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# CONTENTS

1. Law of Sedition: A Changing Paradigm	<i>Raashi Pathak</i> <i>Rakesh Roshan</i>	04
2. Law of Sedition in India : Pre and Post Constitutional Interpretations	<i>Naveen Chandra</i> <i>Sharma</i>	27
3. Sedition Law: A Comparative Perspective	<i>Mohd Yasin</i>	47
4. Sedition Law: A Changing Paradigm	<i>Prateek Jain</i> <i>Nidhi Pious</i>	64
5. Sedition in India: A Comparative Study Proposing Abolition of the Colonial Law	<i>Rakesh Kumar Sahoo</i> <i>Shivani Kapoor</i>	80
6. Sedition in a Democracy: A Comparative Study of Anti- Sedition Laws in Western and Asian Democracies	<i>S.L. Sriram</i> <i>Jyotsna Arora</i>	96
7. Unwanted Dowry of the British Empire: Sedition Laws in India	<i>Namrata Dubey</i>	110
8. Sedition in India: Section 124 A of IPC v. Freedom of Speech	<i>Harrsita</i> <i>Isshitaa</i>	123
9. Section 124(A): The Offender of Freedom of Speech and Expression	<i>Suravi Sarawgi</i>	133

# LAW OF SEDITION: A CHANGING PARADIGM

*Raashi Pathak\**

*Rakesh Roshan\*\**

## Abstract

India has various laws inherited from the British rule that showcase a strong Victorian legacy. Lord Macaulay's idea behind notorious provisions like sedition was to give a good government to people to whom the British could not give a free government. The authors note the manner in which this section was applied strategically and politically by the colonial government against the nationalist and social leaders. The Constituent Assembly debates display how various members considered the provision on sedition to be an anti free speech. However, it continues to be applied as a political tool to suppress dissenting opinions. The authors observe through case laws how sedition as a law is vague in nature and autocratic in application. The argument attempted in this article is that when this law was introduced as a penal law, freedom of speech was not a Constitutional guarantee. However, today right to freedom of speech and expression has become a touchstone of a democratic country. In a comparative analysis, the movements of sedition law in England, the country of origin for the provision in the IPC shall be traced, and in doing so an attempt shall be made to form a tentative case for repealing the same from the Code.

## I Introduction

SEDITION HAS often been defined as hate speech directed against the state or sovereign. It may refer to the uttering or writing of words, and expression of any representations that are intended to bring hatred or contempt toward the sovereign state, to urge disaffection against the democratically elected government or to procure a change of government by 'unlawful' means<sup>1</sup>. One of the ways that sedition may be said to have differed along the years is in its purview or scope. There have been many debates about the purpose behind the law of sedition, questioning whether it is instituted to prevent societies from disintegrating into chaos and anarchy or whether it is used merely as a tool by states to suppress any forms of dissent against those in power<sup>2</sup>. Another major conflict regarding the idea of sedition comes up in the discussion of freedom of speech. Many scholars argue that sedition is an unnecessary restraint on

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1. Hari Singh Gour, *Penal Law of India* 1213 (Law Publishers India Pvt. Ltd.11<sup>th</sup> ed., 2010).
2. Sarah Sorial, "Sedition and the Question of Freedom of Speech", 18 *Current Issues in Criminal Justice* 431-448 (2007).

this freedom and is simply used as a tool to silence unwanted voices against the government. At the same time, differing opinions raise the point that every freedom comes with certain constraints and that the provision of sedition is necessary to maintain the very existence of the state.

Viewing sedition through the historical lens in India, it is seen that it was widely used as a tool by the British to suppress nationalist sentiment in the colonial period. Moreover, section 124A of the I PC, which contains the basic law regarding sedition, received several varying interpretations to suit the need of the hour. Lastly, it is also noted in certain cases sedition was used as a tool to prompt and further the economic interests of the British.<sup>3</sup>

While making comparisons of sedition law across various regimes, it is noticed that Indian sedition law is a result of a strong Victorian legacy. Yet, at the same time there are certain nuances regarding blasphemy and the main actors or constituents in an act of sedition that are present in the British context and not in the Indian. Furthermore, British sedition law has evolved through a history of jurisprudence and is applied as common law, through a jury.

In the present day context, it is noted that sedition has lost its value, mainly due to its highly subjective nature as a penal law, and the large amounts of media attention and public criticism that instituting such a charge receives.<sup>4</sup> It is to be understood that sedition has become a tool for intimidation to suppress dissent, and this can be done through tracking and examining the historical precedents that set the basis for this usage<sup>5</sup>.

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3. A.K. Mukherjee, "*The Federal Court and the Law of Sedition in India*" 98 *Indian Journal of Political Science* (1943).

4. Vishal Kanve, "*Sedition: A Double Edged Sword*", *Daily News and Analysis*, Mar. 6, 2015.

5. RMLNLU "*Sedition in India*" available at: <http://www.rmlnlu.ac.in/webj/sedition.pdf> (Last visited on July 15, 2016).

These continuing areas of discrepancy and the lack of congruence across states and regimes with regard to the main constituent elements of sedition gives rise to the need to study and analyze the laws of sedition.

Therefore, through the course of this article the authors seek to trace the various aspects of sedition law with regard to its main controversies, *i.e.*, infringement on free speech and suppression of dissent and discourse. Also, we make a case of irrelevance of sedition as a penal law in a democratic setup. In the end, we provide some concluding remarks to our discussion.

## **II History and practice**

Section 124A of the IPC, the most prominently wielded piece of legislation when it comes to sedition law in India was added to the IPC by the British colonial government in 1870, it has been surmised that the absence of the law on sedition came to be keenly felt due to the increased activities of Wahabis between 1863 and 1870, whose agents moved freely amongst the established Muslim population of Bengal and Bombay<sup>6</sup> and also in view of the 'Mutiny' of 1857.<sup>7</sup>

This 'law on sedition' was present as section 113 in Thomas Macaulay's draft IPC of 1837. However, in the introduced Penal Code of 1860, this clause was for some unaccounted reason, omitted. It was only 10 years later that by way of a Special Act (XXVIII of 1870) that the IPC was amended to add Macaulay's provision, practically the same as it stood at the time of its original conception.<sup>8</sup>

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6. Aravind Ganachari, *Nationalism and Social Reform in Colonial Situation* 57 (Gyan Publishing House, 2005).

7. W.R. Donogh, *A Treatise on the Law of Sedition and Cognate Offences in British India* (Forgotten Book, London, 1911).

8. *Id.* at 2.

Several questions have been raised regarding this lag in the introduction of the sedition clause. Sir James Fitzjames Stephen, popularly known as the architect of the Indian Evidence Act, when introducing the amendment in 1870, elaborated that the provision on sedition, “was one which, by some unaccountable mistake, had been omitted from the Penal Code as ultimately passed.”<sup>9</sup>

The prominent features of this section can be traced to various sources, namely, the Treason Felony Act which was in operation in Britain, the Common law governing seditious libel as well as the English statutory provisions relating to seditious words. There were, and are, however, several key differences in the English sedition law and that of India. The main legacy of Indian sedition legislation is ultimately attributed to the Victorian legacy.

Bal Gangadhar Tilak was one of the stalwarts of India's freedom struggle. He was charged with sedition thrice, the judgments becoming extremely crucial for defining aspects of section 124A, even providing courts with an interpretation that was to form the cornerstone for judicial decisions for years to come, and has popularly come to be referred to as 'Strachey's Law.' The circumstances that led to the first trial are as follows.

Bal Gangadhar Tilak was tried by the colonial government on charges of sedition under section 124A of the IPC. The circumstances that led to the same are as follow. The British government held that Tilak's publications in the Kesari, specifically those referring to Shivaji's killing of Afzal Khan when distributed in the ever deteriorating conditions of bubonic plague in Poona in 1897 had instigated the murder of the much disliked Plague Commissioner Rand and Lieutenant Ayherst.<sup>10</sup>

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9. *Ibid.*

10. A.G. Noorani, *Indian Political Trials 1775-1947* 116 (Oxford University Press, 2005).

These murders were a cause of great agitation to the colonial government and led to much unrest in Bombay and Poona at the time. Tilak was held to be responsible for inciting the murders.<sup>11</sup> Tilak was tried before Strachey, J., and a special jury. Ultimately, Tilak was found guilty by the jury and sentenced to 18 months in prison. His appeals to the Privy Council were constantly dismissed.<sup>12</sup>

### *Strachey's law vis-à-vis federal court*

During the proceedings of the trial, Strachey, J., with his reputation for conscientiousness and painstaking judgments provided an extremely laborious charge to the jury. Unfortunately, Strachey, J., was also known for his anti-native bias. This judgment, like many other colonial legacies, permeates our present understanding of sedition in India. This case was decided in 1897, a year before the amendment to the provision, and hence the arguments also reference to sedition law in its earlier language.

While examining section 124 A, J Strachey, J., laid the question, “What are feelings of disaffection?” Strachey's answer was, “Disaffection means simply the absence of affection”, making reference to C.J. Petheram's definition in the *Bangobasi* case.<sup>13</sup>

This 'absence of affection' phrasing was a slip the defense counsel tried to jump on as opposed to the meaning 'contrary to affection'. Strachey then went on to clarify the meaning by referring to several dictionaries and ultimately establishing the meaning of sedition according to legal terminology as: 'hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the government.' He added that 'disloyalty is perhaps the best general term, comprehending every possible form of bad feeling to the government.'<sup>14</sup>

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11. *Supra*. note 10.

12. *Queen-Empress v. Bal Gangadhar Tilak and Keshav Mahadev Bal*, The Indian Law Reports Vol. XXII (1897) available at: <http://bombayhighcourt.nic.in/libweb/judgment/Tilakcases/Tilakcases/ILR1898%2822%29BOM112.pdf>, p. 113 (Last visited July 15, 2016).

13. *Supra* note 12.

14. *Id.* at 136.

Thus, Strachey gave meaning to one of the most crucial aspects of sedition law in India, by defining what 'feelings of disaffection' were to be held to mean.

He further went on to say that the 'disapprobation' referred to in the subsequent explanations in the section wouldn't apply to 'any writing which attacks upon the government itself'. He meant to introduce a clarification, that the scope of the explanation was extremely limited, in that it applied only to 'measures of government but (not) upon the government itself, its existence, its essential characteristics...' Thus we see the creation of the distinction between criticizing the existence of the government itself as opposed to its measures.<sup>15</sup>

The last defining point that was a result of Strachey's charge to the jury in this case was on the matter of inciting actual disturbance. On this, Strachey held that the offence consisted in attempting to excite disaffection towards the government that the offence lies in exciting certain feelings. Whether any actual disturbance or outbreak was the result of this attempt, or was intended to be the result of this attempt of disaffection remains immaterial. Strachey held that the attempt to simply excite disaffection was enough to book a man under section 124A of the IPC.<sup>16</sup>

These interpretation afforded by Justice Strachey are today referred to as Strachey's Law.

The 1916 trial of Tilak was witness to some very strong arguments presented by his counsel at the time, M. A. Jinnah. One of the key distinctions that Jinnah drew was regarding the 'government established by law' in British India.<sup>17</sup>

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15. *Ibid.*

16. *Ibid.*

17. *Supra* note 10 at 116.

In attempting to defend certain speeches made by Tilak regarding swaraj, Jinnah differentiated between 'government' as described in section 17 of the IPC, and 'government established by law in British India. He refused to accept that the two meant the same, as the words 'established by law' in the latter would then seem redundant.<sup>18</sup>

He argued that the 'government established by law' referred to a more abstract form, that is to say 'Constitutionally established government', further moving to say that Tilak was disapproving of the persons of the bureaucracy in his speech, rather than advocating against the established British rule as such.<sup>19</sup> Hence, a key distinction that was first referred to in the Tilak judgment of 1897 by Strachey, J., and later strongly relied upon by Jinnah in order to define the nature of the 'government' or 'state' the offence of sedition referred to.

Strachey held that the attempt to simply excite disaffection was enough to book a man under section 124A of the IPC.<sup>20</sup> Hence, through the above discourse we have observed how the various defining characteristics of sedition law came to gain meaning, as applied even in the present context. In between, the famous political trials of nationalist figures like Mahatma Gandhi and Annie Besant was also held under the same law.

However, by 1939, the conception of sedition had changed. The ambit under which one could be booked for sedition was narrowed. This development could be attributed to the fact that there were some severe political currents establishing themselves in the nation, and Indian nationalism was a potent force with Indian independence a not so distant possibility. We can observe this subsequent application of sedition law in

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18. *Ibid.*

19. *Ibid.*

20. *Id.* at 135.

the case of *Niharendu Dutta Majumdar*, wherein the Federal Court in India took the view that in order to constitute sedition, '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.'<sup>21</sup>

For the first time in colonial history, the federal court took the view that section 124A should be read in its spirit rather than in its literal sense, and as such attempted to narrow the ambit of the law.<sup>22</sup>

The judgment was provided by, Chief Justice Maurice Gwyer. He acknowledged that in 1939, the time was by gone that the mere criticism of governments constituted sedition.<sup>23</sup>

Hence, we may note that the Federal Court changed the definition of sedition from that given by Strachey. Strachey's definition held that there needs to be mere expression of 'disaffection', whereas the federal court in *Niharendu Dutta Majumdar* narrowed the scope of sedition to include only those acts or words intended to incite disorder and disruption.<sup>24</sup>

This view has been explained by scholars as a result of the political developments in India, where the court conceded that these changes needed to be accounted for, where nationalist sentiment had become a force to reckon with and could no longer be brought under the ambit of sedition. This view was however turned on its head by the Privy Council judgment in *Sadashiv*,<sup>25</sup> reinforcing the Strachey understanding of sedition in the Tilak case; the offence was in exciting bad feelings towards the government, and not solely in inciting any kind of disturbance like a mutiny or rebellion. This broad Privy Council judgment was astonishing, in 1947, in light of the intractable nationalist, anti-colonial forces that had established themselves in India by that time.

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21. *Niharendu Dutta Majumdar v. the King Emperor*, AIR 1942 FC 22: (43 Cr L J 504).

22. *Supra* note 3 at 99.

23. *Id.* at 100.

24. *Supra* note 3 at 101.

25. *King Emperor v. Sadashiv Narayan Bhalerao* (1947) L R 74 IA 89.

### ***Debate in the constituent assembly***

The major irony of sedition law being used primarily against nationalist figures like Bal Gangadhar Tilak and Mahatma Gandhi was not lost on the makers of the Constitution. K.M. Munshi, one of the central figures in the drafting of our Constitution, was the prime advocate for the removal of the term 'sedition' as a basis on which laws could be framed, limiting the fundamental right to freedom of speech under article 19. 'Sedition' was eliminated from the exceptions to the right to freedom of speech and expression in article 19(2).

K.M. Munshi included in his speech that, 'the essence of democracy is criticism of government the advocacy of a different system of government should be welcome because that gives vitality to a democracy.'<sup>26</sup> It is seen that Munshi approached the problem of sedition with a sole focus on its restrictions to speech and expression. He felt that the makers of the Constitution needed to secure against the misuse of sedition, a term which he is recorded as describing as, 'a word of varying import that has created considerable doubt in the minds of not only the members of this House but of Courts of law all over the world.'<sup>27</sup>

He ends with quoting a passage from the judgment in *Niharendu Dutt Majumdar*, by the then C. J. of India:-

'This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts 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.'<sup>28</sup>

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26. Constituent Assembly of India Part I Vol. VII, 1 December 1948, *available at* <http://164.100.47.132/LssNew/cadebatefiles/C01121948.html> (Last visited July 15, 2016).

27. *Ibid.*

28. *Supra* note 20.

Thus, the manner in which Munshi aptly summarizes his misgivings about sedition being used as a tool to suppress dissent by those in power, a misgiving that was a result of the various instances of manipulative use by the British colonial authorities.

The absence of sedition from the central articles of our Constitution is a result of the initiative taken by K.M. Munshi. His sentiment with regard to the presence of 'sedition' as a central feature of the Constitution was supported by other framers like T.T. Krishnamachari and Seth Govind Das. These framers of our Constitution thus exhibited a wish to move away from the stringent colonial order where legitimate dissent was denied to Indians.

### ***Post-independence era***

The concept of the freedom of speech emerges from liberalism; there should be a space where the individual is free from social coercion. Freedom of speech in India is guaranteed as a fundamental right in the Constitution of India under article 19, to all citizens of the country. However, clause 2 of article 19 also lists certain 'reasonable restrictions' that may be used to justify the curtailment of this freedom of speech by the state. Among the various reasons, there exist the restrictions to guarantee 'public order' and the 'security of the state'.<sup>29</sup> Even though we see through the Constitutional Assembly debates that the framers of the constitution refrained from adding sedition to this list of reasonable restrictions, the phrases 'public order' and 'security of the state' have been oft upheld in order to showcase the constitutional validity of sedition law.<sup>30</sup> This is what led to the question of whether the content that was being viewed as seditious was merely the exercise of the freedom of speech in criticizing the authorities, or was such seditious

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29. Constitution of India (1950), article 19(2).

30. Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press, 1999).

content aired in order to create public order. Then did only such speech count as sedition which incited public disorder, or any speech that simply expressed 'disaffection' as laid down by Strachey.

The question of freedom of speech and the restriction on it in the form of sedition came to become a much-debated issue, especially in the new democratic framework of fundamental rights.

Post-independence, the major charges brought against sedition law was whether there remained a place for such provision within the new democratic set up. This question was of special importance, as sedition was primarily viewed in the light of the liberal and manipulative use of the colonial government. Sedition and especially section 124A were viewed mainly as a draconian tool to be used by authorities to suppress expression of dissent. This back and forth between sedition as an offence against the state, and sedition as a decayed, colonial constraint to the freedom of expression was exhibited in several cases over the years after independence.

Sedition law came under intense scrutiny in a trilogy of cases in the wake of Indian independence and political awakening in the 1950s and 60s, with the main emphasis being on its constitutional validity when seen as a restriction to the freedom of speech.<sup>31</sup>

In 1950, Weston, C.J., of the Punjab High Court gave a substantial judgment in relation to the position of sedition with regards to freedom of speech. This was one of the first instances where opinion against sedition law was voiced thoroughly, holding that a law of sedition that had been deemed necessary during a period of foreign rule had become unnecessary due to the transition of India into an independent democracy.<sup>32</sup>

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31. *Supra* note 30.

32. *Tara Singh Gopichand v. State* (1951) Cri L. J. 449.

By this, he conveyed that sedition law had no place in the new democratic set up of India, where freedom and especially freedom of speech held such a sacred spot. No curtailment of speech arising due to the criticism of the government should be sanctioned by law. In the course of this view, the court established that the sedition law became unconstitutional the moment the language of this section was broad enough to cover.

“It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the Constitution. The section then must be held to have become void.”<sup>33</sup>

Hence, the first instance where the judiciary called for the abandonment of what it termed an inappropriate colonial law, on the grounds that this restriction of speech was unconstitutional.<sup>34</sup>

The second case where a similar view was voiced by the court was in *Sabir Raza*,<sup>35</sup> however, the notable judgment remained that of the Allahabad high court. Popularly known as the *Ram Nandan* case, it examined in detail the constitutional validity of sedition law in India. The case came to the high court as a challenge to the conviction of Ram Nandan for an inflammatory speech given in 1954. One notable fact in the series of events in this case is that Nandan's comments politically tilted towards criticizing the Congress regime. He announced that the Congress had been unable to address extreme poverty, and then called for farmers and cultivators to form an army and overthrow the government if need be.

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33. *Supra* note 32.

34. *Ibid.*

35. *Sabir Raza v. The State*, Cri App No 1434 of 1955.

According to Strachey's definition of sedition, the charges would hold, Ram Nandan was exciting feelings of disaffection or contempt of the state, and even inciting disorder in the form of a rebellion. However, the Allahabad high court actually overturned his conviction and declared section 124A to be unconstitutional.

In a memorable judgment, Gurtu, J., gave the following reasoning-

“In the Indian democracy, there exists a concentration of legislative and executive power in a small body of men known as the ministers. The most important check on the powers of this body comes from a powerfully organized Parliamentary opposition.”

However, there exists another fear that the government may be subject to 'popular disapproval not merely expressed in the legislative chambers but in the market place also, which, after all, is the forum where individual citizens ventilate their points of view.' Since there exists in our democratic setup, a place for the criticism of the policy of ministers and if this criticism, without having any tendency to bring about public disorder, has a chance of getting caught under the 'mischief of section 124A of the IPC' then that section should henceforth be invalidated as it is capable of striking at the very heart of the Constitution, that is, the freedom of speech in disregard of whether the security of the state or public order is in concern.<sup>36</sup>

With this trilogy, it can be appropriately summed up that the various arguments as to why sedition has been considered unconstitutional in that it is an infringement to the freedom of speech, an ideal that is held sacred at the very heart of the democratic Indian Constitution. As Gurtu, J., says, if there is even one instance of speech being curtailed under sedition when there was no tendency to incite disorder, this section should become invalid.<sup>37</sup>

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36. *Ram Nandan v. Nath State* AIR 1959 All 101.

37. *Ibid.*

This trilogy of cases deeming sedition as unconstitutional were invalidated by a decisive Supreme Court judgment in 1962, known as *Kedar Nath v. State of Bihar*.<sup>38</sup> This judgment was made by the Supreme Court keeping in mind several other cases filed on grounds of sedition, and was intended to clarify the position of sedition in the then democratic framework. The Supreme Court also distinguished between certain confusions in the terminology of the law. Firstly it stated the distinction between 'the government established by law' and 'persons for the time being engaged in carrying on the administration'. The judgment quite eloquently stated:

“Government established by law” is the visible symbol of the state. The very existence of the state will be in jeopardy if the government established by law is subverted. Hence, the continued existence of the government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in section 124A has been characterized, comes under chapter VI relating to offences against the State.”<sup>39</sup>

Thus, it can be concluded that the Supreme Court in *Kedar Nath* established that the seditious words or representations were to be an affront to the sovereign, and not to the political or elected government of the time. Secondly, even while upholding the constitutionality of sedition law, the Supreme Court did curtail its meaning and limit its applicability to acts that involve the intention or tendency to create disorder, or the incitement to violence. The same is displayed in the following lines from the judgment:

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38. AIR 1962 SC 955.

39. *Ibid.*

40. *Ibid.*

“A citizen has a right to say or write whatever he likes about the government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the government established by law or with the intention of creating public disorder.”<sup>40</sup>

The judges went on to observe that in the present set up, if sedition was given a wider definition, it wouldn't be able to survive the test of constitutionality.

This argument on the constraint to freedom of speech by sedition was justified and legitimized in *Kedar Nath*, and continues to be held as the judicial opinion on sedition law in India.

### III Politics, media and sedition

“When it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme.”

—Supreme Court of India, *Shreya Singhal v. Union of India*,  
March 24, 2015.

Mahatma Gandhi was insightfully recorded as calling out section 124A of the IPC as being the 'prince among the political sections of the IPC designed to suppress the liberty of the citizen.'<sup>41</sup>

Bal Gangadhar Tilak trial was one of the first instances where the British used sedition law as a tool to serve their political purposes. They wished to lash out punishment to send the message that the killing of British officials will not be tolerated, and secondly, any anti-colonial propaganda will not be borne, no matter however respected and prominent its source remains. Another argument that the judiciary has put forth is that sedition law was a tool used by the colonial state to serve its arbitrary political needs, and hence with the transition to democracy, this colonial tool should also become void.<sup>42</sup>

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41. *Supra* note 17 at 235.

42. *Ibid.*

The opposition to these two main arguments comes in various forms. Many conservative ideologies have been linked to the line of argumentation that supports the presence of sedition law. Defenders of the law of sedition have claimed that it becomes necessary and right as a matter of principle for the state to retain the offence of sedition for the dual purpose of protecting the state and its citizens.<sup>43</sup> Sedition has often been justified on the grounds that a sovereign government has the right to resist external and internal aggression, and thus to protect the citizen from harm.<sup>44</sup>

More on the same line, Binayak Sen, a prominent human rights activist was to be held under section 124A of the IPC for criticizing the Chhattisgarh government's support to the vigilante body Salwa Judum. Thus, it is seen in the recent times that sedition does not contain any of those original elements as drafted in the Victorian colonial era, and thus has become highly unsuitable to the present political climate. This archaic language has become a method for political authorities to punish those who criticize it, rather than book those who incite disruption and disorder as came to be the understanding of section 124A.

The State, it has been argued, should not have to wait until violence and insurrection break out, but should be able to eliminate the threat as it arises. Nevertheless, states continue to use sedition law by claiming that seditious words are likely to provoke violence and are thus necessary to protect public interest. One instance where we can observe the hasty enactment of sedition law can be in the early 2000s, after terror attacks started gaining frequency, specifically after the attacks in London and Madrid. Western governments started to realize that those who

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43. *Supra* note 2 at 447.

44. Report by Sarah Sorial, *Sedition and the Advocacy of Violence: Free Speech and Counter Terrorism* (2012).

orchestrated such terror attacks had actually been raised in Europe where they were 'radicalised' and this radicalization could be attributed to 'words'. Thus by establishing a causal relationship between speech acts and violent acts, governments were able to justify the regulation of free speech with reference to the 'protection of public order' principle.<sup>45</sup>

In fact, sedition can be quantified as a tool being used by political authorities to suppress dissent in present day India. The widespread presence of media criticism, intellectual forums and international backlash has prevented actual prosecution and conviction under section 124A however, the threat of being booked under the same provision has been wielded widely.

Arundhati Roy, one of the most renowned cases of a possible booking under sedition led to major discussion on whether the popular writer's remarks that 'Kashmir has never been an integral part of India' bordered on what constituted sedition in the nation's laws. The charge never came to fruition, probably because the statement did not fulfill the essential criteria of inciting disorder of some kind.<sup>46</sup>

Other respected writers and media persons were threatened with charges of sedition at the same conference as Arundhati Roy, like S.A.R. Geelani and Varavara Rao. The title of the seminar these personalities were gracing was on Kashmir, 'Azadi, The Only Way'. The threats to such renowned personalities by state officials truly brought to media attention the presence of this colonial age law on sedition and there ensued many debates on the manner in which the state wielded the power of section 124A.

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45. *Supra* note 44.

46. Arundhati Roy's "*Possible Sedition Case*", available at: <http://www.ndtv.com/india-news/arundhati-roys-statement-on-possible-sedition-case-437396> (Last visited July 15, 2016).

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Thus, it is seen in the recent times that sedition does not contain any of those original elements as drafted in the Victorian colonial era, and thus has become highly unsuitable to the present political climate. This archaic language has become a method for political authorities to punish those who criticize it, rather than book those who incite disruption and disorder as came to be the understanding of section 124A.

A disconnect between the higher judiciary and the lower courts plus state officials is also noted. While there have been several flimsy cases of sedition brought against persons like teachers and editors, which were later acquitted by higher courts on the grounds that they did not fit into the circumscribed nature of section 124A as read with the *Kedar Nath* judgment of the Supreme Court. For example, charges of sedition were brought against one Manoj Shinde, an editor from Surat for blaming Chief Minister Modi for the disastrous floods that hit the city, and in doing so allegedly “inciting the people against a duly elected government.”<sup>48</sup>

The recent ruling on Aseem Trivedi charging him with sedition for parodying the national symbols of the Indian nation simply exhibit the frivolous nature of seditious charges in the present day.

47. Priscilla Jebaraj, “*Binayak Sen among Six People Charged with Sedition in 2010*”, *The Hindu*, January 1, 2016. available at: <http://www.thehindu.com/todays-paper/tp-national/binayak-sen-among-six-people-charged-with-sedition-in-2010/article1022205.ece> (Last visited July 15, 2016).

48. Subash Gatade, “*Article Writing Equals Sedition*” (June 3, 2008), available at: <http://www.countercurrents.org/gatade030608.htm> (Last visited July 15, 2016).

Sedition is being charged even when there is a lack of incitement to any action of any sort. This may be attributed to a lack of understanding on the part of the lower strata of the state and judicial machinery, and their grasping efforts to suppress dissent in today's highly democratized forums.

With this there only becomes more stronger and stronger case for doing away with sedition law as it has completely lost its relevance in today's political context, and has devolved into a mere tool to threaten writers, media persons and such to tow the line laid by those in power. Ever since the narrowing of the scope of the law of sedition in *Kedar Nath*, there have been few present day cases where any citizen has actually qualified to be booked under the section in accordance with the criteria laid down in the Supreme Court judgment.

Sedition law has become more of a tool to stem political dissent in the nation, and as we see in the case of Binayak Sen and the conference on Kashmiri Azadi, a way to curb the development of any alternate political philosophy, often that which goes against the mindset of the ruling party or those in power.

#### **IV Comparative analysis of sedition law**

The Indian sedition law is strongly influenced by its Victorian legacy. This English legacy was a mix of the common law on sedition and English statutory provisions. The major statute regarding sedition in England was, and is, the Treason Felony Act of 1848. The sedition law is extremely similar, in that, it includes publication or utterance of seditious words. However, there does existence a long established procedure under Common law wherein a seditious intention is to be proved. Here is where the English definition of sedition begins to differ from the Indian. A seditious intention becomes one where the government, Constitution, Parliament or even the justice administration system could be shed into contempt.<sup>49</sup>

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49. *Supra* note 3 at 98.

The English law thus contained much greater specificity as to what entities are covered under the offence, and there was no dilemma, as in the Indian law; of 'the government established by law' and 'persons for the time being engaged in carrying on the administration' that needed to be duly distinguished between in *Kedar Nath*.<sup>50</sup>

Further, sedition had a much broader scope, in that it wasn't used just for offences against the state. There was the inclusion of bringing into contempt the church, or inciting disaffection or hostility between different classes of subjects in the kingdom. Having one uniform church officiated by the state, the common law held that an offence against the church to be an affront to the sovereign itself.

What truly bring out the differences between India and England with regard to sedition are the changes brought about in modernity. Their last prosecution of sedition was in 1972, with all further attempts being unsuccessful.

In Britain, the charge of sedition has always had to be approved by a jury, thus providing a much more democratic application. Thus, despite having a wider purview, the English law of sedition was applied with greater constraint in England.<sup>51</sup>

There was a landmark case of *R v. Chief Metropolitan Stipendiary Magistrate ex parte Choudhury* where the English judiciary held a view similar to that of the Indian judiciary. The judgment declared that there had to be 'provocation to violence, resistance or defiance of authority for seditious libel to be proved.'<sup>52</sup>

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50. *Supra* note 49.

51. *Id.* at 100.

52. *R v. Chief Metropolitan Stipendiary Magistrate ex parte Choudhury*, [1991] 1 All ER 313.

In the same case, the court also clarified the position of blasphemy under sedition law. It held that a person may criticize other religions like Judaism and Islam without being liable to prosecution for it, however, any general attack on Christianity is the subject of a criminal prosecution, mainly because Christianity is the established religion of the state and nation.

Lastly, the Coroners and Justice Act of 2010<sup>53</sup> in England abolished the crimes of sedition and seditious libel. This was a result of a discourse on the violation of freedom of speech and the archaic nature of such laws, started by the European Convention on Human Rights and the subsequent observations of the joint committee on human rights<sup>54</sup> in the UK in February, 2010.

Hence, we see that while English and Indian sedition law might have borne great similarities in origin and application by the state, the developments in the modern era of the 21<sup>st</sup> century are much different. While England outlawed the crime of sedition for being out of touch with modern democratic values, and for its 'chilling effect' on free speech, sedition law has only been reinforced in India with the recent spate of charges.

## **V Conclusion**

In this article it is noted the manner in which sedition law first developed in the colonial era, and how it was used by the British authorities of the time.

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53. Coroners and Justice Act, *available at*: <http://www.legislation.gov.uk/ukpga/2009/25/contents> (Last visited July 10, 2016).

54. European Convention on Human Rights 2010, *available at*: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) (Last visited July 10, 2016).

Through the mentioned cases the conclusion may be drawn that while initially the scope for application was extremely wide, with sedition law being used primarily to suppress dissent, with ensuing political changes the purview of sedition has been narrowed.

This pattern seems to follow throughout while tracking the evolution of sedition law, and the application of the same. The definition, and therefore the ambit, of the law seem to morph in accordance with the political climate. Therefore, we note that it is not necessary that sedition is molded by the political authorities in power, sedition law can be interpreted in a decisive manner by the judiciary as well, keeping in mind the political background and inclinations of the time.

In observing the debates surrounding sedition as an infringement on the freedom of speech we note several arguments for and against it. The arguments for sedition seemed to rely mostly on justifying the need to protect against public disorder and a sovereign's right to maintain its integrity. Currently in India, despite many advocates for its abolishment, sedition continues to be defined as in the *Kedar Nath* case; *i.e.*, with limited scope but definite applicability to speech acts and others that incite contempt with a tendency to disrupt.

It is seen that sedition in India has denigrated to a threat to be used to suppress dissenting voices, and most cases that are booked under section 124A do not actually fulfill the necessary criteria, which is why most do not come to fruition.

In the last chapter English sedition law was compared with Indian sedition law, which contains a major Victorian legacy. Despite their similarity in origin, however, it may be reasonably concluded that their paths have diverged in the 21<sup>st</sup> century. Even as England has outlawed

sedition, new offenders like Hardik Patel continue to be booked under the crime every day in India. There is a gross need for a re-examination of the necessity of such a provision in the modern Indian framework, much as there was a reexamination in England due to the European Commission on Human Rights.

Thus, it may be concluded that by stating sedition law has been evolved, or more accurately, been manipulated, by various regimes in order that its definition serviced certain political agendas of the time. The judiciary has also had a major role to play on defining the applicability of the same, and acts as the regulating factor by conciliating sedition law in face of modern freedoms.

In noting the highly subjective nature of the law, and the wide scope for its arbitrary application, a case for repealing the sedition law in India is being put forth, modeling ourselves after Britain, which has declared the same to be obsolete and purged it from its legal system. Through the case for freedom of speech, and wide scope for misuse, we may state that sedition law is a dangerous trend that undermines modern democracy.

# LAW OF SEDITION IN INDIA - PRE AND POST CONSTITUTIONAL INTERPRETATIONS

*Naveen Chandra Sharma\**

## **Abstract**

The research paper tries to map the journey of law of sedition in India since its inception and its post-constitutional scope. The research begins by highlighting the historical context of the law of sedition in India and thereafter analyzes section 124A of the IPC which provides for the offence of sedition and tries to analyze the essentials of the provision to constitute the offence over which there has been an inconsistent approach by various courts namely the federal court and the Privy council. The research further discusses the post-constitutional law of sedition and through the help of precedents, comments on the constitutional validity of the law of sedition trying to discover the thin line of distinction between freedom of speech and sedition. The research thereafter highlights the recent developments in the law of sedition in India by mentioning about the celebrated cases of Hardik Patel and the JNU controversy. The research concludes by commenting about the interpretation which should be placed by the courts in India on the law of sedition making it tenable and workable in the functioning of the democratic framework like India.

## **I Introduction**

SECTION 124 A deals with the law of sedition in India. It is incorporated under chapter VI of IPC, 1860 relating to "Offences against the State". The law of sedition prescribed under section 124A of IPC, 1860 was originally section 113 of Macaulay's Draft Penal Code, 1837-39.<sup>1</sup> However, the section was excluded from the code when IPC was enacted in 1860. One of the many reason given for such omission from the code was that it was the result of a mistake.<sup>2</sup> The British government later on November 25, 1870, by Act XXVII of 1870 section 124A was introduced in the IPC.<sup>3</sup>

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1. W.R. Donogh, *A Treatise on the Law of Sedition and Cognate Offences in British India* 1 (Thakker, Spink and Co., Calcutta, 1911).
2. James Fitzjames Stephens, widely regarded as to be architect of Indian Evidence Act, 1872, see A.G., Noorani, *Indian Political Trials: 1775-1947*, 235 (Oxford University Press, New Delhi, 2009). See also R. Samaddar, *Emergence of the Political Subject* (Sage Publications, New Delhi, 2010).
3. See Ratanlal and Dhirajlal, *The Indian Penal Code*. 659-72 (LexisNexis, Gurgaon, 32nd edn., 2013).

The most prominent reason for enacting the law of sedition by the British government at that time was to suppress the Wahabi activities between the years 1863-1870 that posed a serious threat to British supremacy.<sup>4</sup>

Similar to the sedition law, the other laws that were enacted by the British government to restrict the freedom of speech and expression were the Vernacular Press Act, 1878, (repealed in 1881), the Newspapers (Incitement of Offences) Act, 1908, and the Indian Press Act, 1910 (repealed in 1921). However, the laws that are still subsisting in one way or other similar to the sedition law in India are section 95<sup>5</sup> of Cr.P.C. , 1973. Section 5<sup>6</sup>

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4. The Wahabis were a shadowy network of rebels who were part of the First War of Indian Independence in 1857 and were feared for their extensive network across the country. They followed a modern organizational technique of combining secret work with mass preaching set in a politico-religious framework, See Aravind Ganachari, "Combating Terror of Law in Colonial India: The Law of Sedition and the Nationalist Response" in M. Vandalos, G.K. Lotts, H.M. Teixeira, A. Karzai and J. Haig, Boca Raton (eds.), *Engaging Terror: A Critical and Interdisciplinary Approach*, 98, 99 (Brown Walker Press, Florida, 2009).

5. Section 95 reads: - Power to declare certain publications forfeited and to issue search-warrants for the same. Where-
- (a) any newspaper, or book, or
  - (b) any document, wherever printed, appears to the State government to contain any matter the publication of which is punishable under section 124-A or section 153-A or section 153-B or section 292 or section 293 or section 295-A of the I PC, the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any book or other document may be or may be reasonably suspected to be.
6. Section 5 provides: Power prohibit public meetings: The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquility.

of the Seditious Meeting Act, 1911, section 2(1)(o)<sup>7</sup> and section 13<sup>8</sup> the Unlawful Activities (Prevention) Act, 1967. The section 124A which was inserted in the year 1870 in IPC, was later modified on February 18, 1898 and it remains the same till date.<sup>9</sup>

The section 124A does not elucidate sedition but only specifies the manner in which seditious activities can be perpetrated.<sup>10</sup> Sedition can effectively be described as defamation against the established government.<sup>11</sup>

In *Kedar Nath v. State of Bihar*<sup>12</sup> the court held that the word sedition in ordinary sense means a stirring up

7. Section 2 (1) (o) provides: (o) unlawful activity, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), —
- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
  - (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
  - (iii) which causes or is intended to cause disaffection against India;
8. Section 13:—Punishment for unlawful activities :—
- (1) Whoever,
    - (a) takes part in or commits, or
    - (b) Advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.
  - (2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.
  - (3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India
9. Section 124-A of IPC, 1860.
10. *Supra* note 9.
11. P.S.A Pillai, *Criminal Law*, 348 (Butterworths, New Delhi, 9<sup>th</sup>edn., 2000).
12. AIR 1962 SC 955.

of rebellion against the government. The sedition law was earlier used by colonial government to silence the anti-colonial voices against their misrule and to curb the opportunities for arguments that would question their injustices. While the British government abolished the law of sedition in their country,<sup>13</sup> it continues to be in force in India till now. Their legacy has been adopted by our constitutional framers. The foundations of freedom of speech and expression are laid down in the Preamble of the Constitution of India.<sup>14</sup> Indian Constitution guarantees right to speech and expression under article 19. The law of sedition became an instrument of suppressing dissent by empowering the ruling government even after independence to suppress any form political dissent of their own people. There is a conflicting history of judgments regarding the question as to when does a conduct becomes a seditious act.

## II Essential ingredients of section 124A

The law of sedition has gained a special degree of disrepute in the recent times. It would be necessary to revisit the essentials ingredients of sedition under IPC, 1860. A brief overview would make things clear as to how this law formed under colonial epoch served India as a laboratory. Some of the essentials of the law of sedition are as follows:

### ***Whoever, by words, signs, visible representation or otherwise***

The language used to determine the manner in which seditious activities is open to a broad interpretation. The term visible representation has not

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13. In 2009 the British Government removed the law of sedition from their country. Sedition was abolished through the Coroners and Justice Act, 2009, under Gordon Brown's Labour government. Three offences were abolished: the offences of sedition and seditious libel; the offence of defamatory libel; and the offence of obscene libel. *available at:* <http://www.hindustantimes.com/world/sedition-law-in-uk-abolished-in-2009-continues-in-india/story-Pkrvylv6J0T3ddY8uqvKsO.html> (last visited July 2, 2016).

14. *See*, U.K. Singh, *Political Prisoners in India* (Oxford University Press, New Delhi, 1998).

been defined. In the general sense of the word, “visible representation” means and includes any form of communication or pictures/ dramatic performance or any other performances where no words are spoken. Similarly, the words “or otherwise” indicates the universality of the means by which the offence may be committed.<sup>15</sup> Thus in short this section includes whoever by any means<sup>16</sup> whether by words spoken, written, circulation, distribution of seditious material and also all of the above mentioned shall be liable under this section.

***Bring or attempts to bring into hatred or contempt***

The words 'hatred' or 'contempt' inserted in law of sedition after the amendment in 1898. The actual causing of hatred or contempt does not matter, even attempting to bring into hatred or contempt will be punishable under this section.<sup>17</sup>

However, in *Raghubir Singh v. State of Bihar*<sup>18</sup> the court held that, law will not take into account the offence of sedition merely because of the feeling of hatred or contempt, the law will only step in when the inner feelings of hatred or contempt excites disaffection against the state. In the case of *Annie Besant v. Advocate General of Madras*<sup>19</sup>

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15. *Supra* note 11 at 349. See also Simon Bronitt and James Stellios, “*Sedition Security and Human Rights: Unbalanced Law Reform in the War on Terror*”, 30 *Melbourne University Law Review*, 924-960 (2006).
  16. *Aravindan v. State of Kerala* 1983 Cri LJ 1259.
  17. *Supra* note 11 at 349.
  18. AIR 1987 SC 149 at 158.
  19. AIR (1919) P.C. 31.

the court while interpreting section 4(1) of the Indian Press Act, 1910,<sup>20</sup> which was framed similar to the section 124A of IPC, 1860 held that, hatred or contempt towards the government established by law by writing, imputing to the government base, dishonorable, contemptuous, malicious motives in the discharge of its duties or by writing that unjustly accuses the government of hostility or indifference to the welfare of the people.<sup>21</sup>

### ***Excite disaffection***

The section 124A of IPC does not define the word disaffection, but simply declare that disaffection includes disloyalty and all feelings of enmity. The main point of controversy is regarding to the word disaffection the question arises when an act is said to be exciting disaffection in order to constitute offence under this section. The first probable case of sedition under the British government was *Queen Empress v. Jogendra Chunder Bose*<sup>22</sup> the chief justice of Calcutta High Court explained when the conduct or an act would amount to disaffection. The judgment laid down a distinction between disaffection and disapprobation, and observed:<sup>23</sup>

Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove if a man's sentiments or action and yet to like him. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey lawful authority of the government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be

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20. Section 4(1) The relevant provision said that any press used for printing/publishing newspapers, books or other documents containing words, signs or other visible representations that had a tendency to provoke hatred or contempt to His Majesty's government...or any class of subjects (either directly or indirectly, by way of inference, suggestion, metaphor, etc.) would be liable to have its deposit forfeited.

21. K.D Gaur, *The Indian Penal Code*, 202 (Universal Law Publishing Co.Pvt. Ltd., Delhi, 2<sup>nd</sup> edn., 2001).

22. (1891) ILR 19 Cal 35.

23. *Supra* note 11 at 351.

guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them.

The disaffection relates to disobedience towards the government established by law, which is entirely different from legitimate disapprobation. First, there is no need to show the actual harm but to demonstrate that the person intended to create disposition<sup>24</sup> in the minds of the other to defy or disobey the government established by law in India. Secondly, the words be calculated to create such disposition.

However, this position has been reversed in the case of *Queen Empress v. Bal Gangadhar Tilak*,<sup>25</sup> Strachey, J., interpreted section 124A of IPC, 1860 and widens the scope of section and equated disaffection to disloyalty. He further held that the amount of disaffection is irrelevant, neither it is relevant that whether any actual feelings of disaffection were created amongst the audience or not. He described the term feeling of disaffection actually refers to hatred, enmity, dislike, hostility, contempt and every form of ill will to the government established by law.<sup>26</sup>

He even rejected the previous argument of legitimate disapprobation and held that explanation to the section 124A which permits acts of disapprobation would not apply to any writing which consists not merely the comments upon government measures, but also attacks upon the government itself, its existence, its essential characteristics, its motives, or its feelings towards people.<sup>27</sup>

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24. Gautam Bhatia, *Offend, Shock, or Disturb*, 83-101 (Oxford University Press, New Delhi, 2016). See also Laurence W. Maher, "The Use and Abuse of Sedition", (1992) 14 *Sydney Law Review* 287 (1992); Laurence W. Maher, "Dissent, Disloyalty and Disaffection: Australia's Last Cold War Sedition Case", 16 *Adelaide Law Review* 1 (1994).

25. ILR 22 Bom 112.

26. Justice Strachey give the new interpretation to the offence of sedition while Delivering the judgment in Tilak case, available at: [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf) (last visited July 2, 2016).

27. See A.G. Noorani (2009), *supra* note 2.

According to his interpretation, one need not to even attempt to excite the feeling of rebellion or disturbance but all that is needed is an attempt to excite feeling of enmity towards the government established by law in British India. After this judgment the section was amended to legalize the interpretation of Justice Strachey. These amendments also introduced section 153A<sup>28</sup> and section 505<sup>29</sup> of the IPC. Tilak in his paper (*Kesari*) carried an editorial pointing to the measures taken by British government to suppress voice of the masses through the various enactments<sup>30</sup> by the British government in 1908. He was subsequently arrested and put into jail for his criticism. In 1916, Tilak was again brought before the court for orally disseminating seditious material but Jinnah skillfully defended his case by relying on the fact that his attack was on the bureaucracy and not on the government itself and such speech would not amount disaffection but only disapprobation.

Mahatma Gandhi trial under the offence of sedition was one of the most prominent cases of that time. He was held guilty under section 124A of IPC, 1860 along with Shankerlal Banker, the proprietor of Young India, for three articles published in the weekly. He explained to Justice Strangman that why from a strong supporter of monarchy he had now become an uncompromising disaffectionist and a non-cooperator and why it is his moral duty to oppose this law.<sup>31</sup> He demanded being punished with the maximum sentence under this section from the judge in following words:<sup>32</sup>

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28. Section 153-A—Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, *etc.*, and doing acts prejudicial to maintenance of harmony.

29. Section 505—Statements conducing to public mischief.

30. The Newspapers (Incitement to Offences) Act in 1908, a law that empowered District Magistrates to confiscate printing presses that published seditious material and the Seditious Meetings Act to prevent more than twenty people from assembling for meetings.

31. Siddharth Narrain, “Disaffection’ and the Law: The Chilling Effect of Sedition Laws in India”, 56(8) *Economic and Political Weekly*, 34 (2011).

32. Mahatma Gandhi was charged for the offence of sedition by the British government, during his trial before the court he explained how the law of sedition has become a tool in the hand of colonial government to control and crush the ant-colonial voices. *Available at:* [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf) (last visited July, 5, 2016).

Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence. But the section under which Mr. Banker and I are charged is one under which mere promotion of disaffection is a crime. I have studied some of the cases tried under it, and I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. I have endeavoured to give in their briefest outline the reasons for my disaffection

Mahatma Gandhi also criticized the Punjab martial law cases in his seditious trial and made the point that nearly ninety-five percent of convictions are wrong and nine out of ten convictions are totally innocent. He told the court that the crime they committed consist of love for their country.<sup>33</sup>

### ***Government established by law in India***

The expression has to be separated from the government of particular ruling party or the bureaucracy running the government.<sup>34</sup> Section 17 of IPC defines government as indicating the central government or the state government. Where there is an attempt to remove the ministers, who are in power in the office in any state<sup>35</sup> or criticizing any ministry in power<sup>36</sup> or any agitation for the repeal of an Act of Parliament will not amount to offence of sedition if there are no unlawful means employed to achieve the same.<sup>37</sup> The most significant distinction was made in the case of *Tilak v. Chirol*<sup>38</sup>

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33. *Supra* note 2.

34. *Supra* note 11 at 355.

35. *Dhirendra Nath Sen* (1938) 2 Cal 672.

36. *Om Prakash v. Crown* 42 PLR 382.

37. *Supra* note 33.

38. *Supra* note 32.

in which he made distinction between criticism of government and criticism of bureaucracy. Further in the case of *Kedar Nath v. State of Bihar*<sup>39</sup> the court held that the expression 'government established by law' must be distinguished from the persons for the time being engaged in carrying on the administration.

### III Federal court versus Privy council

In the case of *Niharendru Dutt Majumdaar v. Emperor*<sup>40</sup> the federal court held that the aggressive words used against the government would not *ipso facto* make a speech or written document seditious. The court further held that in order to constitute offence under sedition the acts or words complained of, must either incite to disorder or must be such as to satisfy reasonable men that is, their intention or tendency. However, this position has been reversed in the subsequent case of *K.E. v. Sadashiv Narayan*.<sup>41</sup> Privy Council held the view taken by the Stacey, J., in Tilak's case regarding the scope of section 124A as correct law on the question of sedition.

The court in that case held that:<sup>42</sup>

The offence consisted in exciting or attempting to excite in others certain bad feelings towards the government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small.

Thus, according to the Privy Council the need for incitement to violence is not a necessary element for the offence of sedition.<sup>43</sup>

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39. AIR 1962 SC 955.

40. AIR 1942 FC 22.

41. (1947) 49 Bom LR 526.

42. The decision given by the Federal court was reversed by the privy council and held that only incitement to other regarding bad feeling towards government is to be prove, *available at*: <http://www.thehindu.com/opinion/lead/sedition-legislation-meant-to-suppress-the-voice-of-indian-people/article7758013.ece> (last accessed on 3<sup>rd</sup> July, 2016).

43. R. Dhavan, *Only the Good News: On the Law of the Press in India* 287-285 (Manohar Publications, New Delhi, 1987).

The decision given by the Privy Council remained in operation for years even after the independence, before it was finally overruled in the *Kedar Nath* case.

#### IV Understanding constitutional validity

Even after India got its independence the law of sedition remained in force. In the case of *Romesh Thappar v. State of Madras*<sup>44</sup> the petitioner under article 32 of the Constitution filed a petition against the order to Madras government imposing a ban upon the entry and circulation of the petitioner's weekly journal *Crossroads*, printed and published in Bombay. The order was passed under the Madras Maintenance of Public Order Act, 1949. Another case was the *Brij Bhushan v. State of Delhi*<sup>45</sup> where again there was ban on newspaper or periodicals under the state law. The Supreme Court of India in both the cases held that the impugned legislation imposes 'a priori restraint' by authorizing the state government to prohibit the circulation of newspapers in the anticipation of public disorder. The court held that through these legislations the government choked off speech before it even had the opportunity to be made. The Supreme Court held the ban as unconstitutional and as being against the principles under article 19(1) (a) of the Constitution.

Later on in *Tara Singh v. State of Punjab*<sup>46</sup> the law regarding to sedition under section 124A was struck down as unconstitutional for being contrary to the freedom of speech and expression under article 19 (1) (a). Eric Weston, C.J., put forward his view:<sup>47</sup>

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44. AIR 1950 SC 124.

45. AIR 1950 SC 129.

46. AIR (1951) E.P.27.

47. After India got its Independence from the colonial regime the law that were used by the colonial government were continued to be used by the ruling government in Indian to curb the voices of its own people this was probably the first case where the law of sedition under section 124A was declared unconstitutional, available at: [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf) (last visited July 6, 2016).

India is now a sovereign democratic state. Governments may go and be caused to go without the foundations of the State being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change, which has come about. It is true that the framers of the Constitution have not adopted the limitations, which the federal court desired to lay down. It may be they did not consider it proper to go so far. The limitation placed by clause (2) of article 19 upon interference with the freedom of Speech, however, is real and substantial. The unsuccessful attempt to excite bad feelings is an offence within the ambit of section 124A. In some instances at least the unsuccessful attempt will not undermine or tend to overthrow the State. It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the constitution. The section then must be held to have become void.

This led the Nehru government to obviate the constitutional difficulty by inserting amend the words public order and relations with friendly states in the article 19(2) and the word reasonable before restrictions, which was intended to give a protection against abuse by the legislature. In the case of *Ram Nandan v. State*<sup>48</sup> the constitutional validity of law of sedition under section 124A of IPC, 1860 was challenged. It was held by the court that the particular section provides unreasonable restriction on the freedom of speech and expression guaranteed under article 19 (1) (a) and it cannot be saved under article 19(2) of the Constitution on the ground of 'in the interest of public order'. The court abolished Ram Nandan's conviction and held section 124A to be unconstitutional, Gurtu, J., said:<sup>49</sup>

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48. (1959) All 101.

49. This was the first time after the first amendment Act, 1951 by the Nehru government to legalize the offence of sedition, the constitutional validity of law of sedition been challenged before the Supreme Court of India which declared the law been unconstitutional, *available at*: [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf) (last visited July5, 2016).

If there is a possibility in the working of our democratic system—as I think there is—of criticism of the policy of ministers and of the execution of their policy, by persons untrained in public speech becoming criticism of the government as such and if such criticism without having any tendency in it to bring about public disorder, can be caught within the mischief of section 124A of the IPC, then that section must be invalidated because it restricts freedom of speech in disregard of whether the interest of public order or the security of the state is involved, and is capable of striking at the very root of the constitution which is free speech (subject of limited control under article 19(2)).

However, the above decision was overruled in the case of *Kedar Nath v. State of Bihar*.<sup>50</sup> The Supreme Court upholds the constitutionality of section 124A of IPC, 1860. The Supreme Court held that:<sup>51</sup>

This court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a license for vilification and condemnation of the government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the government

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50. AIR 1962 SC 955.

51. The constitutional validity of this section was challenged before the Supreme Court of India and it was argued that the law is against the freedom of speech and expression and must be declared ultra - vires , available at : [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf) (last visited July 6, 2016).

established by law or with the intention of creating public disorder. The court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under article. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the state and public order.

However, the court has given constitutional validity to section 124A of IPC, 1860 but at the same time curtailed its meaning and limited its application in the sense that the particular section would be applicable to the acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. The Supreme Court had read down the offence of sedition in the sense where the speech which could be exciting disaffection against the government but which did not have the tendency to create a disorder or excite violence.<sup>52</sup> Similarly, in *Balwant Singh v. State of Punjab*<sup>53</sup> in this case also Supreme Court of India held that casual raising slogan once or twice by two individuals alone cannot be aimed at exciting or attempt to excite hatred or disaffection towards the government as established by law in India.

### V Recent developments

Even though the Supreme Court in *Kedar Nath* case limited the scope and ambit of law of sedition in India there is still prevalent misuse of this section by the various political parties.

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52. The Supreme Court of India while declaring the constitutional validity to the offence of sedition held that the offence of sedition will not be made if there is only disaffection toward the government established by law but no tendency to create disorder to excite violence, *available at*: [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf) (last visited July 7, 2016).

53. AIR 1995 SC 1785.

The law of sedition seems to criminalize peaceful expression, a large number of cases being filed against the people having any sort of political dissent in the country and any alternate political philosophy which goes against the interest of the ruling government.<sup>54</sup>

In the case of *P. Hemalatha v. The Govt. of Andhra Pradesh*<sup>55</sup> the court held that writings of the petitioner incite violence and advocating overthrowing the government with arms and violence and held him guilty under this section.

In the case of *P. Alavi v. State of Kerala*<sup>57</sup> the court held that criticizing the present judicial set up or functioning of the parliament or legislative assemblies would not be amount to offence of sedition. The court further says that the slogans raised by the petitioners were not capable of inciting any class or community of persons to commit any offence.

In the case of *Manuel v. State of Kerala* the accused was encouraging people to boycott general elections by affixing posters on a board at the Kozhikode public library and research centre demonstrating that “no vote for the masters who have become swollen exploiting the people, irrespective of difference in parties.” The criminal proceedings under section 124A for the offence of sedition were initiated against him. The Kerala High Court held that when a question arises as how far in a democratic set up publishing or preaching of protest or even questioning the foundation of the form of government could be imputed as causing disaffection towards the government and thus committing of any offence. Sedition has to be examined within the letter and spirit of Constitution and not as previously done under the imperial rule.

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54. See, AnandTeltumbde. “Yet Another Binayak Sen”,<sup>46</sup> *Economic and Political Weekly*, 10-11 (Feb 5, 2011), See also Jyoti Punwani, “The Trial of Binayak Sen”<sup>45</sup>(52) *Economic and Political Weekly* (Dec., 2010).

55. AIR 1976 AP 375.

56. 1982 KLT 205.

57. (2013) 122 AIC 502.

The high court acquitted the accused as there was no prior sanction by the government under section 196 of the CrPC., 1973.<sup>58</sup> In the cases of *Sanskar Marathe v. State of Maharashtra*<sup>59</sup> the court laid down the guidance for the arrest in the case where the accused is being charged with the offence of sedition under section 124A of IPC, 1860. The court held that:<sup>60</sup>

The words, signs or representations must bring the government (Central or State) into hatred or contempt or must be an incitement to violence. Comments expressing disapproval or criticism of the Government with a view to obtaining a change of government by lawful means without any of the above are not seditious under section 124A.

In another case *Arun Jaitley v. State of U.P.*<sup>61</sup> the Allahabad High court rejected the sedition charges against Arun Jaitley for his comment on National Judicial Commission Act case. The court held that:<sup>62</sup>

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58. Section 196—Prosecution for offences against the State and for criminal conspiracy to commit such offence,  
 (1) No Court shall take cognizance of-  
 (a) any offence punishable under Chapter VI or under s. 153A, of Indian Penal Code, or 2 s. 295 A or sub section (1) of s. 505] of the Indian Penal Code (45 of 1860).
59. Cri. PIL No. 3 of 2015 (Bom).
60. *Ibid.*
61. 2015 SCC Online All 6013.
62. Finance Minister Arun Jaitley expressed his views regarding the NJAC Act been declared as unconstitutional in which he criticized the Judiciary, he was charged under the offence of sedition, *available at*:  
<http://www.thequint.com/india/2016/02/18/1934-to-2016-how-courts-in-india-looked-at-charges-of-sedition> (last visited July 7, 2016).

A citizen had a right to say or write whatever he likes about the government, by way of criticism or comments so long as he did not incite people to resort to violence. The article merely seeks to voice the opinion and the view of the author of the need to strike a balance between the functioning of two important pillars of the country. It is surely not a call to arms.

In *Shreya Singhal v. Union of India*<sup>63</sup> the Supreme Court of India held that section 66-A of Information Technology Act, 2000, is unconstitutional and made a clear distinction between advocacy and incitement, stating that only the latter could be punished. In the case of *Binayak Sen v. State of Chhattisgarh*<sup>64</sup> the Chhattisgarh High Court convicted and sentenced Binayak Sen to life imprisonment for being a Maoist sympathizer and possessing naxal literature on the charge for the offence of sedition but the Supreme Court of India while granting him bail observed:<sup>65</sup>

We are a democratic country. He may be a sympathiser. That does not make him guilty of sedition.” Drawing an analogy, the court asked: “If Mahatma Gandhi's autobiography is found in somebody's place, is he a Gandhian? No case of sedition is made out on the basis of materials in possession unless you show that he was actively helping or harbouring Maoists.

In some of the cases there was the dilemma regarding application of law of sedition. In *Mohd. Yaqub v. State of W.B.*<sup>66</sup>

63. (2013) 12 SCC 73.

64. (2011) 266 ELT 193.

65. The Supreme Court of India while granting the bail to Binayak Sen held that everyone has right to follow the particular ideology that will not make a person guilty of the offence of sedition, *available at*: <http://www.thequint.com/india/2016/02/18/1934-to-2016-how-courts-in-india-looked-at-charges-of-sedition> (last visited July 7, 2016).

66. (2004) 4 CHN 406.

the Calcutta High Court evolved the principle of strict evidentiary requirements even though the accused had admitted to being a spy for the Pakistan intelligence agency ISI. He admitted to receive instruction from the ISI to carry out antinational activities in India. The High Court while citing the elements of sedition laid down in the *Kedarnath* case held that the prosecution failed to establish his case based on those elements to show the activity was seditious in nature and was that they had the effect of inciting people to violence. In the case of *Indra Das v. State of Assam*<sup>67</sup> even though the accused had been shown to be a member of the banned organization ULFA, the Supreme Court of India demanded strict evidently requirement and stated that only speech that amounts to “incitement to imminent lawless action” can be criminalized.

Also in some of the cases the precedent laid down by the *Kedar Nath* case was not followed and accused was wrongly been convicted by the various courts. In the case of *Nazir Khan v. State of Delhi*<sup>68</sup> in this case accused was charged with the offence of sedition. The accused was alleged to be carrying out terrorist activities in India. The Supreme Court noted that the “line dividing preaching disaffection towards the government and legitimate political activity in a democratic set up cannot be neatly drawn.”<sup>69</sup> The Supreme Court while ignoring the precedent laid down in the *Kedar Nath* case held the accused guilty of the offence of sedition on the ground that:<sup>70</sup>

the objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. It then states that the offence under section 124A has been clearly established.

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67. (2011) 3 SCC 380.

68. (2003) 8 SCC 461.

69. Nivedita Saksena and Siddhartha Srivastava, “An Analysis of the Modern offence of Sedition”, 7 *NUJS Law Review* 121-147 (2014).

70. *Id* at 124.

The Supreme Court in this judgment completely ignores the elements needed to determine whether a person is guilty of the offence of sedition under which along with the inciting disaffection against the government there must be a connection to the direct incitement to violence which was not present in this case. Thus, the decision of the Supreme Court was *per incuriam*.<sup>71</sup> Similarly, in the case of *Asit Kumar Sen Gupta v. State of Chhattisgarh*<sup>72</sup> the accused was found to be in possession of Maoist literature and was a member of the banned organization Communist Party of India (Maoist). He was accused of inciting and provoking people to join the organization, with the intention of overthrowing the current capitalist government through armed rebellion. The High Court by citing an earlier judgment<sup>73</sup> came to the conclusion that the accused need not to be an author of the seditious material, all need to prove that the accused distributed or circulated the sedition material for the offence under section 124A of IPC, 1860. The court relied upon its judgment given in the Nazir Khan case by saying “the very tendency of sedition is to incite the people to insurrection and rebellion.”<sup>74</sup> Both these cases ignored the precedent laid down in the *Kedar Nath* case and are wrongly given judgments.

In the case of *Kanhaiya Kumar v. N.C.T Delhi*<sup>75</sup> the accused was arrested for organizing anti-national event and subsequently raising anti-national slogans. Following the precedent laid by Supreme Court in the *Kedar Nath* case in order to constitute offence under this section there must be intention or tendency to create disorder or disturbance of law and order or incitement to violence. Similar opinion was laid down in *Balwant Singh* case where the accused was raising slogan of 'Khalistan Zindabad' but there was no incitement to violence by those slogan and Supreme Court of India acquitted the accused.

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71. *Id* at 126.

72. Cri App No. 86 of 2011 (Chh).

73. *Raghubir Singh v. State of Bihar* (1986) 4 SCC 481.

74. *Supra* note 69 at 140.

75. (2016) 227 DLT 612. Similarly see also *Hardik Bharatbhai Patel v. State of Gujarat* 2016 SCC Online Guj 824.

Mere raising of slogans would not amount to sedition under section 124A until and unless it does not incite people to violence against the government established by law or with the intention of creating public disorder, both the requirements were absent in the JNU case.

The law of sedition has no doubt restricted the accords of legitimate freedom of speech and expression—serving best to its original purpose for which offence was created by colonial government. Even after so many years of independence the law of sedition still survives— this itself shows the need amongst various political parties (in power) to secure their political interest in the colonial style. The definition of sedition is too broad and has been used by the political parties as a tool to suppress any legitimate alternate, political ideology which justifies criminalizing, prosecuting and harassing of such dissenting voices. The question remained unsolved as to when the government of India transforms into symbol of state? Why the provisions of sedition are allowed to be abused so easily? There is an urgent need of clarification so that protection of legitimate free speech and expression are guaranteed to its citizens.

## **VI Conclusion**

The recent spate in instances of invoking sedition laws against human rights activists, journalists and public intellectuals in the country did raise important questions on the undemocratic usage of such laws—introduced primarily through colonial government. While sedition laws are a part of a larger framework of colonial laws—used copiously by the governments of the day to curb free speech, thereby surviving even after the demise of colonial rule, just to haunt justified, reasonable dissent. The specificity of these laws lie in the language of disaffection and severity of the punishment associated with them, besides transforming a justified and reasonable attempt of disagreement into crime of highest order *i.e.* crime against state. The existence of sedition laws in India's statute books and the resulting criminalization of disaffection towards the state are unacceptable in any democratic society. There is an urgent need to bring such changes which are in tune with the existent democratic framework.

# SEDITION LAW: A COMPARATIVE PERSPECTIVE

*Mohd Yasin\**

## Abstract

Sedition is considered as one of the most controversial laws which have been inherited from the colonial regime in India. The basic idea of sedition is to safeguard the sovereignty and integrity of the state. However, it is criticized that it imposes a restriction to freedom of speech and expression and is unconstitutional and has been used by contemporary governments for reasons that are arguably similar to those of our former oppressive rulers. This article focuses on the study of history and practice of sedition in the past three centuries. It mainly discusses “the colonial trials”, “The three Tilaks trial”, and “the great trial of 1922”. The law was enacted by a colonial autocratic regime for a specific purpose, which cannot extend to a post-independence democratically elected government. This article also analyzes the cases of sedition post-independence, wherein it can be concluded that the interpretation of this law has been very indeterminate and vague in nature and cannot be applied uniformly. The cases have been discussed under the headings: Clear acquittal cases, grey area cases and convictions. Therefore, the present definition of this law is very mature and it is the system or the government which implements this law in an indeterminate and vague manner which is clearly evident in its history.

## I Introduction

SEDITION, IN any country is considered as one of the gravest crimes of all times. It is a crime directed against the very existence of the state itself and is therefore peculiarly odious. The rationale for sedition is based on the principle that dissemination of seditious material undermines the loyalty of the citizens, that disloyal citizens jeopardize the government at law, and that a weakened government at law threatens the very fabric of the state as well as public order and safety.<sup>1</sup> Thus, various judicial justifications for the law of sedition conglomerate around invocations of the necessity for preserving the government, without questioning whether the government in fact is worth protecting or not.

The inheritance of the present law of sedition cannot be abstracted from its historical context rule. The law of sedition is the unfortunate legacy of the British government in India. Pre-independence it was a mechanism employed by the courts to quash anti-government sentiment, by

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1. Subhradipta Sarkar “*Right to free speech in a censored democracy*” 6 *University of Denver Sports and Entertainment Law Journal* 61 – 88 (2009).

stemming the propagation of ideas that might cause the listeners to feel “disaffection” for the government of British India. It is for the reason that Mohandas Gandhi called section 124A, “the prince”<sup>2</sup> amongst mechanism used to silence political opposition.

Certainly, the repressive implementation if section 124A casts a long shadow. Today, the law still stands (though as we shall see with a modified interpretation at common law.) The recent wave of cases against writers, editors, politicians, lawyers, human rights activists, political activists and public intellectuals is demonstrative of the broad application of the statute. Many of those arrested have been high profile and respected figures, locally and nationally.

Any act or any word which brings or attempts to bring into hatred or contempt or excites disaffection towards the government is sedition. The same was held in *Kedar Nath* case.<sup>3</sup> Also, any act which amounts to violence or is likely to inculcate other people into violence is considered as sedition. This has been clearly defined along with the explanations of the words “disaffection” and “disapprobation” in section 124A<sup>4</sup> of the IPC.

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2. Mohandas Gandhi, “*Famous Speeches by Mahatma Gandhi; Great Trial of 1922*” 129-33 (Gandhian Institute Bombay Sarvodaya Mandal and Gandhi Research Foundation. 1951).

3. *Kedar Nath Singh v. State of Bihar*, 1962 AIR 955, 1962 SCR Supl. (2) 769.

4. The section 124-A reads as:

“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 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. Explanation 1- The expression 'disaffection' includes disloyalty and all feelings of enmity. Explanation 2- Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation 3- Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.”

## II History of sedition law

During the drafting of the Constitution, much discussion occurred over whether the term 'sedition' should be included as a restriction upon the right to free speech or not. K.M. Munshi, a lawyer and activist for the Indian independence movement, argued that it should not be included because of the way in which sedition has been used as a mechanism of state oppression. He further explained,<sup>5</sup>

“Our notorious section 124A of the IPC was sometimes constructed so widely that I remember in a case a criticism of the District Magistrate was urged to be covered by section 124A.”

The law relating to the offence of sedition was first introduced in colonial India through clause 113 of the IPC ('draft penal code'), proposed by Thomas Babington Macaulay in 1837.<sup>6</sup> However, when the IPC was finally enacted after a period of 20 years in 1860, the said section pertaining to sedition had inexplicably been omitted. Although Sir James Fitzjames Stephen, architect of the Indian Evidence Act, 1872, and the law secretary to the government of India at the time, attributed the omission to an 'unaccountable mistake'<sup>7</sup>, various other explanations for the omission have been given. Some believe that the British government wanted to endorse more comprehensive and powerful strategies against the press such as the institution of a deposit forfeiture system along with more preventive and regulatory measures.<sup>8</sup> Others preferred that the omission was to be primarily attributed to the existence of sections 121 and 121A of the IPC, 1860.

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5. See, Constituent Assembly Debates as held on December 1, 1948, Lok Sabha Secretariat, Constituent Assembly Debates, Volume VII, Part I (1949).
  6. Arvind Ganachari, “*Evolution of the Law of Sedition in the context of Indian Freedom Struggle in Nationalism and Social Reform in a Colonial Situation*”, 54 (Gyan Publishing House, Delhi, 2005).
  7. Walter Russel Donogh, “A treatise on the law of sedition and cognate offences in British India”, available at <http://archive.org/stream/onlawofsedition00dono#page/n23/mode/2up> (Last visited June 10, 2016).
  8. R. Dhawan, *Only The Good News: On the Law of Press in India* 285-87 (Manohar Publications, New Delhi, 1987).

It was assumed that seditious proceedings of all kinds were to be subject to official scrutiny within the ambit of these sections.

The immediate necessity of amending the law, in order to allow the government to deal more efficiently with seditious activities was first recognized by the British in light of increased Wahabi activities in the period leading up to 1870.<sup>9</sup> With increasing incidents of mutinous activities against the British, the need to make sedition a substantive offence was widely acknowledged, and the insertion of a section pertaining specifically to seditious rebellion was considered exigent. It was the recognition of this rising wave of nationalism at the turn of the 20<sup>th</sup> century which led to the bill containing the law of sedition finally being passed. The offence of sedition was incorporated under section 124A of the IPC on November 25, 1870, and continued without modification till February 18, 1898.<sup>10</sup>

Since it came into operation in 1870, the law of sedition has continued to be used to stifle voices of protest, dissent or criticism of the government. While the indeterminate invoking of the provision has put it in the media spotlight, there has been very little academic discussion with respect to the nature of the law and its possible repeal.

The punishment for seditious offences is known to be especially harsh compared to other offences in the IPC. It is a cognizable, non-bailable and non-compoundable offence that can be tried by a court of sessions.<sup>11</sup> It may attract a prison term of up to seven years if one is found guilty of committing seditious acts.<sup>12</sup>

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9. Ganachari, *supra* note 6.

10. The Indian Penal Code, 1898, section 124-A read as follows: "Whosoever, by words, either spoken or intended to be read or by signs or by visible representations or otherwise excite or attempts to excite feelings of disaffection to the Government established by Law in British India, shall be punishable with transportation of life ... to three years to which fine may be added."; *See also, Supra* note 2.

11. Criminal Procedure Code, 1973, Schedule I.

12. The IPC, 1860, section 124-A.

The highly subjective nature of the offence makes it necessary that courts determine on a case-to-case basis if any threat is caused to the stability of the state or its democratic order. Leaving such a determination to legislative or executive fiat only enables a repressive government to undermine the free speech guarantee.<sup>13</sup> Thus, in this article various cases have been discussed which have arisen in pre-independence.

### *Colonial trials*

These early trials were often justified as particularly apt for the Indian context. This thinly veiled racism followed the rhetoric of saving the impressionable and restless natives from themselves. For example, the British author Edmund Candler's novel presents a fictional account of the Indian political climate in the early twentieth century in *Sri Ram Revolutionist*. Candler's protagonist, a Bengali dissident at the beginning of the twentieth century is portrayed, as Morton puts it, as a man who is “disaffected and suggestible”.<sup>14</sup> Dissent was constructed, not as a reaction to English rule, but as a peculiarly Indian problem, the natural condition of a society so large and diverse.<sup>15</sup>

The first sedition case, which came before the courts, was the trial of *Jogendra Chandra Bose*<sup>16</sup> in 1891 before the Calcutta High Court. Bose, in his newspaper, *Bangobasi*, criticized a bill, which sought to (and later did) raise the age of consent from ten to twelve years. Bose claimed that the Hindu religion and society was “in danger of being destroyed.” Though the article did not contain a detailed analysis of the bill itself, neither did it contain a direct incitement of rebellion. The proceedings were dropped after Bose tendered an apology.

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13. Eric Barendt, *Interests in Freedom of Speech: Theory and Practice in Legal Explorations: Essays in Honour of Professor Michael Chesterman* 170 (Oxford University Press, UK, 2003).

14. Stephen Morton and Elleke Boehmer (eds.), *Terror and the Post-colonial* 213 (Wiley-Blackwells, U.K., 2010).

15. R. Dhavan, *Obtaining Moral Consensus in a Law and Order Society* 273-339 (Manohar Publications, Delhi, 1987).

16. *Queen-Empress v. Jogendra Chandra Bose And Ors.* 1891, (1892) ILR 19 Cal 35.

### ***The three Tilaks trial***

The first of the trials of Bal Gangadhar Tilak occurred in 1897.<sup>17</sup> Tilak was liable as proprietor, publisher and editor of *The Kesari* for an allegorical article published in this newspaper. The article in question was an article entitled “Shivaji's Utterances” and was about Shivaji killing Afzal Khan for the public good. A week later, after a reception in honour of the diamond jubilee of Queen Victoria’s rules which Tilak himself had attended, two British officers were murdered. This event invited an atmosphere of panic, fuelled by the British Indian media, who called for Tilak's arrest.<sup>18</sup> Although, the murders were not technically relevant to the case, they had the effect of rendering more visceral, more immediate and less abstract the threat to public order and safety, which the sedition laws were intended curb.

The crown claimed that Tilak had used the occasion of a Shivaji festival to undermine the British government in India.<sup>19</sup> Tilak challenged the courts translations of the Marathi texts, a language that the majority of jurors did not know. In summing up, Tilak said to the jury that the articles “were not written with any seditious intention, and were not likely to produce that effect, and I do not think they have produced that effect on the readers of the *Kesari*, or would produce on any intelligent Marathi readers.<sup>20</sup> Stachey, J., notorious for his anti-native stance and for misdirecting the jury, presided over the case.<sup>21</sup> The Privy council upheld the guilty verdict of the jury. The sentence was later commuted upon the proviso that Tilak would do nothing by act or speech to incite disaffection for the government.

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17. *Queen-Empress v. Bal Gangadhar Tilak*, ILR 22Bom 112.

18. A G Noorani, *Indian Political Trials* 116 (Oxford University Press, New Delhi, 2005).

19. *Supra* note 15.

20. Stanley A. Wolpert, *Tilak and Gokale: Revolution and Reform in the Making of Modern India* 101 (University of California Press, Berkeley and Los Angeles, 1961).

21. W.R. Donogh, *A Treatise on the Law of Sedition and Cognate Offences in British India; Penal and Preventive* 42 (Thakker, Spink and Co. Calcutta, Calcutta, 1911).

In 1908, Tilak was again tried for sedition.<sup>22</sup> The trial again was in the wake of an attack upon British Indians. This time it was a bomb blast which was intended for a sessions judge at Muzaffarpur, but which unintentionally killed the wife and child of an English barrister. Again, none of the jurors were native Marathi speakers; again the majority of jurors were English. Tilak was this time sentenced to six years imprisonment with transportation.

The third of Tilak's trials for sedition was in 1916.<sup>23</sup> This time the offence was for attributing dishonest motives to government in three speeches that he had made criticizing the bureaucracy. The Batchelor, J., found that the speeches amounted to inciting disapprobation, but not to inciting disaffection (and thus were not seditious). Furthermore, although Batchelor, J., explained that “disaffection,” and not advocacy of Swarajya was seditious, it is difficult to how one may be able to propose the instituting of a new system, without exciting disaffection for, or at least dissatisfaction with the current one.

One recalls the prophetic words of Tilak, after his conviction in 1908: “In spite of the verdict of the jury, I maintain that I am innocent. There are higher powers that rule the destiny of mankind and it may be the will of providence that the cause which I represent may prosper more by the suffering than by my remaining free.”

### ***The great trial of Mahatma Gandhi***

In 1922, Mohandas Gandhi in was tried under section 124A, along with Shankerlal Banker. They were charged with the writing and publication of three articles “Tampering with Loyalty”, “The Puzzle and its Solution” and “Shaking the Manes”, which were published in the newspaper, *Young India*. According to A.G. Noorani, the trial “failed to deflect Gandhi from the course he had decided upon. It succeeded only in highlighting his qualities – dignity and felicity of expression.”<sup>24</sup>

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22. *Emperor v. Bal Gangadhar Tilak*, 1908 10 BomLR 848.

23. *Emperor v. Bal Gangadhar Tilak*, 1916 19 BomLR 211.

24. A G Noorani, *Tilak's Trials (1897 and 1980) and Indian Political Trials; 1775-1947* 227 (Oxford University Press, New Delhi, 2005).

Gandhi pled guilty and demanded that the judge give him the maximum punishment possible. He said that “to preach disaffection towards the existing system of government has become almost a passion with me,”<sup>25</sup> that he was morally obliged to disobey the law and that he was proud to follow in the tradition of Tilak. Judge Strangeman sentenced him to six years imprisonment. However, rather than stemming the tide of opposition, his imprisonment worked to increase his popularity. During the trial in the court room, Gandhi seeks apology for the conduct of his people and also request the Judge to punish him with the highest punishment.<sup>26</sup>

The language works to link heroism and sedition. No doubt this also effects the formulation of the identities of current “seditionist.” Media presentations often represent them as fearless and persecuted crusaders for freedom at the same time as legal discourses paint them as criminally dangerous proponents of rebellion. Surely, the historical context plays a foundational role in such constructions today.

### **III Practice of law of sedition in India in the present scenario**

Since the eponymous decision of the Supreme Court in Kedar Nath, the courts have applied the law of sedition on various occasions. To examine how the courts have dealt with cases of sedition in the recent past, we have examined all cases that came before the High Courts and Supreme Court between the years 2000 and 2015. Of these cases, the cases where the question

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25. *Supra* note 24.

26. Anil Dutta and P.V. Sarma Mishra, *Mahatma Gandhi speaks: Selected Speeches and Writings* (Concept Publishing Company Pvt. Ltd., Delhi, 2014).

“I wanted to avoid violence. Non-violence is the first article of my faith. It is also the last article of my creed. But I had to make my choice. I had either to submit to a system which I considered had done an irreparable harm to my country, or incur the risk of the mad fury of my people bursting forth when they understood the truth from my lips. I know that my people have sometimes gone mad. I am deeply sorry for it and I am, therefore, here to submit not to a light penalty but to the highest penalty. I do not ask for mercy. I do not plead any extenuating act... But by the time I have finished with my statement you will have a glimpse of what is raging within my breast to run this maddest risk which a sane man can run”.

of sedition was not directly in issue or where the court did not address the issue of sedition were eliminated. It was found that there have been only fourteen cases of sedition in the last fifteen years, of which only two were heard before the Supreme Court. Further, there have been only three convictions, of which one conviction was made by the Supreme Court. In this part of the paper, we will briefly analyze these cases. For the purpose of clarity, we have categorized them as 'clear acquittal cases', 'grey area cases' and 'convictions'. While the clear acquittal cases are those where it could easily be determined that the requirements for sedition were not satisfied, the grey area cases are where the courts acquitted the accused, but where these acquittals give us crucial guidance on what activities *do not* qualify as sedition.

### ***Clear acquittal cases***

Of the fourteen cases of sedition before the courts, six can be categorized as clear acquittal cases. As per Kedar Nath, it is necessary that the act causes disaffection towards the government established by law and that it incites people to violence and to disrupt public order. It can be seen from the facts of these cases that the acts involved clearly did not satisfy these requirements. The courts recorded findings to this effect, and acquitted the accused in these cases. In one such case, *P.J. Manuel v. State of Kerala*,<sup>27</sup> the accused affixed posters on a board at the Kozhikode public library and research centre, exhorting people to boycott the general election to the legislative assembly of the state.<sup>28</sup> The poster proclaimed, “no vote for the masters who have become swollen exploiting the people, irrespective of difference in parties.” Consequently, criminal proceedings were initiated against him under section 124A of the IPC for the offence of sedition.

The Kerala High Court observed that it needs to be examined whether the publication or preaching of protest, or even questioning the foundation or form of government should be imputed as “causing disaffection towards the government” in a modern democracy. The content of the offence of

27. *P.J. Manuel v. State of Kerala*, ILR 2013 1 Ker 793.

28. *Ibid.*

sedition must be determined with reference to the letter and spirit of the constitution and not to the standards applied during colonial rule. In support of its view, it cited authority to demonstrate that even the shouting of slogans for the establishment of a classless society in line with the tenets of socialism would not be punishable as sedition.<sup>29</sup> Further, it noted that section 196 of 'Cr.P.C.1973 mandates that the government must expressly authorize any complaint filed for an offence against the state (under part VI of the IPC) before the Court can take cognizance of such an offence. It thus held that the impugned act did not constitute the act of sedition and quashed the criminal proceedings against the petitioner.

The courts reached a similar conclusion in a case where the editor of a newspaper published articles claiming that the police commissioner of Ahmadabad city was corrupt and was responsible for a high profile murder,<sup>30</sup> where the publisher and editor of an Urdu weekly was charged for publishing articles that claimed denounced the 'injustice' being done to Muslims<sup>31</sup> and claimed that former Prime Ministers Indira Gandhi and Atal Bihari Vajpayee had conspired against Muslims, and where the Chief Minister of Jammu and Kashmir had tweeted that if their Assembly had passed a resolution pardoning the death sentence of a terrorist (as had been done by the Tamil Nadu Assembly), the reactions would not have been so muted.<sup>32</sup> Acquittals were also obtained by a filmmaker who made a documentary that highlighted the violence that affects the life of people in Kashmir,<sup>33</sup> and by a cartoonist who drew cartoons highlighting and lampooning the corruption in the government.<sup>34</sup>

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29. *Alavi v. State of Kerala*, 1982 KLT 205; *Balwant Singh v. State of Punjab*, (1995) 3 SCC 214.

30. *Bharat Desai v. State of Gujarat*, CR.MA/7536/2008 55/ 55 (Guj) (Unreported).

31. *Javed Habib v. State (NCT of Delhi)*, (2007) 96 DRJ 693.

32. *K. Neelamegam v. State*, Cri OP (MD) No. 14086 of 2011 (Mad) (Unreported).

33. *Pankaj Butalia v. Central Board of Film Certification*, WP (C) 675 of 2015 (Del) (Unreported).

34. *Sanskar Marathe v. State of Maharashtra*, Cri PIL No. 3 of 2015 (Bom) (Unreported).

### ***Grey area cases***

In five cases of sedition before the courts, the accused also managed to obtain acquittals on this charge. However, these cases have been categorized as grey area cases as they involved acts that could be categorized as anti-national, secessionist or terrorist activities. However, the courts found that in the absence of an immediate threat of violence, these ideologies could not be criminalized.

In *Gurjatinder Pal Singh v. State of Punjab*,<sup>35</sup> for example, the accused petitioned the Punjab & Haryana High Court for an order to quash the First Information Report ('FIR') that had been filed against him under section 124A and section 153B of the IPC. At a religious ceremony organized in memory of the martyrs during operation blue star, the petitioner gave a speech to the people present advocating the establishment of a buffer state between Pakistan and India known as Khalistan. He stated that the Constitution was a “worthless / useless” book for the Sikhs. The supporters of the petitioner then raised aggressive slogans and naked swords were raised in the air. The high court cited the decision of the Supreme Court in *Balwant Singh v. State of Punjab*,<sup>36</sup> where it was held that the mere casual raising of slogans a couple of times without the *intention* to incite people to create disorder would not constitute a threat to the government of India. Crucially, it held that even explicit demands for secession and the establishment of a separate state would also not constitute a seditious act.<sup>37</sup> Thus, the FIR against the accused was quashed.

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35. *Gurjatinder Pal Singh v. State of Punjab*, 2009 3 RCR (Cri) 224.

36. *Balwant Singh v. State of Punjab*, 1995 3 SCC 214 : AIR 1995 SC 1785.

37. *Partap Singh v. UT, Chandigarh*, Cri Misc No. 11926-M of 1991.

Courts have also consistently found that criminal conspiracies and acts of terrorism did not constitute seditious acts. In *Mohd. Yaqub v. State of W.B.*<sup>38</sup>, the accused had admitted to being a spy for the Pakistani intelligence agency ISI. He would receive instructions from the agency to carry out antinational activities. He was thus charged for sedition under section 124A of the IPC.

Citing the elements of sedition that were laid down in *Kedar Nath*, the Calcutta high court found that the prosecution had failed to establish that the acts were seditious and that they had the effect of inciting people to violence. Thus, the accused were found not guilty as the strict evidentiary requirements were not met.

Similarly, in *Indra Das v. State of Assam*,<sup>39</sup> the accused had been shown to be a member of the banned organization ULFA. It was also alleged that he had murdered another man, even though there was no evidence for the same. Applying the decision of the Court in *Kedar Nath* and *Niharendu Majumdar*, the Supreme Court found that no seditious acts could be imputed to the accused, and the appeal was allowed. This strict evidentiary requirement was also echoed in the decision of the courts in *State of Assam v. Fasiullah Hussain*<sup>40</sup> and *State of Rajasthan v. Ravindra Singhi*,<sup>41</sup> where the courts acquitted the accused of the charge of sedition on the grounds that the prosecution had failed to produce sufficient evidence to prove that they had committed a seditious act.

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38. *Mohd. Yaqub v. State of W.B.*, 2004 4 CHN 406.

39. *Indra Das v. State of Assam*, 2011 3 SCC 380.

40. *State of Assam v. Fasiullah Hussain*, 2013 4 GLT 284.

41. *State of Rajasthan v. Ravindra Singhi*, 2001 3 WLN 242.

## ***Convictions***

Finally, there were only three cases where the accused was convicted of the charge of sedition. While two of these cases were before the Chhattisgarh high court, one was before the Supreme Court. However, as will be argued in this part, these cases were *per incuriam* and were based on an incorrect application of the law and failure to take into cognizance the legally binding precedent on the matter.

In *Binayak Sen v. State of Chhattisgarh*,<sup>42</sup> one of the accused Piyush Guha made an extra-judicial confession that Binayak Sen, a public health advocate, had delivered certain letters to him to be delivered to Kolkata. These letter allegedly contained naxal literature – some contained information on police atrocities and human rights. Convicting the accused of sedition, the high court cited the widespread violence by banned naxalite groups against members of the armed forces. However, it did not explain how the mere possession and distribution of literature could constitute a seditious act. Further, the high court did not address the question of incitement to violence, which was evidently absent in this case. Consequently, the judgment of the Chhattisgarh high court in this case has also been the subject of immense criticism.<sup>43</sup>

In *Nazir Khan v. State of Delhi*,<sup>44</sup> the accused underwent training with militant organizations such as *Jamet-e-Islamic* and *Al-e-Hadees*, and was given the task of carrying out terrorist activities in India. He then kidnapped British and American nationals visiting India, and demanded that ten terrorists that were confined in jail be released in exchange for the release of the foreign nationals. However, he was caught by the police after one of the hostages managed to escape. He was subsequently tried for several offences, including sedition. The trial court had convicted

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42. *Binayak Sen v. State of Chhattisgarh*, 2011 266 ELT 193.

43. See, e.g., Tehelka, Not a 21st Century Law, April 30, 2011, available at: [http://archive.tehelka.com/story\\_main49.asp?filename=Op300411Not21st.asp](http://archive.tehelka.com/story_main49.asp?filename=Op300411Not21st.asp) (Last visited June 17, 2016).

44. 2003 8 SCC 461.

the accused on this charge, stating that they were trying to 'overawe' the government of India by criminal force and arousing hatred, contempt and dissatisfaction in a section of people in India against the government. Further, they had collected materials and arms to carry out these acts. The Supreme Court noted that the "line dividing preaching disaffection towards the government and legitimate political activity in a democratic set up cannot be neatly drawn." However, it then disposes of its analysis of whether the act qualified as sedition in a paragraph without citing any precedent. It does not give any reasons why the particular acts in this case were seditious, but instead merely posits that "the objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion." It then states that the offence under section 124A has been "clearly established".

In this case, the court appears to blur the distinction between the 'act' and the 'incitement' to the detriment of public order by suggesting that the act of sedition itself has the tendency to incite people to insurrection and rebellion. It thus disposes of the need to examine whether the acts of the accused had the tendency to incite people to disrupt public order, as the act itself constitutes the incitement. We argue that this interpretation of the court is *per incuriam*, as it has been made without reference to several cases that operate as binding legal precedent on the matter. Most significantly, it ignores the decision in *Kedar Nath*, which was passed by a five-judge bench and was thus binding on the two-judge bench in this case. In *Kedar Nath*, as has been explained in Part III of this paper, the court drew a clear distinction between the act of sedition and the incitement to public disorder. Inciting disaffection against the government would not constitute sedition unless it was accompanied by the direct incitement to violence. In fact, it was this distinction that rendered the provision constitutional. Thus, the decision of the court in *Nazir Khan* is incorrect in holding that seditious acts themselves constituted incitements to violence.

In *Asit Kumar Sen Gupta v. State of Chhattisgarh*,<sup>45</sup> the appellant

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45. *Asit Kumar Sen Gupta v. State of Chhattisgarh*, Cri App No. 86 of 2011 (Chh) (Unreported).

challenged his conviction *inter alia* under section 124A of the IPC before the Chhattisgarh high court (Bilaspur bench), for which he had been sentenced to undergo rigorous imprisonment for three years and a fine of Rs. 500. He was found to be in possession of Maoist literature and was a member of the banned organization Communist Party of India (Maoist). He was accused of “inciting” and “provoking” people to join the organization, with the intention of overthrowing the current “capitalist” government through armed rebellion. In coming to its conclusion, the Court cited the decision of the Supreme Court in *Raghubir Singh v. State of Bihar*,<sup>46</sup> where it was held that the accused does not necessarily have to be the author of seditious material for a charge of sedition to be established. It was enough to prove that the accused had circulated or distributed the seditious material. Thus, it concluded that in this case it was enough that the accused was in possession of this Naxalite literature and was propagating the information contained therein. However, while the court established that merely circulating or distributing seditious material could make a person liable under section 124A, we argue that its reasoning with respect to the content of the offence was lacking in several respects.

To determine the content of the offence of sedition, the court applied the decision of the Supreme Court in *Nazir Khan*, to conclude that “the very applied it as precedent. The binding authority in this matter still remains *Kedar Nath*, and the courts must apply the ratio in that case faithfully. tendency of sedition is to incite the people to insurrection and rebellion”.<sup>47</sup> However, as we have explained above, the decision of the court in *Nazir Khan* was *per incuriam*, and thus the court in *Asit Gupta* incorrectly

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46. *Raghubir Singh v. State of Bihar*, 1986 4 SCC 481.

47. *Nazir Khan v. State of Delhi*, 2003 8 SCC 461 : AIR 2003 SC 4427.

## IV Conclusion

Since its origin in the court of Star Chamber in England, the law of sedition has been defined by uncertainty and non-uniformity in its application. By keeping its scope deliberately vague, generations of members of the ruling political class have ensured that they have a tool to censor any speech that goes against their interests.

The courts have also been unable to give a clear direction to the law except for few cases. While the final position on the law in India was laid down as early as 1960, the law of sedition is characterized by its incorrect application and use as a tool for harassment. Thus, some of the reasons for which people have been booked under the provision (and often incarcerated) include liking a facebook page,<sup>48</sup> criticising a popular yoga expert,<sup>49</sup> cheering for the Pakistani team during a cricket match versus India,<sup>50</sup> asking a question about whether the stone-palters in Jammu and Kashmir were the real heroes in a university exam,<sup>51</sup> making cartoons that allegedly incite violence<sup>52</sup> and making a speech at a conference highlighting the various atrocities committed by the armed forces.<sup>53</sup>

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48 Times News Network, Facebook “like” case: No evidence of sedition, govt tells HC, January 30, 2013, available at [http://articles.timesofindia.indiatimes.com/2013-01-30/kochi/36635179\\_1\\_national-flag-facebook-post-sedition](http://articles.timesofindia.indiatimes.com/2013-01-30/kochi/36635179_1_national-flag-facebook-post-sedition) (Last visited Jun 15, 2016).

49 The Indian Express, *Sedition charge against Digvijay over remark against Ramdev*, June 6, 2011, available at <http://www.indianexpress.com/news/sedition-charge-against-digvijay-overremark-against-ramdev/799912> (Last visited Jun 15, 2016).

50 NDTV, *Outrage over Sedition Charges against Students who cheered Pakistan*, June 6, 2014, available at <http://www.ndtv.com/article/india/outrage-over-sedition-charges-againststudents-who-cheered-pakistan-492250> (Last visited Mar 6, 2016).

51 India Today, *Kashmir University lecturer released*, January 2, 2011, available at <http://indiatoday.intoday.in/story/kashmir-university-lecturer-released/1/125303.html> (Last visited Jun 15, 2016).

52 India Today, *Anti-corruption cartoonist Aseem Trivedi arrested on sedition charges*, September 9, 2012, available at <http://indiatoday.intoday.in/story/anti-corruption-cartoonistaseem-trivedi-arrested-on-seditioncharges/1/216643.html> (Last visited Jun 15, 2016).

53 Press Trust of India, *Sedition case registered against Arundhati Roy, Geelani*, November 29, 2010, available at <http://www.ndtv.com/article/india/sedition-case-registered-against-arundhati-roy-geelani-69431> (Last visited Jun 15, 2016).

An analysis of the judgment of the Supreme Court in *Kedar Nath* itself demonstrates certain deficiencies in how the law is currently understood. There has been a shift in how we understand 'security of the state' as a ground for limiting the freedom of speech and expression. Further, a change in the nature of the government and the susceptibility of the common people to be incited to violence by an inflammatory speech has also reduced considerably. Even the maintenance of 'public order' cannot be used as a ground to justify these laws as it is intended to address local law and order issues rather than actions affecting the very basis of the state itself.

The current definition incorporated in section 124A of IPC clearly explains the meaning of sedition. It may be argued on one hand that this law must be repealed on grounds of its indeterminate and vague practice, but on the other hand, it is not the mistake of this law, what must be changed is the system or the government which exercise this law in a wrong manner. This has been evident ever since the colonial regime. Since, many people have been harassed by this law, therefore they plead for its repeal, but the fact is that a law cannot be blamed for such implementation, rather the system or the government which exercises this law in a vague manner must be criticized and therefore, the current definition of sedition under section 124A of IPC is very mature.

# SEDITION LAW: A CHANGING PARADIGM

Prateek Jain\* Nidhi Pious\*\*

## Abstract

A well-organized legal system is required to be updated and amended from time to time so as to encourage the advancements and developments of the society. A law must be capable of devolving itself with the changing needs of society. One such age-old law to which India is still stuck on is the law of sedition. The latest judgments of sedition cases in India have relied on the very old meaning of sedition given under section 124A of the IPC, 1860. These judgments have initiated a thorough level headed discussion on the issue of sedition laws. The concept of sedition as given under Indian law considers it to be a “speech, activity, or writing in any form that is capable of inciting disdain against the established order and is also capable of damaging the orderly peace of the nation”. Numerous experts in law believe that the current obsolete laws regarding sedition must be discarded at the earliest. Considering the changing demands of the society, this paper seeks to analyse the significance of modifying and amending the present laws relating to Sedition. The present paper further analyses a brief history of the sedition law, the interpretation put forward by the judiciary, the role played by the media in cases of sedition, politics and sedition and the paper concludes with a comparative perspective of sedition laws with selected foreign countries. In the conclusion, certain changes are proposed that can be well implemented within the legal system of India.

## I Introduction

THE LAW of sedition was introduced by section 124A of the IPC in 1870 as a draconian measure to counter anti-colonial sentiments, and most major leaders of the independence movement – including Gandhi and Tilak – were tried under this provision. Gandhi famously described section 124A as the 'prince among the political sections of the IPC designed to suppress the liberty of the citizen.'<sup>1</sup>

At the point when the Constituent Assembly got together and thought on the degree of confinements that could be put on free discourse, the unmistakable prohibition from what in the long run got to be article 19(2) was the word sedition. In the first draft that was up for examination, the word sedition had been incorporated as one of the justifications for limitation on discourse. “Take again section 124A of the IPC” Jawaharlal Nehru said during a parliamentary debate centered on freedom of speech in 1951.

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1. Anil Dutta and P.V. Sarma Mishra, *Mahatma Gandhi Speaks: Selected Speeches and Writings* (Concept Publishing Company Pvt. Ltd., Delhi, 2014).

He stated:

“Now as far as I am concerned that particular section is highly objectionable and obnoxious and it should have no place in any body of laws that we might pass. The sooner we get rid of it the better.”<sup>2</sup>

Sedition is an offense consolidated into the IPC which has been discovered as being convenient to quiet or teach critics. This nineteenth century law, instituted to hush the Indian individuals by the colonial rulers, has been held by the popularity based government in free India. Not just that, it has perhaps been utilized more regularly by free India's administrations than the colonial government did during the 77 years of its presence in the country. Sedition was not a part of the first IPC instituted in 1860 and was introduced in 1870. This brought about incorporation of words like 'public order' and 'friendly relations with states' into article 19(2). Additionally "reasonable" before "restriction" was included, which was intended to give a shield against abuse by the government. It was very clear in the minds of the governing body that the law could be abused and in this manner a revision was required so as to narrow down the pertinence to the degree of reasonableness.

In a landmark judgment of the *Kedar Nath Singh v. State of Bihar*<sup>3</sup> case, five judges bench of the Supreme Court upheld sedition as constitutional. Kedar Nath Singh had been brought to court for making a rather intemperate speech, which he began by saying:

“Today the dogs of the CID are loitering around Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country and elected these Congress goondas to the gaddi and seated them on it. Today these Congress goondas are sitting on the gaddi due to mistake of the people. When we drove out the Britishers, we shall strike and turn out these Congress goondas as well,”

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2. 1951, Parliament debate “Freedom of Speech”. *available at*: <http://www.thehindu.com/opinion/editorial/sedition-seriously/article3882414.ece> (Last visited Aug 12, 2016).
  3. AIR 1962 SC 955.

This resulted in him being charged with sedition, and ultimately his case went up to the Supreme Court, where the constitutionality of the provision itself was challenged. The court had further observed in the said case that the right guaranteed under article 19(1) (a) is subject to such reasonable restriction as would come within the purview of clause (2) of article 19<sup>4</sup> with reference to the legality of area section 124A, of the IPC, in the matter of how far they are reliable with the necessities of clause(2) of article 19 with specific reference to security of state and public order, the section, it must be noted punishes any talked or composed words or science or noticeable representations, and so on., which have the impact of bringing, or which endeavour to bring into disdain or hatred or energize or endeavour to energize antagonism towards "the government set up by law" must be recognized from the people for the present occupied with carrying on the organization. Government built up by law is the obvious image of the state would be in danger, where the administration set up by law is subverted.

Subsequently, any demonstration or any composed or talked words, and so forth., within the ambit of section 124A which have certain in them subverting government by fierce means, which are succinctly incorporated into the term transformation, have been made corrective by the section being referred to. Yet, the section has taken care to demonstrate plainly that solid words under legal means used to express dissatisfaction against the government with the view to their change or adjustment would not go in close vicinity to the section.

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4. (a) Security of the State.  
 (b) Friendly relations with foreign states.  
 (c) Public order.  
 (d) Decency or morality, etc.

## II Judicial interpretation

In 1942, for the first time, the courts in India raised pressing questions against the use of sedition as a weapon to stop all innocent forms of disagreement. After the Constitution was adopted in 1950, it appeared that section 124A would soon be denounced as a repugnant historical object of our colonial past. After all, efforts made by some members of the Constituent Assembly to include sedition as an express ground for limiting speech in article 19(2) had been successfully resisted.

However, over the past so many years after the inception of sedition laws, it still remains to stay in the IPC, as well as possesses a place of pride in the state's arsenal. This is on the grounds that, despite two diverse high courts having declared sedition unconstitutional, in 1962, the Supreme Court maintained section 124A, in *Kedar Nath Singh v. State of Bihar*. Here, the court embraced a thought that the law was instituted in light of a legitimate concern for public order, which was by then one of the specifically recognized limitations to free speech. The cases go yet again from pre-flexibility till date, and consolidate the catch and trial of visual artist Aseem Trivedi, and a contention against the present finance Minister Arun Jaitley. Here is a summary of what Judiciary has concluded in a number of cases.

- *Kamal Krishna Sircar v. Emperor*<sup>5</sup>

Mr Kamal Krishna Sircar in Bengal was convicted on charges of sedition for making a speech and tabling a resolution. A Two-judge bench of the Calcutta high court scrapped the conviction, saying:

“It is really absurd to say that speeches of this kind amount to sedition. If such were the case, then every argument against the present form of government and in favour of some other form of government might be alleged to lead to hatred. To suggest some other form of government is not necessarily to bring the present government into hatred or contempt”.

- ***Niharendu Dutt Majumder v. The King Emperor***<sup>6</sup>

In a similar case pertaining to an Indian versus the foreign government, prior to India's independence the federal court noted:

“Public disorder, or the reasonable anticipation or likelihood of public disorder, is the gist of the offence called 'sedition'. The acts or words complained of, must either incite to disorder or must be such as to satisfy reasonable men, that it is their intention or tendency”.

- ***Brij Bhushan & Anr. v. The State of Delhi***<sup>7</sup>

The court ruled that such pre-publication censorship was not permitted. In response to the judgement the central government proceeded to amend article 19(2) to insert:

“public order, decency and morality as grounds for restricting free speech”. Interestingly this was the first amendment to the Constitution.

- ***Kedar Nath Singh v. State of Bihar***<sup>8</sup>

Hearing the appeals of conviction under sedition charges the Constitution bench of the Supreme Court of India said:

“What has been contended is that a person, who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of government, might also come within the ambit of 'sedition'. But, in our opinion, such words written or spoken would be outside the scope of the section. A citizen has a right to say or write whatever he likes about the government, or its measures, by way of criticism or comment, so long as he does not incite people to violence.”

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6. AIR 1939 Cal 703.

7. AIR 1950 SC 129.

8. AIR 1935 Cal 636.

- ***State of Chhattisgarh v. Binayak Sen***<sup>9</sup>

A doctor and human rights activist Binayak Sen was convicted and sentenced to life imprisonment for being a maoist sympathiser and possessing naxal literature. Granting him bail the Supreme Court observed:

“We are a democratic country. He may be a sympathiser. That does not make him guilty of sedition.” Drawing an analogy, the court asked: “If Mahatma Gandhi's autobiography is found in somebody's place, is he a Gandhian? No case of sedition is made out on the basis of materials in possession unless you show that he was actively helping or harbouring maoists.”

- ***Sanskar Marathe v. State of Maharashtra and Ors.***<sup>10</sup>

In the case of the victimization of cartoonist Aseem Trivedi, a division bench of the Bombay high court laid down the guidelines for the police while invoking the sedition law against any person and it is as follows:

“The words, signs or representations must bring the government (Central or State) into hatred or contempt or must be an incitement to violence. Comments expressing disapproval or criticism of the government with a view to obtaining a change of government by lawful means without any of the above are not seditious under section 124A”.

- ***Arun Jaitley v. State of U.P.***<sup>11</sup>

In this case, decided less than four months ago, a single Judge bench of the Allahabad high court threw out a charge of sedition against Finance Minister, Arun Jaitely. The case was filed taking a *suo motu* cognizance of an article by Arun Jaitley on National Judicial Commission Act case. Quashing the complaint the court said:

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9. AIR 1939 Cal 703.

10. AIR 1950 SC 129.

11. Application U/S 482 No. 32703 of 2015, Order & Judgment Dated- 05.11.2015.

“A citizen had a right to say or write whatever he likes about the government, by way of criticism or comments so long as he did not incite people to resort to violence. The article merely seeks to voice the opinion and the view of the author of the need to strike a balance between the functioning of two important pillars of the country. It is surely not a call to arms.”

Senior advocate KTS Tulsi, who has fought many a legal battle for people, also was against slapping of sedition charges against Kanhaiya Kumar, a student of Jawaharlal Nehru University and said-

“People raising slogans empty handed or delivering speeches cannot amount to sedition. It has to be an attempt to overthrow the government, not youngsters engaging in an intellectual exercise”.<sup>12</sup>

Further, Tulsi cited the Supreme Court's ruling in the *Romesh Thapar*<sup>13</sup> case to argue that mere sloganeering is not enough. "It has to be restricted to the narrow area of threat to security of state, violent or at least preparing to be violent. Likewise, C.S. Vaidyanathan said:<sup>14</sup>

"This is reminiscent of Emergency, when you just picked up people and slapped whatever charges you wanted to. It can only be invoked if there is an attempt to overthrow the government or a situation is created which endangers the security of the threat. Therefore keeping in view all this the judiciary has to take positive steps towards “sedition law”.

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12. Available at : [http://articles.economictimes.indiatimes.com/2016-02-17/news/70698341\\_1\\_sedition-charges-kts-tulsi-gujarat-government](http://articles.economictimes.indiatimes.com/2016-02-17/news/70698341_1_sedition-charges-kts-tulsi-gujarat-government) (last visited Oct. 15, 2016).

13. *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

14. Available at : [http://articles.economictimes.indiatimes.com/2016-02-17/news/70698341\\_1\\_sedition-charges-kts-tulsi-gujarat-government](http://articles.economictimes.indiatimes.com/2016-02-17/news/70698341_1_sedition-charges-kts-tulsi-gujarat-government) (last visited Oct. 15, 2016).

### III Role of media

“Reports and images circulate the globe with amazing speed via twitter, YouTube, Facebook, blogs, cell phones, and email. Speed puts pressure on newsrooms to publish stories before they are adequately checked and verified as to the source of the story and the reliability of the alleged facts. Major news organizations too often pick up rumors online...”

- Stephen JA Ward.<sup>15</sup>

This is not the first time, nor will it be the last time that the media are being gotten inappropriately. This is a stunning imperative since it is one of those uncommon events when both sections of social media and prevailing press at the same time distorted actualities, criticized pure individuals and misinformed the country.

The coming of online networking was viewed as a cure to the firm hold that the media outlets had on the dispersal of data. With platforms like Twitter and Facebook, news never again was the luxury of a chosen few web-based social networking, in that sense, social media democratized access to data. The stream of news, from that point forward, has moved to such a degree, that it is regularly web-based social networking that chooses the account in the standard.

Genuine inquiries stay for the media to reply. More balanced governance on the media by the government, which would inevitably mean decline the contracting space for squeeze opportunity, will be counter-beneficial. In any case, in the meantime, what amount has self-direction made a difference? Has the Press Council of India, set up 'with the object of protecting the freedom of the press and of keeping up and enhancing the gauges of press in India' possessed with the capacity to take 'appropriate steps'? An incongruity in this is any restorative measures in the media will need to originate from inside at the same time, similar to the question in the tale, 'Who will ringer the feline?'

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15. Available at: <https://ethics.journalism.wisc.edu/resources/digital-media-ethics/> (last visited Oct. 15, 2016).

Be that as it may, there are positives too to detract from these late advancements. The path sections of the media, and 'well known' journalist, have acted has left little to question about their ideological leanings and journalistic qualifications. Ideally the surface of validity, the charged 'for-the-people' stand and the ethical power with which they have been approaching doing "journalism" has now taken a genuine beating. The sentimentality that was till now being spruced up as news, will give route for more significant issues, helpful exchanges and important level headed discussions.

It is just when these sandcastles of belief disintegrate and these Trojan steeds of bias are uncovered, will reporting begin its rise to its legitimate place according to the general population — as the fourth mainstay of this democracy. Coming close to this, in the prominent minds of the country, the media will get itself cozily set alongside primetime TVsoap operas — as only TRP-producing, exceptionally engaging night carnivals intended to engage and occupy the general population.

- *JNU case*

The JNU 'crackdown', in this light, is a unique example and a case study of how both social and mainstream media can form a symbiotic pair where one feeds on the other.

Serious questions remain for the media to answer. More checks and balances on the media by the government — which would eventually mean curbing the already shrinking space for press freedom — will be counter-productive. But at the same time, how much has self-regulation helped? Has the Press Council of India, set up 'with the object of preserving the freedom of the press and of maintaining and improving the standards of press in India' and has it been able to take appropriate steps? An irony in this is that any corrective measures in the media will have to come from within... but, like the question in the fable, 'who will bell the cat?'

- ***Hardik Patel's case***

The influences of media reports are strong and sometimes devastating. In the famous sedition case of Gujarat, *Hardik Patel v. State of Gujarat*,<sup>16</sup> the judges said, “at the commencement of the hearing, we required the media not to report the proceedings of this case, which are sensitive in nature. We are recording the same in our order and hereby affirming our direction that the media (electronic as well as print) shall not report the proceedings of this case till the final decision.”

- ***Aseem Trivedi's case***

The, then Markandey Katju (Former Judge) Chairman of the Press Council of India, slammed the Mumbai police for the arrest of Aseem Trivedi and compared them to Nazi War Criminals. Katju, J., opined regarding the case<sup>17</sup>

“The policemen who make such illegal arrests cannot take the plea that they were obeying orders of political superiors. In the Nuremberg trials, the Nazi War Criminals took the plea that orders are orders, and that they were only obeying the orders of their political superior Hitler. But this plea was rejected by the International Tribunal which held that illegal orders should be disobeyed.”

#### **IV Sedition and political developments**

“Sedition Law is nothing, just a power by the government or the political leaders to show how powerful they are.”

Numerous cases show that the sedition laws have become just a matter of debate among political parties, if one party is in favour then surely the other will be in the against. The offence of sedition involves the question of the relationship between a government and the people. In the past, when the government was the absolute ruler and people were the subjects, any opposition, however peaceful, was considered a challenge

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16. Special Criminal Application (Quashing) No. 6330 of 2015.

17. Available at: <http://www.ndtv.com/india-news/outrage-over-cartoonist-aseem-trivedis-arrest-on-sedition-charges-for-mocking-the-constitution-498901>(last visited on Sep. 15, 2016).

to political authority and, as such, was punishable as sedition. But with the arrival of democratic governments, recognition of sedition became controversial. The difficult question is where to draw line between permissible speech and justifiable limits in the interest of safeguarding the political authority of a democratic state?

The chapter VI of IPC titled “Of offences against the state” defines sedition in section 124A. It reads as:

“Whoever by words, either spoken or written or by signs or visible representation, or otherwise, brings or attempts to bring into hatred or contempt or attempts to excite disaffection towards 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.”

It includes disloyalty and all feelings of enmity. It excludes comments expressing disapprobation of the measures of a government with a view to obtain their alteration by lawful means, or comments expressing disapprobation of the administrative or other action of the government without exciting or attempting to excite hatred, contempt or disaffection. In India, the Constitution ensures, in article 19(1) (a), the right to the freedom of speech and expression, which incorporates free press and all types of correspondence. Just reasonable restrictions can be forced by law on specified grounds, for example, sovereignty and integrity of India, security of India, public order and so on. The draft Constitution included sedition as a ground too, yet it was dropped in the long run.

The right to speech and expression and freedom of communication has a favoured status in a popularity based society and must be protected accordingly. Sedition is a tool to check genuine wrongdoing against the state and also a test of the power of the state — and is not just a restriction, however solid or imperviousness to the arrangement of the government. The state, in such manner, can't be mistaken for the government of the day. Governments are by and large contradicted to any difference or

restriction to their strategy or program and are enticed to summon all measures, including sedition to stifle the resistance. The political developments for the most part include incendiary talks. Unless the discourses, directly and instantly, do not promote or incite violence, they ought not to be marked seditious. Doubtlessly it is hard to choose where to take a stand. But on the other hand it is necessary that a line must be drawn, in the favour of free speech.

How about we take the most recent case, the increasing line over the JNU issue had found a resonance at a meeting of political social occasions called by Prime Minister Narendra Modi with opposition leaders talking against sedition case slapped on the arrested student leader and government certifying that mottos raised by students were "extraordinarily horrendous".

The government said it is open to debating the JNU row in Parliament during the upcoming Budget Session starting February 23, 2016 with Prime Minister Modi saying that the government will address the concerns raised by the opposition party.

After the JNU case, ahead of a Parliament session Prime Minister Modi said in an all- party meeting-

“We will respond to the issues raised by the opposition and address them. I hope the congenial mood here will be translated into action in Parliament.”<sup>18</sup>

If the power of our reasons provides insufficient immunity from the harmful effects of speech, then may be our arguments about free speech ought to change as well. They are based on the assumptions that we are capable, and in fact do, critically engage with what we hear and that we should therefore be at liberty to hear everything, so as to be able to choose autonomously.

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18. “Modi Throttling Freedom of Expression” in *DNA India* 7 Jun., 2008.

If these political leaders have the power to speak their views then why not common people, why are they not allowed to speak their minds? Yes there should be some restriction as it is stated in section .124A of IPC that is the views should be such that it shouldn't incite people to do unlawful action.

“Once a government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear.”

### **V Sedition law: A comparative perspective**

Whilst there are numerous nations that still have sedition laws, the general pattern is positively far from such laws, which are regularly remainders of provincial time political scenes. In a few wards, rebellion has been repulsed inside and out. Where they remain these laws are not uncontroversial or uncontested, looking over against national constitutions and human rights structures. At times, the extent of the law has been contracted to a moderate development, arraignments are uncommon, and disciplines are frequently ostensible. This next area is a brief layout of a portion of the contemporary methodologies globally to sedition.

#### ***United Kingdom***

In the UK, seditious defamation was annulled under the Coroners and Justice Act 2010. This annulment the result of the laws negation of the UK's Human Rights Act 1998 and the basic privileges of the European Convention on Human Rights which the HRA maintained. Before this in any case, the law was once in a while drew in and the guideline under ex parte Choudhury confined the use of rebellious criticism to situations where there was an incitement to savagery.

In any case, the security honored by the ECHR does not reach out to Non-European nationals. Likewise, the Terrorism Act of 2000 incorporates offenses, for example, "inducing terrorist acts" and "giving preparing to terrorist purposes at home or abroad."<sup>19</sup>

### *New Zealand*

In New Zealand sedition was abolished in 2007, under the Crimes (Repeal of Seditious Offences) Amendment Act, 2007. It was comprehended that the criminalization of disagreeing perspectives was not a helpful or fitting reaction, that it negated the New Zealand Bill of Rights and that subversion in New Zealand bore a "spoiled history".<sup>20</sup> The New Zealand parliament likewise noticed the dubiousness of sedition, its insignificance in the contemporary setting, the fittingness of other criminal law procurements to manage instances of actuation to viciousness and vitally, the "chilling impact" that such laws have upon free discourse.

### *United States of America*

In the USA, under *Brandenburg v. Ohio*, the court said that advocating a doctrine of violence in abstract terms was not considered sedition, whereas advocating immediate violence was.<sup>21</sup> The prior, it was held was protected by the first amendment and the distinction was the immediacy of the threat. This law operates under civil jurisdiction and there is a separate code governing military justice where both sedition and failure to suppress sedition is punishable under a court marshal.

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19. *R v Chief*; Metropolitan Stipendiary Magistrate ex parte Choudhury, [1991] 1 All ER 313.

20. Crimes (Repeal of Seditious Offences) Amendment Bill, 2007.

21. *Brandenburg v. Ohio* 395 US 298 (1957).

### *Nigeria*

In Choke Obi, the Nigerian laws on sedition were found to be constitutional. Criticism of the government, insofar as it was a “malignant matter,” was seditious.<sup>22</sup> Subsequent cases such as *Nwankwo* have challenged this ruling on the grounds that sedition is incompatible with free speech.<sup>23</sup> The matter is not finally settled but some scholars, such as F.C. Nwoke, suggest that as the former was decided under colonial rule, the latter is more authoritative.<sup>24</sup>

### *Australia*

In Australia, Sedition laws are classified under a few states criminal codes and the government Anti-Terrorism Act ,2005, which supplanted the references to dissidence in the Federal Crimes Act 1914. Preceding 2005, the last conviction of sedition had been in 1961.<sup>25</sup>

## VI Conclusion

Merriam Webster defines sedition as:<sup>26</sup>

*“the crime of saying, writing, or doing something that encourages people to disobey their government.”*

Going by that definition, there's plenty in this country that can qualify as sedition.

- When a country has 340 million people below the poverty line (which is more than the population in 1947), it is sedition.
- When every year, 16,000 farmers are compelled to commit suicide because of failure of government policy, it is sedition.
- When a country has 287 million illiterate people (37% of the world's illiterate population), the highest in the world, that is sedition.

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22. *DPP v. Chike Obi*, [1961] 1 All NLR, 186.

23. *State v Arthur Nwankwo*, (1985) 6CLR 228.

24. F.C Nwoke, “The Law of Sedition and the Concept of Press Freedom in Nigeria,”

25. *Cooper v The Queen*, [1961] HCA 16,

26. Available at: <http://www.merriam-webster.com/dictionary/sedition> (last visited Sep. 15, 2016).

- When a country has 25,000 rapes every year, and the government doesn't seem to be doing much to prevent them, it is sedition.
- When getting justice takes up to 20 years and still 30% of vacancies exist in the judiciary, it is sedition.

Sedition is not a few blockheads yelling mottos in some edge of this nation. Sedition is not some confused youth waving dark banners on Republic Day or green banners on one more day. Sedition is not some adolescent having inept civil arguments on issues they don't generally understand.

Sedition is the point at which a government chooses so as to avoid seeing the savagery against mankind, with an ulterior intention to break individual's resistance, driving them to rise in insubordination. Sedition is compelling individuals to go rogue since government has fizzled. Sedition is trying the persistence of a country's kin.

It is no foreign power that will bring about our extraordinary nation to crumble. If at any point it happens, it will be the lack of concern of the government, the inaction of the organization to the genuine issues at the grass-roots level. It won't be for need of a sanctuary or as a result of sloganeering by dolts. Our adversaries are not outside but rather inside. Hence, the need of the hour is the scrapping up of the law of sedition, because it poses serious threats to the constitutional safeguards of the "Freedom of speech and expression."

# SEDITION IN INDIA: A COMPARATIVE STUDY PROPOSING ABOLITION OF THE COLONIAL LAW

*Rakesh Kumar Sahoo \**

*Shivani Kappor \*\**

“Law being the cement which holds the social structure together, must intelligently link the past with the present without ignoring the pressing claims of the future.”

Edgar Bodenheimer<sup>1</sup>

## Abstract

Independent India inherited many of the laws from their predecessors, including the controversial law of sedition which has judicially evolved over a period of time. Simplistically defined sedition is the defamation of the state and the government with certain peculiar characteristics. The paper elaborates on the changing interpretation of the meaning of sedition under the IPC, keeping in mind that the section is an element of the criminal law introduced by the Britishers and a contradiction to freedom of speech guaranteed under article 19 (1) (a). More than 60 years after independence, it may well be said that the time for prosecuting political libel has passed in India like in other democratic countries, especially the implementer of the law in India- the United Kingdom. This law continues to give the government a chance of stepping into the shoes of the colonial master. The later episodes of this conjuring rebellion law against human rights activists, columnists and open erudite people in the nation have upraised basic issues of the legitimacy and the old and undemocratic nature of these laws. The paper aims to answer one fundamental question - Is sedition a law in the interest of public order here to stay or the time has come to do away with the colonial law, which prevents free speech? It answers this question through a comparative study of Indian and English Laws of sedition to finally make a case in favour of repealing the colonial archaic sedition law.

## I Introduction

AT TIMES does one go over a qualification so fine that even a word talked against it might bring about turmoil. The framers of the constitution understood the liberty of speech along with the freedom to express one's supposition and perspectives as one of the notable privileges of the residents of India. But what has happened over decades with this freedom must have never at any point remotely entered their thoughts. Today we remain to investigate the plausibility where a word talked might be translated as a misuse of Constitutional liberty- a motivation to be tossed in jail on the charges of sedition.

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1. Edgar Bodenheimer, *Jurisprudence :The Philosophy and Methods of Law* (Harvard University Press, Cambridge, 1962).

Section 124A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence.

Mahatma Gandhi, March, 1922<sup>2</sup>

The above words, as rightly put, by Mahatma Gandhi during his famous trial of 1922 in the colonial India, briefly summarizes the very meaning of sedition. The word “sedition” has been derived from the latin word “*Seditio*” meaning 'sed' – apart and 'itio' – going, thus signifying something which is 'going away from'<sup>3</sup>. As defined by the Oxford Dictionary, it is conduct or speech inciting people to rebel against the authority of a state or monarch. In the legal sense, sedition, as defined by the black law dictionary, it is an insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquility of the state.<sup>4</sup>

English law punishes a seditious act with intention of exciting disaffection, hatred or contempt against the government or exciting ill will among the subjects of the king, *i.e.* the citizens of the United Kingdom. In the United States, the sedition law recognizes acts done wilfully or acts done with the intention or abetting acts to overthrow the government of the United States as a whole or any of the States as a seditious act.

Since its origin, the law has continued to be used to stifle voices of protest, dissent or criticism of the government. In the 21<sup>st</sup> century in light of the ever growing human rights concerns there exists an ongoing debate on the very existence of sedition law in India. The jurisprudence of

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2. R. Mukherjee, (ed.), *The Great Speeches of Modern India*.(Random House, Gurgaon, 2014).

3. Oxford Dictionary

4. Black Law Dictionary (2<sup>nd</sup>ed, 1910).

sedition in India has been in question throughout in the recent time owing not only to it being incorrectly applied as a tool for harassment by the prosecuting authorities, but also being declared obsolete and hence being repealed in many countries including UK.

## II The Indian scenario

**Section 124A.**—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.

Explanation 1. — The expression “disaffection” includes disloyalty and all feelings of enmity. Explanation 2.— Alteration by lawful means, without exciting or attempting to excite hatred, contempt or comments expressing disapprobation of the measures of the government with a view to obtain their disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]<sup>5</sup>

The offence of sedition in India, as reproduced above, punishes only those who by their act either bring or attempt to bring into contempt or hatred or excite disaffection towards government. Explanation 3 for the provision excludes acts of disapprobation toward the actions of government from the scope of the offence. Thus, words of criticism, however harsh, but not exciting the feeling of disaffection do not qualify for sedition. But this was not the scenario in the earliest times; rather it took years for this construction to develop. This evolution can be traced in light of the various judicial pronouncements.

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5. Section 124-A, Indian Penal Code.

*Queen Empress v. Bal Gangadhar Tilak*,<sup>6</sup> was the leading case of sedition where the court, transcending the arguments from both sides, interpreted section 124A mainly as exciting 'feelings of disaffection' towards the government, which covered within its ambit sentiments such as hatred, enmity, dislike, hostility, contempt, and all forms of ill-will. It expanded the scope of the offence by holding that it was not the gravity of the action or the intensity of disaffection, but the presence of feelings that was paramount and mere attempt to excite such feelings was sufficient to constitute an offence.<sup>7</sup>

A conflict arose when the federal court of India, the highest judicial bodies of the country till the establishment of the Supreme Court, in *Niharendu Dutt Majumdar v. King Emperor*<sup>8</sup> held that the mere presence of violent words does not make a speech or publication seditious. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men of its intention or tendency."<sup>9</sup>

The view of the federal court was subsequently overruled by the Privy council.<sup>10</sup> When the speaker told the audience that the government wanted to ruin those people who were trying to set them on the right path, that the Englishmen had come to India to make the people addicted to drink, opium and bhang, that the executive and the judiciary are partial to white men and exhorted the audience to resolve not to live under Englishmen; it was held that the speech was calculated to excite disaffection against the government and to bring hatred and contempt.<sup>11</sup>

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6. ILR (1898) 22 Bom 112.

7. JanakiBakhle Savarkar, "Sedition and Surveillance: The rule of law in a colonial situation" 35 *Social History* 25(2010).

8. *Niharendu Dutt Majumdar v. King Emperor*, AIR 1942 FC 22.

9. *Id.* at page 24.

10. *King Emperor v. Sadashiv Narayan Bhalerao*, (1947) 49 Bom LR 526.

11. *Kedar Nath Sehgal v. Emperor*, AIR 1929 Lah 817.

### ***Post-independence development – freedom of speech & sedition***

After India attained independence in 1947, the offence of sedition continued to remain in operation under section 124A of the IPC.

In *Tara Singh v. The State of Punjab*,<sup>12</sup> section 124A, IPC was struck down as unlawful as against the right to speech and expression ensured under article 19 (1) (a). The after-effect of the above cited case was avoided through the first amendment to the Constitution in which, the additional grounds of 'public order' and 'relations with friendly states' were added to the list of permissible restrictions on the freedom of speech and expression under article 19 (2).<sup>13</sup> Further, the word '*reasonable*' was added before '*restrictions*' to limit the possibility of abuse by the government.<sup>14</sup> Thus, it made section 124A of IPC in consonance with article 19 (1) (a) being saved by the expression "in the interest of public order" in article 19 (2). It has been stated that the expression in the interest of public order is of wider connotation and includes not only the acts which are likely to disturb public order but something more than that. As per this interpretation, section 124A IPC has been held *intra vires* to the constitution.

### ***Modern definition – Kedar Nath judgement***

The landmark decision of the Supreme Court in *Kedar Nath Das v. State of Bihar*<sup>15</sup> laid down the interpretation of the law of sedition as it stands today. In the court's interpretation the incitement to violence was considered as an essential ingredient of the offence of sedition.<sup>16</sup> Here, the court followed the interpretation given by the federal court in *Niharendu Dutt Majumdar*<sup>17</sup> case.

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12. AIR 1950 SC 124.

13. Siddharth Narrain, "Disaffection and the Law: The Chilling Effect of Sedition Laws in India", *XLVI Economic and Political Weekly* 34 (2011).

14. *Id.*

15. AIR 1962 SC 955.

16. K.I. Vibhute, (ed.), *PSA Pillai, Criminal Law* 1131 (Indian Law Institute, Delhi, 2009).

17. (1942) FCR 38.

The fundamental issue involved for consideration was whether section 124A has ended up a void in perspective of article 19 (1) (a) of the Constitution. Sinha, C.J., who delivered the judgment analysed the whole history of section 124A. It was most likely that the provision of section 124A is violative of the privilege revered under article 19 (1) (a). The inquiry was principally whether the segment would be spared by bringing it under the ambit of the limitations listed in article 19 (2). The court measured the clashing implications given to section 124A by the federal court and the Privy Council. The necessity of having the offence of sedition and the view of the federal court on the presumption of constitutionality was accepted. Therefore section 124A was held to be constitutional and should make penal only those matters that had the intention or tendency to incite public disorder or violence. The restrictions imposed on freedom of speech could be said to be in the interest of public order. The crime of sedition was thus established as a crime against public tranquility, as opposed to a political crime affecting the very basis of the State.<sup>18</sup>

Earlier the section placed the successful, exciting of feelings of disaffection and the unsuccessful attempt to excite them absolutely on the same footing but after this judgment, it is only when the words, written or spoken, *etc.* which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in, to prevent such activities in the interest of public order.

### ***Recent developments in the law***

Since the eponymous decision of the Supreme Court in Kedar Nath, the courts have applied the law of sedition on various occasions. There have been only fourteen cases of sedition in the last fifteen years, of which only two were heard before the Supreme Court. Further, there have been only three convictions, of which one conviction was made by the Supreme Court.

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18. *Rex v. Aldred*, (1909) 22 Cox CC 1.

In one such recent case, *P.J. Manuel v. State of Kerala*,<sup>19</sup> the accused affixed posters on a board at the Kozhikode public library and research centre, exhorting people to boycott the general election to the legislative assembly of the state. The poster proclaimed, “no vote for the masters who have become swollen exploiting the people, irrespective of difference in parties.” Consequently, criminal proceedings were initiated against him under section 124A of the IPC for the offence of sedition. The court held that the content of the offence of sedition must be determined with reference to the letter and the spirit of the Constitution and not to the standards applied during colonial rule and ordered acquittal. In another case of *Gurjatinder Pal Singh v. the state of Punjab*,<sup>20</sup> the accused petitioned the Punjab & Haryana high court for an order to quash the first information report (‘FIR’) that had been filed against him under section 124A. At a religious ceremony organized in memory of the martyrs the petitioner gave a speech to the people presently advocating the establishment of a buffer state between Pakistan and India known as Khalistan. Crucially, it was held that even explicit demands for secession and the establishment of a separate State would also not constitute a seditious act. Thus, the FIR against the accused was quashed. In the other case of *Mohd Yaqub v. State of W.B.*<sup>21</sup> the accused had admitted to being a spy for the Pakistani intelligence agency ISI. He would receive instructions from the agency to carry out anti-national activities. He was thus charged for sedition under section 124A of the IPC. Citing the elements of sedition that were laid down in *Kedar Nath*, the Calcutta high court found that the prosecution had failed to establish that the acts were seditious and that they had the effect of inciting people to violence. Thus, the accused were found not guilty as the strict evidentiary requirements were not met.

In the other case of *Nazir Khan v. State of Delhi*,<sup>22</sup> the accused underwent training with militant organisations such as Jamet-e-Islamic and Al-e-Hadees, and was given the task of carrying out terrorist activities in India. He then kidnapped British and American nationals visiting India, and

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19. ILR (2013) 1 Ker 793.

20. (2009) 3 RCR (Cri) 224.

21. (2004) 4 CHN 406.

22. AIR 2003 SC 4427.

demanding that ten terrorists that were confined in jail be released in exchange for the release of the foreign nationals. However, he was caught by the police after one of the hostages managed to escape. He was subsequently tried for several offences, including sedition. The Supreme Court held it to be an act of sedition noted that the “line dividing preaching disaffection towards the Government and legitimate political activity in a democratic set up cannot be neatly drawn.” The court held it to be an act of sedition. In *Balwant Singh v. State of Punjab*,<sup>23</sup> the Supreme Court overturned the convictions for 'sedition', section 124A, IPC,1860) and 'promoting enmity between different groups on grounds of religion, race, etc. Section 153A, IPC,1860), and acquitted persons who had shouted – “Khalistan zindabaad, Raj Karega Khalsa,” and, “Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da”. In the very famous case of *Binayak Sen v. State of Chhattisgarh*,<sup>24</sup> one of the accused Piyush Guha made an extra-judicial confession that Binayak Sen, a public health advocate, had delivered certain letters to him to be delivered to Kolkata. These letters allegedly contained naxal literature – some contained information on police atrocities and human rights. Convicting the accused of sedition, the high court cited the widespread violence by banning naxalite groups against members of the armed forces. However, it did not explain how the mere possession and distribution of literature could constitute a seditious act. Further, the High Court did not address the question of incitement to violence, which was evidently absent in this case.

Besides these there are many cases that are still pending in various cases. Some of them are-

- Kirori Singh Bainsla, Gujjar community leader, June ,2008 Bayana, Rajasthan-For leading an agitation demanding ST status for Gujjars
- V. Gopalswamy, Politician, MDMK, Dec. 2009 Chennai, Tamil Nadu-Remarks allegedly against India's sovereignty at a book launch function.

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23. 1995 (1) SCR 411

24. (2011) 266 ELT 193

- E. Rati Rao, Resident Editor, Varthapatra, Feb., 2010 Mysore, Karnataka- Article in Varthapatra claiming encounter deaths in Karnataka
- Piyush Sethia, Environmentalist and Organic Farmer, Jan., 2010 Salem, Tamil Nadu -Pamphlet distributed during protest against Chhattisgarh government's support for Salwa Judum.
- Niranjana Mahapatra, Avinash Kulkarni, Bharat Pawar, others Trade Union Leaders and Social Activists March 2010 –June 2010 - Gujarat Police allege link with CPI (Maoist).
- Arundhati Roy, Shuddabrata Sengupta, S.A.R. Geelani, Varavara Rao & others Writers, political activists, and media theorists, November, 2010 Delhi -Private complaint alleging that they made anti-India speeches titled “Azadi-The only Way” at a seminar in Kashmir”
- Noor Muhammed Bhat Lecturer, Gandhi Memorial College, Srinagar, Dec 2010 Srinagar- setting a question paper for students of English literature on the topic of “Whether stone pelters were the real heroes”
- Sudhir Dhawale Dalit Rights Activist and Free Lance Journalist, Jan 2011 Wardha, Maharashtra-Police allege link with CPI (Maoist) party.
- Aseem Trivedi, Cartoonist, September 8, 2012, Mumbai-He was arrested after a complaint that his cartoons mocked the Indian constitution and national emblem.
- The most recent case of Meerut University suspending 60 students for cheering in favour of Pakistan in a cricket match between India and Pakistan, these students being charged under sedition

### **III The international scenario**

The law of sedition is an archaic piece of law in India, given by the Britishers being nearly half a millennium old. Thus, it is necessary to study and have a comparative analysis with the sedition law of the country who enacted this sedition law. The country which birthed section 124A —repealed its own sedition law in 2009.

Sedition or seditious libel was a common law criminal offence in the United Kingdom. The common law principles of seditious libel evolved from the Britain's oldest law- Statute of Westminster 1275, where it was established that for the crime of sedition, truth was no defence and intention was irrelevant as was whether there was any actual harm done. The offence was then clearly defined in the "Digest of Criminal Law". This was extensively used in the 18th and 19th century, mostly against activists who challenged the extent of freedom of speech and media.<sup>25</sup>

But with time the situation changed. The offence of seditious libel remained largely unused for the most of the 20th century as British democracy liberalised. The 1970s was the last time prosecutions were ever made for this offence. Then in 1977, the Law Commission expressed its view that the common law offence of sedition was ill defined, unnecessary and fallen into disuse for nearly 150 years.<sup>26</sup> There was a consensus on the law being redundant and inappropriate and hence a move to repeal the law was made.

On March 2009, amendments to the Coroners & Justice Bill were tabled in the House of Commons and then again in the House of Lords before the Government eventually accepted the case for abolition and promised to get rid of the laws themselves. Some very well-articulated points by their Lordships in the House of Lords' were debated on the motion like:<sup>27</sup>

“It is my understanding that... secretary of state for justice, agrees that there is no basis for keeping the laws of seditious libel... on the statute book and that there would be a benefit in setting an example to oppressive regimes which use similar offences to silence dissent by repealing these antique and out-of-date laws.”

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25. Suhrith Parthasarathy, “*Sedition and the government*”, *The Hindu*, Feb. 16, 2016.

26. Nandita Jha, “Free speech: a dire three months”, *The Hindu*, April 5, 2016 .

27. Sukanya Shetty, “40 months on, court acquits 'Naxal activist' Sudhir Dhawale”, *Indian Express*, May 23, 2014 available at:

<http://indianexpress.com/article/india/regional-india/40-months-on-court-acquits-naxal-activist-sudhir-dhawale/> (last visited Nov 15, 2016).

“The power to express forcefully political discontent is the cornerstone of democracy and lies with the people. The ability of individuals to criticize the state is crucial to maintaining freedom in this day and age, when we have so many journalists, bloggers and so forth who give us their views all the time. Conversely, it is not therefore in the power of government to criminalize this expression. The fundamental rights of UK individuals would be better protected by removing the offence of seditious libel from the statute book.”

With this, the law of seditious libel was completely uprooted from the English legal system with the additional hope to help campaigners overseas argue for its abolishment. They professed that it would be helpful to open the door for other countries that retain the law to move forward and abolish the offence when it was out of books in the country which in the colonial era was responsible for its implementation. In New Zealand also the sedition law was repealed in 2007 on grounds of containing legal principles which defy the principles of natural justice and the rule of law.<sup>28</sup> Similarly Australia, Indonesia and South Korea have also done away with their sedition law declaring them to be unconstitutional. Canada also has no sedition laws and the citizens enjoy liberal freedom as the laws to restrict freedom of speech are rarely enforced upon them. Malaysia is one example of a democratic country where use of sedition law was rampant, but in the present time, it is also confronted with criticism, especially by the United Nations Human Rights Commission to repeal the 'archaic and draconian' Sedition Act, 1948 - a Pre-Merdeka British enactment aimed to control dissenters and to strengthen their political grip in Malaya during a period when the spirit of nationalism was rising high among the people. Similarly, USA has a sedition law, but is rarely enforced in respect for freedom of speech.

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28. “India drops sedition charge for Kashmiri students in cricket row”, *BBC News*, March 6, 2014 available at: <http://www.bbc.com/news/world-asia-india-26463140> (last visited Nov 15, 2016).

#### IV Comparative analysis

The basic essence of any law is to grow in order to placate the needs of the people and keep abreast with the developments taking place in the country. The present India has evolved up to a great extent. With the advent of modern technology and globalization, the conditions have changed and most importantly the attitude of people towards the government has revolutionized. The law of sedition being followed till date is the one enacted in the context of a totally different kind of India in the late 1800's by the Britishers with the aim to quell and oppress the Indian freedom struggle. The time seems apposite to repeal this outdated, archaic colonial-era law and get rid of a provision that has no place in a country that prides itself on a Constitution that guarantees to all its citizens the fundamental right to dissent. The law was criticized by Prime Minister Jawaharlal Nehru, who told Parliament in 1951 that he found section 124A “highly objectionable and obnoxious” and “the sooner we got rid of it the better.”<sup>29</sup> But his government and all the subsequent governments retained it and misused it. Such hypocrisy of Indian politicians kept alive this colonial law which should have been repealed by the first Indian Parliament.

There is no place in a democracy for a black law that conflates disaffection with disloyalty. Democracies like India must be confident enough in their powers to withstand criticism where people have the power to change governments through a vote. No democratic government can afford to charge people with sedition and put them behind bars for saying things which they have the freedom to say. By retaining it, the governments have repudiated the concept of human rights evolved through long years of freedom struggle. Clinging to an all-encompassing vaguely worded sedition law will do more harm than good to our democracy.

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29. Editorial, “Repeal the sedition law”, *The Hindu*, April 21, 2011.

The Supreme Court of India in the *Kedar Nath*<sup>30</sup> case has upheld the constitutional validity of the law only with the interpretation that it is to be applied only to actions that have a direct and unambiguous connection to violence or public disorder; else its application would be unconstitutional. However, in practice, the law continues to be used as a weapon of oppression against all voices raised against all dissenting. Politicians with power, police authorities have always ignored the nicety that the scope of the sedition law is severely limited. For them, it is the process of being dragged to court that is the punishment. So even if someone charged with sedition is acquitted along the way, he faces punishment by been put through a torturous legal process simply because they expressed the 'anti-government' opinions. Trial courts have been increasingly guilty of entertaining sedition charges and sometimes even convicting at the initial stages. The current case of sedition charged on Kanhaiya Kumar would also not have existed if the law laid by the apex court is strictly implemented as it lacks the necessary proximate nexus between the speech and consequence. The literal interpretation of section-124-A is despotic and is widely criticized by the higher judiciary being in violation of the constitutional scheme Therefore, it is better to do away wholesale with the current law.

India is still slapping sedition cases on people, including lecturers, journalists, human rights activists and cartoonists when the offence has been rendered obsolete in many countries, either through a formal scrapping of the sedition law or by rendering it virtually toothless because of judicial rulings. Interestingly, the country which gave India its sedition law, the United Kingdom, which was considered the most enthusiastic user of sedition law, repealed it in 2009 on its becoming obsolete- the last case dating back to 1947.<sup>31</sup>

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30. *Ibid.*

31. Meenakshi Ganguly, "India: Folk Singer Jailed for Sedition", *Human Rights Watch*, Nov. 3, 2016. Available at: <https://www.hrw.org/news/2015/11/03/india-folk-singer-jailed-sedition> (last visited June 26, 2016).

The government has since then rarely used this heavy arm of the criminal law against trenchant critics of the state. The, then Parliamentary Under-secretary of state at the ministry of justice, Claire Ward, said at that time “Sedition and seditious and defamatory libel are arcane offences - from a bygone era when freedom of expression wasn't seen as the right it is today” According to him the existence of these obsolete offences in their country had been used by other countries as justification for the retention of similar laws. Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries.<sup>32</sup> But democratic India even with all its bitter experience of the operation of this law fails to realize it and continues to retain and use it.

It is time that the lead of modern constitutional democracies such as the United Kingdom, is followed. There is an urgent need to re-examine the need for this undemocratic law in the world's largest democracy and send section 124A (IPC) to where it really belongs — to the scrap heap of repealed laws. What was once an instrument of British colonialism to suppress the freedom struggle cannot be retained by the state to silence the voices of its own people? If someone raises slogans against India or endangers the security of India, he should be dealt with under appropriate laws existing under chapter VIII of the IPC. Various other statutes also govern the maintenance of public order and may be invoked to ensure peace and tranquility. The law of sedition is too colonial, too dangerous and too destructive of the basic freedom of the people and hence should be scrapped.

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32. Sonwalkar Prasun, “*Sedition law in UK abolished in 2009 continues in India*” *Hindustan Times*, Feb 16, 2016.

## V Conclusion

In the words of Roscoe Pound, “*Law must be stable yet it cannot be still.*”

The words and acts that tend to endanger society differ from time to time as society is instable. In the present day meetings and processions are held lawful which 150 years ago would be deemed seditious owing to the evolution of society.<sup>33</sup> The yardstick to assess that a person has excited or attempted or desired to excite hatred, contempt or disaffection needs to be revisited as at the present day after more than 60 years of independence India as well as the ruling authority have transposed.

In the words of Adlai Stevenson:<sup>34</sup>

*“Every man has a right to be heard, but no man has the right to strangle democracy with a single set of vocal chords.”*

There is a difference between desiring and working to overthrow the government and desiring and working to overthrow the country. The government is not the same as the country. Because, it is the national anthem of India and not the national anthem of the government of India; It is the national flag of India and not the national flag of government of India; It is the citizen of India and not a citizen of the government of India. Thus, there is a difference between speaking against the government and speaking against the country which should be upheld at all costs.

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33. Edgar Bodenheimer, *Jurisprudence: The philosophy and method of the Law* (Harvard University Press; London, 1962).

34. Eric Barendt “*Threats To Freedom Of Speech In The United Kingdom*” 28(3) *UNSW Law Journal* 896 (2005).

In today's environment the sedition law seems to be colonial bogey which expects that citizens should not show enmity, contempt or hatred towards the government established by law. In its current form, there is a grey area which lies between actual law and its implementation. There is no need for a specific provision for the punishment of acts committed against the state or the government for the maintenance of public order. Other existing provisions that are less stringent and do not counter productively mark out and legitimize offenders as political offenders may be applied in such cases.<sup>35</sup>

Thus, there seems no valid reason available to justify the retention of seditious offences in statute books in light of its obsolescence. It only undermines the public interest. Since its origin the sedition laws have been defined by uncertainty and non-uniformity, giving ample opportunity for its vague implementation of the ruling class, especially as a tool to censor any speech that goes against their interests. The courts have also failed to remove the deficiencies and ensure a proper use of the law and stop it from being a tool of harassment. Drawing inspiration from the repeal of sedition law in England, the Indian law should also be declared obsolete. In light of the above observations, it is time that the Indian legislature and judiciary reconsider the existence of provisions related to sedition. These remain as vestiges of colonial oppression and simply undermine the rights of the citizens to dissent and criticize the government in a democracy.

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35. Ben Saul, "Speaking of Terror: Criminalizing Incitement to Violence", 28 *UNSW LJ* 874 (2005).

# **SEDITION IN A DEMOCRACY: A COMPARATIVE STUDY OF ANTI-SEDITION LAWS IN WESTERN AND ASIAN DEMOCRACIES**

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## **Abstract**

Several modern democracies, especially in Asia, can point to the British colonial legacy as the source of their sedition laws. Recent political developments in India and in many other countries across the world regarding the crime of sedition have once again given rise to a debate on the ethical and legal validity of criminalizing the act of sedition. To provide a comparative look at the different legal scenarios in the world, this paper studies (anti)sedition laws in the United Kingdom, the United States of America, Malaysia and Hong Kong. The development of sedition as an offence in India has been studied, with special reference to the charges brought against Mahatma Gandhi himself, under the provisions of the IPC which prohibit seditious behavior. A contrast is observed between the approach to sedition, seditious libel and plain criticism of public officials in the Eastern and Western parts of the world. Suppression of dissent is hardly a novel concept in a dictatorship or in an authoritarian state, which is why this paper focuses on sedition laws in democracies, both old and new. The prevalence of a multitude of factors including geo-politics, religious heterogeneity and even the age of a state is studied to provide context and perspective to existing legal frameworks in each country. The problems with the law as it is in India are succinctly identified and pointers are provided to find our way into the future, as a healthy, strong and evolving democratic power.

## **I Introduction**

“Section 124 A, under which I am happily charged, is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen.”

– Mahatma Gandhi, March 18, 1922.

ANY COUNTRY in the world has to ask itself about the extent to which certain fundamental freedoms of citizens can go un-policed. It is this line of tolerance that often decides whether a country is a democracy, an autocracy, a dictatorship or something in between these systems of governance. More than fundamental rights themselves, a country is defined by the restrictions it places on such rights. This paper deals with

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the offence of sedition as defined under section 124A of the IPC . The section as it is today, reads as follows:

“124-A. 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.”

Sedition therefore, in simplified terms, is an act by any person or entity who seeks to incite “disaffection” against the state of India. Such person will be subjected to the due process of law which may extend up to life imprisonment. Charges under this provision of law will naturally be brought against speech or writing that happen to incite acts of a seditious nature and therefore constitute a limitation on the fundamental right of freedom of speech and expression provided for under article 19<sup>2</sup> of the Constitution. As with any limitation on a fundamental right, the concept of imprisonment or even chastisement for seditious behavior has its detractors who believe that in a proper democracy, seditious behavior is also covered under and protected by the freedom of speech and expression. Such an idea is in direct conflict of traditional notions of nationalism and patriotism while others claim that India is not a nation so weak as to be in any actual danger by mere seditious words and ideas. However, the debate on sedition is not limited only to India and has a long jurisprudential history in almost every country in the world. To offer some perspective on the situation in India, it is imperative to compare and contrast the history and future of sedition in India and other countries across the world.

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## 2. Protection of certain rights regarding freedom of speech etc.

All citizens shall have the right

- to freedom of speech and expression;
- to assemble peaceably and without arms;
- to form associations or unions;
- to move freely throughout the territory of India;
- to reside and settle in any part of the territory of India; and
- omitted
- to practise any profession, or to carry on any occupation, trade or business

## II History of sedition in India

Like much of the IPC, section 124A is a product of our colonial history, introduced by the British. Lord Thomas Macaulay introduced sedition as an offence in the draft of the IPC in 1837, but it was omitted in the version enacted in 1860.<sup>3</sup> British legislators considered this to be a mistake and believed that the Indian press needed to be kept in check to prevent the rise of a nationalist movement. Furthermore, they were afraid of the rise of Wahabism and greatly increased Wahabi activities in the late 1800s.<sup>4</sup> As a result, the provision was re-introduced in the Code in 1870.<sup>5</sup> *Queen Empress v. Jogendra Chunder Bose*<sup>6</sup> was the first ever case brought about on the grounds of sedition.

In 1922, Mahatma Gandhi was charged under the same provision and was brought to court for a hearing. Gandhi's writings in his own paper, *Young India* were the cause of the charge being levied on him.<sup>7</sup> In his paper, Gandhi wrote against the oppressive regime of the British and the importance of resisting such oppression. His opinion can be derived from this succinct line reproduced from his article:

“We seek arrest because the so-called freedom is slavery. We are challenging the might of this government because we consider its activity to be wholly evil. We want to overthrow the government. We want to compel its submission to the people's will. We desire to show that the government exists to serve the people, not the people the government.”<sup>8</sup>

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3. Arvind Ganachari, *Evolution of the Law of “Sedition” in the Context of the Indian Freedom Struggle in Nationalism And Social Reform In A Colonial Situation* 54 (Kalpaz Publications, Delhi, 2005).
  4. *Id.* at 56.
  5. Narrain, S., “Disaffection and the Law: The Chilling Effect of Sedition Laws in India” *Economic & Political Weekly*, September 2016, pp. 33-37.
  6. 1891, (1892) ILR 19 Cal 35.
  7. Vaishnav, H., “The Great Trial of Mohandas K. Gandhi” Vol. II/X11 *SRJIS*1485-1489 ( May-June 2012).
  8. Bombay High Court, 'Trial of Mahatma Gandhi-1922', available at: [http://bombayhighcourt.nic.in/libweb/historicalcases/cases/TRIAL\\_OF\\_MAHATMA\\_GANDHI-1922.html](http://bombayhighcourt.nic.in/libweb/historicalcases/cases/TRIAL_OF_MAHATMA_GANDHI-1922.html) (last visited Sep 12, 2016).

Here we note that Gandhi spoke strictly in terms of passive resistance and the use of peace and non-violence alone. This was no bar for the application of the provision against him. The proceedings were closely followed by the entire nation as Gandhi had by then become a national icon and a symbol for the freedom movement. Charges of sedition against Gandhi were of special importance because he was at the forefront of the national movement and was fighting for his own country, against its illegal occupants. Gandhi believed that it was his moral duty to disobey the law in this matter.<sup>9</sup> Bal Gangadhar Tilak and Annie Besant were among other prominent freedom fighters that were charged with sedition.<sup>10</sup>

The constitutionality of the section has not gone unchallenged. In *Ram Nandan v. State of U.P.*,<sup>11</sup> the Allahabad high court held that section 124A of the IPC is *ultra vires* as it violates article 19(1) (a) of the Constitution and said,

“A law which punishes an act which results in the mere adoption of certain emotional or mental attitude towards a particular government would under a democratic Constitution itself appear to err on the side of extremity”. This decision was overruled in the landmark *Kedar Nath Singh v. State of Bihar*<sup>12</sup> judgment. The judgment reasoned this by saying, “It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order.

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9. *Supra* note 8.

10. Bombay High Court, 'First Tilak Trial - 1897', available at : [http://bombayhighcourt.nic.in/libweb/historicalcases/cases/First\\_Tilak\\_Trial\\_-\\_1897.html](http://bombayhighcourt.nic.in/libweb/historicalcases/cases/First_Tilak_Trial_-_1897.html). (last visited Sep 15, 2016).

11. AIR 1959 All 101.

12. 1962 AIR 955.

So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order.” The judgment draws a parallel between section 124A and section 505(1)<sup>13</sup> of the IPC. Section 505 penalizes acts that cause or intend to cause a mutiny in the armed forces. These two cases are highlighted because they are reflective of the general public opinion on sedition being a punishable offence. While some consider it a restriction on a fundamental right, there are others who believe that such a restriction falls within the ambit of a “reasonable restriction”. Since it has been upheld by the Supreme court itself, it is unlikely that a future judgment will strike down section 124A of IPC completely as the *Kedar Nath* judgment conclusively lays down that section 124A as it stands now, strikes a balance between freedom and restraint.

The Supreme Court has steadily upheld the nuanced stance adopted in *Kedar Nath* since the judgment. When the Chhattisgarh high court refused bail to a human rights activist who was sentenced to rigorous life imprisonment for sedition,<sup>14</sup> the Supreme court granted him bail and observed, “We are a democratic country. He may be a sympathizer. That does not make him guilty of sedition.”<sup>15</sup> In *Bilal Ahmed Kaloo v. State of Andhra Pradesh*,<sup>16</sup> decided by A.S. Anand,J., and K.T. Thomas,J., of the Supreme Court in 1997, a Kashmiri youth was convicted for sedition by the trial court.

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13. S 505 (1) as it is currently, reads as:

505. Statements conducing to public mischief.—

(1) Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

14. *Binayak Sen v. State of Chhattisgarh*, CRLA No. 20 of 2011.

15. *Binayak Sen v. State of Chhattisgarh*, SLP No. 2053 of 2011.

16. AIR 1997 SC 1785.

The Supreme Court set aside the conviction and sentence because they felt that even though the accused was part of a militant group, the ingredients weren't sufficient to constitute sedition. If anything, it is the lower courts that have actively championed for a larger scope of application of anti-sedition laws against speech in the country. The misuse of the section has been so rampant that the Supreme Court in a recent case was forced to re-iterate that 'criticism is not sedition' and only a "violent revolution" against the government attracts the charge of sedition."<sup>17</sup>

### **III Sedition laws: A comparison with other nations**

#### ***United States of America and the United Kingdom***

In an increasingly Anglo-centric world, The United Kingdom and North America are considered to be representatives of "the West" owing to their long established principles of democracy and their financial prowess and general global influence. As a result, these countries are expected to set the bar for how a democracy is expected to function. The IPC was penned by the colonial British State and it is interesting to see how they approach the act of sedition and their position on sedition as a crime. While it is not advisable to ape or mimic their actions or laws, given that they operate under a completely different set of political and cultural variables, the sedition laws in the UK and the USA can provide some perspective as to the modern democratic stance on sedition as a punishable offence.

Much like most of their laws, England set the judicial precedent for the concept of sedition in the form of the offence of seditious libel. The English "Star Chamber" court in 1606 defined seditious libel as criticism of public persons, the government, or King.<sup>18</sup> The consequences were barbaric by today's standards, but seemingly on par with the prevalent legal scenario.

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17. *Common Cause v. Union of India*, WP(C) 683 of 2016.

18. *De LibellisFamosis*, (1606) 5 Co. Rep. 125a.

The intent of the libel and the actual damage suffered as a consequence of such libel was considered to be irrelevant. Truth was no defense to the offence either. The church and the state being intrinsically linked and interchangeable to such an extent as to practically be considered one and the same (even with different heads for both organs), seditious libel was equated to religious blasphemy. The history of seditious libel and this case in particular are telling examples of the underlying significance of making sedition a crime; questioning the state's authority is not condoned by the state. Sedition and blasphemous libel were liberally used by the state to curb questioning of authorities by civilians in the eighteenth and nineteenth centuries. Civil rights campaigner John Wilkes was regularly targeted by the authorities under this law. His publication titled "North Briton" was declared to be seditious and burned in heaps in public.<sup>19</sup>

With the onset of the 20<sup>th</sup> century, Britain was increasingly liberalized, especially post World War II. The 1970s was the last decade to see any prosecutions.<sup>20</sup> Modern day Britain, however, is a different situation altogether. The Criminal Justice and Immigration Act of 2008 abolished religious blasphemy as an offence while the Coroners and Justice Act of 2009 removed sedition as an offence, along with seditious libel.<sup>21</sup>

Therefore as the law now stands, sedition in any manner or form is not a criminal offence in the United Kingdom. One may note that in the seven years since the repeal of criminal sedition, there has been no military coup or any other attempts to destabilize the Government, nor has there been any internal warfare, rebellious uprisings or civil wars. But then again, one has to keep in mind that the United Kingdom is a stable democracy and not a fledgling one that was at risk of a rebellion or coup at any point of time in recent history.

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19. Index on Censorship and English PEN, "A Briefing on The Abolition of Seditious Libel and Criminal Libel" available at : [https://www.englishpen.org/wp-content/uploads/2015/09/seditious\\_libel\\_july09.pdf](https://www.englishpen.org/wp-content/uploads/2015/09/seditious_libel_july09.pdf) (Last visited July 2009).

20. The Lord High Chancellor of the United Kingdom, 149th Report on Criminal Libel (September, 1985).

21. Clare Feikert-Ahalt, *Sedition in England: The Abolition of a Law from a Bygone Era*, October 2, 2012, available at <http://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/> (Last visited Sep 7, 2016).

The notion that anti-sedition sentiments, in the West and maybe even in India, are typically to be found in left leaning political ideology may not be far from the truth, considering that the Labour party (a left-leaning party) in the United Kingdom was responsible for the multiple Acts mentioned above. With the current political climate in India being right leaning, legislative change to sedition laws may be a hard sell. In the United States of America as well, sedition was criminalized hundreds of years ago. The Sedition Act of 1798<sup>22</sup> criminalized sedition. The United States of America thus criminalized speaking up against the government and its various members including members of Congress and the President, merely a little more than twenty years after the inception of the country itself. A country which was born after a war of independence from Britain, whose citizens formed the original colonies that later evolved into the USA. A country that was formed by an act of rebellious warfare would naturally know the dangers of a violent uprising. The country later verged on violent division of its territory after the southern states attempt to secede during the course of the American civil war. The USA was also faster to abolish the crime of sedition than its parent country Britain. In 1919, Holmes, J., with Brandeis, J., of the American Supreme court held a dissenting opinion, one that has been largely appreciated, that the first amendment to the American Constitution which guaranteed the right of free speech abolished the crime of sedition and seditious libel in the *Abrams v. United States*<sup>23</sup> case.<sup>24</sup> It is interesting to note that whenever the judiciary or the legislature has had to step in to alter the concept of sedition, the backdrop is usually a progressive social movement.

In the United States, the *New York Times v. Sullivan*<sup>25</sup> case set the golden standard on free press, thereby allowing unrestricted freedom of the press to report on the growing civil rights movement in the country.

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22. 1 Stat. 596.

23. 250 U.S. 616, 630 (1919).

24. Fu Hualing, Carole J. Petersen et. al. (eds.), *National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny* 217( Hong Kong University Press, Hong Kong, 2005).

25. 376 U.S. 254 (1964).

The civil rights movement largely depended on the press to gather followers from the African-American community and eventually lead to the end of segregation and legal racism in the country. If the court had held in the case that opinions directly against public officials were not to be printed by the media, the outcome may have been delayed to say the least. An important aspect of this judgment was that it established a standard of malice to be established in a case brought against a publisher for publishing content against a public official. While the crime of sedition has not been struck down in the USA, it is practically an obsolete offence now as multiple cases like the *Sullivan*<sup>26</sup> case have made it abundantly clear that publishing anything against a public authority is not a crime and is protected by the first amendment. *Brandenburg v. Ohio*<sup>27</sup> laid down the limitations to such freedom and the essence of the judgment boils down to the rider that speech may only be considered to be an offence if it incites “imminent lawless action”.<sup>28</sup>

### ***Sedition laws in Asia***

To provide a clearer contrast to the mostly anti-sedition-law scenario in the more liberalized western legal structure, we take a look at the situation in South-East Asian countries. This part of the world is still home to a number of countries that are either not democratic or are home to populist cultures that call for death or stringent punishment for seditionists. In Malaysia, which was also a British colony, the Sedition Act was brought about, quite unsurprisingly, by the British colonial authority as late as in 1948.<sup>29</sup> This was akin to the circumstances that criminalized sedition in India in the late 1800s. Article 3 of the Sedition Act of Malaysia criminalizes “the commission, attempt, or conspiracy to commit “any act” which has or would have a “seditious tendency”; “utter[ing] any seditious words”; and printing, publishing, offering for sale, distributing, reproducing, or importing “any seditious publication”.

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26. *Supra* note 25.

27. 395 U.S. 444 (1969).

28. *Ibid.*

29. The Sedition Ordinance came into force on July 19, 1948.

The Malaysian sedition act is infamous for its stringent provisions and its ever expanding scope that now includes speech against Islam and other religions.<sup>30</sup>

Even though promises were made to repeal the Act in 2012 by the Prime Minister of Malaysia, he backtracked on his promise and in a speech made to the UN even promised to bolster the act and make it stronger and wider in scope.<sup>31</sup> In a worrisome move in late 2015, the apex court of Malaysia also upheld the validity of the law and firmly affirmed the regressive nature of the law.<sup>32</sup> Critics of the concept of sedition as a crime often blame it as a colonial hangover and evidence of the British legacy,<sup>33</sup> but the Malaysian example serves as a reminder to the fact that sometimes states actively embrace, adopt and enlarge such laws in an attempt to secure their own future and power. Authoritarian powers especially those that do not derive their power from popular vote are already working against popular opinion and in such a scenario tend to look at free flowing public opinion as an omniscient danger to their presence. Ideologies provoke rebellions and uprisings, and sedition laws can be used as a method of clamping down on the free flow of thought and opinion in the country.

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30. Lawyers Rights Watch Canada, "Lawyers And The Rule of Law on Trial: Sedition In Malaysia", May 2000, *available at*: <http://www.lrwc.org/ws/wp-content/uploads/2013/02/Lawyers-and-the-Rule-of-Law-on-Trial-Sedition-in-Malaysia.pdf>. (last visited Sep 7, 2016).

31. "Malaysia Backtracks on Sedition Law" *The Diplomat*, November 29, 2014. *available at*: <http://thediplomat.com/2014/11/malaysia-backtracks-on-sedition-law/>. (last visited September 7, 2016).

32. "Malaysia Court Dismisses Challenge to 'Unconstitutional' Sedition Law" *The Guardian*, October 6, 2015. *available at*: <https://www.theguardian.com/world/2015/oct/06/malaysia-court-dismisses-challenge-to-unconstitutional-sedition-law>. (last visited September 7, 2016)

33. "Sedition Laws and The Death of Free Speech In India", Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore & Alternative Law Forum, Bangalore, Page 60: *available at*: [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf). (last visited September 7, 2016).

In Hong Kong, sedition laws are once again a remnant of the British colonial history. However, it has been strongly shaped by the influence of the Chinese. China has after all had a legacy of such strict control on its populace so as to arguably be considered a part of its traditional history. Speaking up against the state is hardly encouraged in the Republic of China. The Hong Kong government passed the ordinance on Chinese Publications (Prevention) in October 1907.<sup>34</sup> Under section 2 of the ordinance, any person who printed, published, or offered for sale or distributed any printed or written newspaper or book or other publication containing matter calculated to excite tumult or disorder in China or to excite persons to crime in China would be liable for a fine not exceeding five hundred dollars or a maximum of 2 years' imprisonment or both. The ordinance was therefore a classic example of the form a sedition law takes. Impeding the flow of opinions and thoughts in a country is the basic idea of a sedition law. Multiple ordinances and acts were enacted over the subsequent decades that expanded the crime of sedition in the country.<sup>35</sup> It was only in 1997 that the amendment to the laws was made and the ambit and punishment of the crime of sedition were reduced in a significant manner.<sup>36</sup> The reasoning behind such reduction was provided by the committee that proposed the amendment and reads as,

The offence of sedition is archaic, has notorious colonial connotations and is contrary to the development of democracy. It criminalizes speech or writing and may be used as a weapon against legitimate criticism of the government.<sup>37</sup>

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34. *Supra* note 25 at 5.

35. Like the *Post Office Ordinance 1900, Seditious Publications Ordinance 1914, Sedition Ordinance 1938, Control of Publications Consolidation Ordinance 1951, Crimes Ordinance 1971*.

36. *Judicial Independence and The Rule of Law in Hong Kong*”, Hong Kong University Press (2001) 78.

37. Legislative Council of Hong Kong, Report of the Bills Committee on the Crimes (Amendment) (No.2) Bill 1996: Paper for the House Committee Meeting on 13 June 1997(LegCo Paper No. CB(2)2638/96-97).

While it is easy to blame the British for leaving a trail of sedition laws in their wake as a lasting reminder of their role as colonialists, one cannot deny the multiple factors involved that have led to their continued existence. Hong Kong is a prominent example for two main reasons: Firstly, the departure of the British did not dampen the state's enthusiasm to continually expand and increase the ambit and power of sedition laws in the country. If anything, once the British left, the state's policy on sedition as a crime seems to have intensified. Secondly, there is a singular geo-political reason for Hong Kong to have such strong anti-sedition laws; China. China uses such laws to quell disquiet and opposition to its influence on Hong Kong which many in the state resent and oppose.<sup>38</sup>

Whether or not such opposition is right is a complicated political question this paper will not dabble in. However, it is evident that wherever there is a significant amount of opposition against the State and its authority, sedition laws seem to pop up stronger and more ambiguous than ever before. Whether causation and correlation are one and the same in this situation is for the reader to decide.

#### **IV Conclusion**

The aim of this article was to provide a comparative look at how different forms of democratic Governments in the world tackle the issue of sedition. We saw complete legislative abolishment of sedition in the United Kingdom and judicial abolishment of the same in the United States of America, even though the UK is a common law country more so than the US. In Asia, we saw the history of sedition in India with the most prominent cases having been those that were filed against Mahatma Gandhi along with those against Tilak and Annie Besant. This may ostensibly come across as a portrayal of all seditionists as freedom fighters fighting for the advancement of democracy.

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38. Carol P. Lai, *Media in Hong Kong: Press Freedom and Political Change, 1967-2005* 145 (Routledge, Abington, Oxfordshire, 2007).

This is simply not true, as seditious behavior can have unexpected consequences. As seen in countries like Malaysia and erstwhile church-state countries like Britain in the 1800s, religious blasphemy can be the cause of a lot of chaos. The underlying rider to any fundamental right is that one has the absolute freedom to enjoy such rights provided that the right of no other person is infringed in such exercise. This provides a moral dilemma. If the act of sedition incites an act of violence in the country, does the perpetrator get to hide behind the garb of freedom of speech? India is a country that was stitched together from multiple States after the departure of the British. In multiple regions like the North East and Kashmir, factions often call for secession from the state and violence against it. Is a relatively young country like India ready to abolish sedition as a crime and then wait for the results of its experiments in democracy? Sedition law marks the thin line between populism and democracy. The collective good also matters and may be affected if sedition laws are removed. One has to keep in mind that it took more than 400 years for the UK to do away with sedition as a concept. While it is easy for critics to point westwards and claim that since democracy in the west does not penalize sedition, we mustn't either. This is simply not true because of the history that marks the removal of sedition as a crime and the political, geo-political, cultural and economic factors that back such a decision.

This is where the examples of Malaysia and Hong Kong come into place. Sure, countries in the Middle East come down much harder on sedition and related crimes but they are often pure monarchies or dictatorships. Malaysia and Hong Kong represent the common form of socialist democracy prevalent in Asia and are thus more reflective of the general legal framework.

To conclude, it appears that abolishment of laws that criminalize sedition are the ultimate and inevitable outcome in any modern democracy. What matters however, is the path such democracy takes to get there.

Organizations like Amnesty call for overnight removal of such laws, but it is also to be considered whether such countries are prepared for a lack of sedition laws. In countries where religious sentiments run high, tempers are frayed and relationships between different communities are tenuous at best, the State has to constantly work as a watchdog to ensure that conflicts within the country do not arise. To this end, some sedition laws are required. On the other hand, when political cartoonists are jailed and newspaper editors are tried for merely criticizing the government, the government has successfully crossed the line from being a democratic authority to a draconian one.

India being an emerging superpower is under more global scrutiny than ever before and has the responsibility of setting an example in human rights developments for most of Asia including our quite regressive neighbor, Pakistan. The solution therefore should be forward looking. In the short run, reduce the severity of punishment for sedition and appoint a watch dog or create a special tribunal to make sure the process of law is not being abused for political gains. In the long run, aim for total abolishment of sedition laws and set a roadmap to get there eventually. A democracy is defined by its ability to evolve with the times and exist as a dynamic reflection of global humanitarian concerns. As the law exists now, anybody who speaks up against the state can be charged with sedition. Arundhati Roy has been charged for sedition for making speeches that have caused absolutely no violence.<sup>39</sup> Political cartoonist Aseem Trivedi was arrested on sedition charges for a cartoon that once again has had no violence attributed to it.<sup>40</sup> India cannot afford to be labeled as a regressive country and its actions towards its citizens of late have been criticized across the world. By taking the right approach towards sedition laws, India can bring about a change in public perception of itself. The solution is simple; existing laws need to be reworked to be narrower in what they consider a crime while a committee should be set up to consider the path to total abolishment. Change is slow even in a modern democracy like India, but change is inevitable and we need to gear up for the future.

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39. Arundhati Roy faces arrest over Kashmir remark.”*The Guardian* October 26, 2010.

40. “Indian Cartoonist Aseem Trivedi Jailed After Arrest on Sedition Charges” *The Guardian*, Sep 10, 2012.

# UNWANTED DOWRY OF THE BRITISH EMPIRE: SEDITION LAWS IN INDIA

*Namrata Dubey\**

## Abstract

Today's generation has a say on issues, something or the other but they cannot openly express themselves since all their acts are being governed by some or the other law in India. Ironically, many of the laws that govern us today were made in the pre-Independence era. The law of sedition is one such cumbersome law that has been a gift of the British rule in India. This law is an unwanted dowry which the English Crown had thrust upon the inhabitants of different princely states which they brought together by use of sheer force. The main purpose of this law was to keep the states under the scrutiny of the Crown but unfortunately it still exists, long after the colonial regime has left.

Through this paper the author would try to analyze how and why this law came to India? Why is it still being enforced in spite of the fact that Indian Constitution guarantees right to speech and expression? The author would cruise through the history of sedition laws in the context of India in both pre-colonial and post-colonial era. The author would attempt to understand the judicial temperament towards the cases on sedition. On perusal of laws, judgment and writings of various thinkers the author would try to give a logical explanation as to why it is high time to repeal this law.

## I INTRODUCTION

IT WAS the era of the Mughals when the British came to India. They brought with themselves trade and fortunes of war. Apart from this they also brought laws. These laws were introduced in India with the objective of regulating the actions of the English populace. Slowly and gradually over the period of 200 years these laws expanded and now the subjects of these laws were not only the Englishmen but also to India population. The period of colonization took away the powers of the Local rulers to govern their people and now this power was vested in the hands of British official and British Crown, which in itself was a monarchy. These laws aimed at curbing the liberty of press in India, whereas this particular right was still being enjoyed by the press in England. In curbing this freedom, the most important role was played by section 124A of IPC. This section aimed at maintaining the control by Queen in India. The arrival of colonial had, in the words of Thompson and Garratt, left a “permanent mark” on the Indian soil.<sup>1</sup> This mark is even present today.

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\* Student, Institute of Law, Nirma University, Gujarat.

1. Partha Chatterjee, *The Partha Chatterjee Omnibus* 14-34, (Oxford University Press, 1999).

“Prince among the political sections of the IPC designed to suppress liberty of the citizen.”<sup>2</sup>

This is how Mahatma Gandhi summarized the Sedition laws of India. On 10, March, 1922, Mohan Das Karam Chandra Gandhi was arrested for Sedition under section 124A for the two articles published in *Young India*. His offence, as construed, by the then existing government was the publication of two articles, but in his real offence, was his active involvement in non-cooperation movement and civil disobedience movement, which according to the British government was an attempt to overthrow the government by creating a hostile environment.

The word *Sedition* originates from the Latin word '*Seditio*' which in literal sense means '*going aside*'.<sup>3</sup> In the context of India this word is understood as “any act which is done with the intention to bring hatred or attempt to bring hatred, or exciting or attempting to excite disaffection towards the lawfully established government in India via words, spoken or written or through visual representation or otherwise”<sup>4</sup>. This concept of sedition was evolved to protect the interest of the then ruling power in England as the sovereigns of 13<sup>th</sup> century England considered the press to be a reason for their downfall.<sup>5</sup> It became necessary for them to restrict the dissemination of news. The measures taken to avoid such situations were, Scandum Mangalum and offence of treason. The former is defamation of government provided the statement made is not true and the latter is acts done with the intention to overthrow the government.<sup>6</sup> Upon the arrival of 18<sup>th</sup> century dissent against these archaic laws were already in existence. In spite of it, these laws were introduced in India because it helped the British in silencing off any voice that rose against the acts done by the officials, in the name of the crown.

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2. Editorial, “*Repeal the Sedition Law*” *The Hindu*, Apr 21, 2011.

3. Shubharangsu Shekhar Chatterji, *Control of Political Offences in India through Law 72*, (Kamal Law House, 2003).

4. *Ibid.*

5. Nivedita Saksena & Siddhartha Srivastava, “*An Analysis of the Modern Offence of Sedition*” 7 *NUJS L.Rev* 121 (2014)

6. *Ibid.*

They were able to rule efficiently by punishing anyone who they thought challenged their sovereignty. Unfortunately enough the trend continues, as India in spite of being a democratic country allows this law to hold a prominent place in the Indian legal system and every voice that shows any discontent with the working of the government is subjected to punishment. The Booker prize winner Arundhati Roy was charged with sedition for her remarks on Kashmir not being an internal part of India.<sup>7</sup> Recently, a student from Jawaharlal Nehru University, Kanhaiya Kumar is being prosecuted of the same offence for his speech. Hence, it would not be wrong to say that though the actors have changed but the institutions remains the same. Dissenting parties do not get a chance to present their grievances in front of the leviathan but are punished just because of the fear that this discontent will result in the overthrowing of the government. What is really interesting here is that may be if, the government does listen to the grievances of the *salus populi*, they would be able to unite with the *salus populi* and be able to create a more stable society where overthrowing government would be the last thing that comes to the public's mind. It is to be understood as to why after such hue and cry over the law of sedition in its present form, it is still retained.

## **II History of sedition laws in India**

### ***Pre-independence era***

Lord Macaulay in his Draft of IPC of 1837-39, already had defined Sedition under section 113 but this Draconian law was implemented by the British government in India in the year 1870. This omission was claimed to be a 'mistake'.<sup>8</sup> This law is the unwanted dowry which the Great Britain brought along when it came to India.

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7. Anonymous, "Arundhati Roy Faces Arrest over Kashmir" *The Guardian*, Oct, 26, 2010.

8. National Law School of India University, *Sedition laws and the Death of Free Speech In India* (NLSIU, Bangalore, 2011).

It is based on various laws like the Treason Felony Act, the common law of seditious libel and the English law relating to seditious words, all of which were the offspring of the legal system of Britain.

The section stemmed out from the dire need of the government to put public opinion expressed by press under the command of executives. At first when newspapers came into existence in India the reporters enjoyed the liberty to express themselves without any restrictions but as British supremacy was not yet established in India, the circulation of political news became dangerous for the ruling party. It is at this time that the repressive measures over the press were established. The censorship that was established in 1799 and the rules of 1813 made it mandatory that all the publishing material must be acknowledged and allowed by the chief secretary before its publication. After the British government had a firm grip over the Indian states they started to say that the control over the press of India is necessary for the prestige of the country. Under the regime of Lord Hastings, the press received liberty to write about political matters and the bars of sedition were held to be very low but soon after his retirement, Mr. Adams, decided to do away with the policies of Lord Hastings. Then, under Lord William Bentick some freedom of public opinion was allowed. He was later on succeeded by Sir Charles Metcalfe who in 1835 totally liberated the Press.<sup>9</sup> The unexpected spurt of nationalism in the country and the acts of Wahhabis made the British Government realize that indeed there was a need to introduce a proper law to govern the seditious activities. This is when section 124- A came into being.<sup>10</sup> The scope of this law was widened in 1898 and it now includes the words 'hatred' and 'contempt' along with 'disaffection'.<sup>11</sup>

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9. J. Chaudhary, “*Sedition Law in India*,” 4 CLR 28 (2001).

10. *Supra* note 6.

11. Jeanine Cali, “*Sedition Law in India*”, available at: <http://blogs.loc.gov/law/2012/10/sedition-law-in-india/>. (last visited Sep 7, 2016).

### ***Judicial view of sedition in pre-independence era***

While introducing the offence of sedition in the IPC, Sir James Stephen, said that it is now “free from a great amount of vagueness and obscurity with which the Law of England was hampered.”<sup>12</sup> But soon he stood corrected as the first widely known application of this law happened in the case of *Queen Empress v. Jogendra Chander Bose*.<sup>13</sup> In this case the editor of the newspaper *Bangobasiwas* was charged under section 124A as well as section 500 of the IPC. The charges under section 500 were dropped as defamation of the government was allowed. The charge levied on the editor was in respect of the five articles published in the newspaper. In this case the jury interpreted the meaning of 'disaffection' and 'disapprobation'. The word 'disapprobation' simply meant “disapproval”. 'Disaffection' meant “a feeling contrary to the affection and therefore to excite or attempt to excite a feeling contrary to affection would render a person liable to prosecution under the section”<sup>14</sup>

Many people, especially some of the prominent members of India's freedom struggle have been victimized by the provisions of section 124A. Bal Gandhar Tilak was, by a very positivistic approach of the court, prosecuted in 1879 for his speech on Shivaji's fight for Swaraj. Court alleged that these speeches when published in the magazine named *Kesari* led to the murder of two British officials. Tilak was given a six year imprisonment but after the intervention of Max Webber, was released in 1898.<sup>15</sup>

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12. *Supra* note 6.

13. (1891) 19 ILR Cal 35 (44).

14. Chatterji, “*Control of Political Offences in India through Law Delhi, 1980*” (Kamala Law House, New Delhi).

15. Siddharth Narrain, “*Disaffection' and the Law: The Chilling Effect of Sedition Laws in India*” 46 EPW 33 (2011).

Also see: National Law School of India University, *Sedition laws and the Death of Free Speech In India* (NLSIU, Bangalore, 2011).

It is through the criticism of this case, came the term 'Strachey Law', this law was the interpretation given by Strachey, J., to the word sedition. According to him, 'hatred', 'enmity', 'dislike', 'hostility', 'contempt' and every form of ill will to the government, fell within the purview of sedition. The enactment of *Newspapers Act*, in 1908 was also heavily criticized by Tilak which, in spite of Mohammad Ali Jinnah's spirited defense, led to six year imprisonment. Later on when JA Guider, DIG of police, Criminal Investigation Department (CID), accused Tilak of orally disseminating seditious information, Jinnah claimed that Tilak's attack was on bureaucracy and not on the government.<sup>16</sup> The British Parliament while amending the law in 1898, kept in mind this judgment of this as well as the two subsequent judgment so that any loophole could be avoided and the British can rule the people as per there whims and fancies. But the very relevant questions asked by Tilak, 'whether this was a trail of *Rajdroha or Deshdroha?*' is still left unanswered. People like Annie Besant as well as the "Father of the nation" were not exempted from the clutches of this archaic law.

A scuffle took place between the federal court and Privy council which brought array of hope with it in the case of *Niharendu Dutta Majumdar v. The King-Emperor*.<sup>17</sup> Then the Federal court pronounced that violent words included in a speech or writing does not make it seditious until and unless those words are able enough to incite violence and from the perspective of any reasonable man can the act was intended by the accused. But this hope soon died down as Privy Council went against its previous judgment and reiterated the principles of Tilak's case in *Sadashiv*<sup>18</sup> case and said "the offence consisted in exciting or attempting

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16. *Supra* note 15.

17. AIR 1942, FC 22.

18. (1947) LR 74 IA 89.

to excite in others certain bad feelings towards the government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small.”<sup>19</sup> Coming of this law ensured that even the slightest of deviance, even the slightest of discontent, would make one criminally liable against the state. But what really agitates my mind is, 'Is it not true that the main aim of western education is to teach people, how to question “the accepted”’, so what happened when these freedom fighters questioned the government? What became the reason of such hypocrisy? Or is it true that the British never really wanted to educate the Indians but the former wanted the latter to be better equipped to cater to their needs? The answer may never be known.

### ***Post-independence era***

#### ***Sedition law in Constitutional assembly debates***

Indian Constitution under article 19 (1) (a) provides for freedom of speech and expression yet the law of sedition that curtails the constitutional right is also present in the Indian legal system. When the draft of Indian constitution was being prepared, the question of 'reasonable restriction' found under Article 19(2) came up. It was at that time the topic of sedition came up for discussion amongst the members of the constituent assembly and there was a clash of ideologies. KM Munshi, vehemently opposed section 124A and termed it as “Our notorious section”. For him this section was a tool applied of state oppression.

Sardar Hukum Singh also objected to the inclusion of sedition under article 19(2) of the Indian Constitution. The reason he provided was that in case sedition is given place in the fundamental rights then the courts of India would not be able to strike off any law made by the parliament to curb the speech and expression. This article would be working against public morality.<sup>20</sup>

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19. *Supra* note 8.

20. *Supra* note 12.

Seth Govind Das, a freedom fighter, who was himself a victim of this provision narrated his experience explaining that he was charged for sedition merely because he referred to the then ruling government as alien government.<sup>21</sup>

Since the members of the constituent assembly of Indian constitution were aware of the oppressive nature of this draconian law as well as due to such an opposition against the inclusion of sedition in article . 13 of the draft constitution the idea was dropped by the whole assembly.

### ***Judicial view of sedition in post-independence era***

Since independence and Constitution coming into force the major confusion related to section 124A (IPC) had been its synchronization with the fundamental rights given under the Constitution. The judicial institutions of India in a number of cases tried to decide whether the sedition rights are in contravention to the freedom of speech and expression as guaranteed by the Constitution and more than often, the final judgment had been in the favour of Freedom of Speech and Expression. The Constitution itself makes it void through the virtue of article 13 of Indian Constitution which says any law which existed before the commencement of constitution would be held void if it infringes any fundamental right. Apart from this the parliament is prohibited from making any laws in contravention of fundamental rights.<sup>22</sup>

In the following trail of cases, we will see how the rules related to sedition laws have changed with time.

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21. *Supra* note 8.

22. The Indian Law Institute, *The Law of Sedition in India* 29, (NM Tripathi pvt ltd., Delhi, 1970).

The words “public order” and “relations with friendly states” was later on added to article 19 (2) through 1<sup>st</sup> amendment of Indian Constitution. This amendment was the direct result of the strain put up on the shoulders of Jawaharlal Nehru. This strain came into existence by two judgments. One of them was *Romesh Thapar v. State of Madras*<sup>23</sup> where the question arose as to whether the section 9 of Madras Maintenance of Public Order Act, 1949 was unconstitutional as it since it imposed restrictions on the circulation of “Crossroads Magazine” which was highly critical of Nehru government. In this case the court opposed the view that banning of circulation to protect public safety or public order was correct and said that this act of government was against the constitutional scheme. The second case was *Brij Bhusan v. State of Delhi*,<sup>24</sup> the section 7 of the East Punjab Safety Act, 1949 made it compulsory for the newspapers to submit for scrutiny any matters related to Pakistan. In this case the apex court ruled that such pre – publication censorship was not permitted. In response to this judgment the government in the first ever amendment of Constitution inserted the words 'public order, decency and morality' in article 19 (2) as the grounds for restricting free speech.

In the case of *Tara Singh v. State of Punjab*<sup>25</sup> the Supreme court of India struck down section 124A(IPC) as unconstitutional being contrary to the freedom of speech and expression guaranteed under article 19(1) (a). Similar thoughts were resonated by the Allahabad high court 9 years later in the case of *Ram Nandan v. State of UP*,<sup>26</sup> The court held that the law imposed restriction on the freedom of speech which is not in the interest of general public and hence is *ultra vires* to article 19 of the Constitution of India.

However, this case was later overruled in the landmark judgment of *Kedarnath v. State of Bihar*<sup>27</sup> wherein the court commented on the nature and scope of the section and held that any strong speech or use of very vigorous words are outside the scope of the section as long as they do not

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23. AIR 1950 SC 124.

24. AIR 1950 SC 129.

25. AIR 1950 SC 124.

26. AIR 1959 Alld. 101.

27. AIR 1962 SC 955.

incite violence. A citizen has right to say or write whatever he likes to think about his government, or its measure by way of criticism or comment. Hence, the section is not *ultra vires* to the Constitution and is Constitutional.

The court has time and again yearned to make the sedition laws a legal tool and not a mean for the government to oppress the subjects. In pursuant to the same principle the court in the case of *P Alavi v. State of Kerala* held that,

Criticizing the present judicial setup or functioning of parliament or legislative assemblies cannot be considered as bringing hatred or contempt to the government... seldom a day has passed when such or similar slogans has not been shouted in one or the another part of the state. Hence, to scrutinize the sedition through speech or writing its probable or natural effect has to be seen.

In the landmark judgment of *State of Chhattisgarh v. Binayak Sen*,<sup>28</sup> a doctor and human rights activist Binayak Sen was convicted and sentenced for life imprisonment for being a maoist sympathizer and possessing naxalite literature. The Supreme Court observed:

“We are a democratic country. He may be a sympathiser. That does not make him guilty of sedition. If Mahatma Gandhi's autobiography is found in somebody's place, is he a Gandhian ? No case of sedition is made out on the basis of materials in possession unless you show that he was actively helping or harboring maoists.”<sup>29</sup>

Similarly, in the case of *Sanskar Marathe v. State of Maharashtra*,<sup>30</sup> a division bench of Bombay high court laid down the guidelines for police while invoking any sedition law against any person and resonating the Supreme court judgment of *Kedarnath*<sup>31</sup> held that the words, signs and/or representation must bring the government into hatred or contempt or must be an incitement to violence Comments expressing disapproval or criticism of the government with a view to obtaining a change of government by lawful means without any of the above are not seditious under section 124A.

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28. Appeal (Crl.) 20 of 2011, Chhattisgarh High Court.

29. Dhananjay Mahapatra and Supriya Verma, “SC Grants Bail to Binayak Sen, Says No Case for Sedition Charge” *Times of India*, Jan. 14, 2016.

30. PIL (Crl) 3 of 2015, Bombay High Court.

### III Reasons for repealing the archaic law

Our reading of political theory says that it is the governmental institution which holds the real power in any country and those who have the authority to exercise this power are always *just* in their act, but what we do not understand is that these governmental institutions derive their power and legitimacy through the will of the governed.<sup>32</sup> But who is this governed? It is basically a particular society. Thus every person in that society has the right to question the government which he legitimizes the government. These rights should be given primacy because the Constitution of India starts by the statement “we the people of India... hereby adopt, enact and give to ourselves this constitution”.<sup>33</sup> Moreover, the government that comes to power is selected when we press the ballot button, so how can we not ask for clarification from someone whom “we” have “ourselves” chosen? Is it not true that whenever a large democracy has elections it acknowledges the fact that there are some people who do not agree with the current government as they did not choose the existing government?

This dissent is the very base of a democracy. Affection cannot be created for the government as there is a difference of ideologies between the government and the citizen who do not vote for them. Is it not infringing our right to choose? The law of sedition enforces the theory given by Thrasymachus 'the will of the strong prevails'.

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31. AIR 1962 SC 955.

32. M.G Wallace, “*Constitutionality of Sedition Laws*” 6 *Va. L. Rev* 385-399.

33. Gopal Sankarnarayanan, *The Constitution of India* 1 (Eastern Book Company, 15<sup>th</sup> edn., 2014)

The logic for repealing this law can be found in the writings of many thinkers. One such thinker happens to be Emile Durkheim for whom law happens to be the manifestation of collective consciousness. According to him the laws which are formed, stand on the basis of society's morality. That which hurts the collective consciousness of the society should not be considered a law.<sup>34</sup> The law of sedition strictly goes against this claim of Durkheim and creates such rules which are against the collective consciousness of people. Perhaps the Solidarity statement written by various countries in order to support Kanhaiya Kumar who was charged for sedition happens to be an excellent example. The second thinker happens to be the controversial, Karl Marx, according to whom the law should be such that it should further the interest community rather than the interest of the ruling class.<sup>35</sup> Whereas anyone can see that this law is actually present to further or safeguard the interest of the ruling class. Perhaps Marx's idea of law as oppression is correct. Savigny would also reject sedition as according to him law is not the arbitrary creation of the rulers but is the "spirit of the people".<sup>36</sup> Ironically it is the spirit of people which gets crushed through this law as they are not able to express themselves.

When making a case against the sedition laws, the most important thinker would be Duguit, because it is he who said all institutions should work to achieve social solidarity and even the state does not have a claim to special position or privilege. He even asks the public to revolt against the state in case the state fails to carry out the aforementioned duty. For him the state is not indispensable instead it is bound by the chains of social solidarity. As per his views public opinion should be given more importance because it is through these means the expression of social solidarity comes into existence.<sup>37</sup>

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34. Mathieu Deflem, *Sociology of Law: Visions of a Scholarly Tradition* 56-73 (Cambridge University Press, 2008).

35. Colin Hay, "Marxism and the State" in Andrew Gamble, David Marsh, Tony Tant *et al.* (eds.), *Marxism and Social Science* 153-158.

36. E. Donald Elliot, "The Evolutionary Tradition in Jurisprudence" 42 *YLS Scholarship Repository* (1985)

37. NK Jayakumar, *Lectures in Jurisprudence*, page no:101-102

Also see, BN Mani Tripathi, *Jurisprudence the Legal Theory* 40-41 (Allahabad Law Agency 2014).

Apart from this a unique and different approach is given by Ronald Dworkin. If asked, he would answer that a judge should always keep in mind the principle emanating from rights. These rights are the most important thing according to him. It is only through this process that a judge can truly decide a case. But when one applies this idea of Dworkin to contemporary India one would be disheartened to find that it is not the rights of the people which are prevailing in the society despite being guaranteed by the Constitution. Rather it is the will of despotic ruling power which keeps changing hand on every five years.<sup>38</sup>

It is through the journey of this paper one can come to the conclusion which shows that even after the Britishers have left India, we are still slaves of a 'colonial government', which does not believe in giving its citizen the right to project themselves. The concept that this government is failing to grasp is, in a democracy people have rights and it is on the basis of their rights they will question the act of government and the government will have to be very tolerant about it. If it does not show a tolerant attitude to the dissent made by the members of the society or else as Marx's has said the days of revolution are not far away. In the end that will happen which he state is trying to avoid if the state keeps on applying coercion on its people.

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38. JG Riddall, *Jurisprudence* 87-89 (Oxford University Press, 2<sup>nd</sup> ed. 2005).

# SEDITION IN INDIA: SECTION 124 A OF IPC V. FREEDOM OF SPEECH

*Harrsita\**

*Isshitaa\*\**

## Abstract

The following article is an overview of the history and practice of sedition law in India and how it is distinct from freedom of speech guaranteed under article 19 (1) (a) of the Indian Constitution. Along with colonial laws sedition law also runs against the ideal of freedom of expression. The right to freedom of speech and expression guaranteed under article 19(1) (a) is not absolute. It is limited by 'reasonable restrictions' laid down in article 19(2). Sedition laws are now used liberally by both the central and state governments to curb free speech. It has been seen from the ancient time that peaceful dissenters are jailed for shouting anti-India slogans and the goons who attack these misguided and angry young dissenters are given protection and encouraged in their hooliganism. Targets of this law included renowned nationalists like Mahatma Gandhi, Bal Gangadhar Tilak and Annie Besant. It is ironic that these laws have survived the demise of colonial rule and continue to haunt media personnel, human rights activists, political dissenters and public intellectuals across the country. The existence of sedition laws in India's statute books and the resulting criminalization of 'disaffection' towards the state are unacceptable in a democratic society. Since many innocent citizens are trapped by this law from the ancient time therefore the law relating to sedition should be repealed and amended by new law for the betterment of the country.

## I Introduction

THE CURRENT topic is a sensitive issue in India, which since independence from Britain in 1947, has quelled several separatist rebellions in various parts of the country.<sup>1</sup> Along with colonial laws like criminal defamation, laws on obscenity and blasphemy, the sedition law also runs against the ideal of freedom of expression, guaranteed under article 19 (1) (a) of the Indian constitution. The right to freedom of speech and expression guaranteed under article 19(1) (a) is not absolute. It is limited by 'reasonable restrictions' laid down in article 19(2). These reasonable restrictions can be in the interests of public order, security of the state, sovereignty and integrity of India, friendly relations with foreign states, decency or morality or in relation to contempt of court, defamation or incitement to violence. Since much of political speech and

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1. Robert E. Drechsel, "*Media Malpractice: The legal risks of voluntary social responsibility in Mass Communication*", 27 *Duq. L. Rev.* 237 (1989).

dissent has been curbed in the pretext of public order, the legal contestation on what amounts to reasonable restrictions on article 19(1) (a) in the interest of public order is crucial for us to understand the scope of this right.

Sedition is not defined under section 124A of the IPC, rather it is only found as a marginal note under section 124A. Sedition laws which were introduced by the British colonial government against human rights activists, journalists *etc.* in the country have raised important questions on the undemocratic nature of these laws and they are now used by both the central and state governments to curb free speech. Many renowned nationalists like Mahatma Gandhi, Bal Gangadhar Tilak and Annie Besant were targeted under this law and it continues to haunt human rights activists, political dissenters and public intellectuals across the country.

Hence, through this research paper our aim is that sedition laws are against Indian culture and society. For a democracy to flourish it is the duty of the state to protect the freedom of expression of all people by making efforts to stop criminalizing critical voices. It is seen that protesters are jailed for shouting anti-India slogans and the criminals who attack these protesters are given protection under this.

Sedition is a crime of inciting revolt against government. It has no place in 21<sup>st</sup> century. The 19<sup>th</sup> century law, which was enacted by colonials to silence the Indian people, has been retained by the democratic government in free India. Sedition was never a part of the original IPC enacted in 1860 and was introduced in 1870. The sedition law, which was enacted in 1860, states:<sup>2</sup>

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2. See, section 124-A, I.P.C.

“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, a 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”.

The word 'disaffection' included under this section means disloyalty. The speech must be taken as a whole, without giving weightage to isolated passages and each passage should be in connection with the others and with the general drift of the whole.

## **II Concept and understanding of sedition and free speech**

The word speech is a basic act of human being where it means expressing orally and has been considered to be indivisible for a democratic polity. It includes the freedom speak (express orally) ex- Lecture, private talks etc., Expression (expressing publicly or privately using the means *viz* writing, printing, making picture, making cartoon (to comment or to wish as opinion as a piece of information (news), talking on telephone (speaking privately) and express once convictions, opinions or ideas freely, through any communicable medium or visible representation (pictures, video, painting *etc.*) such as gestures or signs.

### ***Pre- independence scenario***

The word sedition was included by Britishers in IPC in 1870 to censure dissenting voices from Indian media and freedom fighters. There were a number of landmark cases which were decided during Pre- independence era.

*Queen Emperor v. Bal Gangadhar Tilak*<sup>3</sup> was the first case where sedition law was explained under IPC. In this case Bal Gangadhar Tilak, was charged with sedition on two occasions.

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3. *Queen Emperor v. Bal Gangadhar Tilak* (1897) I.L.R. 22 Bom. 112.

Firstly, in 1897, he was charged for speeches that incited violence and resulted in the killings of two British officers. And secondly, in 1909, he was prosecuted for his newspaper writings. He said that he was innocent but was convicted and sent to jail for six years. After Tilak's trial then came the case of Mahatma Gandhi in 1922. He was jailed for six years on sedition charges because of the articles he wrote for a weekly journal, 'Young India'. However, Mr. Gandhi did not oppose the verdict, and said that "people should be free to express their disaffection toward the government so long as they aren't inciting violence." In *Annie Besant v. Advocate General of Madras*,<sup>4</sup> Section 4(1) of the Indian Press Act, 1910, was confined similar to section 124 A. The provision said that any press that had a tendency to provoke hatred either directly or indirectly would be liable to have its deposit forfeited. The Privy council followed the earlier interpretation of Strachey, J., and confiscated the deposit of Annie Besant's printing press.

The federal court in *Niharendu Dutt Majumdar v. King Emperor*,<sup>5</sup> held that "public disorder or the reasonable anticipation or likelihood of public disorder is the gist of the offence". These judges were of the view that sedition implies resistance or lawlessness in some form. In all these cases the point that has been emphasized is that if there is no incitement to violence, there is no sedition. On the other hand, the Privy Council was of the view that acts like incitement to violence and insurrection are immaterial while deciding the culpability of a person charged with sedition. It said that since the IPC defines the offence of sedition, unlike the English Law, which doesn't define it, one needs to go by that definition only. In *King Emperor v. Sadashiv Narayan Bhalerao*,<sup>6</sup> the Privy Council not only reiterated the law on sedition enunciated in the Tilak case, but also held that the federal court's statement of law in the Niharendu Majumdar case was wrong.<sup>7</sup>

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4. *Annie Besant v. Advocate General of Madras*, AIR 1919 PC 31.

5. *Niharendu Majumdar v. Emperor* AIR 1942 FC 22 (26).

6. *Emperor v. Sadashiv Narayan Bhalerao* AIR 1947 PC 82.

7. *Supra* note 5.

The Privy Council overruled the decision of the federal court and held that excitement of feelings of enmity to the government is sufficient to make one guilty under section 124A of the IPC.

### ***Post-independence***

Indian leaders realized the dangers posed by this law to freedom of speech and expression, contained in article 19(1)(a) of the Constitution, in an independent India. The constituent assembly moved an amendment to drop sedition from the list of restrictions on this fundamental right. On this occasion, highlighting the change needed in interpretation of sedition law brought about by India's independence, K.M. Munshi said:

“A line must be drawn between criticism of government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the state”.

In 1951, India's P.M. Jawaharlal Nehru publicly voiced his dislike of section 124A saying, “that particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons”. However, this was ironic given these words were spoken on the occasion of the first amendment to the Constitution, which imposed greater restrictions on the right to free speech.

### **III Section 124A of IPC v Article 19(1) of Constitution**

The sedition law died a judicial death in 1958 when the Allahabad High Court declared it *ultra vires*. In the *Ram Nandan v. State*<sup>8</sup> (1958), the Allahabad high court held section 124A to be unconstitutional citing that the section restricts freedom of speech (article 19) in disregard of whether the interest of public order or the security of the state is involved and is capable of striking at the very root of the Constitution which is free speech. The decision of the Allahabad high court was overruled by Supreme Court in the *Kedarnath Singh v State of Bihar*.<sup>9</sup>

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8. AIR 1959 All 101, 1959 CriLJ 1.

9. 1962 AIR 955, 1962 SCR Supl. (2) 769.

However, the Supreme Court said that this section should be construed as to limit their application to acts involving intention or tendency to create disorder or disturbance of law and order, or incitement to violence. If used arbitrarily, the sedition law would violate freedom of speech and expression guaranteed by the Constitution under article 19.

However, the Supreme Court greatly reduced the scope of offences under which this law could be applied. To make sure section 124A did not impinge on the fundamental right to free speech, the Supreme Court added:

“Strong words used to express disapprobation of the measures of government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the government, without exciting those feelings, which generate the inclination to cause public disorder by acts of violence, would not be penal”.

Further, the court went as far as to say that section 124-A would be ultra vires article 19(1) (a) if it were applied in case of “words written or spoken which merely create disaffection or feelings of enmity against the government.” The apex court's insistence on provocation of “imminent violence” being an acid test for sedition, or for curbing speech of any kind, has been reiterated in several subsequent judgments, such as in *S. Rangarajan etc v. P. Jagjivan Ram*,<sup>10</sup> *Indra Das v State of Assam*,<sup>11</sup> and *Arup Bhuyan v State of Assam*.<sup>12</sup>

One of the most important judgments in this regard is *Balwant Singh v State of Punjab*.<sup>13</sup> In this case, the two Sikh accused raised three slogans – “Khalistan Zindabad”, “Raj Karega Khalsa” (Khalsa will rule), and “Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da” (Hindus will leave Punjab, we will rule).

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10. 1989 SCR (2) 204, 1989 SCC (2) 574.

11. (2011) 3 SCC 380.

12. (2011) 3 SCC 377.

13. *Balwant Singh v. State of Punjab*, 1995 (1) SCR 411.

the slogans clearly undermining Indian sovereignty and government, the Supreme court acquitted the accused because the slogans did not imminently incite violence. Removing any doubts whatsoever over the doctrine of imminent violence, the Supreme Court said:

“The slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded”.

Elaborating further, the Supreme Court said:

“The casual raising of the slogans alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India, section 124A IPC.”

The colonial-era law has been used in recent high-profile cases. The sedition law was previously used to charge three Kashmiri students who cheered for Pakistan during a cricket match between India and its neighbor. The Supreme Court upheld the constitutionality of the sedition law, but at the same time curtailed its meaning and limited its application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. It is important to note that the Supreme Court read down the offence of sedition in effect removing speech which could be exciting disaffection against the government but which did not have the tendency to create a disturbance or disorder from within the ambit of the provision. The judges observed that if the sedition law were to be given a wider interpretation, it would not survive the test of constitutionality.

The other pertinent and glaring cases wherein sedition law was charged recently are:

- i. In 2012, cartoonist Aseem Trivedi was arrested with sedition charges because his banners and cartoons mocked constitution, parliament and India's national flag.
- ii. In 2010, Noor Mohammad Bhat, a lecturer from Gandhi Memorial College was arrested for setting an anti-India question paper.
- iii. In 2010, writer Arundhati Roy and SAR Gilani were arrested for making anti-Indian speech in New Delhi.
- iv. In 2009, V Gopalaswamy (Vaiko) was slapped with sedition charges for his statements against India's sovereignty in speech on Sri Lanka's war with LTTE.
- v. In 2007, Binayak sen was arrested for sedition charges due to his help to carry messages to maoists in Chhattisgarh.

### **V Current position**

Even after the above decision by the Supreme Court, the section 124A continues to be used irrespective of whether the alleged seditious act or words constitute a tendency to cause public disorder or incitement to violence. India is one of the few countries where we have an archaic sedition law. Various sections of the society are demanding that the section of sedition must be dropped from the IPC.

However, the push back against free speech curbs when the state is concerned is markedly less. In the on-going case, where the Delhi Police arrested the President of the Jawaharlal Nehru University Students Union for allegedly anti-national speech, big media and public opinion has mostly supported the action. Both the Union Home Minister Rajnath Singh as well as Human Resources Minister Smriti Irani has said that any insult to India will not be tolerated. There is no way Kanhaiya Kumar, the arrested JNU student leader, will be convicted for sedition, especially if the case goes all the way up to the Supreme Court. In fact, one won't be found seditious even for an offence seemingly as grave as waving ISIS flags. India's sedition law itself has been read down and is fairly liberal on paper now, given that only speech that directly incites violence against the government is liable to be prosecuted as seditious.

### ***Opinion should sedition law stay***

In the Menaka Gandhi case, the Supreme Court had held that freedom of speech and expression is not confined to geographical limitations and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad too. Thus, criticism against the government policies and decisions within a reasonable limit that does not incite people to rebel is consistent with freedom of speech and expression. In the Kedarnath Singh case, the Supreme Court has warned against the arbitrary use of sedition law because such arbitrary use would violate the freedom of speech and expression guaranteed by the Constitution. In today's environment the sedition law seems to be colonial bogey which expects that citizens should not show enmity, contempt or hatred towards the government established by law.

However, slapping sedition charged merely on words spoken or written should need to be avoided. Thus, in its current form, there is a grey area which lies between actual law and its implementation. In many cases, it has been randomly used. Thus the law needs amendments to minimize those grey areas. However, such laws are necessary evils in a country like India where so many divisive forces are acting in tandem. The need for such law is to deter the activities that promote violence and public disorder.

### **VI Conclusion and recommendations**

Finally we come to the conclusion that sedition and freedom of speech are two different words and they should not be collided together. Section 124 A of IPC has clearly stated what should be included in the word sedition and article 19 (1) (a) of the Constitution has clearly stated what should be included in freedom of speech. Sedition defined under section 124A of the IPC is a colonial law meant to suppress the voice of Indian people. That is why the Indian law on sedition was different from the English law. Despite the strict construction adopted by the Supreme Court, the law enforcement agencies have always used it against artists, public men,

Intellectuals, for criticizing the governments. The case for repealing the law of sedition in India is rooted in its impact on the ability of citizens to freely express themselves as well as to constructively criticize or express dissent against their government. The existence of sedition laws in India's statute books and the resulting criminalization of 'disaffection' towards the state are unacceptable in a democratic society. These laws are clearly colonial remnants with their origin in extremely repressive measures used by the colonial government against nationalists fighting for Indian independence. The use of these laws to harass and intimidate media personnel, human rights activists, political activists, artists, and public intellectuals despite a Supreme Court ruling narrowing its application, shows that the very existence of sedition laws on the statute books is a threat to democratic values. Hence the recommendation is to repeal section 124A of the IPC, 1860 and amend it by new law.

# SECTION 124(A): THE OFFENDER OF FREEDOM OF SPEECH AND EXPRESSION

*Suravi Sarawgi\**

## Abstract

Rights, dignity and equality have been fought for since the laying down of the societal foundations. Of the rights that man has struggled for over centuries, one is the right to freedom of speech and expression. The voice of the masses over time has been silenced by the sovereign authorities for centuries. But today, most of the constitutions of the world have included the right to freedom of speech and expression as one of their basic human right. India acknowledges this right in article 19(1) (a) of the Constitution. But this right is not absolute and comes with restrictions of its own. Section 124A of the IPC talks about Sedition which is one such restriction. Sedition is the use of one's expressions to incite violence against a sovereign state. Though introduced in India during the British rule, this law has been retained time and again by the legislature despite being under attack since its very existence. The debate over the need of such a draconian law in today's era has sparked controversies throughout the country time and again. The aim of this article is to examine the stand of the Indian judiciary on the matter of sedition. It would also be the aim of this article to study the JNU controversy using numerous case laws and the rules laid down by the court of law in them and the similarities it shares with the American judiciary on this respect. Also, it would strive to provide a remedy to this problem.

## I Introduction

THE TRUE nature of any law lies in its history which depicts the then prevailing necessities and social circumstances that led to its formulation. The law of sedition was first introduced in India in the year 1870 in the IPC as a drastic measure to control the then rising voices of protest against the British colonial rule. Section 124A of the IPC of 1860 says that:<sup>1</sup>

“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.”

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1. *See*, S. 124(A) of the IPC of 1860.

Though said to be one of the “necessary” evils by many jurists, this section has a horrid legacy which, as irony would have it, is the law which was used to punish freedom fighters like Mahatma Gandhi, Bal Gangadhar Tilak, *etc.* Gandhiji, while being tried under this section by Strangman, J., in 1922 for publishing three articles in the magazine *Young India*, famously said:

“. . . Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence. But the section under which Mr. Banker and I are charged is one under which mere promotion of disaffection is a crime. I have studied some of the cases tried under it, and I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. I have endeavored to give in their briefest outline the reasons for my disaffection. I have no personal ill-will against any single administrator; much less can I have any disaffection towards the King's person. But I hold it a virtue to be disaffected towards a government, which in its totality has done more harm to India than previous system. India is less manly under the British rule than she ever was before. Holding such a belief, I consider it to be a sin to have affection for the system. And it has been a precious privilege for me to be able to write what I have in the various articles tendered in as evidence against me.”<sup>2</sup>

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2. A.G., Noorani *Indian Political Trials: 1775-1947* (New Delhi, Oxford University Press, 2009).

Post-independence, while drafting the Constitution, the drafting body initially wanted to include sedition in the constitution as an exception to the right of speech. But this was opposed by various members which resulted in its non-inclusion.<sup>3</sup> However, it was not repealed and, thus, till this day has been retained by the IPC as an unpleasant and unreasonable restriction to article 19(1) (a) which says that all citizens shall have the right “to freedom of speech and expression.” The limitation to this right has been provided in article 19 (2) of the Constitution which says that:

“Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”

Section 124A is justified by article 19 (2) as being a tool to safeguard the “sovereignty and integrity of India and the security of the State.” Though, a long history of judicial battle tells a different story altogether in respect of its necessity. It has been witnessed time and again in many cases that this law functions more as an infringement on one's right to freedom of speech and expression rather than the savior and protector of the sovereignty and integrity of the Union of India. And the gross misinterpretation of the sedition law in India is another injustice which the citizens of our country face while exercising their freedom of speech. With this regard, a better understanding of the judiciary's take on section 124A becomes indispensable.

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3. Clause 13 cited on p. 7 of the *Draft Constitution of India prepared by the Drafting Committee.*

*Constituent Assembly Debates of Wednesday 30-4-1947, Vol. III, No. 3 at p. 445 where Clause 8 referred to above is reproduced cited in Para 81, Ram Nandan v State, AIR 1959 All 101, 1959 Cri LJ 1.*

## II Judicial viewpoint

Over the years, the Indian judiciary has, through various cases, established its stand on the sedition laws in the country. The legal viewpoints considered and the tests applied by the Indian courts are very similar to the American system. With this regard, a basic understanding of the American rules will warrant a much easier approach on our part regarding the judicial stand in our own country. The initial test applied to speech in America that criticized the government (especially during war) was the “bad tendency” test. The bad tendency principle is a test which permits restriction of freedom of speech by government if it is believed that a form of speech has a sole tendency to incite or cause illegal activity. The principle was formulated in the case of *Patterson v. Colorado*.<sup>4</sup> However, in the *Schenck case*,<sup>5</sup> which is one of the first cases related to sedition after passing of the Bill of Rights, Justice Holmes added a new dimension to laws related to speech against the state even as they accepted the bad tendency test. Holmes asked “whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent”. This was the introduction of the 'clear and present danger' test in the American legal system. Eight months later a doctrinal shift begins with the *Abrams case*<sup>6</sup> where the majority reiterated the bad tendency test again, but Holmes dissented, relying on his own formulation of 'clear and present danger' test in *Schenck* and clarified its scope to create a rupture between speech and consequence, arguing that it was only the present danger of immediate evil or an intent to bring it about that justified limitations on speech.<sup>7</sup>

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4. *Patterson v. Colorado*, 205 U.S. 454 (1907).

5. *Charles T. Schenck v. United States*, 249 U.S. 47 (1919).

6. *Jacob Abrams, et al. v. United States*, 250 U.S. 616 (1919).

7. Available at: <http://thewire.in/2016/02/14/sedition-and-the-status-of-subversive-speech-in-india-21547/>, (last visited July 12, 2016).

The 'clear and present danger' test remained the prevailing standard till the 1960's till the *Ku KluxKlan case*<sup>8</sup> held that while the test may even have some value in times of emergency, in ordinary circumstances it had no place in assisting the interpretation of the first amendment. According to the court, "The constitutional guarantees of free speech and free press do not permit a state to forbid or prescribe advocacy of the use of force or law violation [i.e., subversive advocacy] except where [1] such advocacy is directed to inciting or producing imminent lawless action and [2] is likely to incite or produce such action." This was the formulation of the 'Brandenburg test' which works on the three distinct elements of intent, imminence and likelihood. The two-step 'Brandenburg test' currently stands as the prevailing standard to determine protectable speech.<sup>9</sup>

The current position of the Indian case laws is similar to that of the American ones. After the case of *Arup Bhuyan v. The State of Assam*,<sup>10</sup> the apex court of India has now set down the two-step Brandenburg test as the determinant of sedition. But despite such a clear-cut process being set-up by the Supreme Court, it's almost baffling how the police and politicians in India and the courts at the lower judicial level continue to turn a blind eye towards these tests and keep convicting individuals for speaking their mind.

The facts stated above clearly distinguish how the sedition laws are meant only to counter the use of forceful overthrow of the state and by no means stop an individual to criticize the government or to say anything against it. Only in the situation of an incitement to violence shall the person be held guilty to seditious offence.

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8. *Clarence Brandenburg v. The State of Ohio*, 395 U.S 444 (1969).

9. *Supra* Note 5.

10. Criminal Appeal No(s). 889 of 2007.

There is one more analogy to determine the scope of incitement that has been accepted by the Indian judiciary. One of the most significant tests that have emerged after the *Lohia case*<sup>11</sup> and *KedarNath case*<sup>12</sup> is the analogy of 'spark in a powder keg' in the *Rangarajan case*. In a crucial paragraph in *Rangarajan*<sup>13</sup> case, the court explicitly held that while there has to be a balance between free speech and restrictions for special interest, the two cannot be balanced as though they were of equal weight. One can infer that the courts are making it clear that exceptions have to be construed precisely as deviations from the norm that free speech should prevail except in exceptional circumstances as stated below:<sup>14</sup>

“Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a “spark in a powder keg”.<sup>15</sup>

### III Observations

After all these decisions of the apex court to determine the grounds for sedition, when the Jawaharlal Nehru University case is closely examined, the conclusion derived is that there is absolutely no reason as to why accused students should be charged with sedition. The slogans they shouted did not result in any kind of violence or incitement in any part of the county to go against the rules of the government or to use violence to over-throw it.

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11. *The Superintendent, Central Prison v. Ram Manohar Lohia*, 1960 AIR 633.

12. *Kedar Nath Singh v. The State of Bihar*, 1962 AIR 955.

13. *S. Rangarajan etc v. P. Jagjivan Ram*, [1989 SCR(2) 204].

14. *Supra* note 5.

15. *Ibid*.

It was a case of a group of students expressing their dissent against a judicial decision they thought was wrong. The JNU incident is one of the many examples of post-independent India where people have been dragged to courts for the crime of speaking their thoughts. Journalists, cartoonists, political activists, and lately, students have been the main targets of this 'witch-hunt', as some people have termed this process. The two most prominent present-day cases of sedition have been against Arundhati Roy and Binayak Sen. In May 2007, Sen was detained for allegedly supporting the outlawed naxalites which violated the provisions of the Chhattisgarh Special Public Security Act, 2005 (CSPSA) and the Unlawful Activities (Prevention) Act, 1967. Sen first applied for bail before the Raipur sessions court and then the Chhattisgarh high court in July 2007, soon after his arrest, but was granted bail by the Supreme Court of India on 25, May 2009. In 2010, he was convicted and sentenced to life imprisonment by Raipur Sessions Court, Chhattisgarh for sedition and helping naxalites to set up a network to fight the state. He was granted bail on 15, April 2011 by the Supreme Court of India which gave no reason for the order. Sen has filed an appeal before the Chhattisgarh high court and the case is pending.<sup>16</sup>

In the case of Arundhati Roy, when faced with the allegation of sedition (along with S.A.R. Geelani, Varavara Rao and others) for speaking at a seminar on Kashmir titled “Azaadi: The Only Way” held in Delhi in 2010, Roy issued a public statement:<sup>17</sup>

“In the papers some have accused me of giving 'hate-speeches', of wanting India to break up. What I say comes from love and pride. It comes from not wanting people to be killed, raped, imprisoned or have their finger-nails pulled out in order to force them to say they are Indians.

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16. *Supre* note 15.

17. *Available at:*

[https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf),  
(last visited Mar 11, 2016).

comes from wanting to live in a society that is striving to be a just one. Pity the nation that has to silence its writers for speaking their minds. Pity the nation that needs to jail those who ask for justice, while communal killers, mass murderers, corporate scamsters, looters, rapists, and those who prey on the poorest of the poor, roam free.”

These words of Roy are as thought – provoking as is the stand of the Supreme Court of India. Despite there being clearly laid down tests and precedents to determine the offence of sedition, why does the Republic of India continues to ostracize its artists and now students, in the name of protecting it's 'sovereignty and integrity'? Why do our politicians claim to protect the pride of our nation by stripping her sons and daughters of their very dignity?

#### **IV Conclusion**

In a society like ours, where we are not used to the truth and have a set of restricted perceptions of what is right and what is wrong, what is nationalist and what is anti-national; offending someone is not something we need to put an effort into. Since criticism is not something we have learnt to take in a constructive way, we aim to destroy the very source of it by suppressing its voice time and again. People in today's society get offended by almost anything. The government needs to be criticized when the decisions taken by it are wrong and arbitrary. It also has to be held accountable for its laws and policies. And this can be done only by the citizens of the country who have the right to express their assent or displeasure over an issue. Instead of creating an environment where the dissenting opinion is heard and respected, the government today is annihilating the masses from expressing their views. And when laws like section 124A exist that support the thought that one can be punished for dissenting against a majority opinion, against the opinion and the ideas of the state, our fate looks almost sealed. At times like these, when a constructive dissent mechanism can be used to fix the loop holes of the

world's biggest democracy, our leaders sabotage our right to speak our minds for their petty political gains leading to unnecessary scandals and conflicts that have no relevance to the safety or integrity of the nation.

When the question of proposing a solution pops up, there are many dimensions one has to look at. One solution proposed by the alternative law forum is to bring sedition out of the ambit of an offence against the state and put it under one against public tranquility.<sup>18</sup> This will have one more impact - the sentence for sedition which can go up to life imprisonment at present because it's an offence against the state will considerably come down if it's a matter of public peace. The most sought after solution, however, still remains the decriminalization of section 124A.

Countries like England and New Zealand have already done away with the laws of sedition and cases in countries like United States have been on an all-time low. Still, India continues to practice this 'outdated and draconian' piece of law with utmost passion, which was once used to suppress the voice of our freedom fighters, despite calling itself the biggest democracy in the world. The situation, however, is not bound to come under control anytime soon. Within the first two months of 2016, we have already had two major incidents that aim to curb any sort of dissatisfaction a citizen might have towards the government and the problems seem to be increasing with the passage of time.

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18. *Supra* Note 5

In troublesome times such as these, the country needs the apex court to take a strong stand against a law of this nature, which is against the Constitution of India and is infringing upon one of the most important rights of a person, that is, to speak his mind without fear. Some action needs to be taken before we all are pushed down the dark alley of silence once again, just as we were under the British rule, by the present government. India today has become a country where your disagreement from the sovereign state can put you behind bars with a huge social backlash and the tag of being an anti – national. We need to rectify this situation at the earliest and create a nation, a mechanism, where dissenting from the opinion of the state is not seen as a crime. Instead, it is respected and given due consideration. As long as draconian laws such as section 124A exist in India, fundamental rights like article 19 (1) (a) will continue be offended and infringed upon by the state without any regard for a dignity of a person's opinion.

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