



# SEDITION: UNDEMOCRATIC PROVISION

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Abstract

Sedition was introduced in 1870 to the IPC

Though the purpose for the introduction of S124A IPC is to suppress the Indian voices during the freedom movement, continuation of that provision post independence allows political parties for misuse.

Law commission report 2018 states that sedition must be used to maintain public order but not to curb the freedom of speech.

In 2019 according to NCRB states the rise in cases but drops in conviction shows the actual purpose which is to suppress the freedom to criticize.

India describes fundamental rights as 'magnacarta' of Indian Constitution, enables a provision for these many years which interferes with the rights of citizens.

Sedition as an offence under S.124A of IPC poses a threat to democracy and violates article 19(1)(a) of Indian Constitution. Although in Kedarnath case the apex court tried to strike the balance between freedom of speech and restriction but still it must be considered as a threat.

A much needed step was taken by apex court by protecting two news channels from AP Government, A politician and 6 senior journalists and in holding the cases regarding the sedition calling sedition as 'Chilling Effect on speech'. Is it Sufficient for a largest democratic country??

Introduction:

"Section 124A, 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".<sup>15</sup>

Mahatma Gandhi, March 18, 1922

(Mahatma Gandhi, during his famous sedition trial of 1922).

India seems like a hypocritical country while projecting itself as a biggest democratic country and promising a citizen to guarantee their rights under fundamental rights as part of the constitution, on the contrary continuing this provision in penal code which is and will be considered as a political weapon. This particular section has been criticized since its insertion in IPC due to an invisible restriction or fear that it places in a citizen. Many of

them has been a victim of this provision from a high profile tribal activist<sup>1</sup>, a renowned Indian author<sup>2</sup> to a talented cartoonist<sup>3</sup> and a group of Kashmiri students cheering for Pakistan in a cricket match?<sup>4</sup>

This puts people in a state of confusion or an invisible fear or restriction whether the statements made by them contributes to the nation or puts them in prison. A positive criticism always works inadvertently positive in democracy.

In a 2018 Consultation Paper on Sedition, the 21st Law Commission said:

*“Democracy is not another name of majoritarianism, on the contrary, it is a system to include every voice, where thought of every person is counted, irrespective of the number of the people backing that idea. In a democracy, it is natural that there will be different and conflicting interpretations of a given account of an event. Not only viewpoints which constitute the majority are to be considered, but at the same time, dissenting and critical opinions should also be acknowledged. Free speech is protected because it is necessary to achieve some greater, often ultimate, social good. In the unforgettable words of Charles Bradlaugh: Better a thousand fold abuse of free speech than denial of free speech. The abuse dies in a day but the denial slays the life of the people and entombs the hopes of the race.”*

If the country is not open to positive criticism, there lies little difference between the pre- and post-independence eras,” the Commission had said.<sup>5</sup>

Sedition cases have increased by 28% under the Modi government, according to a database compiled by news website Article-14. Since 2014, Indian authorities have filed more than 500 sedition cases involving more than 7,000 people. According to Article-14, 149 people have faced sedition charges simply for making remarks about Modi that were considered critical or derogatory.<sup>6</sup>

1. C. Sathyamala, *Binayak Sen: Refining Health Care in an Unjust Society*, 4(3) INDIAN J. MED. ETH. 104, 104-105 (2007), (Dr. Binayak Sen, the General Secretary of P.U.C.L., was arrested in May 2007 for allegedly acting as a courier for a jailed Maoist leader in Chhattisgarh).

2 Press Trust of India, *Sedition Case Registered Against Arundhati Roy, Geelani*, NDTV, Nov. 29, 2010, <http://www.ndtv.com/article/india/sedition-case-registered-against-arundhati-roy-geelani-69431>,

3 Special Correspondent, *Mumbai Police Arrest Cartoonist, Slap Sedition, Cybercrime Charges On Him*, THE HINDU, Sept. 10, 2012, <http://www.thehindu.com/news/national/mumbai-police-arrest-cartoonist-slap-sedition-cybercrime-charges-on-him/article3877809.ece>, (Aseem Trivedi was arrested for making and publishing seditious cartoons as part of the India against Corruption movement in 2012).

4 Dean Nelson, *Indian Kashmiri Cricket Fans to be Charged for Cheering Pakistan*, Mar. 25, 2014, THE TELEGRAPH, <http://www.telegraph.co.uk/news/worldnews/asia/india/10678163/Indian-Kashmiri-cricket-fans-to-be-charged-for-cheering-Pakistan.html>, (A group of Kashmiri students was arrested in Meerut for cheering for Pakistan in a televised Asia Cup cricket match in May 2014).

5 <https://www.outlookindia.com/national/law-commission-called-for-rethink-or-repeal-of-sedition-law-in-2018-read-what-all-the-panel-said-news-195842>.

6 <https://www.hrw.org/news/2022/07/18/sedition-law-why-india-should-break-britains-abusive-legacy>

This kind of controversial provision that was recommended for abolition by a British law commission 1977<sup>7</sup> and still haunts many activists as, which increased the no of cases as per NCRB but not the convictions and the public criticism or the reports of law commission to repeal it puts us in a position to examine the scope of this and examine the positive and negative aspects. Is it a necessary restriction or a menace to the society? The declaration of section 66A of IT Act proves the stand of the court regarding the importance of free speech. The apex court in 2015 held that it was vague and unconstitutional and Justice (now retired) Rohinton F. Nariman had written in his 2015 judgment for the court.

“Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the Section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total,”<sup>8</sup>

In July 2021, a petition was filed in the SC, that sought a relook into the Sedition Law,

The court ruled that “a statute criminalizing expression based on unconstitutionally vague definitions of ‘disaffection towards Government’ etc. is an unreasonable restriction on the fundamental right to free expression guaranteed under Article 19(1)(a) and causes constitutionally impermissible ‘Chilling Effect’ on speech”.

This paper is divided into 4 parts. Firstly it discusses regarding the judicial inspection from pre independence and post independence. The second part deal with the comparative study with other democratic countries. The third part deals on the detailed analysis on freedom of speech and sedition and finally the last part concludes with the suggestions.

#### Judicial interpretation over years

The Interpretation of sedition has been changed over the years. Adapting to the society from pre independence to post independence. In pre-independence, the court disallowed the legitimate criticism and held that there need not be any material consequence at all to qualify the offence of sedition and also that in sedition matters, it is the intention of the offender which is of primacy, and could be presumed based on content, audience and circumstances of their seditious speech and opined that any ‘bad feelings’ towards the government is criminal, irrespective of the level of bad feeling<sup>9</sup>. Broader definition for the term “disaffection” was interpreted which can be seen in trial of Bala Gangadhar Tilak. The criticism on the civil service is considered as seditious and that there is basic distinction state and civil service as they are a single entity<sup>10</sup>. This judgment had a positive impact on free speech and the sedition is given utmost importance by the imperial government to suppress the liberty and to curb the revolting voices.

<sup>7</sup><https://www.hindustantimes.com/world/sedition-law-in-uk-abolished-in-2009-continues-in-india/story-Pkrvylv6J0T3ddY8uqvKsO.html>

<sup>8</sup> <https://www.thehindu.com/news/national/no-more-prosecutions-under-section-66a-says-supreme-court/article66002464.ece>

<sup>9</sup> (1892) ILR 19 Cal 35

<sup>10</sup> (1917) 19 Bom LR 211 *Emperor v. Bal Gangadhar Tilak*

**Post independence:**

Firstly In, *Romesh Thapper v. The State of Madras*<sup>11</sup>,

"Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the constitution cannot be ruled out, it must be held to be wholly unconstitutional and void." and immediately In *Tara Singh Gopi Chand v the State of Punjab*<sup>12</sup> on November,

It was held that

"There can be no dispute that Section 124A is a restriction on the freedom of speech and expression which is guaranteed to all citizens by el. (1) of Article 19 of the Constitution. The question is whether the section is saved by Clause (2) of Article 19 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."

and struck down Section 124A of the Indian Penal Code, which defines sedition, holding it to be unconstitutional as it was contrary to the freedom of speech and expression guaranteed under Article 19(1) (a). A strict adherence to the freedom of speech and intention to struck down the provision can be clearly witnessed but later in *Kedar Nath Singh*<sup>13</sup>, which is considered the most authoritative judgement of the Supreme Court on the interpretation of the sedition law. It was held that "Section 124A could not be used to stifle free speech, and could only be invoked if it could be proven that the seditious speech in question led to the incitement to violence or would result in public disorder. also noted that the presence of a pernicious tendency to incite violence is a precondition to invoke the sedition clause." and later on in the case of *Balwant Singh & Anr. v. State Of Punjab*<sup>14</sup>, it was held that "since the speech in question did not lead to any disturbance of public order, and was not likely to incite any violence in the minds of the target audience. Taking into consideration the phrase 'pernicious tendency' discussed in *Kedar Nath Singh*, the court stressed that such tendency was to be ascertained by looking at the consequences of the impugned speech."

In the cases *Arup Bhuyan v. the State of Assam*<sup>15</sup> and *Sri Indira Das v. State of Assam*<sup>16</sup>, both of which were decided by the same two-judge division bench of the Supreme Court within seven days of each other. In both judgments, the court, adjudicating on charges of sedition and preventive detention, placed reliance on the 'imminent lawless action' test laid down by the U.S. Supreme Court judgement in the case of *Brandenburg v. Ohio*<sup>17</sup>. As per this test, all speech is protected by the First Amendment to the U.S. Constitution unless it incites imminent lawless action.

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11 AIR 1950 SC 124

12 1951 CriLJ 449

13 1962 AIR 955

14 1995 (1) SCR 411

15 (2011) 3 SCC 377

16 (2011) 3 SCC 380

17 395 U.S. 444 (1969)

After a decade in Disha Ravi tool kit case

A Delhi court granted bail, observing that the “offence of sedition cannot be invoked to minister to the wounded vanity of governments.” and in *Rajat Sharma v Union of India*<sup>18</sup>, the plea stated that Abdullah had commented on “restoring Article 370” with “help of China.” the Supreme Court said it was “not seditious to have views different from the government.”

Though the Supreme court of India has a clear intention of striking down the S124A of IPC in 1950, later on from the landmark case of *Kedarnath Singh vs state of Bihar* a striking pattern can be observed which is, sedition can only be charged when there is the threat to public order and incitement of violence. Though apex court had narrowed down the interpretation of sedition now a days but the arrests done by the police could not hold the intention of apex court and the purpose of provision could not be justified in democracy, instead it acts as a threat.

## Chapter : US and UK Sedition law

India derived its major constitutional structure from UK and USA which mentions the government structure and the fundamental rights to drive the nation in the direction of developed countries

The chairman of the drafting committee had said –

“As to the accusation that the Draft Constitution has reproduced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution....”

Dr Ambedkar

UK:

Sedition in UK goes back to,

The common law on sedition, which is traced to the Statute of Westminster, 1275, when the King was considered the holder of Divine right, was termed arcane and from a bygone era, when freedom of expression was not seen as a right<sup>19</sup>.

The Sedition Act, 1661 imposed punishment on anyone who wrote, printed or preached any words against the King. It evolved to mean slander and libel against the reputation or actions of government officials and judges. The goal was to protect the faith that the common person had in the government and to avoid a ‘breach of peace’ in society but the main crux here is that the intention of law behind England and Indian cant be taken as one. The England’s common law on sedition infers to distinct their social classes and maintain the hierarchy that roots back to many decades before and in India a clear intention establishes to suppress us.

<sup>18</sup> (2021) 5 SCC 585

<sup>19</sup> <https://timesofindia.indiatimes.com/blogs/truth-lies-and-politics/sedition-law-in-historical-perspective-part-ii/>

Sedition in common Law consists of any Act done, or words spoken and written and published with a Seditious intention.

In England the common Law on Sedition still exists. However the last conviction for Sedition occurred way back in 1909<sup>20</sup> where the printer of the Indian socialist was convicted for Sedition for calling for the independence of India

The courts of Britain prioritized free speech in various scenarios such as in *R v. Caunt*, the accused was the editor of a local newspaper. He published an article in the paper which was intended to be an attack on the Jews living in Britain. Towards the end of the 900 words article was the line- 'violence may be the only way to bring those (British Jews) to the sense of responsibility to the country where they live'. The jury however, upheld the Right of the press to free discussion, despite the unrestrained language used in the article in question. The jury accepted contention that the accused was not threatening violence but only issuing a 'warning' and in *r.v. chief metropolitan stipendiary magistrate*, the Seditious writing in question was Salman Rushdie's controversial work *The satanic verse*. In fact of this case, one Abdul Husain Choudhry applied for judicial review of the order of the metropolitan magistrate refusing to issue summonses to the author and charged the author with blasphemy and Seditious libel. The book vilified the prophet Mohammed calling him a 'conjurer' a 'magician' and a false prophet' his wives and companions. The book also ridiculed and vilified the teaching of Islam. The court had no doubt that such passages would deeply offend the Muslims of the United Kingdom. The proof of an intention to promote feelings of ill-will between classes of subjects does not by itself establish Seditious intention. The court held that there must not only be this ingredient but also the element of public mischief or the intention to incite violence, particularly against 'constituted authority'.

Stephen in his "*History of the Criminal Law of England*" accepted the view that a seditious libel was nothing short of a direct incitement to disorder and violence. He stated that the modern view of the law was plainly and fully set out by Littledale J. that they could convict of seditious libel only if it meant that the people should make use of physical force as their own resource to obtain justice, and meant to excite the people to take the power in to their own hands, and meant to excite them to tumult and disorder".

Blackstone's Commentaries on the Laws of England, published in four volumes from 1765 to 1769, offer a comprehensive examination of English law, from constitutionalism to common law he outlined rights of individuals against government, including a free press and the protection of liberty against the actions of officials seeking to silence criticism and suppress the ability of the press to inform the public.

Although Blackstone recognized the right of the government to punish "blasphemous, immoral, treasonable, schismatical, seditious or scandalous libels," he also stood firmly in favour of an extensive freedom of the press and an absolute prohibition on prior restraint of publication<sup>21</sup>.

<sup>20</sup> *R v. Aldred* (1909) 22 COX C.C.I.

<sup>21</sup> <https://www.mtsu.edu/first-amendment/article/1286/william-blackstone>

In 1977, a working paper was published by the Law Commission suggesting the abolishment of the Act. This suggested that several legislations existed that covered the issues under sedition and that a law based on 'politics' rather than the policy was unnecessary. Thirty-two years later, Section 73 of the Coroners and Justice Act, 2009 abolished the offence of sedition.

US:

USA being largest democratic always strives to maintain its policies and sustains to be, since its government is based ideals of democracy. One of the core fundamental value of a democratic country is the freedom of speech that citizens of that country has and USA considers it with paramount importance. Though the sedition act was introduced in 1798 to protect the government from false implication but it was also designed to expire in 1801<sup>22</sup>

Later on it was reintroduced during world war 1 for protection of their government and after a few years in a landmark case, it was held that free speech can be curtailed<sup>23</sup>.

In *Schenck v. United States*<sup>24</sup>,

The apex courts of USA formed an opinion that free speech can be curtailed if it poses threat to government.

In *New York Times v. Sullivan*<sup>25</sup>, the importance of right to free speech was explained and it was held that criticism of the government and public officials did not constitute libel. In a democracy free speech is of utmost importance.

In *Brandenburg v Ohio*<sup>26</sup>, the US Supreme Court held that freedom of speech can be exercised by the people to advocate certain ideas, principles and others, however when such advocacy leads to imminent lawless action, it becomes a punishable offence under the law of sedition of US

Though the us government takes a stand by not repealing the act of sedition completely, it prioritized its free speech and took a stand to punish when there is only an imminent lawless action which is similar to the stand taken by India.

Though the decisions of both the apex courts in both the countries are same the standards of societies and functioning of the government machineries must be considered. The decision or policy they form is based on their people and society, similar policy can be taken in India as we are not yet up to their standards in terms of economy, education, literacy, legal knowledge etc..

Free speech and Sedition

“Words are, of course, the most powerful drug used by mankind”.<sup>27</sup>

Rudyard Kipling, London, 1923

22 <https://www.scobserver.in/journal/sedition-in-the-common-law-jurisdictions-uk-usa-and-india/>

23 <https://www.britannica.com/topic/In-re-Debs#ref1225592>

24 249 U.S. 47 (1919).

25 376 U.S. 254 (1964)

26 395 U.S. 444

27 Rudyard Kipling, *Surgeons and the Soul* in A WORD OF BOOKS available at <https://ebooks.adelaide.edu.au/k/kipling/rudyard/words/chapter23.html> (last visited Dec. 22, 2014).

Indian constitution recognizes the value of free speech of a citizen, as well as media and the value that it adds to the democracy. Free speech is a core in a country that is based on democracy and the influence that it has on peoples mind invariably effects the voting . Our constitution guarantees free speech in article 19(1)(a) subject to restrictions that are placed in article 19(2). A speech by a person or broadcast by a media regarding the actions, policies or reforms of a government must not fall under the purview of sedition but a constructive criticism that it needs to be adopted in our country.

Though we don't consider it as sedition in India but the arrests done by the police doesn't establish the shared vision of courts and it damages the ideals of free speech.

In *Romesh Thapar v. State of Madras*<sup>28</sup>, Chief Justice observed: "Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible."

Any provision that is violative of fundamental right would be considered void and it was well established in various scenarios in India. Sedition was not held unconstitutional in *Kedarnath* case and in that judgement it was established that there must be public violence or disorder in order to charge with S.124A . But still the controversy goes on with sedition implying that it opposes the free speech.

Projecting views, sharing of opinions on air for welfare of various people, revolting against the government policies still is considered as sedition and citizens can be indirectly affected or put through fear if the government responsible acts against the law and ideals of justice. When a provision like sedition puts the government in higher position compared to common man then it is nothing but a dictatorship under the shadow of law. Free speech allows and will be a tool and strikes balance between a citizen and the government.

### *Conclusion*

After the analysis of sedition in India, judicial decisions, Comparative studies with other democratic countries there can be 2 possible scenarios which can be a way forward.

Firstly the sedition can be charged only on the person who has influence or an authority or who can exercise influence over large group of persons. Section S124A establishes that any individual can be punished but the redrafted must be added with "provided that the person must be an authority or exercise influence over large group of persons" and "provided that there must be a physical damage or violence based on the expression of that person" but the problem here is the *opposition in a* democratic country is an influential entity and this scenario can be a direct weapon to the government.

The ideology of the apex court can be achieved with the first scenario but the judicial and executive machinery is not in a balance and the perception of judiciary cant be executed due to the differences, as it is evident due to raise in false cases of sedition.

The second scenario is to repeal the provision regarding the sedition and it provides a better path to the future of the nation.