



## DEFENDING DEMOCRACY: THE COMPLEX INTERPLAY BETWEEN SEDITION AND FREE SPEECH IN INDIA

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### **Abstract:**

*The inclusion of the right to freedom of expression inside the Indian Constitution is of paramount importance, as it constitutes an integral element of fundamental rights. Due to the continuous evolution of individuals' ideas and methods of communication, coupled with the amendments made to Indian laws, the space for outdated and authoritarian British constraints has significantly diminished. Nevertheless, it is indeed surprising to note that during almost seven decades of independence, both the Parliament and state legislatures have refrained from amending the provisions outlined in Section 124, considering the outdated nature of this act. It is noteworthy to mention that the British Parliament abolished the criminalization of sedition in 2009, thereby signalling to other countries the importance of adopting similar measures to uphold genuine freedom of speech and expression. It is important to acknowledge, however, that the UK has implemented more rigorous laws within its counter-terrorism legislation. The sedition act in New Zealand was also repealed in 2007 due to its inclusion of provisions that were seen to be in violation of principles of natural justice and the rule of law. The sedition laws in Australia, Canada, Indonesia, and South Korea have all been repealed. This legislation affords the government an ongoing chance to adopt the responsibilities and functions traditionally associated with colonial governance. Hence, the inquiry pertains to the decision of whether to retain or repeal Section 124A. The criminal act of sedition is perceived as a limitation on the exercise of the freedom safeguarded by Article 19(1). (a) Please provide more context or information for me to rewrite in an academic manner. The primary objective of the book is to determine whether the subject under examination, namely legislation or weaponry, has been extensively misused, resulting in the restriction of individuals' ability to express themselves verbally or through other means.*

**Keywords: Sedition, Freedom of Speech, Constitution, Fundamental Rights.**

### **Introduction:**

Sedition laws in India are governed primarily by Section 124A of

the Indian Penal Code (IPC), which defines the offense of sedition. Sedition laws in India have a long history, dating

back to the colonial era, and they have been a subject of debate and controversy due to concerns about their potential misuse to stifle freedom of speech and dissent. Here's a detailed overview of sedition laws in India:<sup>1</sup>

### Section 124A of the Indian Penal Code (IPC):

*Section 124A of the IPC defines the offense of sedition. It states:*

"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."

### *Key points to note about Section 124A:*

- **Nature of Offense:** Sedition in India involves any act or expression that promotes hatred, contempt, or disaffection toward the government established by law in India. This can include

spoken or written words, signs, or visible representations.

- **Penalty:** The punishment for sedition can range from imprisonment for life to a maximum of three years, along with a possible fine.
- **Provisions for Bail:** In *Kedar Nath Singh v. State of Bihar* (1962), the Supreme Court of India clarified that not all criticism of the government constitutes sedition. Only when there is a direct incitement to violence or public disorder can it be considered sedition. As a result, bail is generally available to individuals charged with sedition, subject to certain conditions.
- **Misuse and Controversy:** Sedition laws have been criticized for their potential misuse to stifle free speech and dissent. Critics argue that these laws are vague and overbroad, making it easy for authorities to suppress legitimate criticism of the government.
- **Legal Challenges:** Over the years, there have been various legal challenges to Section 124A, with some calling for its repeal or

<sup>1</sup> Singh, Anushka. *Sedition in liberal democracies*. Oxford University Press, 2018.

amendment. The Indian government, however, has defended the law as necessary to maintain public order and national security.

- **Interpretation:** The interpretation and application of sedition laws can vary, and what constitutes sedition can be a matter of judicial discretion. This has led to concerns about the inconsistency in legal proceedings related to sedition.
- **Historical Context:** Section 124A was introduced by the British colonial government in 1870, primarily to suppress dissent against British rule. After India gained independence, the law was retained, and it has been used on multiple occasions to charge individuals critical of the government.

In summary, sedition laws in India, as defined in Section 124A of the Indian Penal Code, criminalize acts or expressions that promote hatred, contempt, or disaffection toward the government. These laws have been a subject of controversy, with concerns about their potential misuse and impact on free speech and dissent. Legal interpretations and challenges continue

to shape the application of sedition laws in India.

### **Historical Context Of Sedition Laws In India:**

The historical context of sedition laws in India is deeply rooted in the colonial period, during British rule. Understanding this historical background is crucial to appreciate the evolution and controversies surrounding sedition laws in the country. Here is a brief overview of the historical context of sedition laws in India:<sup>2</sup>

- **Introduction During British Rule:**

Sedition laws were first introduced in India during the colonial period by the British authorities.

The British colonial government sought to suppress dissent and political opposition to their rule, especially during the Indian freedom struggle.

- **The Indian Penal Code, 1870:**

The foundation of sedition laws in India lies in the Indian Penal Code (IPC), which was enacted in 1860. Section 124A was added in 1870 and defined the offense of sedition.

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<sup>2</sup> Bhatia, Gautam. *Offend, shock, or disturb: Free speech under the Indian Constitution*. Oxford University Press, 2016.

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- **Rationale for Sedition Laws:**

The British government used sedition laws to control and suppress Indian nationalists, revolutionaries, and freedom fighters who were advocating for independence and self-rule.

Acts of rebellion, protest, and speeches that criticized British rule or promoted Indian nationalism were considered seditious and could lead to imprisonment.

- **Landmark Sedition Cases:**

Several notable cases during the colonial period exemplified the use of sedition laws, including the trial of Bal Gangadhar Tilak, the Muzaffarpur conspiracy case, and the trial of Mahatma Gandhi. These cases showcased the conflict between the colonial government's efforts to maintain control and the Indian freedom movement's determination to gain independence.

- **Pre-Independence Struggle:**

Sedition laws were a significant tool in the hands of the British government to suppress dissent and pro-independence activities. Many freedom fighters and political leaders were charged with sedition and imprisoned for their anti-colonial activities.

- **Post-Independence Retention:**

Despite gaining independence in 1947, India chose to retain the sedition law as part of its legal framework. The Indian government argued that it was necessary to maintain public order and national security.<sup>3</sup>

- **Amendments and Legal Challenges:**

The interpretation of sedition laws has evolved through legal challenges and court judgments. Notably, the Kedar Nath Singh v. State of Bihar case in 1962 clarified that criticism of the government does not constitute sedition unless it incites violence or public disorder.

- **Contemporary Debates:**

In contemporary India, sedition laws have been a subject of debate and controversy due to concerns about their misuse to stifle free speech and dissent. Various organizations and civil society groups have called for the repeal or reform of sedition laws. Understanding the historical context of sedition laws in India helps shed light on the origins of these laws, their use during British colonial rule, and the subsequent challenges and debates about their

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<sup>3</sup> Patil, Poorva, and Jinisha Shah. "The Era of Free Speech-Is Sedition Law a Need?." Issue 1 Indian JL & Legal Rsch. 5 (2023): 1.

relevance and application in the post-independence period. The historical legacy of sedition laws continues to influence the legal, political, and social landscape of India.

### **The Role of Free Speech in A Democratic Society:**

Free speech plays a fundamental and multifaceted role in a democratic society. It is a cornerstone of democracy, serving as a vital element that not only facilitates the functioning of democratic institutions but also empowers citizens and fosters social progress. Here are some of the key roles of free speech in a democratic society:<sup>4</sup>

- **Protection of Individual Liberties:**

Free speech is essential for protecting individual liberties. It allows individuals to express their thoughts, ideas, and beliefs without fear of censorship or retribution from the government or powerful entities. This protection is a fundamental human right.

- **Facilitation of Political Discourse:**

Free speech is critical for the exchange of ideas and opinions, especially in the political sphere. It allows citizens to engage in open and robust discussions about government policies, candidates, and issues. In a democracy, informed political discourse is vital for making informed decisions during elections and holding leaders accountable.

- **Accountability and Transparency:**

Free speech serves as a check on government power. It enables the media and civil society to investigate and expose corruption, misconduct, and abuse of power. Whistleblowers and investigative journalists rely on free speech to bring transparency to government actions.

- **Social Progress and Innovation:**

A democratic society encourages the free exchange of ideas and innovations. Free speech fosters an environment where creativity, scientific progress, and new solutions can flourish. It allows for the dissemination of knowledge and encourages diverse perspectives, which can lead to social and technological advancements.

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<sup>4</sup> Ray, Ritik Kumar. "Critical Analysis of the Interplay between Sedition Law and Article 19." Issue 2 Indian JL & Legal Rsch. 4 (2022): 1.

- **Protection of Minority Rights:**

In a democracy, minority voices and viewpoints can be easily marginalized. Free speech ensures that minority groups, whether based on ethnicity, religion, or other characteristics, have a platform to express their concerns and advocate for their rights without censorship or discrimination.

- **Fostering Tolerance and Inclusivity:**

Free speech encourages societies to become more inclusive and tolerant. Open dialogue and debate can help bridge gaps and reduce prejudices. It provides a space for different viewpoints to be heard and, over time, can lead to greater understanding and acceptance of diversity.

- **Peaceful Protest and Dissent:**

Free speech allows citizens to engage in peaceful protest and dissent against government policies or actions they find objectionable. This nonviolent form of expression is a fundamental part of a democratic society, helping to bring about change without resorting to violence.

- **Individual Empowerment:**

Free speech empowers individuals by giving them a voice and a sense of agency in shaping the direction

of their society. When people know they can freely express their opinions, they are more likely to be engaged and participate in the democratic process.

- **Cultural and Artistic Expression:**

In a democratic society, freedom of expression extends to artistic and cultural endeavors. This allows artists, writers, and creators to challenge societal norms and explore diverse themes, contributing to the richness of culture and creative expression.

- **Global Influence and Soft Power:**

A country that upholds free speech often wields significant global influence, projecting democratic values and soft power on the international stage. Respect for free speech can also encourage global cooperation and dialogue.

In summary, free speech is an indispensable element of a democratic society, providing the essential building blocks for informed decision-making, government accountability, social progress, and the protection of individual liberties. It creates an open, diverse, and inclusive environment where ideas can be shared, debated, and challenged, ultimately strengthening the foundations of democracy.

**Recent Developments:**

Courts have consistently applied the legal principles established by the Supreme Court in the Kedar Nath case on multiple instances. Over the course of the past fifteen years, a total of fourteen instances of sedition have been documented, with a mere two cases having been brought before the highest judicial body in the United States, the Supreme Court. Moreover, the number of convictions in this matter is limited, with only three cases resulting in guilty verdicts, one of which was rendered by the Supreme Court. Furthermore, a study published by the Ministry of Home Affairs reveals that there were a total of 326 incidents of sedition documented in India from 2014 to 2019, resulting in a mere six convictions<sup>17</sup>. The data was provided by the National Crime Records Bureau.<sup>5</sup>

Consequently, it is not inaccurate to argue that the act of sedition is often utilised to suppress the lawful expression of individuals' voices and demands, so affecting innocent individuals. The occurrence of 326 instances of sedition within a span of merely five years is an alarming

statistic, which serves as a testament to the ruling government's malevolent intentions, irrespective of the specific regions involved. Drawing a parallel between state governments and Indian governments with the British government in this context would not be factually incorrect. The issue at hand extends beyond the first point; individuals who express dissent towards the prevailing political parties, be it at the national or state level, or those who critique its propaganda, are effectively silenced by the initiation of sedition proceedings against them, either as individuals or as a collective. Both national and state political parties have refrained from revisiting the provisions of the sedition statute, indicating a shared consensus among all parties on this matter.

In a recent legal proceeding, the case of P.J. Manuel v. State of Kerala<sup>18</sup>, the defendants were found to have displayed placards on a notice board situated outside the Kozhikode public library and research gate. These placards were intended to encourage local residents to refrain from participating in the general elections for the Legislative Assembly of the state. The author of the poster expressed the viewpoint that individuals should

<sup>5</sup> Misra, R. K. "Freedom of Speech and the Law of Sedition in India." *Journal of the Indian Law Institute* 8.1 (1966): 117-131.

refrain from voting for politicians who have gained wealth and power by exploiting the general population, irrespective of their political party affiliation. The court acquitted him after considering the allegations filed against him under Sec.124A, stating that the evaluation of the offence of sedition should be based on the language and principles of the constitution rather than British norms.

In a separate case, *Gurjinder Pal Singh v. The State of Punjab*<sup>19</sup>, the defendant filed a petition with the Punjab and Haryana High Court seeking the annulment of the First Information Report (FIR) filed against him under Section 124A. During a religious service dedicated to the remembrance of the martyrs, the individual in question delivered a speech to the assembled audience, proposing for the creation of a distinct buffer state known as 'Khalistan' to be situated between the nations of India and Pakistan. It has been established that even overt appeals for secession and the formation of a novel political entity would not be deemed seditious in nature.

Consequently, the First Information Report (FIR) lodged against the defendant was nullified.

In the case of *Mohd. Yaqub v. State of West Bengal*<sup>20</sup>, the defendant acknowledged his affiliation with the Pakistani intelligence organisation ISI and his receipt of directives from the agency to engage in activities that undermine the nation's interests. Consequently, he was formally accused of sedition in accordance with Section 124A of the Indian Penal Code (I.P.C.). The Calcutta High Court, in accordance with the *Kedar Nath* judgement, determined that the prosecution did not adequately establish the seditious nature of the acts and their potential to incite the general population. Due to the lack of stringent evidentiary standards, the defendant was acquitted and subsequently released.<sup>6</sup>

The case of *Balwant Singh v. State of Punjab*<sup>21</sup> was the Supreme Court's decision to overturn a conviction for sedition and the promotion of animosity among different groups based on factors such as ethnicity and religion. Consequently, the individuals who were acquitted were those who had yelled slogans such as "Khalistan Zindabad" and "Raj Karega Khalsa."

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<sup>6</sup> Anand, V. Eshwar. "Freedom of Speech and Expression: A Study on Sedition Law and the Need to Prevent Its Misuse." *Media Watch* 8.1 (2017): 7-18.



In the well-known legal matter of *Binayak Sen v. State of Chhattisgarh* 22, it was brought to light that one of the defendants, Piyush Guha, provided an unofficial admission that Binayak Sen, a specialist in public health, had entrusted him with delivering specific letters to Kolkatta. These letters were purportedly found to contain Naxal literature, with some allegedly containing details regarding police misconduct and violations of human rights. In its conviction of the defendants, the High Court observed the significant level of violence resulting from the prohibition of Naxalite organisations. However, the court did not provide a comprehensive explanation of the manner in which the mere ownership and dissemination of books could be deemed as an act of sedition. Furthermore, the High Court failed to consider the matter of incitement to violence, since it was not a relevant factor in the current case.

The latest incident pertains to Kanhaiya Kumar, the former President of the JNU student union, Umar Khalid, and several other students. They were charged with expressing support for Afsal Guru, the individual responsible for orchestrating the Parliament attack, and reciting the slogan 'Bharat Tere

Tukde Honge' during a meeting held on the premises of Jawaharlal Nehru University (JNU). The matter is currently under review and a final decision has not yet been reached.

**Conclusion:**

Adlai Stevenson previously articulated the notion that while individuals had the entitlement to express their opinions, it is impermissible for any one to impede the functioning of democracy by monopolising the discourse. A clear differentiation can be made between endeavours aimed at undermining the government and those aimed at destabilising the nation as a whole. The government and the country are not interchangeable entities, as evidenced by the differentiation between the national anthem of India and the government's national anthem, as well as the distinction between the national flag of India and the government's national flag. Hence, a differentiation exists between critiquing the governing body and critiquing the nation itself (which, under any circumstances, should not be endorsed). In the contemporary context, the sedition legislation might be perceived as a vestige of colonial rule, imposing upon

individuals the obligation to refrain from expressing any form of antagonism, derision, or animosity against the governing authorities.

Consequently, it is imperative to reconfigure it in a manner that mitigates the occurrence of misuse. It has been accurately asserted that section 108 of the Code of Criminal Procedure (CrPC) 1973 provides a suitable remedy for addressing the problem of misuse of section 124A. In order to safeguard against unnecessary arrests, abuses of individual dignity, and infringements upon freedom of speech and expression, it is recommended that specific amendments be made to Section 124A. These amendments should include the reclassification of the offence as non-cognizable and bailable, therefore ensuring that the legislation is not susceptible to misuse or abuse.

It is imperative to establish a harmonious equilibrium between the principles of free speech and the prevention of sedition, given that not all expressions of disagreement may be categorised as seditious. The application or potential enforcement of section 124A induces persons to engage in self-regulation of their communication, leading to a phenomenon known as the "chilling effect" on the exercise of the

fundamental right to freedom of speech and expression. This is the rationale behind the necessity for the repeal or modification of the legislation. Hence, it is imperative for the judiciary to exercise vigilance and reassess the sedition statute. The legislation need revision and reassessment in accordance with the evolving needs and values of time and society. According to Justice D.Y. Chandrachud, there is a pressing need to establish clear delineations for the borders of the sedition law. Chief Justice of India, N.V. Ramanna, agrees with the aforementioned statement.

The fundamental right to freedom of speech and expression is intrinsic to individuals, and encompasses all forms of communication, including comments, statements, thoughts, and opinions. These expressions, regardless of their favorability or unfavorability, play a crucial role in fostering a robust democratic society. Nevertheless, the concept of liberty necessitates some limitations in order to be properly exercised. The number 27 is the value being discussed. Consequently, it is imperative to conduct an evaluation of any limitations imposed on the freedom

of speech and expression to mitigate the occurrence of unforeseen repercussions.

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