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# Sedition: Whether a Justified Law or Not?

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AYUSHMAN PATNAIK<sup>1</sup>

## ABSTRACT

*This paper addresses the validity of the offence of sedition in India. It talks about the offence of sedition and how it has been historically evolved or developed. It also states the impact on citizens right to express themselves openly and positively express opposition against governments. This paper critically analyses the constitutional validity of the offence of sedition in India with the help of legal precedents. It addresses the problems that an individual face because of this offence. It outlines the impact of sedition on constitutionally guaranteed right Article 19(1)(A)- freedom of speech and expression. Sedition is a reasonable restriction under Article 19 (2) of the Constitution of India, which provides that the government can enforce a reasonable restriction. However, Mahatma Gandhi called section 124A IPC as the prince among the political sections of the IPC designed to suppress the liberty of the citizen.*

**Keywords:** *Sedition, criticize, opposition, government, constitutional, Article19 (1)(A), restriction.*

## I. INTRODUCTION

There is often a difference of opinion between the Government and its citizens in a country like India. For the welfare of its citizens, the government presents various policies, schemes, plans etc. But, the public opinion against the government is resentful, claiming that the policies, plans, schemes, etc. are part of the political agenda of the governing party that strips away people's rights. The conflict, therefore, becomes unavoidable. The government uses various methods to restrict the resenting voices and among those laws is an essential tool that is the law of sedition. With the constitutional provisions, this IPC clause is read to see if the right to freedom of speech is exercised within reasonable limits and whether the State's conduct against any individual is just or not. This paper addresses various issues related to the sedition law.<sup>2</sup>

Sedition is mentioned under section 124A of I.P.C which defines the offence of sedition as- Whoever, by words, either spoken or written, or by sign or by visual representation, or

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<sup>1</sup> Author is a student at Department of Law Maharaja Agrasen Institute of Management studies, India.

<sup>2</sup> Mahima Makhija and Asha Sundaram, the Sedition Laws in India with Special Reference to Shreya Singhal vs. Union of India, International Journal of Pure and Applied Mathematics, Volume 119 No. 17, 111-126, (2018)

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 – Comments expressing disapprobation of the measures of the 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.”<sup>3</sup>

This section of I.P.C, however, only provides a brief note on the law of sedition, it only defines the offences that fall under this provision, it does not provide a specific definition of 'sedition.'

In the case of *Rex vs. Aldred*<sup>4</sup> the court gave another aspect for the law of sedition i.e., “Nothing is clearer than the law on this head – namely, that whoever by language, either written or spoken incites or encourages others to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel. The word “sedition” in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form...” Stephen in his Commentaries used the following words to define sedition: “Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society. The seditious conduct may be by words, by deed, or by writing.”<sup>5</sup>

It is believed that along with colonial laws including criminal defamation, obscenity and blasphemy laws, the sedition law is also contrary to the principle of freedom of speech, stated under Article 19(1)(a) of the constitution of India. In 1951, Jawaharlal Nehru said the sedition law “is highly objectionable and obnoxious ... the sooner we get rid of it the better”.<sup>6</sup> There have been two attempts to remove it through private member bills, during the last decade-but

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<sup>3</sup> Section 124A, IPC, 1860

<sup>4</sup> *Rex vs. Aldred* (1909) 22 CCLC 1

<sup>5</sup> commentary on the Laws of England, 21st Edition, volume IV, at pages 141-142

<sup>6</sup> Time India scrapped the sedition law, ET Editorials, Edit Page, India, (Jul. 31, 2020, 10:35 AM) <https://economictimes.indiatimes.com/blogs/et-editorials/time-india-scrapped-the-sedition-law/>

both efforts have been quashed by governments.

## **II. HISTORY OF SEDITION IN INDIA**

Section 113 of Macaulay's Draft Penal Code 1837 coincided with section 124A of the IPC. The prescribed sentence was life imprisonment. Sir John Romilly, Member of the Second Pre-Independence Law Committee, reflected on the severity of the suggested punishment for sedition, on the basis that the maximum punishment in England was 3 years, and he recommended that the maximum sentence in India be no more than 5 years. This clause, however, was not included in the IPC when it was passed in 1860.

Section 124A of the Indian Penal Code (Amendment) Act 1898, which was revised in 1898, provided for life imprisonment as a punishment. However, the previous section described sedition as inciting or attempting to provoke feelings of discontent with the constitutionally formed government, the amended section also made carrying or threatening to bring hate or disrespect for the existing government punishable. The clause was revised by Act No.26 of 1955, which replaced imprisonment for life and/or a fine to imprisonment for three years and/or a fine.

The Prevention of Seditious Meetings Act, 1907, was passed by the West Minister Parliament to discourage public meetings that were likely to lead to the offence of sedition or to create chaos, as in many parts of India, assemblies were conducted against British law, with the primary objective of overthrowing the Government.<sup>7</sup>

The structure of this section was formed by incorporating points obtained from multiple sources like the Treason Felony Act, which was in force in Britain at the time, the common law of seditious libel, and English cases related to seditious terms. The common law of seditious libel addresses all acts and words directed at individuals and the judiciary, and also words and actions directed at communities of people.<sup>8</sup>

The main distinction between the previous section 124A and the present one is that in the former section the offence consisted in exciting or attempting to excite feelings of 'disaffection' but in the latter one 'bringing or attempting to bring into hatred or contempt the government of India' is also made punishable.

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<sup>7</sup> Law Commission of India report, Consultation Paper on Sedition, 30 August 2018

<sup>8</sup>Ytharth Kumar Sreyoshi Guha, Sedition: Crucifixion of Free Speech and Expression? Liberal Studies Journal, Volume 2, Issue 1, 110, Jan-Jun, 2017

**(A) Historical cases:****1. Queen-Empress vs. Bal Gangadhar Tilak<sup>9</sup>**

By far the most prominent sedition cases in past have been of our country's freedom fighters against colonial rule. Bal Gangadhar Tilak, a committed supporter of India's independence has been accused of sedition in two instances. The first in 1897 for remarks that reportedly instigated the violent behaviour of others, which resulted in the death of two British officers. He was released on bail in 1898.

In 1909 he was charged with sedition for publishing a newspaper article about the Maratha warrior Shivaji encouraging his move against the British Government. Interpretation of 'disaffection' was given through this case.

Section 124 (a) of the IPC was established and applied for the first time in 1897. In the eyes of the Privy Council, incitement to violence and rebellion was irrelevant in determining the guilt of an individual charged with sedition.<sup>10</sup>

**2. Queen Empress v. Jogendra Chunder Bose<sup>11</sup>**

The first state trial for sedition on record is this case, better known as the Bangobasi case that is the name of the newspaper in which the seditious matter appeared. The articles in question were the direct outcome of the legislation of 1891, commonly known as the 'Age of Consent Act'; The Bangobasi, of which the four accused were respectively the proprietor, editor, manager and printer, was a weekly newspaper published in Calcutta, and had a large circulation. The material passages from the article were charged with sedition.

At the trial, it was urged on behalf of the Crown that no attempt at a reasonable discussion of the 'Age of Consent Bill' was to be found in the articles charged, while the defence, on the other hand, contended that they did not exceed the bounds of legitimate criticism of the measure in question.<sup>12</sup>

**3. Trial of Mahatma Gandhi<sup>13</sup>**

Mahatma Gandhi was charged with sedition in March 1922 before the district and sessions judge of Ahmadabad, for two papers he had written in his paper; 'young India'; prior to that,

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<sup>9</sup> Queen-Empress vs. Bal Gangadhar Tilak, 1897 I.L.R. 22 Bom. 112 152

<sup>10</sup> 5 Landmark Cases That Changed the Way We Look at India's Sedition Law, Sara H, (Aug,2, 2020, 11:18 AM) <https://homegrown.co.in/article/47919/5-landmark-cases-that-changed-the-way-we-look-at-indias-sedition-law>

<sup>11</sup> Queen Empress v. Jogendra Chunder Bose, 1892 I.L.R. 19 Cal 35 55

<sup>12</sup> SEDITION, Preeti Prakash, (Aug,2, 2020, 11:58 AM)

<https://www.academia.edu/22418909/SEDITION>

<sup>13</sup> 1922

there was acute agitation and animosity to government, largely due to Gandhi's activities and his policy of non-cooperation movement and civil disobedience movement. As a consequence, there had been certain incidents of bloodshed and terror. The most recent was the assault on innocent civilians in Bombay in 1921, which resulted in much violence and property damage by an angry crowd during the visit of Prince of Wales. Another indication was the inhumane burning alive of many police officers by a hysterical mob in Chauri Chaura, near Agra. Of course, Gandhi condemned these acts of violence and even suspended the movement for a while, fasting for penance.

Mr Justice Strangman presided over the trial. In a strikingly civil reaction, Justice Strangman recognised Gandhi's stature and devotion to nonviolence, but expressed his reluctance to find him not guilty of sedition under the statute, and sentenced him to six years in jail.<sup>14</sup>

#### **4. Kedar Nath Singh v. the State of Bihar**<sup>15</sup>

This was a landmark case, the first case of sedition heard in an independent Indian court, in which the constitutionality of the statute was challenged and the Supreme Court distinguished between disloyalty to the country's government and speaking on the government's measures without inciting civil disturbance by acts of violence. Kedar Nath Singh, a member of Bihar's Forward Communist Party, was charged with making a radical speech criticising the ruling government and calling for a revolution.

“Today the dogs of the CID are loitering around Barauni. Many official dogs are sitting even in this meeting,” he said as he began his speech. “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 the mistake of the people. When we drove out the Britishers, we shall strike and turn out these Congress goondas as well...” The Supreme Court imposed a narrower spectrum of interpretation, declaring as constitutionally seditious only matters that had the intent or propensity to incite public disturbance or violence.<sup>16</sup>

### **III. DOES SEDITION VIOLATES FREEDOM OF SPEECH?**

The main purpose of freedom of speech is to freely think and talk and receive knowledge through publications and public discussion and debates, without fear of government intervention, limitation or suppression. It is through freedom of expression that people will

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<sup>14</sup> SEDITION, Preeti Prakash, (Aug,2, 2020, 12:25 PM) <https://www.academia.edu/22418909/SEDITION>

<sup>15</sup> Kedar Nath Singh v. the State of Bihar 1962 AIR 955

<sup>16</sup> 5 Landmark Cases That Changed the Way We Look at India's Sedition Law, Sara H, (Aug,5, 2020, 09:32 AM) <https://homegrown.co.in/article/47919/5-landmark-cases-that-changed-the-way-we-look-at-indias-sedition-law>

come together to gain political influence, improve their morals and motivate others to become responsible and informed citizens.

After addressing the significance of freedom of speech and expression, one cannot ignore the fact that only the right to free speech and expression is not adequate. It must be recognized that it is important to be aware of all the aspects and principles of the problem under scrutiny to speak or to express a thought.

Freedom of speech and sedition as a concept has two different meanings but they are considered as two sides of the same coin also. Mahatma Gandhi quoted 'speech is silver, but silence is gold'<sup>17</sup>, however, the people's silence in the current situation is undermining the nation's dignity and sovereignty. John Stuart Mill said freedom of speech is necessary for a stable society, as it lets citizens express their positives and negative opinions on the framework. Napoleon Bonaparte said that 'The world suffers a lot, not because of the violence of bad people but because of the silence of the good people.'<sup>18</sup>

#### **(A) Relevant case laws:**

##### **1. In the case of Kedar Nath Singh V State of Bihar:**

The court described "actions inciting violence against the government." "Any written or spoken words, etc., that have latent in them the concept of subverting government through violent means, and which are compendiously included within the term 'revolution,' have been made punitive by the clause in question,"

In this case, the Supreme Court held that "comments, though strongly worded, expressing criticism of government actions" and denying aggression are not called sedition. In other words, disloyalty to the government founded by statute is not the same as vigorously protesting the government's or its agencies' actions or activities to better the people's situation or to secure the cancellation or modification of such acts or measures by legitimate means, that is, without arousing feelings of enmity and disloyalty that might lead to public disturbance or the use of violence," the Bench stated.<sup>19</sup>

##### **2. In the case of Shreya Singhal V. Union of India <sup>20</sup>**

The Court stated: "Three principles are essential in understanding the scope of this most

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<sup>17</sup> SPEECH IS SILVER SILENCE IS GOLD, blog by Dr vsudhakar babu, (Aug,5, 2020, 10:01 AM) <https://www.speakingtree.in/blog/speech-is-silver-silence-is-gold>

<sup>18</sup> <https://www.goodreads.com/quotes/552131-the-world-suffers-a-lot-not-because-the-violence-of>

<sup>19</sup> Sedition law a tool against free speech? Krishnadas Rajagopal, (Aug,11, 2020, 11:17 AM)

<https://www.thehindu.com/news/cities/Delhi/sedition-law-a-tool-against-free-speech/article25996244.ece>

<sup>20</sup> Shreya Singhal V. Union of India, WRIT PETITION (CRIMINAL) NO.167 OF 2012

fundamental human right" [freedom of speech and expression]. The first is a debate, followed by activism, and eventually by incitement. Article 19(1) is focused on the basic discussion or even support of a specific cause, no matter how controversial it might be (a).

Article 19(2) applies only where such debate or activism exceeds the extent of incitement. At this point, a law can be passed regulating speech or expression that inexorably contributes to or threatens to cause public disorder, or that tends to cause or tends to affect India's sovereignty and independence, the protection of the State, friendly ties with foreign states, and so on.

### **(B) Expressions that do not amount to sedition-**

#### **1. In the case of Javed Habib v. State of Delhi<sup>21</sup>**

“Holding an opinion against the Prime Minister or his acts or disapproval of government actions, or drawing inferences from the speeches and actions of the leader of the government that the leader was against a specific group and was in league with any other political leaders, cannot be deemed sedition under Section 124A of the IPC,” the court ruled. The ability to criticise the government is a pillar of democracy. The core of democracy is government critique. The political structure, which necessitates the advocacy of the replacing of one government by another, allows the people the freedom to criticise the government. The politicians of our country are more familiar with the groups. Any party parties are identical to the leader's political groups. The leader of such parties is an embodiment of the party, and the party is revealed only to the leader. As a result, any critique of the group is bound to be the criticism of the party's leader.”

Indeed, opposing the administrative procedure or government authorities is not called sedition. However, if the speaker's critique of the present government reaches the limits of fair criticism, the subject becomes sedition.

#### **2. In the case of Balwant Singh v. State of Punjab<sup>22</sup>**

The Court declined to punish two people for raising slogans against the state a few times (Khalistan Zindabad, Raj Karega Khalsa, and Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da). It was reasoned that raising a few lonesome slogans a couple of times by two people, without anything else, did not constitute a challenge to the Government of India as described by statute, nor could it provoke feelings of enmity or hatred within different communities, religious or other groups.

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<sup>21</sup> Javed Habib v. State of Delhi, 2007 96 DRJ 693

<sup>22</sup> Balwant Singh v. State of Punjab AIR 1995 SC 1785

After the analysis of these judgements it can be stated that scrutinising the government is necessary for a healthy democracy, people are allowed to criticize the working or procedures followed by the government, but these criticisms are subject to some restriction that every individual is needed to abide by those restrictions. However, some expressions do not amount to sedition. Thus a distinction must be made between the expression those amount to sedition and the expression that doesn't.

However, the Law Commission of India in its advisory paper on sedition said opposition and government scrutiny are necessary components of a vigorous public debate in a stable democracy. The Commission, the Centre's top law advisory body led by a former judge of the Supreme Court, Justice B.S. Chauhan indicated it was time to reconsider Section 124A or even revoke it.<sup>23</sup>

In the end, it can be stated that some eminent jurist believes that it does not violate Article 19(1)(A) of the constitution while some jurist believes that it does violate freedom of speech and expression and it must be struck off. There are some expressions that are seditious while some expressions are not. So sedition being an offence in I.P.C must amount to some restrictions. Every person living in a democracy has the freedom to speak and express what they feel, but they must be restricted in a manner that does not affect the sovereignty and integrity of India.

#### **IV. CONSTITUTIONAL VALIDITY OF SEDITION**

Although the proposed Constitution used the words 'Sedition' and 'public order' as a justification for laws restricting the fundamental right of speech (Article 13), in the final version of the Constitution, both 'public order' and 'Sedition' were excluded from the exception to the right to freedom of speech and expression (Article 19 (2)). The contradiction which rose upon before the framer of the Constitution was that whether the word Sedition is too used in Article 19(2) and if it was to be used, in what context would it be used.<sup>24</sup> Also, it should be observed that an amendment to Article 19(2) was made in 1951 which included the phrase "in the interest of" and "public order." The amendment contained constitutional limitations on freedom of expression and speech.<sup>25</sup>

The consequence of these laws risks restricting and slowly diminishing the legitimate and constitutionally guaranteed right to demonstrate, oppose or criticize the government. As a

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<sup>23</sup> Law Commission of India report, Consultation Paper on Sedition, 30 August 2018

<sup>24</sup> [https://sg.inflibnet.ac.in/bitstream/10603/143397/8/08\\_chapter%202.pdf](https://sg.inflibnet.ac.in/bitstream/10603/143397/8/08_chapter%202.pdf)

<sup>25</sup> Constitutionality of Sedition Law in India, Guest Post, (Aug,15, 2020, 3:14 PM) [https://blog.ipleaders.in/constitutionality-sedition-law-india/#\\_ftn1](https://blog.ipleaders.in/constitutionality-sedition-law-india/#_ftn1)

result, the validity of Section 124-A of the Code was challenged after the enforcement of the Indian Constitution as infringing the fundamental right - freedom of speech and expression - under Article 19(1)(a) of the Indian Constitution.<sup>26</sup>

#### **(A) Arguments in support of Section 124A**

IPC Section 124A helps to counter the anti-national, secessionist and terrorist factors. This defends the elected government from efforts to violently overthrow the government by use of unlawful means. The government's continued involvement, defined by statute, is an important prerequisite for the State's stability. If court contempt demands criminal action, government contempt should also invite punishment. Many regions of various states are facing a Maoist rebellion and armed groups are essentially running a parallel government. Such organizations are supporting the violent overthrow of the government.

For this context, it would be ill-advised to eliminate Section 124A solely because it has been mistakenly used in a few well-reported instances.

#### **(B) Arguments against Section 124A**

Section 124A is a legacy of colonial past and unfit for democracy. This is a restriction on the lawful practice of constitutionally protected freedom of expression and speech. The right to challenge, criticise and overthrow rulers are essential to the principle of democracy. The democratic theory is fundamental to the right to question, condemn, and replace rulers. The British, who instigated sedition to suppress Indians, repealed the law in their land. There's no reason why India shouldn't repeal this section. The words used under Section 124A such as 'disaffection' are ambiguous and subject to varying definitions of the investigating officers 'whims and fancies'.<sup>27</sup>

#### **(C) Some legal precedents that reviewed the validity of sedition**

*Ram Nandan v. State of U.P* was the first case to address the constitutionality of Section 124-A. The Allahabad High Court ruled that Section 124-A of the IPC is unlawful because it violates Article 19(1)(a) of the Constitution. 124-A was said to limit freedom of expression and to aim at the core of the Constitution<sup>28</sup>

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<sup>26</sup> Sougata Talukdar & Rakesh Mondal, Law of Sedition: An Agent of Colonialism, International Journal of Law, VOL. 3, ISSUE 3, 21-26, (2017)

<sup>27</sup> Use and misuse of Sedition law: Section 124A of IPC, ClearIAS Tea, (Aug,15, 2020, 3:47 PM) <https://www.indiatoday.in/education-today/gk-current-affairs/story/use-and-misuse-of-sedition-law-section-124a-of-ipc-divd-1607533-2019-10-09>

<sup>28</sup> Constitutionality of Sedition Law in India, Guest Post, (Aug,19, 2020, 4:05 PM) [https://blog.ipleaders.in/constitutionality-sedition-law-india/#\\_ftn1](https://blog.ipleaders.in/constitutionality-sedition-law-india/#_ftn1)

### **1. In the case of Tara Singh Gopi Chand v. The state**

Section 124-A is no longer relevant in today's politics, according to Chief Justice Eric Weston. According to him, India is now an independent democratic entity. Governments will go and be compelled to go if the state's foundations are weakened. The law of sedition, which was considered relevant during a time of foreign rule, has become inapplicable due to the extent of the transition that has happened. Eric Weston concluded that "the Section then must be held void."<sup>29</sup>

In the Tara Singh Decision and the Sabir Raza Decision, the Courts held that Section 124A of the IPC had become invalid as a result of the Constitution's enforcement. The Allahabad High Court had to determine the constitutional legitimacy of Section 124A of the IPC in the Ram Nandan Decision. The High Court declared Section 124A of the IPC null and void, holding that the ministers who comprised the Government were men who framed crucial policy questions and needed a powerful opposition in Parliament. The Court noted that, in addition to the opposition, the government is subject to public support and criticism.

The Court held that for our democratic framework to function, it was necessary for policy criticism and policy implementation, and that "such criticism, though it does not have any tendency to cause public disorder, may be trapped within the mischief of Section 124-A of the Indian Penal Code.", then that Section must be invalidated because it limits freedom of expression regardless of whether it is in the protection of public order or the welfare of the State because it is capable of striking at the very heart of the Constitution, which is freedom of speech (which is subject to restricted control under Article 19). (2).<sup>30</sup>

### **2. In the case of Kedarnath Singh v. The State of Bihar**

It was determined that the statute was constitutional and that it applied to written or spoken words with the implied intent of subverting the government by violent means. Citizens may criticise the government with the intent of causing public disorder, as long as they do not provoke people to violence against the government. The Supreme Court affirmed the constitutionality of Section 124A. In the case of *Balwant Singh and Anr v. The State of Punjab*

Following Prime Minister Indira Gandhi's assassination, the suspects chanted "Khalistan Zindabad" outside a theatre. It was determined that two people casually raising slogans should not be said to be inciting discontent with the government. The provisions of Section 124A will

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<sup>29</sup> [https://sg.inflibnet.ac.in/bitstream/10603/143397/8/08\\_chapter%202.pdf](https://sg.inflibnet.ac.in/bitstream/10603/143397/8/08_chapter%202.pdf)

<sup>30</sup> Ashima Obhan & Shivam Patanjali, Tracing the history of sedition laws in India, (Aug,24, 2020, 1:56 PM), [https://www.obhanandassociates.com/blog/tracing-the-history-of-sedition-in-india/?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=LinkedIn-integration](https://www.obhanandassociates.com/blog/tracing-the-history-of-sedition-in-india/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration)

not extend in this situation.

### **3. In the case of Romesh Thapar v. The State of Madras**

The petitioner argued before the Supreme Court that the Madras State's order prohibiting the publication of his paper "Cross Roads" was unconstitutional. It has violated his Fundamental Right to free speech and expression, as provided by Article 19(1) of the Constitution. The Supreme Court found that Article 19(2), where the limit was enforced only in situations including a threat to national protection, was unconstitutional. It cannot be held to be constitutional or legitimate in situations where no such issue may occur. The Supreme Court reversed Madras State's order and granted the petitioner's appeal under Article 32 of the Constitution.<sup>31</sup>

## **V. WHETHER SEDITION SHOULD BE REMOVED FROM IPC OR NOT?**

### **(A) Latest Trends**

#### **1. Views of Sanjay Hegde (Senior Supreme Court advocate)**

It's also a potent tool in the possession of a local official or the head of any party looking to silence a single political dissenter. He might quickly rush to a police department, file a complaint, and recommend that they take action. And it is often up to the speaker to speculate about how the situation will unfold.

It has a negative effect on thought honestly and interacting with others. I don't believe that administration is concerned with justice. The majority of cases filed would not result in a conviction if Section 124A were applied, as the Supreme Court claimed in Kedar Nath Singh (1962) since the term complained about would not always result in any overt incitement to violence.

#### **2. Views of Nandita Rao (Delhi government's additional standing counsel (criminal)):**

Sedition was a crime in our Indian Penal Code (IPC) before we were independent and the colonial government wanted to punish anybody who attempted to topple the government. The irony is that this provision is now being used to bully and terrorise people in independent India.<sup>32</sup>

#### **3. Key points on sedition (legislative view)**

In a written reply to the Rajya Sabha, the Ministry of Home Affairs (MHA) affirmed the

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<sup>31</sup> Law of Sedition in India, Sudarshna Thapa, (Aug,28, 2020, 10:45 AM) <https://blog.ipleaders.in/law-of-sedition/>

<sup>32</sup> Should the sedition law be scrapped? Jayant Sriram, (Aug,28, 2020, 12:22 PM) <https://www.thehindu.com/opinion/op-ed/should-the-sedition-law-be-scrapped/article30993146.ece>

government's stance on sedition, which is punishable by life imprisonment and an additional fine if the governing dispensation believes an individual is stirring hate towards the state. To successfully fight anti-national, secessionist, and extremist groups, the IPC clause must be preserved, the government stated.

In response to a question regarding whether the government was considering repealing the colonial-era statute of Section 124A of the IPC, which describes sedition, Minister of State for Home Affairs Nityanand Rai said, "There is no plan to revoke the IPC clause dealing with the crime of sedition. The provision must be kept in order to effectively combat anti-national, secessionist, and terrorist elements."

The sedition bill has enraged both the Modi government and the former UPA governments, as the law has never been repealed by any government in the country's 70-year period since independence.

Various parties have consistently vowed to abolish the sedition statute.

In its manifesto for the 2019 Lok Sabha elections, Congress vowed to repeal Indian Penal Code Section 124A. In contrast to Congress' pledge to repeal the bill, the BJP has stated that the government will strengthen the law—so robust that its provisions will "send shivers down the spine."

Rajnath Singh said in the run-up to the Lok Sabha elections that the NDA government would seek to improve sedition law if it returned to power after the elections. Rajnath claimed that the legislation would help in dealing strongly with "anti-national" forces trying to tarnish the country's image.<sup>33</sup>

#### **(B) The viewpoint of the Law Commission of India:**

- In August 2018, the Law Commission of India issued a consultation paper requesting that Section 124A of the Indian Penal Code, which deals with sedition, be reconsidered or repealed.
- The Law Commission had opposed repealing the provision in its 39th Report (1968).
- In its 42nd Report (1971), the panel recommended that the section's scope be extended to include the Constitution, the legislature, and the judiciary, in addition to the

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<sup>33</sup>Sedition law to stay, govt says need to retain provision to fight anti-national elements, India Today Web Desk, (Sep,3, 2020, 7:30 PM), <https://www.indiatoday.in/india/story/sedition-law-modi-govt-retain-provision-anti-national-elements-1560982-2019-07-03>

constitutionally constituted administration, as entities against which 'disaffection' could not be accepted.

- In a new consultation report on sedition, the Law Commission proposed using 124A to criminalise only crimes performed with the intent to disturb public order or overthrow the government by intimidation and unlawful means.

### **(C) Sedition law and the stand of Supreme Court of India:**

In *Kedar Nath vs. the State of Bihar*, the constitutionality of sedition was challenged in the Supreme Court (1962). The Court upheld the statute on the grounds that the state needed this authority to defend itself. It had, however, included a crucial caveat: "an individual could be tried for sedition only if his actions created incitement to violence or the desire or propensity to trigger public disorder or disrupt public peace."

The court ruled that "a person has the freedom to say or write anything he wishes about the Government, or its measures, as long as he does not provoke citizens to violence against the Government defined by statute or cause public disorder."

The Supreme Court reaffirmed these required protections in September 2016, ruling that they should be observed by all the authorities.<sup>34</sup>

After its establishment in 1950, the Supreme Court of India has only heard thirty-eight cases including sedition and has issued only six judgments in which it has thoroughly addressed the offence. This inevitably leads to two conclusions: (1) The crime of sedition has not been abused to the degree that it has been hyped; (2) even though the courts have raised the question of sedition, they have done so in a limited and restrictive manner.<sup>35</sup>

## **VI. LATEST SEDITION CASES IN INDIA**

### **1. Dr Binayak Sen vs. The State of Chhattisgarh**

Dr Binayak Sen was charged with sedition, among other offences, for reportedly assisting Naxalites, and sentenced to life in jail at the Raipur Session Court. He was charged with assisting rebels, who were involved in the area at the time, by forwarding information from a Maoist inmate who was his client to those outside the prison. Dr Sen, who denied all charges against him, claimed that he was under the strict surveillance of prison authorities during his

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<sup>34</sup> Use and misuse of Sedition law: Section 124A of IPC, ClearIAS Team, (Sep,7, 2020, 5:10 PM) <https://www.indiatoday.in/education-today/gk-current-affairs/story/use-and-misuse-of-sedition-law-section-124a-of-ipc-divd-1607533-2019-10-09>

<sup>35</sup> Aishwarya, N. (2015) "A Theoretical Analysis of the Law on Sedition in India", *Christ University Law Journal*, 4(1)

treatment and that taking an action would be impossible. According to Dr. Sen, his detention and ensuing charges were prompted by his criticism of vigilante-style killings. Salwa Judum is the party he's pointing to, which was created and funded by the state government of Chhattisgarh to combat insurgency in indigenous tribe villages where it thrived, according to them. However, Dr. Sen, a human-rights activist in addition to being a paediatrician, believes that the groups' real tasks are to clear village land rich in iron ore, bauxite, and diamonds so that it can be quarried. His arrest drew widespread international interest, and the World Health Council in the United States honoured Dr. Sen with the 2008 Jonathan Mann Award for global health and human rights in recognition of his contributions to rural and tribal groups in India. Later that year, on May, 22 Nobel prize winners wrote to the Indian government, criticising his imprisonment and requesting that he be released so that he could accept the award in person. "We also wish to express grave concern that "Dr. Sen seems to be jailed simply for freely exercising his basic human rights...and that he is convicted with two domestic security statutes that do not conform with universal human rights standards," they wrote in their letter.

## **2. Aseem Trivedi vs. The State of Maharashtra**

Aseem Trivedi, a controversial political cartoonist and activist known best for his anti-corruption initiatives, *Cartoons against political corruption*, was arrested in 2010 on charges of sedition. The lawsuit, registered by Amit Katarnayea, a legal counsel for a Mumbai-based NGO, opposes Trivedi's show of 'insulting and degrading' sketches depicting the Parliament as a commode and the National Emblem in a negative light, having swapped the lions with rabid wolves, during an Anna Hazare agitation against corruption, as well as sharing them on social media websites. Members of India Against Corruption said that the lawsuits were brought against Trivedi because the government was upset with their anti-corruption campaign. "The case has been registered merely because Aseem joined in the BKC protest organised by Anna Hazare and raised his voice against corruption," said Mayank Gandhi. Trivedi's case challenged the nation's freedom of speech and expression when a young man was arrested for mocking the country's blatant corruption. Understandably some people found his animation insulting and in poor taste, but sentencing someone to life in jail for such an act is unreasonable.

## **3. Shreya Singhal vs. Union of India**

This case is significant in Indian jurisprudence because its decision invalidated Section 66A of the IT Act, which intended to violate Article 19 (1) of the Indian Constitution, which grants all people the right to free speech and expression. Shreya Singhal, a law student, filed a petition in 2012 demanding an extension to Section 66A, which was prompted by the detention of two

girls in Mumbai for a Post on Facebook critical of the city's closure following the death of Shiv Sena leader Bal Thackeray; one girl commented while the other one only "liked" it. The court's decision that an individual could not be prosecuted for sedition unless their voice, no matter how "unpopular," insulting, or improper, had a proven link with any provocation to violence or disturbance of public order is important. The Supreme Court differentiated between "advocacy" and "incitement," holding that only the latter is criminally punishable. The Supreme Court decision came 3 years after the petition was filed in 2015, but Shreya was undeterred.<sup>36</sup>

#### **4. Kanhaiya Kumar vs the State of NCT**

Last week, the Delhi High Court ordered the state government to submit a status report in the case by April 3. The court also gave police more time to obtain permission from the Aam Aadmi Party-led State government to sue accused former JNU students' Union President Kanhaiya Kumar, Umar Khalid, and Anirban. Judge Purshottam Pathak of Patiala House Court had directed the Special Cell of Delhi Police to file a new reminder to the Deputy Secretary of the Delhi Government's Home Department, seeking its approval to continue with the investigation or not. The court had previously reprimanded Delhi Police for filing the charge sheet "without obtaining the required sanction." The case concerns an incident held on February 9, 2016, at Jawaharlal Nehru University, protesting the hanging of Afzal Guru, the mastermind of the 2001 Parliament attack. In January, the Delhi Police filed a charge-sheet wherein 10 JNU students were called for reportedly raising "seditious" slogans. The Delhi High Court granted Kanhaiya provisional bail in the case in March 2016, about three weeks after he was arrested on charges of sedition. Shortly after, an Additional Sessions Judge granted Khalid and Bhattacharya temporary bail in the case. In December, the Delhi High Court denied Garg's request to order the Delhi Government to give permission in the JNU sedition case. The High Court dismissed the PIL, arguing that the matter of sanction must be determined by the Delhi government in accordance with established laws. The Bench of Chief Justice of India SA Bobde and Justices BR Gavai and Surya Kant dismissed the plea, saying, "These general prayers cannot be entertained." The Court also noted that such directives can only be issued on a case-by-case basis.<sup>37</sup>

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<sup>36</sup> 5 Landmark Cases That Changed the Way We Look at India's Sedition Law, Sara H, (Sep,11, 2020, 8:55 PM) <https://homegrown.co.in/article/47919/5-landmark-cases-that-changed-the-way-we-look-at-indias-sedition-law>

<sup>37</sup> 2016 sedition case: SC refuses the plea seeking directions to the Delhi government to prosecute Kanhaiya Kumar, Vaibhav Goyal, (Sep,11, 2020, 10:23 AM) <http://lawtimesjournal.in/2016-sedition-case-sc-refuses-the-plea-seeking-directions-to-the-delhi-government-to-prosecute-kanhaiya-kumar/>

### **5. Arundhati Roy Case**

The Delhi Police arrested Roy, Hurriyat chief Syed Geelani, and many others on sedition charges in 2010 for their "anti-India" speech at a conference. The FIR was filed in response to a local court's directive on a petition filed by Sushil Pandit, who said that Geelani and Roy made anti-India speeches at a conference on "Azadi-the Only Way" on October 21, 2010. In response to the court order, Roy indicated that they "posthumously file a charge against Jawaharlal Nehru," citing 14 instances in which the first Prime Minister claimed that "the matter of accession in any contested territory or state must be resolved in compliance with people's wishes."

### **6. Praveen Togadia Case**

The Rajasthan government charged the Firebrand VHP chief with sedition in 2003 after he violated a state ban on supplying tridents to Bajrang Dal supporters. Among the charges is an effort to "wage war against the government." Togadia had faced 19 criminal charges for making hate speeches as of August 2013, the most of any citizen in the world.

### **7. Akbaruddin Owaisi Case**

The district police of Karimnagar charged Majlis-e-Ittehadul Muslimeen MLA Akbaruddin Owaisi with sedition for allegedly delivering a hateful speech in Nirmal on December 22, 2012.<sup>38</sup>

## **VII. CONCLUSION AND SUGGESTIONS**

The Sedition Law aims to restrict and regulate freedom of speech far beyond what is permitted under law. Sedition is an offence that must be used for the welfare of the citizens and not against them. Freedom to express views on government is an important factor of every democracy. It is a must for every democracy where a citizen is allowed to speak and express freely without any fear of legal action against him. As only when the citizens speak and express what they have to say then only the government can analyse the needs of the people. They will know what every citizen need and what they expect from the government in power. Some authors, activists and eminent jurist believe that sedition as an offence under I.P.C restricts an individual and strips the constitutionally guaranteed right to the citizen i.e. freedom to speech and expression. However, a citizen must be allowed to express himself but there should be a limit that must be set. There should be some restrictions that the citizen must abide by, to

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<sup>38</sup> Top 8 high-profile sedition cases in the history of Independent India, India TV News Desk, (Sep,15, 2020, 9:10 PM)<https://www.indiatvnews.com/news/india/8-high-profile-sedition-cases-in-history-of-independent-india-57728.html>

prevent legal action against him. As words can be a double-edged sword. They can be used to determine the authority of the very state that protects them. They can be used to incite violence and disorder against the state and citizens. In order to protect itself and its citizens, the state makes Sedition an offence. Sedition as an offence must be given a narrow interpretation having regard to the particular rights at issue, and the purpose of the restriction. The purpose of restricting speech under the Sedition Act is for the protection of National Security. However according to International Human Right Law, as freedom of expression is fundamental to a functioning democracy, it can be restricted only with regard to serious threats to National Security. Although on its face the Sedition is a law of general application the Government has been arbitrarily applying the law, in bad faith and for an improper purpose to prevent political opposition. It cannot be established that Sedition is prescribed by Statute or that people punished with Sedition are being stripped of their liberty of the individual in conformance with the law. Language and expressions seem to be the only aspect that distinguishes human from an animal. The role of words in the continuous expansion of civilisation and society, as well as the introduction of new ideas and understanding, is encouraging several societies across the globe to preserve them. Sedition is an offence against humanity that is closely related to treason, and it often takes place before treason. Thus by this, it can be concluded that sedition is an important law and it must be there in every democracy as it acts as a watchdog over the people who incites the public leading to various types of violence. However, the meaning and extent of the offence of sedition under I.P.C must be clearly stated and every word must contain an explanation so that it doesn't lose its objectivity.

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