# Sedition in India-An Overview

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## Abstract

*The law may not be used to manufacture affection under pain of a penal sanction-`Mahatma Gandhi'*

The prevailing laws that India haseither belong to colonial rule or have their roots from those times. These laws were enacted and implemented by the colonial rulers just for the oppression of the Indian subjects. Unfortunately some of the laws found their place in the post independent period and becoming a matter of controversy. Sedition is one among such laws. It is a law which is drafted for the rebellions, revolutionaries who disobey the government, who criticizes the Governance of the government or who disturbs the way of functioning of the government. This law was enacted and integrated into the Indian Penal Code, 1860 in the year 1870 by Lord Macaulay. After Independence, this law was not included in the Indian Constitution, but after four years of independence the government had reinstalled this law due to increasing criticism against the Government, this time it was included in Part IV of Indian constitution which made the sedition as justiciable if pronounced illimitably. There were number of cases which played a vital role evolution of this law, some of them are mentioned further...

Presently, Sedition law is being regarded as vague law as the Democracy is comparatively modified when compared to the democracy in India just after Independence. After Seven and a half decades of Democracy, a question has arisen, whether to continue or to not to continue the Sedition Law. India is a nation where Rule of Law carries the day; unreasonable charging of persons under the law of Sedition is against the morals of constitutionalism. This Paper is an attempt to showcase the progress of the Law of Sedition from the British Era to the present day through various cases, debates and interpretation of the law made by the legislature.

## Evolution of the Sedition laws

The Law of sedition was neither part of the original Draft in the year 1837 nor was the part of the Penal Code during its commencement in the year 1860. It was introduced by Lord Thomas Babington Macaulay and inserted it in Section 124A of the Indian Penal

code in the year 1870. This law was used to punish and suppress the voices which turn against the British Government. The first case to get registered under this law is Queen Empress vs. Jogendra Chunder Bose[1], where Bose was an editor of a newspaper called Bangobasi was charged under Sedition. Later he was released on Bail and the Charges were dropped against him as the jury was unable to come to a unanimous judgment. When it comes to the punishment under sedition laws, Bal Gangadhar Tilak was the first person, convicted under this law. In the case of Queen Empress vs. Bal Gangadhar Tilak (1898)[2] it was held that the speeches of Tilak on killing of Afzal Khan by Shivaji have prompted the murder of two other British officials in Poona. He was held guilty in the Bombay Court with a jury of nine members out of which six white judges were against him and three Indian Judges were in favor of him and was sentenced with a year of imprisonment. This case was chaired by Justice Strachey[3].In another case of Niharendu Dutt Majumdar vs. King Emperor[4]there was a clash between the opinions of Federal court in India and Privy Council in England. It was held that the Federal court had held by the violent words by themselves, did not make a speech or written documents seditious and that in order to constitute sedition "the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that is their intention or tendency". In the Post-independence era, In the year 1948, the word sedition was removed from the constitution after the discussions held in the constituent Assembly as the drafters decided to remove the word Sedition as it acts as an obstacle to the Article 19(1) (a) the right to freedom of speech and expression, thus the word got disappeared from the constitution, but the word sedition remained in the Indian penal code.But,In the year 1951, the government headed by Pundit Jawaharlal Nehru has retained the word sedition in the constitution as to limit the right of Freedom of speech and expression added a new phrase 'in the interest of Public Order' in the Article19 (2) which define the reasonable restrictions of the freedom of speech and expressions through the first constitution amendment Act, 1951. Finally, In the year 1973, the government headed by Smt. Indira Gandhi, reconstructed the Criminal Procedure Code,1898 to Criminal procedure Code,1973 in which it was mentioned that the offence of sedition is cognizable, which empowers the police to arrest the offender without any warrant.

**Jawaharlal Nehru has quoted that the Section 124A is Objectionable and obnoxious and opined that it did not deserve a place in the Indian Penal Code.* This statement was made

[1] Queen Empress vs. Jogendhra Chundra Bose, ILR(1892)19 Cal 35

[2]Queen Empress vs. Bal Gangadhar Tilak, ILR(1898) 22 Bom 112

[3] Justice Strachey interpreted the decision stating that the `the amount of disaffection was not to be absolutely immaterial in the decision, nor it was important whether any Actual feelings of disaffection were created among the audience or not'. He also held that the feelings of disaffection also means hatred, enmity, dislike, hostility, contempt and every form of ill will to the Government

[4] Niharendu Dutt Majumdar vs. King Emperor AIR1942 FC 22

in the parliament sessions in the year 1951, and until now we are, in the year 2021, still living with the same law.

Hence any act within the meaning of Section 124A which has the effect of overthrowing the government by bringing in contempt, hatred or creating dissatisfaction against it would be attracted by Penal Laws. The reason is disloyalty to the government established by law or enmity against it imports an idea of disloyalty and creates public disorder by use of violence or incitement of violence. But this sedition is carefully drafted that strong words under lawful means constructive criticism which will not cause disturbance to public at large.

The **Essentials of sedition**[5]inscribed under the section 124A of Indian Penal Code,1860 are below,

- Attempting to bring or bringing hatred
- Attempting to excite or exciting disaffection against The Government of India.
- Above mentioned acts must be Intentional
- The act or attempt may be pursued- By Words either written or spoken, By Visible representation, Or by any Signs.

The **Punishment for sedition** is severe in nature and it is Non-Bailable, Cognizable and Non Compoundable offence[6]. The law only punishes a person who limitlessly criticizes the Government; reasonable criticism is permitted, what is reasonable is not defined as subject to. The punishment for sedition is also enshrined in Section 124A of IPC,1860 which may bePenal Transportation for life to which fine may be added, Imprisonment which may extend to three years (sometimes seven) to which fine may be added and Fine.
There are certain exceptions given to the laws of sedition under IPC, 1860 they areexpressing dissatisfaction against the measures taken by the Government and with an object to bring it down by lawful means without any hatred, contempt, disaffection against it and Expressing dissatisfaction against the actions of the Government without any hatred, contempt or disaffection towards the government.

**Indian Constitution and Sedition.**

The Indian Constitution is undoubtedly a legal document.Thus the law of sedition intercepts Article (19) (a) of the constitution. Free speech allows the conveyance of a person's ideas and his opinions. This expression is instrumental in allowing individual to achieve their aspirations and goals. A true democracy is governance by an individual

5Gaur, K. D. (2020).Textbook on Indian Penal Code - 7th Edition (7th Ed.).Lexis Nexis.

6*ibid*

through choice based representation. In such circumstances a conflict between the state and individual is bound to exist. Sentencing or curtailing a person right to speech for state or judicial system contravenes the theory of promotion of free speech and expression. It is the responsibility of the state and the judiciary to constitutionalize all dimensions of free speech. If the extension of free speech is not feasible it should be solely restrained by the constitution. When it comes to the constitutionality of Section 124A of IPC the Supreme Court has constitutionalized and limited the scope of sedition in Kedar Nath vs. State of Bihar by restricting it to instances where individuals through their speech provoke or incite violence. But in Practice a list of cases showcases that despite the existence of this guide mark, sedition charges are levied on individuals for mere criticism of the government in public, expressing displeasure on policies.

**Judicial interpretation of Sedition Laws**

In the Post-Independent Era, there were no proper laws for and there was an increase in the number of rebels. Some people say that sedition is unreasonable restriction on the freedom of Speech and Expression and expressed that it was the only way to convey the dissatisfaction against government. The remaining hold that this section is intra vires of Indian constitution as it doesn't contravene the Article19 (1) rather it is upheld by the Phrase "in the interest of Public Order" in the Article19(2)[7]. It was the case of *Romesh Thappar vs. State of Madras*[8]which paved the way for the First Amendment of the Constitution in the year 1951 also helped for the introduction of the phrase 'in the interest of public' or 'public order'. Regarding the facts of the case, Romesh Thappar was a Journalist, Editor and Publisher in a magazine named The Cross Roads which is printed and published in Bombay. The Circulation of these journals were banned in the State of Madras under Section 9(I-A) of Madras Maintenance of Public Order. In reply the petitioner filed a writ petition before the Supreme Court, questioning the provisions in the Act which restricted the Freedom of speech and expression. In Response the Petitioner State held, the journal was banned in the state for the purpose of Public Safety and Public Order. It was held that the reason of Public Safety and Public order was conferred with a wide-ranging meaning and it has to be read together for the purpose for which restrictions were allowed under the Act. For this purpose of the word public order is incorporated in the above mentioned section.The Court noted that such wide restrictions were unconstitutional and that only narrow restrictions on freedom of expression were permitted.Further an Act if interpreted within the limits as well as outside the scope of these limits should be considered void. The mentioned section was considered to be void for its unconstitutionality, as it gave the State wide powers to restrict freedom of expression. The Court also quashed the order of the Government and the newspaper was banned.Later, this case was also cited in few landmark cases such as *Kedar Nath Singh*

[7]Singh, M. P. (2019). Constitution of India by V. N. Shukla (13th ed.). Eastern Book Company.

[8]Romesh Thappar vs. State of Madras AIR 1950 SC 124;1950 SCR 594

*vs. State of Bihar, M.S.M.Sharma vs. Krishna Sinha, Sakal Papers (P) Ltd. vs. The Union of India.*

Yet in other case of *Tara Singh vs. State of Punjab*[9], in the mentioned case, the Section 124A was struck down as unconstitutional as it is contrary to the Article 19(1) (a) of Indian Constitution which guarantees the Right to Freedom of Speech and Expression. The Result of above case is introduction of two new words into in the Article 19(2) of Indian Constitution which deals with reasonable restrictions of Freedom of speech and Expression. (Constitutional First(Amendment) Act, 1951) in another landmark case of *Kedar Nath Singh vs. Union of India*[10], The Supreme Court of India upheld the constitutional validity of the provisions of the Indian Penal Code that penalized sedition. Kedar Nath Singh had been convicted for sedition and inciting public mischief because of a speech in which he criticized the government (INC) and advocated for the Forward Communist Party. The Court reasoned that the penalization of sedition is a constitutionally valid restriction on the right to freedom of expression only when the words are intended to disturb public peace by violence .Thus any kind of Dissatisfaction against the government is permissible and constitutional as long as it stays intra vires and it is acted in the interest of Public Order. In *Umesh Kumar v. State of Uttarakhand*[11]the High Court of Uttarakhand held that the mere false allegation against the government cannot be sedition, unless it disturbs public order. The Chief Minister of Uttarakhand brought the case in response to a video posted on social media by journalist Umesh Kumar, which alleged the minister was engaged in corruption.

Although some of the allegations were proven false, the Court rejected the State's argument that Kumar intentionally spread lies to fuel hatred against the Government. The Court affirmed that criticism of government action, even when strongly worded, must be consistent with the fundamental right of freedom of speech and expression. The judge further emphasized that in a democracy, dissent should always be respected. Recently *Patricia Mukhim v. State of Meghalaya*, [12]On March 25, 2021, the Supreme Court of India quashed the First Information Report filed under section 153A, section 500 and section 505(1)(c) of the Indian Penal code, 1860 against Patricia Mukhim, a renowned journalist who resides in Shillong, Meghalaya . The appellant contended that the disputed Facebook post was made without the intention of inciting enmity between the two communities: tribals and non-tribals and promoting communal disharmony. Rather the brutal attack on non-tribals was highlighted in the Facebook post to call for suitable action against the culprits. The judges accepted this contention and ruled that the appellant's plea calling for the equality and protection of non-tribals living in the State of

[9]Tara Singh vs. State of Punjab, AIR 1957 EP 27

[10]Kedar Nath Singh vs. Union of India, 1962 Supp. (2) S.C.R. 769

[11]Umesh Kumar v. State of Uttarakhand Writ Petition (Criminal) No. 1187 of 2020

[12]Patricia Mukhim v. State of Meghalaya, Criminal Appeal No.141 of 2021

Meghalaya could not be categorized as hate speech. The judges further reiterated that the disapprobation of governmental inaction could not be branded as an attempt to promote hatred between different communities and that free speech should not be muted by implicating people in criminal cases, unless such speech has the tendency to affect public order.Another case which attracted the judicial fraternity is the case of SG *Vombatkere v. Union of India*[13]the Supreme Court wondered that the many of the age old laws were being repealed and questioned the Legislature on the requirement of this law.One of the senior Advocates have mentioned that the Section 124A apart from being unconstitutional it is being grossly misused. Later, the Advocate General of India K.K.Venugopal replied that this section need not be struck down and only guidelines to be set out so that it serves its legal purpose The petition filed by Vombatkereasks for a fresh examination of Section 124A which was upheld in the Kedar Nath Singh case which was decided in the year 1962 and the court contended that the disaffection towards the Government or any of its organs is unreasonable restriction on Article 19(1)(a) and thus it will be held unconstitutional. Thus, it was argued that the top court must consider afresh the question as to the constitutional vires of 124A, unconstrained by the fact that it was upheld in *Kedar Nath*, since the reasons given in that judgment were impliedly overruled.

**Chief justice compared this dangerous law to a carpenter and elaborated that, sedition is like giving the saw to the carpenter to cut a piece of wood and he uses it to cut the entire forest itself. The gravity of this section could be clearly felt in the line mentioned by Chief Justice.*[14]

**Is Sedition Bailable**

Under the Indian Penal Code and the penal laws sedition is a non-bailable offence. Punishment under the Section 124A ranges from imprisonment up to three years to a life term, to which fine may be added. A person charged under this law is barred from a government job. They have to live without their passport and must produce themselves in the court at all times as and when required. Law cannot be static and it changes according to the situations and the needs of the society and the people at large, for that reason the supreme court recently in *Kanumuri Raghurama Krishnam Raju v. State of Andhra Pradesh*[15]Member of Parliament from the constituency of Narasapuram, Andhra Pradesh, On 14 May 2021, he was arrested by the Andhra Pradesh Criminal Investigation Department (CID) on the charges of sedition for disturbing communal harmony and

[13]SG Vombatkere v. Union of IndiaW.P.(C) No. 682/2021

[14] Hindu, T. (2021, July 15). [It] is like giving a saw to the carpenter to cut a piece of wood and he uses it to cut the entire forest itself.The Hindu. https://www.thehindu.com/app-exclusive/it-is-like-giving-a-saw-to-the-carpenter-to-cut-a-piece-of-wood-and-he-uses-it-to-cut-the-entire-forest-itself/article35336802.ece

[15]Kanumuri Raghurama Krishnam Raju v. State of Andhra Pradesh criminal appeal no.515 of 2021

attacking dignitaries of the Government. This was done during debates in a news Channel and through Social media platform where he pronounced about the governance of the Chief Minister of the State. He was held under section 124A and 153A of IPC, he was arrested and sent for judicial Custody. On behalf of Petitioner, it was contended that it was not his intention to call for overthrow of government and it was merely his disaffection and dissatisfaction with governance, where he referred the Kedar Nath Singh's Case. The S.C granted him bail on the ground that he has mere dissatisfaction against the Governance of the Government. The bail was issued to him on the conditions that the Petitioner must cooperate in investigation; Shall be present when called upon by the Investigation officers; shall be given at least 24 hours' notice by the Investigative officers to be present; Interrogation to be permitted in presence of the advocate who may not be a part of the interrogation team; on any of the matter of the case, the petitioner will not give any statements. He was issued bail on a bond of □1 lakh to the trial court stating the charges against him did not require custodial interrogation and regarding to his bodily injuries mentioned in the medical report prepared by Secunderabad Army Hospital doctors. Even though the offence of sedition is non-bailable, Mr Raju was granted bail due to his medical conditions. The bench consisting of Justice Vineet Saran and B.R. Gavai, held that the MP deserved the bail based on his medical condition and claimed that he had underwent a Heart Surgery which must considered for the granting of the bail to MP Raju[16]

**Future of the Law of Sedition**

The foundation of the democracy is the free speech which is blocked by this law. But some people argue that this law acts as a bar for expression of disaffection, disloyalty towards the Government, if it is done below the bar then it can be treated as good criticism and can be taken by the government, if the criticism is over the bar then it can called as an offence and the offender is liable to be punished under this law. The rest of them say that the fundamental right of Right to speech is being taken away .It is already high time where the parliament has to bat an eye on this age old law

The nation has achieved its Independence in 1947 and going to celebrate its diamond jubilee in 2021. Even after 75 years of Independence the country has been following this colonial law where many of them were already in their graves. The CJI has already started to enquire about the future of this law with the Attorney Generalfor which he replied thatretaining the sedition laws;one must find the constitutional ways and practical means to check the abuse and misuse of this law. In fact the law was basically inherited to spread peace and harmony in the society but its

[16] Rajagopal, K. (2021, May 21). Supreme Court grants bail to rebel YSR Congress MP Raghu Ramakrishna Raju. The Hindu.https://www.thehindu.com/news/national/andhra-pradesh/supreme-court-grants-bail-to-rebel-ysr-congress-mp-raghu-ramakrishna-raju/article34616990.ece

misinterpretation has led to the human rights violations. A difference is to be made between the two situations that is the presence and absence of the intention in case of critical views for the government. A relook in the definition, scope and application of sedition laws would reduce the misuse by all the stakeholders.

*The Sedition Law needs Reconsideration*[17]

*- Dr .Justice (Retd.) Balbir Singh Chauhan*

*Democratic legality thrives on the axiom that powers given by the law must be exercised for the purpose for which it is given and for no other* [18]

*-Upendra Baxi*

[17]Sedition law needs relook: Balbir Singh Chauhan, Law Commission chief. (2016, March 22). The Economic Times. https://economictimes.indiatimes.com/news/politics-and-nation/sedition-law-needs-relook-balbir-singh-chauhan-law-commission-chief/articleshow/51511513.cms?from=mdr

[18]Baxi, U. (2021, July 31). Why India at 75 is ready for a sedition-less future. The Indian Express. https://indianexpress.com/article/opinion/columns/why-india-at-75-is-ready-for-a-sedition-less-future-7430939/