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# **ANALYSING INTRUSION OF SECURITY IN FUNDAMENTAL RIGHTS**

Authored By- Chesta Upadhyay & Trishi Mathur

## **INTRODUCTION**

Fundamental rights serve as the cornerstone of a democratic society, assuring its citizens essential liberties and protections. In the context of India, The Constitution provides citizens with the fundamental right to freedom of speech and expression, as mentioned under Article 19(1)(a). The article encompasses freedom to voice one's thoughts, opinions, and beliefs on any subject through diverse means, including spoken words, written text, or print. It not only guarantees the freedom to communicate but also the right to disseminate and publish one's viewpoints. It is also crucial to acknowledge, however, that these freedoms, while inherent to an individual's status, are not without limitations and are subject to reasonable restrictions.

This article ventures into the complex overlap when we put this fundamental right with "Sedition law" enshrined under section 124A of Indian Penal Code (IPC). This legal provision occasionally sparks a conflict, as it restricts actions intended to incite hate or lack of loyalty toward the government duly established by law. Over time, the judiciary has grappled with the interpretation and scope of this section, aiming to make a delicate balance between the preservation of rights and the limitations imposed by Sedition laws. This dynamic has sparked continuous debate and discussion, as a legal provision that originated in colonial India has persisted into an independent and democratic India, raising concerns that it might be misused to stifle dissent. In this exploration, we delve into pivotal cases that have significantly shaped the legal landscape in India, shedding light on the ever-evolving relationship between freedom of making speech of opinions and the Sedition law.

## **HISTORY: THE SEDITION LAW**

Roots of India's Sedition law, a contentious and much-debated legal provision, can be seen back from the era of British colonial rule. It was introduced in 1837 by the British Government, under the stewardship of Thomas Macaulay, this law, codified under section 124A of the Indian Penal

Code (IPC), served to be a powerful tool wielded by the colonial masters to suppress dissent and quell any voices of opposition.

The first significant episode involving this law unfolded in 1897 when Bal Gangadhar Tilak, an iconic freedom fighter and journalist, became the first individual to be convicted of Sedition in colonial India. The British authorities levied charges against Tilak, alleging that articles published in his Marathi newspaper, Kesari, were inciting people to rise against the government's efforts to combat a devastating plague epidemic in India.

At that time, the punishment prescribed for Sedition was nothing short of severe - life imprisonment. However, even within the colonial administration, there were voices of moderation. The Chairman of the Second Pre-Independence Law Commission, Sir John Romilly expressed his reservations about the proposed punishment for sedition, drawing a parallel line with the United Kingdom where the maximum penalty for such offenses was 3 years. Recommendation was made that in India, this punishment given in this offence should be up to five years, signalling the recognition of the need for a more balanced approach to address acts of sedition.

The primary objective behind the introduction of section 124A was to penalize actions that incited feelings of disaffection or dissatisfaction towards the government. It wasn't easy to differentiate between this disaffection and mere disapprobation. The former constituted the essence of the offense, intended to curb actions that might threaten the stability and authority of the government. In the legal realm, the interpretation of the section has witnessed significant evolution. In *Niharendu Dutt Majumdar v. King Emperor*<sup>1</sup>, 1942, Federal Court held that offense of Sedition essentially hinged to the anticipation or likelihood of public disturbance. Nonetheless, this interpretation was later reversed when Privy Council in the 1947 came across the case of *King Emperor v. Sadashiv Narayan Bhalerao*<sup>2</sup>. Privy Council in this case reevaluated Tilak's case and established a new precedent, asserting that the incitement to violence was not a mandatory element for the offense of sedition. Instead, the act of arousing hostile sentiments toward the government was considered adequate to establish offence under section 124A.

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<sup>1</sup> Niharendu Dutt Majumdar v. King Emperor, AIR 1939 Cal 703

<sup>2</sup> King Emperor v. Sadashiv Narayan Bhalerao, Criminal Appeal No. 363 of 1943

Following India's independence, the makers of constitution recognized the need to reevaluate and, in some instances, discard relics of the colonial past. In 1948, "sedition" was expunged from the Constitution of India, reflecting a collective desire to cleanse the legal framework of remnants that could potentially curb freedom of speech and expression.

Yet, Sedition as a law remained intact within the part of IPC, raising questions about its continued relevance and application in the new, independent India. In 1951, Dr. Jawaharlal Nehru's government took proactive steps and initiated the first amendment in the Constitution. This amendment introduced Article 19(2), through which the State can impose "reasonable restrictions" on the fundamental right of free speech, thus placing checks on the unbridled exercise of this fundamental right.

The constitutional validity of section 124A was put to the test once more in the case of *Kedar Nath Singh v. State of Bihar*<sup>3</sup>, where constitutional bench uphold provision's validity. This judgment signified a pivotal moment in the legal narrative, as the court underlined the phrase "Government established by law" in section 124A should be set apart from critiques directed at particular parties or individuals. The court made it clear that Sedition would only apply when the spoken or expressed words demonstrated a tendency or intent to incite disturbance or disrupt public peace through the use of violence. This limitation, as outlined in Article 19(2), was deemed constitutionally sound, reaffirming the state's power to restrict speech in the pursuit of upholding public order.

In the leadership of Prime Minister Indira Gandhi in 1973, Sedition was transformed into a cognizable offense in India. This meant that individuals could be arrested without the need for a police warrant, heightening the gravity of this offense. Moreover, the offense under section 124A became non-compoundable, meaning it could not be resolved through a compromise between the accused and the victim, and it became a non-bailable offense, where if someone is arrested and imprisoned for a serious crime or, non-bailable offense they are not eligible for bail as their right.

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<sup>3</sup> Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955

## LANDMARK JUDGMENTS

The historical trajectory of India's Sedition law reveals a complex interplay of colonial legacies, post-independence reforms, and evolving judicial interpretations. This legal provision, though born under the British colonial regime, has endured into the democratic era, prompting questions about its necessity, scope, and implications for freedom of expression in modern India. In the ensuing sections, we delve into landmark cases that have left an indelible mark on the Sedition law's contemporary relevance and application, illuminating the ongoing debate over the delicate balance between free speech and the state's authority to curb seditious acts.

The judiciary in India has recognized the prominence of freedom of speech in a democratic state. Democracy thrives on free debate and open discussion, which serve as checks on government actions. The judiciary consistently emphasized on the subsequent ground where individuals have the right to voice their opinions on regarding matters involving general concern, open criticism of government policies should not serve as a basis for curtailing the freedom of expression. According to data from the National Crime Records Bureau (NCRB), in 2019, 93 cases of Sedition were filed, resulting in only two convictions. Likewise, in 2020, 73 cases were filed, yet none led to convictions. In 2021, 76 cases were registered under IPC section 124A across the country.

In the case *Patit Paban Halder v. State of West Bengal*<sup>4</sup> the police were informed that a conference is going on in a village, where seditious lectures were being delivered. Among the attendees there were 30 to 40 people having guns. When the police arrived at the scene, the people started to run away, and the suspect was later taken into custody. In this case, court held the importance of providing concrete evidence when charging someone with sedition. In the absence of credible evidence. Hence, court observed that without complete and proper evidences proved no one can be charged in sedition.

In the case of *Amish Devgan v. Union of India*<sup>5</sup>, a television journalist was charged of insulting a revered Muslim saint as a terrorist intruder. The Supreme Court emphasized the importance of protecting free speech while safeguarding group dignity and national unity. The court also mentioned to emphasize the need to balance the issue of freedom of speech and expression with the need to prevent the spread of hatred and social unrest. It highlighted the media's role in

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<sup>4</sup> Patit Paban Halder v. State of West Bengal CRA No. 337 of 2006

<sup>5</sup> Amish Devgan v. Union of India, Writ Petition (Criminal) No. 160 of 2020

promoting responsible journalism and preventing the spread of hate speech.

In *Vinod Dua v. Union of India*<sup>6</sup>, Mr. Vinod Dua was accused of making inflammatory accusations in his YouTube program. The Supreme Court in this case ruled that the words used by Mr. Vinod were not created to incite others or demonstrate a proclivity for causing trouble or disturbing public peace through the use of violence. but were only the expressions of disapproval of measures taken by the government and its officials for the crisis to be resolved swiftly and efficiently. Hence, Sedition charges should be invoked only when there is an intention to incite violence or cause public disorder.

In *Rajat Sharma v. Union of India*<sup>7</sup>, the case involved comments made by Farooq Abdullah about Article 370 of the Constitution of India as Abdullah had said in an interview that the Kashmiris prefer to be ruled by the Chinese rather than feeling or wanting to be Indians. The court stressed out that expressing diverse opinions and viewpoints that diverge from a decision made by the Central Government cannot be classified as Seditious in essence.

Finally, there was a case putting hold on further convictions under Sedition - *S.G. Vombatkere v. Union of India*<sup>8</sup>, where two journalists, Kishore Wangkhemcha and Kanhaiya Lal Shukla, filed a petition in the Supreme Court challenging the constitutionality of Sedition law.

Supreme Court in the case gave an important aspect to the decision with a clear direction to the state and central government. They were ordered to refrain from registering any FIR, conducting investigation or initiating police action under Section. This move was a clear signal to prevent misuse of a long and controversial law.

Also, if a new case is registered under Section, the person currently affected will be free to seek relief from the appropriate court. The Supreme Court has expressly requested the courts to take into consideration its existing decisions and the clear views of the Union of India on the issues. On the procedures regarding all pending cases, appeals and charges under Sedition be kept in abeyance, this important step reflects the Supreme Court's determination to prevent injustice that may result from the improper use of Sedition laws. This best approach is consistent with the

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<sup>6</sup> Vinod Dua v. Union of India (2005) 6 SCC 1 (2014) 2 SCC 1

<sup>7</sup> Rajat Sharma v. Union of India (2021) Writ Petition (Civil) No. 80/2021

<sup>8</sup> S.G. Vombatkere v. Union of India, WP (C) 682/2021

Court's mission to ensure the democratic application of the law and to protect freedom of speech and expression.

Decision of Supreme Court in this case was an important step towards an attempt of striking a balance between national security concerns and upholding democratic standards. The verdict is a testament to the court's commitment to justice and accountability, giving hope to those protesting for the protection of democratic values, law and society in India.

## THE NEW APPROACH OF PARLIAMENT

The Home Minister Amit Shah brought new bills in Lok Sabha with a vision of improving the judicial system by amending the British-era laws. Although many English laws have been criticized over the years, the act of Sedition is one of them. He said that the crime of Sedition under section 124A will be abolished in "Bharatiya Nyaya Sanhita, 2023". The law of Sedition according to him will be changed by section 150 in the new bill.

The new law that will fall into place would be section 150 which states; *"Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine."* Here, "subversion" in this section shows the desire or intention to subvert, destroy, or overthrow the existing state or system, especially the appropriate government or set beliefs. Also, the removal of "disaffection towards the Government" is an effort made to open dissatisfaction and opinions against the government but in a non-rebellious way.

Criticism of this bill is in controversy because it did not fully repealed the seditious laws as implicated but just changed the word to subversion which may leave room for interpretation of the law by the judiciary to safeguard the fundamental rights as it may not stop the misuse of such laws against the innocents.

## **NEED FOR A BALANCE BETWEEN FUNDAMENTAL RIGHT AND SEDETION**

Fundamental rights serve as the foundation of any independent and democratic state. Among these rights, free speech and expression often considered a basic right that plays a very crucial role in the society. However, the exercise of free speech raises complex questions, particularly about the limits of the state to justify the all actions of a person. Basically, the person's autonomy is the heart of such freedom and eventually any restriction on it requires careful scrutiny.

While reasonable restrictions take an important place on this right to ensure responsible use and fair approach to all citizens, the law of Sedition in a country like India which is known for the democracy and serving the safeguard of rights, remains a matter of ongoing debate.

Fundamental rights stand as the cornerstone of any sovereign and democratic nation. Among these rights, the freedom of speech and expression, often deemed a fundamental right, plays a pivotal role in society. Nonetheless, the exercise of free speech poses intricate questions, particularly concerning the extent to which the state can justify its regulation. Essentially, an individual's autonomy lies at the heart of this freedom, making any curtailment of it a subject of careful examination.

While reasonable restrictions are placed on this right to ensure responsible usage and equitable access for all citizens, the presence of laws related to Sedition in a country like India, renowned for its democratic values and commitment to upholding rights, remains a topic of ongoing debate. In some earlier cases, the court emphasized that strong and fair criticism of government actions or policies does not amount to disloyalty or disaffection to the government. In order to establish a balance between such law and basic rights without inciting disloyalty or enmity that could lead to public disorder or violence, the government needs introduced clear clauses in the law. While citizens have the right to express their views on various matters, this right is subject to certain restrictions in order to have peace and public order.

Every individual has the right to voice his opinion about working of government through comments or criticism, as long as such expressions do not incite violence or public unrest. This approach seeks to strike a delicate and thin line balance between protecting fundamental rights and addressing violative issues. The persistent existence of a law like Sedition has a deterrent

impact on freedom which is being safeguarded by Constitution.

Moreover, considering the extensive scope of actions covered by Sedition, each act should be subject to its distinct provisions, instead of being merged within a general offence, all-encompassing offense with harsh penalty. This method would enable a more refined and context-specific enforcement of the law.

## CONCLUSION AND RECOMMENDATIONS

In summary, it is crucial for the proper functioning of a democratic nation that its citizens are allowed to engage in constructive criticism, debates, and analyse the government's policies and workings. Although these discussions may at times be harsh, derogatory, or unpleasant to some, this alone should not be the criteria for charges under sedition. This should be applied when there is undoubtful proof or strong evidence of an intent to disturb public order and peace or subvert the government through violent and unlawful methods.

It is important for the legislature to establish clear limits governing the exercise of freedom of speech and expression and to outline the conditions under which convictions under Sedition are justified. The legal framework should differentiate between lawful criticism and acts that qualify as Seditious.

Moreover, there is a need for a stricter framework for Sedition laws, especially concerning the cognizable and non-bailable nature of the offense. The power of arrest without a warrant should be exercised judiciously to prevent the wrongful incarceration of innocent individuals.

The modification in the law through the new bill signifies the government's intent to provide a broader and more precise scope to the section by incorporating the term "subversion." This action addresses those acts that harms the sovereignty, unity, and integrity of India, and it is considered a reasonable limitation on the fundamental right of free speech and expression.

Additionally, another vital issue to address is the number of frivolous cases filed in the name of public interest, primarily for gaining media attention or personal gain. The government should demonstrate clarity in this regard and refrain from invoking Sedition in situations better addressed by other legislations, that deals with the Unlawful Activities, or The National Security Act, 1980,

which specifically deal with offenses related to terrorism and insurgency.

In essence, while preserving the integrity of the nation and safeguarding public order is paramount, so is the protection of fundamental rights. A fine balance between these two objectives is essential for a democracy to thrive. To navigate this delicate balance, it is incumbent upon India to revisit and revise such laws, ensuring they reflect the values and transitions of a modern society while upholding the tenets of democracy and freedom.

Because every individual possesses a fundamental right to shape their opinion on matters reflecting general interest. Publicly criticizing government policies and actions should not be a basis for limiting the right of free expression. Intolerance is detrimental to both democracy and the individual. In a democratic society, it's not required for everyone to share the same viewpoint or perspective<sup>9</sup>.



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<sup>9</sup> S. Rangarajan v. P.Jagjivan Ram, 1989 (2) SCC 574