



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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# **SEDITION; AN ARBITRARY ARTICLE; STATUS BEFORE AND AFTER THE BNS BILL**

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## **I. Abstract**

The British employed the sedition legislation to quell opposition and lock up freedom fighters who opposed the colonial government's policies, such as Mahatma Gandhi and Bal Gangadhar Tilak. The authors of the constitution had spent a great deal of time discussing different facets of this colonial statute after independence. K.M. Munshi was among the most vocal opponents of the sedition legislation, claiming that an oppressive law of this kind would endanger India's democracy. "In actuality, criticism of government is the essence of democracy," he asserted. The word "sedition" was removed from the Constitution as a result of his efforts and Sikh politician Bhupinder Singh Mann's tenacity. The First Amendment, which was approved by the administration led by Jawaharlal Nehru, the first prime minister, however, restored this statute. "Now as far as I am concerned that particular Section (124A IPC) is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass," Nehru said in 1951 when he introduced the first amendment to the Constitution. The earlier we eliminate it, the better. He hesitated, nevertheless, since his administration reinforced the sedition statute in 1951 by adding two new phrases to the list of justifications for placing "reasonable restrictions" on free speech: "friendly relations with foreign state" and "public order."<sup>1</sup> Is it an arbitrary article? Is integrity of state better? Is it just repealed for name's sake in the new bill? Are there any ways by which the new section that has replaced sedition be made better?

**Keywords:** arbitrary, oppressive, sedition, integrity, replaced etc.

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<sup>1</sup> Sedition; Threat to Indian Democracy, ORF Online, <https://www.orfonline.org/expert-speak/sedition-law-threat-indian-democracy/>, Last Visited on 1<sup>st</sup> November 2023, 10:00AM.

## II. Introduction

The use of words or actions that are intended to incite people to be or act against the state is known as the crime of sedition. According to Section 124A, Indian Penal Code (IPC), sedition is defined as "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 excites disaffection towards, the Government established by law 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." Whereas Section 150 of the new Bhartiya Nyaya Sanhita Bill reads, "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 means, or by any other means, incites or endeavors to incite secession or armed rebellion or subversive activities, or encourages feelings of separatist activities, or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment that may extend to seven years and shall also be liable to fine." Offences under the new section would be referred as "*desh droh*" rather than "*raj droh*". This constitutes as one of the key changes proposed in the Nyaya Sanhita bill. But there exist critics to this. The liberal notion that there should be a place where people are free from societal pressure gives rise to the concept of freedom of expression. This school of thought's basic premise is that restrictions on an individual's freedom of action should only be justified in cases when the behaviour may endanger other people. This domain of non-coerciveness encompasses "liberty of conscience, in the most comprehensive sense. This is the belief that everyone has the right to an opinion on any topic, whether it be practical, theoretical, moral, or religious, and that people are free to voice their opinions regardless of how unpopular, offensive, or harmful they may be—with the exception of situations in which they actually cause harm to others.

## III. Research Methodology

The research methodology that has been applied for this research paper is doctrinal research. Descriptive research shall also be incorporated. A population, circumstance, or phenomena is intended to be correctly and methodically described through descriptive study. Works from scholarly journals, statutes, extracts from articles and references from various websites shall be included as a part of the doctrinal research.

## IV. Sedition Before and After BNS Bill

### Important Changes:

**Change in name of the section:** The word sedition has been removed from the section and has been replaced by "Acts endangering sovereignty, unity, and integrity of India".

**Change in Punishment:** a) The deletion of a clause that permitted someone convicted of sedition to escape with merely a fine is a significant alteration in the proposed text Section 150 of the BNS bill: The bill's section 150 specifies that in addition to a fine, the penalty is to be sentenced to life in prison or to a term of imprisonment that may reach seven years.

b) Minimum punishment was previously three years of imprisonment with or without fine as per the circumstances of the case and the discretion of the court under sedition 124A. Now, under the BNS Bill, the minimum punishment is increased to seven years along with fine.

**Analysis:** The coming up of the new section 'integrity of state' has not helped the situation. It has rather added to despair. It has increased the punishment to seven years. Although this increase of also suggested by the Law Commission of India, previously, but was criticized. This has made the article even stricter and more prone to misuse which could lead innocents to become the accused. This has also narrowed down the scope of Article 19 of the Indian Constitution and if this bill becomes an act, there is a heavy possibility of it being challenged in the court of law to be unconstitutional as it is expected to be against the basic structure doctrine. The words inciting rebellion have still not be clearly elaborated. The court may strike down the section for less clarity and vagueness.

## V. Is Sedition an Arbitrary Article?

### Criticisms:

The imprecise language of the sedition statute is one of its primary legal issues. The government and police are empowered to harass law-abiding persons who live across the fence from them since the phrases "bring into hatred or contempt" and "attempt to excite disaffection" can be construed in a variety of ways. Sedition legislation has a vague definition that makes it easy for the authorities to falsely charge people of seditious activities. It also gives a broad definition of what might be considered seditious, which makes it vulnerable to abuse. Justice D.Y. Chandrachud brought attention to this matter recently when she issued an order prohibiting the Andhra Pradesh government from pursuing punitive measures against two Telugu news stations

that were charged with sedition under Section 124A of the Indian Penal Code (IPC). The judge, Chandrachud, said, "Nothing can be subversive." It's time we clarified what constitutes and does not constitute sedition. "Expression of views which is dissent and different from the opinion of the government cannot be termed seditious," Justice Chandrachud declared in a significant case (a PIL brought against former Jammu and Kashmir Chief Minister Farooq Abdullah). According to the Delhi High Court's decision in the Disha Ravi case, citizens cannot be imprisoned by the government "just because they chose to disagree with the state policies" and "the offence of sedition cannot be invoked to minister to the wounded vanity of the governments." These judicial decisions obviously deviate from the executive branch's interpretation of the sedition statute and demonstrate how the law is being arbitrarily abused by them.<sup>2</sup> Due to its possible interference with the rights to free speech, expression, and dissent, sedition laws in India have drawn a lot of criticism and controversy. These laws have drawn a lot of criticism for the following main reasons:

1. **Unclear and Vague Wording:** One of the main complaints centres on the sedition laws' unclear and vague wording. Acts that aim to instigate violence, disrupt public order, or overthrow the government by unlawful methods are punishable under Section 124A of the Indian Penal Code. But authorities sometimes have a great deal of discretion when deciding what exactly qualifies as seditious action since there are unclear criteria and a subjective interpretation. Due to this sweeping interpretation, there are worries about misuse and abuse, with opposing viewpoints being singled out and suppressed on the grounds of sedition.<sup>3</sup>
2. **Suppression of Dissent:** According to critics, sedition laws have often been used as a weapon to quell lawful dissent and criticism of the state or its policies. Sedition accusations have frequently been brought against activists, journalists, students, and other people voicing divergent viewpoints, which has resulted in self-censorship and a stifling impact on freedom of expression. Open communication, democratic debate, and the capacity to hold people in positions of authority responsible are all hampered by the fear of being labelled seditious.
3. **Breach of Freedom of Speech:** It has been argued that sedition laws are incompatible with the Indian Constitution's guarantee of the basic right to free speech and expression. In any

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<sup>2</sup> Supra Note 1.

<sup>3</sup>Challenging The status quo, Prime Legal, <https://primelegal.in/2023/05/28/challenging-the-status-quo-unmasking-the-criticisms-surrounding-sedition-laws-in-india/>, Last Visited on 1<sup>st</sup> November 2023, 10:00 AM.

democratic country, the freedom to voice divergent viewpoints, critique the government, and participate in nonviolent demonstrations is seen indispensable. However, the broad application and potential for abuse of the sedition laws foster a climate of fear, restricting the exercise of this basic right.

4. Non-compliance with global norms: India is a party to global human rights accords, including the International Covenant on Civil and Political Rights (ICCPR), which underscores the significance of safeguarding the liberty of speech and thought. Sedition laws in India, according to critics, violate individual rights and unnecessarily restrict the ability to voice divergent opinions, making them incompatible with the norms established by these international accords.
5. Arrests and Harassment: The public's outrage at these laws has been heightened by reports of arrests and harassment made in connection with sedition charges. Outrage has been generated by high-profile cases involving activists, journalists, and students accused of sedition. These instances highlight worries about the abuse of the legal system to silence genuine dissenting voices.<sup>4</sup>

#### Reasons behind criticism of Sedition:

1. Poor application of court directives: Each time a sedition case was dismissed, the judiciary gave advice to the law enforcement organizations on its relevance. The law enforcement agencies, however, do not follow the guidelines in letter or spirit.

#### 1.1. Tracing Case Laws

- 1.1.1 *State of Bihar v. Kedar Nath Singh (1962)*: This case is regarded as a seminal ruling on sedition in India. The Indian Penal Code's Section 124A, which addresses sedition, was upheld by the Supreme Court. However, the court made it clear that just voicing disagreement with the government or dissenting opinions does not qualify as sedition unless it incites violence or causes widespread disturbance.
- 1.1.2 In the 1995 case of *Balwant Singh v. State of Punjab*, the Supreme Court ruled that unless there was a demand for violence or public disturbance, yelling slogans in favour of a separate state did not qualify as sedition. The court stressed how crucial it is to discern between a genuine incitement to violence and the mere statement of a viewpoint.

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<sup>4</sup> Supra Note 3.

- 1.1.3 In the 2011 case of *Arup Bhuyan v. State of Assam*, the Supreme Court held that sedition requires a direct encouragement to violence or public disorder. Sedition does not occur until there is a call for violence. This includes just expressing strong opinions against the government or belonging to an organisation that has separatist demands.
- 1.1.4 *Shreya Singhal VS Union of India (2015)*: This case is noteworthy even though it had nothing to do with sedition since it addressed the constitutionality of Section 66A of the Information Technology Act, which made online speech illegal. Section 66A was declared illegal by the Supreme Court, which also said that it infringed against the right to freedom of speech and expression.<sup>5</sup>

2. Sedition is being abused more and more, as seen by the 160% increase in Section 124A prosecutions for sedition. Although the conviction rate fell from 33.3% in 2016 to 3.3% in 2019, it did so overall.

### 2.1 Tracing Case Laws:

#### 2.1.1 (2011): *Binayak Sen v. State of Chhattisgarh*

This case emphasizes the criticism of the abuse of sedition accusations, even if it is not a sedition case. Human rights activist Binayak Sen was accused with sedition; the Supreme Court granted him bail, highlighting the requirement for proof of intent to cause public disturbance or instigate violence.

## VI. Addressal of the Misuse

How is its misuse being addressed? Civil rights groups and human rights advocates have called for the removal of Section 124A, arguing that any democracy should not tolerate this oppressive colonial law. They claim that the law's definition of sedition endangers the liberties and rights of its people. Even in situations where there is no threat to public order or encouragement to violence, it is nonetheless implemented. Civil rights groups and human rights advocates have called for the removal of Section 124A, arguing that any democracy should not tolerate this oppressive colonial law. They claim that the law's definition of sedition endangers the liberties and rights of its people. Even in situations where there is no threat to public order or

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<sup>5</sup> Supra Note 3.

encouragement to violence, it is nonetheless implemented.<sup>6</sup>

## VII. The current debate: Current Case

### SG Vombatkere v Union of India

The Supreme Court will decide if Section 124A of the Indian Penal Code, 1860, that criminalises sedition, is unconstitutional.

Two journalists, Kishore Wangkhemcha and Kanhaiya Lal Shukla, petitioned the Supreme Court on February 17, 2021, contesting the legality of the sedition legislation. The Indian Penal Code, 1860's Section 124A enforces the legislation, which dates back to India's time as a British colony. "Attempts to excite disaffection towards the Government established by law in India" is how S 124A defines sedition. Journalist and local news presenter Mr. Wangkhemcha, who is located in Manipur and works for ISTV, was detained after he made disparaging remarks about the Manipur administration and its affiliation with the NDA government. In a video posted to social media, he referred to the Chief Minister as a "puppet of Hindutva." Journalist Mr. Shukla from Chattisgarh engaged in a distinct kind of political criticism by sharing cartoons on social media that parodied purportedly fictitious encounters carried out by the Gujarat police between 2002 and 2006. Sedition charges were brought against Mr. Shukla in April 2018 and Mr. Wangkhemcha in August of the same year. Subsequently, they contested the law's origins and present applicability in a 2021 Supreme Court petition. The wide scope of the legislation has always been attacked for being used as a means of restricting free expression. The petition submitted by Mr. Wangkhemcha and Mr. Shukla echoes this concern, claiming that the provision's ambiguity permits the arbitrary application of sedition legislation to suppress dissent. New defences of the unconstitutionality of the sedition legislation have been added to the growing roster of petitioners. In addition to its impact on free expression, the law's appropriateness and suitability for India are questioned; this is particularly true considering that the UK, from whence it originated, has since abolished the statute. The ruling in *Kedar Nath v Union of India* (1962) by the Supreme Court now takes precedent when deciding whether words or deeds qualify as seditious. According to the Court, evidence of seditious behaviour cannot be established without a "incitement to violence" or a "tendency or intention to create public disorder." This judgement has drawn criticism, nevertheless, for being in conflict with itself. The Supreme Court has been deliberating on

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<sup>6</sup> Sedition; Used in Modi Era, The Wire, <https://thewire.in/law/explainer-how-the-sedition-law-has-been-used-in-the-modi-era>, Last Visited on 10<sup>th</sup> November 2023, 10:00 AM.

whether to assign the case to a seven-judge bench since May 5th, 2022. On May 9, 2022, the Union Government announced that it will be reviewing the sedition legislation. Meanwhile, on May 11, 2022, the Supreme Court decided to be even more cautious and issued an order stating that "no coercive action" be done in instances of sedition that are still pending while the Union reexamines the statute.<sup>7</sup>

### **VIII. Why did sedition cases increase sharply after 2014?**

Since the BJP came to power in 2014, there has been a sharp rise in sedition charges, according to the records released by Article14, MHA, and NCRB. These studies show how, in the face of public criticism or demonstrations, state administrations led by the Bharatiya Janata Party (BJP) have effectively employed sedition accusations as a tactic. The database showed a spike in sedition charges during demonstrations or other activities unfavourable of the BJP government in the states and at the federal level. Sedition charges under NDA showed a steep increase. 65% of the almost 11,000 defendants in 816 sedition cases since 2010 were put on trial following the election of the Modi administration in 2014. 95% of the 405 Indians who were charged with sedition in the past ten years for against governments and officials were prosecuted after 2014. Of them, 149 were charged with uttering "critical" or "derogatory" statements against Modi, and 144 against Yogi Adityanath, the chief minister of Uttar Pradesh. According to the data, the number of sedition charges filed annually increased by 28% over the period of 2014 to 2020, or during Modi's administration, in comparison to the average of the UPA's second term in office from 2010 to 2014.<sup>8</sup>

### **IX. Conclusion**

In conclusion, there is cause for grave worry over the increasing abuse of sedition legislation by governments of all hues, including those in states controlled by the opposition. Liberal democracies are known for their emphasis on individual liberty and the freedom of expression. Sedition laws, when abused, undermine the fundamental rights guaranteed by the Indian Constitution. The judiciary must reconsider this harsh statute due to the urgent requirement. In addition to preserving the right to free speech in India, weakening this statute and establishing stringent limits to restrict its indiscriminate application may undoubtedly improve India's

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<sup>7</sup> Sedition Case Background, Scobserver, <https://www.scobserver.in/cases/sg-vombatkere-v-union-of-india-constitutionality-of-sedition-case-background/>, Last Visited on 11<sup>th</sup> November 2023, 10:00 AM.

<sup>8</sup> Supra Note 6.

democratic status.<sup>9</sup> The ability to express oneself freely and raise one's voice is a fundamental human right in the modern day and is a component of democracy. Therefore, the latter should always take precedence over the former in cases when there is a conflict between the sedition legislation and freedom of speech and expression. The freedom of expression, is an inalienable right that cannot be restricted in any way.<sup>10</sup>



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<sup>9</sup> Supra note 1.

<sup>10</sup> Sedition, The Law Brigade, <https://thelawbrigade.com/wp-content/uploads/2021/05/PRITHIVI-RAJ-SALRJ.pdf>, Last Visited on 12<sup>th</sup> November 2023, 10:00 AM.