ISSN: 2582-6433

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions ofthe authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

ISSN: 2582-6433

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN
2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

FREEDOM OF SPEECH AND EXPRESSION VIS-À-VIS SEDITION LAW IN INDIA

Authored By : *Ananya Singh*
Course: *B.A. LL.B. 5th Year*
Institute: *Jamnalal Bajaj School Of Legal Studies, Banasthali Vidyapith, Rajasthan*
Email: *Ananyas2.99@Gmail.Com*

CONTENT

S. No.	TOPIC
1.	INTRODUCTION
2.	HISTORICAL ASPECT OF THE LAW 2.1. REPORTS OF THE LAW COMMISSION ON SEDITION
3.	SEDITION LAWS IN INDIA 3.1. PRE-CONSTITUTIONAL ERA 3.2. POST-CONSTITUTIONAL DEVELOPMENTS
4.	JUDICIAL APPROACH TOWARDS THE LAW OF SEDITION
5.	SEDITION LAW: FROM NON-COGNIZABLE TO COGNIZABLE OFFENCE
6.	ACTIVE JUDICIARY IS THE NEED OF THE HOUR
7.	CHALLENGES TO SEDITION LAW
8.	SUGGESTIONS
9.	CONCLUSION
10.	BIBLIOGRAPHY

ISSN: 2582-6433

ABSTRACT

Once again the topic of Sedition has become the course of discussion. The Supreme Court is hearing the matters challenging it, through the appeal filed by the Editor Guild of India. ***Major General (Retd.) S.G. Vombatkere***[1] states about the Sedition law that it has a ***"chilling effect"*** on free speech and expression and is an exception of it. Freedom of speech is one of the most predominant and relevant requisite of democratic nation like India. It helps to allow an individual to gain self-satisfaction, confidence, and democracy of truth, helps a person to acquire the capacity to make commitments and maintain equity between stability and social change. In the Constitution of India, which is considered as a guardian of democracy, the fundamental right of freedom of speech and expression is indispensable i.e., it is impossible to be without it. It is the most basic human right; the first condition of liberty. A society is said to be free due to this right. This right of freedom of speech and expression is mentioned in the preamble of the **Universal Declaration of Human Rights, 1948** and as a fundamental right **under Article 19**[2] **of the Constitution of India.**

Laws should not be broadly or hazily drawn to protect the freedom of speech or to ensure the fairness of democracy and that is how the free speech has a breathing space. In India, where the Rule of Law prevails, the unpredictable and unacceptable charges of seditious offences cannot be link with the law of the nation. This paper is an attempt to throw some light on the constitutional morality, individual freedom and morality and the law of sedition in Indian penal code and their relation and how they are working together. The role of judiciary and to understand that to what extent the law of sedition is still required and how it should be placed with the freedom of speech and expression in a country like India.

Keywords: freedom, speech, expression, offence, sedition, defamation, public order, democratic, seditious, disaffection, chilling effect.

---

[1] S.G. Vombatkere v. Union of India (2022)

[2] Protection of certain rights regarding freedom of speech-

a) To freedom of speech and expression;
b) To assemble peaceably and without arms;
c) To form associations or unions;
d) To move freely throughout the territory of India;
e) To reside and settle in any part of the territory of India;
f) To practice any profession, or to carry on any occupation, trade or business.

ISSN: 2582-6433

1. INTRODUCTION

One of the major principles of democracy is the free speech and expression. As a democratic nation, we consider the freedom of speech and expression as the first and foremost human right. This expression is the first condition of liberty due to its considerance as the mother of all civil rights because it makes the life worthwhile. This freedom is designated as the soul and spirit of the society.

Article 19 (1) (a)[3] of the Constitution of India assures the right of free speech and expression as the fundamental right to all the citizens of the country. However, there are certain restrictions provided under this **Article 19(2)[4] of the Constitution,** which are as follows:

- Interest of authority and ethics.
- The safety of the State.
- Amiable relations with foreign countries.
- Public order, dignity or righteousness.
- Contempt of Court.
- Defamation.
- Encouragement of an offence.

The offence of Sedition is defined under Section 124-A[5] of IPC. In a democratic nation, the relevancy of Sedition law is continuously a controversial topic. The people, who oppose this law, see this offence as a historical object of colonial era to suppress the public. While, some support this law by saying that it provides reasonable restriction on the opinions that are destructive to the security and public order of the nation.

In general, **"Sedition"** means **the use of words or actions that are intended to encourage people to be or act against a government.**

[3] All citizens have the right to freedom of speech and expression.

[4] Nothing in sub-clause (a) of clause 1 of Article 19 shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with Foreign States, public order, decency, or morality or in relation to contempt of court, defamation or incitement to an offence.

[5] Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

ISSN: 2582-6433

In Legal term, Sedition is defined as **"the offence of creating a revolt, disturbance, or violence against civil authority with the intention to cause its overthrow or destruction.**
In the colonial era, this Section had been expound broadly and was provocative to instigate disaffection towards the government. So it was held punishable whether or not it created public disorder or hatred. Clearly, the Section in such a wide-ranging form could not be assisted under Article 19 (2) of the Indian Constitution.

2. HISTORICAL ASPECT OF THE LAW OF SEDITION

The term Sedition first came into being in the Elizabethan Era as the **"conception to instigate by words or writing disaffection towards the State."** There are some reports of law commission which explains about the establishment of various laws, amendments and also pre and post constitutional developments related to the Sedition Law.

2.1. REPORTS OF THE LAW COMMISSION ON SEDITION

The 39th Report (1968) of the Law Commission, ***"The Punishment of Imprisonment for Life under IPC"***, recommended that offences like sedition should be punished either by life imprisonment or rigorous imprisonment or simple imprisonment, which may extent to 3 years, but not more.

Further, in **42nd Report**, the Commission gave decisive suggestions for Section 124-A of IPC to be inserted as:

i. Inclusion of mens rea.
ii. Defamation cannot be accepted against the Constitution of India, Legislatures and Judiciary along with the government, so the ambit of this section should be broadened.
iii. Erasing the cavity between "imprisonment for life" and "imprisonment which is extendable to 3 years" or penance. It recommended a maximal punishment of 7 years in spite of the above.

But, the government of India denied these suggestions and later came another report, which was the **43rd Report** named, ***"Offences against the National Security (1971)"***, also dispensed with the "sedition" as it considered "sedition" as the part of national security.

The **267th Report of the Law Commission** distinguished between "Sedition" and "Hate Speech" by explaining that Hate Speech is the offence that affects the State indirectly by harming the public peacefulness while "sedition" directly affects the State. Hate Speech is dealt under **Section 153A[6], 153B[7], 295A[8] and 505[9] of IPC** while Sedition is dealt under **Section 124-A of IPC.**

After discussing various reports on Sedition, later came the points to discuss about Sedition laws worldwide and in India before Independence as it was the law introduced during the colonial period to suppress the rights and speech of the Indians who were strongly against the British government ruling over Indians.

3. SEDITION LAWS IN INDIA

3.1. PRE-CONSTITUTIONAL ERA

Macaulay's Draft Penal Code, 1837 agreed to Section 124-A of IPC and proposed the punishment of life imprisonment. Chairman of Second Pre-Independence Law Commission, Sir John Romilly, suggested that in England, the punishment for sedition is of 3 years and on this basis in India also, it should not extend more than 5 years. However, this section was not included in the enactment of Indian Penal Code, 1860. But it was a surprising decision.

Later on, Mr. James Stephen dealt with to correct this omission and as a result included the offence of sedition under section 124-A of IPC, 1860 throughout the Special Act XVII of 1870. One of the main reasons of Mr. Stephen to introduce this section was that if this section would

[6] Promoting disharmony, enmity or feelings of hatred between different groups on the grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony.

[7] Imputations, assertions prejudicial to national integration.

[8] **Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs:** whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

[9] **Statements conducing to public mischief:** whoever makes, publishes or circulates any statement, rumor or report with intent to cause or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or with intent to incite, any class or community of persons to commit any offence against any other class or community.

not have been introduced, the offence would be punished more severely under other provisions of the Code. The intention determined under this section was to penalise the act of excited feelings of dissatisfaction towards the government. Therefore, public was free to express its feelings or expressions but in a way which would not show any harm of disaffection towards the authority.

Section 124-A was added to the Code in 1870 but not in the present form. The term 'disaffection' was discussed in a number of cases during the course of 1870 to 1898. In ***Queen v. Jogendra Chandra Bose***[10]**,** C.J. Petheram defined 'disaffection' as a feeling opposite to affection, or dislike or hatred. The meaning of 'disapprobation' is simply dissatisfaction. In this case, it was further said that if the words spoken or written by any person create in the minds of hearers the feeling of hatred or dislike towards the government, he will be guilty under this section. Further, Strachey, J., agreed with this judgement and used it in the case of ***Queen Empress v. Bal Gangadhar Tilak***[11]**.** Bal Gangadhar Tilak was convicted of sedition twice. In 1897, Tilak was convicted of by the Bombay High Court because of his seditious speech that resulted into the murder of two British officers. This resulted into broadening of the scope of 'disaffection' towards the government under section 124-A of IPC to include disloyalty. Secondly, he was convicted in 1908 due to his writings in a Marathi newspaper 'Kesari' which he founded in 1881.

Earlier, Sedition was the law in United Kingdom to deal with the public who acted against the government but due to the aggressions which were shown by the Indian freedom fighters and the rest of the public against the British rulers to get our nation free from them, the British government brought the laws related to Sedition in India to deal with the hatred and disaffection which arose against them. Hence, there came Section 124-A of IPC which dealt with the provisions and punishment for Sedition in India.

The Indian Penal Code (Amendment) Act, 1898 amended Section 124-A of IPC by providing for the punishment of transportation for life or any shorter term. The previous section included the feelings of dissatisfaction towards the government established by law, while the amendment concluded that the section also focused to bring in hatred or disrespect towards the

[10] (1892) I.L.R. 19 Cal. 35
[11] (1917) BOMLR 211

ISSN: 2582-6433

government, punishable. Since then, the offence was punishable with life imprisonment or with fine or imprisonment for 3 years and/or with both.

The Prevention of Seditious Meetings Act, 1907, was enacted by the West Minster Parliament, to stop the public meetings to withheld in order to prevent the offence of sedition or to cause disrespect or disaffection as in many parts of India meetings were held against the British rulers by the Indian leaders to aware the public about the main objectives of the British. The Act of 1907 was then repealed by the Prevention of Seditious Meetings Act, 1911. Therefore, Section 5 enabled the government to prevent the public meetings to hold in order if they disrespect or spread hatred towards the statutory authority, violation of which could be punished with imprisonment for a term of 6 months or fine or both.

In ***Dutt Niharendu Majumdar v. The King Emperor,***[12] sedition was defined by the Federal Court of India as leading to 'public disorder or reasonable anticipation of public disorder'. The Court highlighted that sedition inferred some form of lawlessness. But the decision was overruled by the Privy Council in ***King Emperor v. Sadashiv Narayan Bhalerao***[13]**.**

While discussing sedition in a debate in the Constituent Assembly in 1947, Sardar Vallabhbhai Patel proposed an exception for 'seditious' language saying that it must serve as an exception to the right to free speech. Further, the Constituent Assembly rejected the proposal in 1948 by counting sedition as an instrument of British rulers to restrain the Indians from standing against the cruel acts of the British.

To conclude the pre independence seditious aspect in India the word 'sedition' was tried to drop from Article 13(2) of the Draft Constitution of India by Hon'ble Justice K.M. Munshi through an amendment. On 26 November, 1949, the word 'sedition' was removed from the Constitution and an absolute and total freedom of speech and expression was given to Article 19 (1) (a) of the Constitution. Although, Section 124-A remained to continue in the Indian Penal Code.

[12] AIR 1939 Cal 703
[13] Crl No. 363 of 1943

ISSN: 2582-6433

3.2. POST-CONSTITUTIONAL DEVELOPMENTS

After independence, the framers of the Constitution did not consider Sedition as a penal statute because it was not accepted to them to impose restriction on the freedom of speech and expression.

In ***Romesh Thappar v. State of Madras,***[14] the Sedition first came into consideration as an offence under section 124-A of IPC after independence. In this case, the Supreme Court held that anything will not lie under the ambit of Article 19(2) of the Constitution of India until and unless it threats or harms the security of the State. For this reason, two restrictions were added by the First Amendment Act, 1951[15]:

- **i.** Good ties with foreign countries.
- **ii.** Public security and order.

In ***Kedar Nath Singh v. State of Bihar,***[16] the constitutionality of Section 124-A of IPC was challenged. In this case, a 5 judge bench reversed the previous decisions of the high court and confirmed the constitutional validity of Section 124-A of IPC but with certain reasonable restrictions, to avoid its misuse. Ensuing the decision of ***Romesh Thappar case,*** the court held that any speech unless accompanied with hatred or disaffection would not be considered as an offence under section 124A, IPC. The speech should incite some "public disorder" to fall under the category of "sedition". The court also issued certain **"guidelines"** when a speech cannot be determined as seditious in nature.

In its guidelines under the verdict, "public disorder" is considered to be the necessary ingredient for the offence of sedition. The court held that mere slogans accompanied with certain hatred or threats would not be qualified as sedition.

But in ***Kedar Nath case,*** the Court did not provide any direction to choose who decides if there is an encouragement to violence.

[14] 1950 AIR 124
[15] It provided means to restrict freedom of speech and expression.
[16] 1962 AIR 955.

ISSN: 2582-6433

In ***Balwant Singh v. State of Punjab,***[17] the petitioners were accused of sedition because of their slogans- *"Khalistan Zindabad, Raj Karega Khalsa (Hindus will leave Punjab and we will rule)"* in the public place, as the real intention behind the speech would be taken into account before considering the offence as seditious in nature.

In further rulings, ***Dr. Vinayak Binayak Sen v. State of Chhattisgarh,***[18] the court held that a person, who has not written the speech but circulated it, can also be charged with sedition.

In the case of ***Arun Jaitley v. State of Uttar Pradesh,***[19] the former minister, Arun Jaitley criticized the Supreme Court's ruling declaring the National Judicial Appointment Commission unconstitutional- would not amount to sedition.

4. JUDICIAL APPROACH TOWARDS THE LAW OF SEDITION

In Patit Paban Halder v. State of West Bengal[20]***,*** the Police obtained information about a conference being held in a village where seditious lectures were being delivered. They were found to have various seditious pamphlets and handouts. A complaint was filed against them and they were charged **under section 121-A[21], 122[22], 124-A of IPC, Section 25(a)[23] and 35[24] of Arms Act, 1959, Section 4[25] and 5[26] of the Explosive Substances Act, 1908.**

[17] (1995) 3 SCC 214
[18] AIR 2011
[19] AIR 2016
[20] CRA 337 of 2006 with CRAN 3530 of 2018
[21] **Conspiracy to commit offences punishable by Section 121:** whoever within or without India conspires to commit any of the offences punishable by Section 121 or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

[22] **Collecting arms, etc., with intention of waging war against the government of India:** whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description fir a term not exceeding ten years, and shall also be liable to fine.

[23] Whoever manufactures, sells, transfers, etc., any arms or ammunition in contravention of Section 5, shall be punishable with imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine.

[24] Criminal responsibility of persons in occupation of premises in certain cases.
[25] Punishment for attempt to cause explosion.
[26] Punishment for making or possessing explosives under suspicious circumstances.

 ISSN: 2582-6433

The Calcutta High Court observed that the prosecution had failed to prove the allegations against the appellants and there was no evidence to link the accused with the charged offences. Therefore, the appellants were given the *benefit of doubt*[27].

In Kishorechandra Wangkhemcha v. Union of India*[28],** in 2018, two journalists were charged with sedition who had posted on social media against the government functionaries. In 2021, a writ petition was filed at the Supreme Court challenging the constitutional validity of Section 124A of IPC. They proposed that it infringes their Right of Expression under Article 19(1) (a) of the Constitution and the restriction forced upon by Section 124A, IPC does not lie under the provisions of 'reasonable restrictions' within the meaning of Article 19 (2) of the Constitution. They also claimed that the judgement set in ***Kedar Nath case in 1962 is outmoded as it does not follow the current laws concerning with safety, security and public order.

***In Vinod Dua v. Union of India*[29], Supreme Court indicates FIR filed against Journalist Vinod Dua.** In 2021, a two- Judge Bench of the Supreme Court rejected the FIR of sedition filed against a journalist who commented against Prime Minister, Narendra Modi about handling the COVID-19 crisis in the country. Hon'ble Justice U.U. Lalit held that his comments could not amount to sedition as it did not create any public disorder. According to this case, the Court also recapitulated the Kedar Nath judgement.

***Rajina Parbin Sultana v. State of Assam*[30]** Ms. Rajina Parbin, the petitioner was detained **under section 124-A of IPC and Section 2 of the Prevention of Insult to National Honour Act, 1971[31]**, when a photo of her enjoying meal at the dining table with her family on the occasion of Eid went viral on social media. She was accused of using the National Flag as the table cloth in the photo. In this case, it was argued that the accused used a table cloth that looked very similar with the national Flag.

The Court accepted the defence and advised the petitioner to be careful in the future; because it did not appear like an act of overthrowing hatred or disaffection against the government.

---

[27] A concession that a person or statement must be regarded as correct, if the contrary is not proved.
[28] Writ Petition (Crl.) No. 106 of 2021
[29] Writ Petition (Crl.) No. 154 of 2020
[30] Case no. : Bail Appln./1123/2020
[31] Insults to Indian National Flag and Constitution of India.

ISSN: 2582-6433

In December 2020, the Government of Delhi sued 18 people who were charged with *Delhi riots case* which took place on February 24, 2020 due to the controversy occurred against the citizenship law. This included Umar Khalid and his fellows from J.N.U., Sharjeel Imam, Devangana Kalita, Natasha Narwal, and local politicians, Tahir Hussain and Ishrat Jahan- brought under many trials including Sedition.

In January 2021, cases related to Sedition were filed in Madhya Pradesh and Uttar Pradesh. A Parliament member, Shashi Tharoor and some journalists namely, Rajdeep Sardesai, Zafar Agha, Mrinal Pandey, Vinod Jose, Paresh Nath and Anant Nath; regarding a tweet which blamed the police for the death of a farmer in Delhi during a protest on the Republic Day. The arrests were kept on hold by the Supreme Court of India and the decision is still pending.

On February 26, 2021, the government of Delhi gave punishment to the students of Jawaharlal Nehru University (J.N.U.), namely, Kanhaiya Kumar, Anirban Bhattacharya, Umar Khalid, Mujeeb Hussain, Aquib Hussain, Muneeb Hussain, Rayeea Rasool, Umar Gul, Basir Bhat and some other student extremists were charged with Sedition for a case in 2016.

In ***Shreya Singhal v. Union of India***[32] the Hon'ble Supreme Court of India entirely refuted Section 66-A[33] of Information Technology Act, 2000. Section 66-A was constitutionally ambiguous according to the argument of the petitioners. Two women were arrested by the police because they posted disrespectful and insulting comments on facebook regarding the closing of city of Mumbai due to the death of a political head. The police arrested these two women and charged them under section 66-A of the Information Technology Act, 2000 which says about punishment to the individual who sends any offensive and disrespectful information or content through the computer resources or any other communication system. The content transferred should be for creating obstruction, ambiguity, vagueness, disrespect, ill-will, danger, risk, or hatred.

[32] (2015) 5 SCC 1

[33] **Punishment for sending offensive messages through communication service, etc.:** Any person who sends, by means of a computer resource or a communication device,

(a) Any information that is grossly offensive or has menacing character; or
(b) Any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device;
(c) Any electronic mail or message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,

shall be punished with imprisonment for a term which may extend to three years and with fine.

ISSN: 2582-6433

The police then released them and dissolved their after which those women appealed and challenged the constitutionality of Section 66-A of Information Technology Act, 2000 on account that it violates the right to freedom of expression. The Court held the Section 66-A of Information Technology Act, 2000 as unconstitutional because it violated right to freedom of expression under Article 19 (1) (a) of the Indian Constitution, also the ground of petition of the women was rejected because this section was already declared as unconstitutional.

G.S. Mani v. Commissioner of Police Delhi & Ors.[34] Here, Kerala MLA KT Jaleel made some tweet regarding Kashmir. The Delhi Court dismissed the complaint by saying that the MLA did so only to get certain "political mileage" which did not harm peace or create any kind of public disorder and also that the secularity and peace of the nation is not that frail or weak that it would get disturbed by such political stunts or get spoiled by random statements of the politicians.

These are very less instances. In the last few years, Sedition has been seen as being registered to those who withstood a nuclear power plant, tribals who protested against their territory snatch, protestors against the Citizenship (Amendment) Act, 2020, those who were against National Register for Citizens (NRC), just criticizing the Prime Minister or the Chief Minister of any State, or farmers and those who were protesting in favour of the farmers against the Farmers Bill, 2021.

While considering so many petitions, the Supreme Court challenged the constitutional validity of Section 124-A of IPC and declared not to register any new case under the sedition law. The court also pronounced that the existing cases would be provided with bail and released immediately.

Further, the Supreme Court pronounced sedition as a colonial law which was used against the freedom fighters of India to suppress their voice and the court also questioned its existence even after 75 years of independence.

By examining the extensive abuse of the sedition law, a bench headed by the Chief Justice of India, N.V. Ramana issued a notice to the Central Government. The Court asked the Centre to

[34] Dated on 16/09/2022.

ISSN: 2582-6433

tell why it is not getting rid of the colonial era penal law of sedition, which was used by the British to silence the public like Mahatma Gandhi, Bal Gangadhar Tilak, etc. to stop or suppress their voice of freedom movement.

"Hon'ble Chief Justice of India, N.V. Ramana said that the use of sedition is like a carpenter being given an axe to cut the tree but he uses it to cut the entire forest."

The constitutionality of the sedition law under section 124A of the India Penal Code, 1860 is challenged by the Major General S.G. Vombatkere (Retd.) because it causes a **"chilling effect"** on the fundamental right to freedom of speech and expression. By **The Doctrine of Chilling effect** it can be understood that the chilling effect is the quashing of free speech and legitimate forms of disagreement among the public because of fear of the consequences. The effect occurs within a society because of punitive actions taken against others who have exercised their rights. It does not directly affect the free speech but has the impact of self-denial. The restriction imposed by the legislation should be narrow enough and must not be broad and vague to create the problem of chilling effect. The direct as well as inevitable consequence of the restriction imposed must be considered by the court while deciding the constitutional validity of the legislation.

Chilling effect was first used as a legal term in 1965 by J. William Brennan in ***Lamont v. Postmaster General***[35]***,*** earlier it was referred to as a deterrent effect on freedom of expression. In ***New York Times v. Sullivan***[36]***,*** the Supreme Court of U.S. recognized the chilling effect by observing that incorrect statements are inevitable in a free discussion and thus must be protected to allow freedom of speech to have a breathing space.

So far, what is more agitating is once detained under sedition law, it is immensely strenuous to get bails as the trial process can be extensive.

This leads to aggravation of nascent people and brings out a terror and loss of courage in others to speak unfavourable towards the government. The cases of Kashmiri disciples in Hubli is an example of the difficulty of getting bail in a sedition case as they got default bail after 100 days of Police custody.

[35] 381 U.S. 301 (1965)
[36] 376 U.S. 254 (1964)

ISSN: 2582-6433

Sometimes, we can say that Sedition is the prime wrongdoing but many times it blends with the Unlawful Activities (Prevention) Act, 1967 (UAPA) and other ruthless laws. Continuously, it has been seen that people just having a divergence of thoughts or views land behind the bars, charged with Sedition. Journalists, Dalits, tribals, activists are being major targets. In India, Assam tops in Sedition cases since 2014, followed by Haryana, Jharkhand, Uttar Pradesh and Karnataka. There is a data which indicates that approximately 65% of cases were filed in 2014. There were mainly students, journalists, authors and academics among who were charged with Sedition in spite of Supreme Court's Kedar Nath judgement in which it was strictly upheld that student, academics, journalists, etc. should not be charged with sedition just to criticize or having diverse thoughts about the government or politicians.

96% of the cases were implicated for having disaffectionate thoughts regarding politicians and government since 2014. 149 of them were for having crucial remarks against the Prime Minister, Narendra Modi and 144 were for having been against Uttar Pradesh Chief Minister, Yogi Adityanath. Many of these were filed during the protests against the Citizenship Amendment Act, 2020 and the rape case of a Dalit in Hathras, Uttar Pradesh. It is ironical that in many cases, courts have quashed the FIR's or provided accused with regular bails, the police regularly continues to file the FIR on shallow charges of Sedition and even arresting the accused which also include tribal extremists, journalists, etc.

This law has been severely misused creating the chilling effect among the public. Some have the resources to reach the Supreme Court but the rest who are poor suffer a lot by spending a lot of useful months or years of their life behind the bars which affects their families, career, jobs, study and metal health. Subsequently, Sedition is merged with UAPA and other adverse laws which entangle the cases and thus poor people suffer more because it is not easy for everyone to reach the court and get proper legal aid.

The judiciary, thus, continuously keeps paying heed on Kedar Nath case which highlights that the person should be charged with Sedition by properly calculating the intensity of the crime or violence to apply Sedition beforehand. The police is also repeatedly advised to stick to this judgement before filing an FIR.

ISSN: 2582-6433

However, it is astonishing that not even a single police officer is sued for blatant misuse of Sedition as an offence and not even a single victim has been compensated for his harm or loss. It is a basic understanding that in a large number of cases, Police measures have been feverishly supported and shielded by the Solicitor General of India, the Assistant Solicitor General and the Advocate General of the State. The Assistant Solicitor General has even reached to the Sessions Court to defend the Police measures and to repel the bail of students and journalists.

5. SEDITION LAW: FROM NON-COGNIZABLE TO COGNIZABLE OFFENCE

It is a salient characteristic which needs to be paid heed on. The verdict of Kedar Nath Singh case was conveyed in 1962 when India was under the control of British rule Code of Criminal Procedure, 1898. During that period, sedition law was considered to be non-cognizable offence, which means that an accused under the offence of Sedition could be arrested only after a warrant issued by the Magistrate. There occurred a judicial interrogation taking place before the arrest. For example, M.K. Gandhi was arrested after the Magistrate issued a warrant against him under the charges of Sedition.

Later, today's Code, the Code of Criminal Procedure, 1973 replaced the Code of 1898. Beneath the new Code, Sedition Law is considered as a cognizable offence which means that now there is no need to get a warrant issued by the magistrate before an arrest under Sedition Law. Police can directly arrest the accused without any judicial warrant of Magistrate. Hence, the supervision of judiciary has been repealed. It has given unrestricted power in the hands of Police.

The Sedition Law has undergone several changes and through a long journey from being brought to India by the British Government to be called as unconstitutional during the debate of Constituent Assembly to being held as constitutional along the Republican period, to even becoming more powerful from being called as non-cognizable offence to become a cognizable offence in 1973.

ISSN: 2582-6433

6. ACTIVE JUDICIARY IS THE NEED OF THE HOUR

Sedition law is one of the most oppressive laws in India among UAPA, National Security Act, 1980, Armed Forces (Special Forces) Act, 1958, etc. which have the necessity to get revoked. The utmost exploit and misapplication of Law of Sedition can no longer be soothed by writing down, readings, guidelines, or pleasing the Police or Politicians. It is an oppressive, anti-democratic law and in opposition to freedom of speech and expression. It is continuously going to be used to violate the fundamental right to *life and personal liberty*[37]. This law will not be revoked by the Parliament because the political party in power has so many benefits from it and even it is misused by the opposition parties too whenever they get the chance. Therefore, the Apex Court of the country should stand high and try to repeal such law which stands in between the fundamental rights of the citizens.

7. CHALLENGES TO SEDITION LAW

- Sedition was used by the Colonial executives as a tool to overpower the people who condemned the British policies. The hard-working, loyal freedom fighters like Lokmanya Tilak, Bhagat Singh, Jawaharlal Nehru and M.K. Gandhi were charged with Sedition for dictating seditious writings, activities and speeches. Hence, pervasive use of this law harks back to the colonial period.
- As Hon'ble Justice K.M. Munshi said, **"the essence of democracy, is the criticism of government."** The sedition law sets aside this core spirit of the freedom of speech and expression. It penalises critics and opposition and it weakens the basic structure of a democratic republic to the point of exhaustion.
- The restrictions imposed in Kedar Nath Singh case have rarely been observed. In the recent years, there is seen an enhanced misuse of law, where even the most affectionate acts of opposition have been met with a charge of sedition.
- Section 124A is an object of virtue of colonial legacy which is unsuitable for democracy. It is a restriction on lawful discharge of freedom of speech and expression.
- Right to question and criticize is the fundamental of democracy which should not be raised as sedition. Disapproval and criticism of government in a decent manner are the rights and essential ingredients of the public residing in a democratic state.

[37] Article 21 of Indian Constitution Act, 1950: No person shall be deprived of his life or personal liberty except according to procedure established by law.

ISSN: 2582-6433

- The British who introduced sedition in India to suppress the Indians have themselves set aside this law in their country. So, there is no reason why India should not abolish this section.
- IPC and Unlawful Activities Prevention Act, 2019 have provisions to penalize "public disorder" or "displacing the government with violence and illegal means". These are sufficient enough for protecting national integrity and the government from disaffection. There is no need for sedition law under section 124A of Indian Penal Code.
- Nowadays, sedition is being misused frequently as a tool to abuse political disputes. As being a part of democratic nation, we should decide to set this rule aside which is becoming a great issue of debate and a stain on democracy of such a vast and unified country.In 1979, India accepted the International Covenant on Civil and Political Rights (ICCPR), which sets forth international standards for the protection of freedom of expression. However, misuse of sedition is in disagreement with India's international commitments.

8. SUGGESTIONS

- Section 124-A should not be misused as a tool to restrict free speech. The Supreme Court's warning given in Kedar Nath Singh case on execution under the law can check its misuse. It needs to be re-examined under the changed circumstances of new era and also on the anvil of ever-evolving tests of necessity, proportionality and arbitrariness.
- The higher judiciary should use its executive power to sensitize the statutory authority and police to the constitutional provisions protecting free speech. The definition of sedition should be narrowed down to indicate only the issues relating to territorial integrity of India as well as the sovereignty of the country. To protect our country, we must keep a check on the constitutional guarantees to personal liberty and freedom so that they do not go in vain. For that, each of our penal laws must have a concern for equality, justice and fairness.
- There should be formation of a committee which could help the public to keep their problems forward, in front of the authoritative statute without any fear or harm to their dignity which they have to face by getting debarred.
- The public should get aware of their rights and principles so that they can come forward to safeguard themselves from the politicians or others who misuse the charge of Sedition by fraudulently accusing innocent people.

- The State and the Central Governments should stop from further filing any FIR regarding Sedition charges until any decision is taken by the Apex Court either against or in favour of Section 124-A.
- Nor the Sedition Law must be decriminalised neither it should be treated so strictly that it creates a chilling effect among the people. It has been repealed from the United Kingdom from where India got origin of Sedition. Now, it is the time when India should also stop treating it as a cognizable offence. Rather, it should be again treated as a non-cognizable offence so that police must not get the whole power in their hands and the accused could get a chance to prove him before getting any punishment.
- As the safeguards of the State, the public legal officers and the police should find and consider these cases as a misapplication of law to protect public order and safety of the citizens and try not to create a chilling effect amidst them.

9. CONCLUSION

Dr. Justice (Retd.) Balbir Singh Chouhan said that the sedition law needs reconsideration. To conclude, sedition laws and their heightened misuse by government (including opposition - ruled states) are a matter of fundamental concern. Personal liberty and the right to freedom of speech and expression authenticate the free democracy but sedition laws are their blatant misuse. They attack the basic structure of democracy and the related rights provided in the Constitution of India. India has faced a lot of trouble due to Sedition since last 75 years of independence, due to which there is an immediate need for the judiciary to fix this oppressive law with some apposite and consequential changes and provides a broad margin of what can be classified as seditious.

It is undoubtedly true that a law cannot be made unconstitutional merely because it has been subject to misuse. But in the case of offence of sedition, the logic for the judgement of Kedar Nath Singh case and the survival of Section 124-A have both become inadmissible with time.

- Since 1962, when the judgement was passed, the Supreme Court’s reading of Fundamental Rights has undergone a transformative change.
- For instance, the Court has, in recent times, struck down penal laws on grounds, among other things of ambiguity in their language and of the chilling effect that the restrictions have on free speech.

ISSN: 2582-6433

India is the largest democracy of the world and the right to freedom of speech and expression is the basic fundamental right of the people living in such a vast democratic nation. Therefore, the mere expression of thought which is in disagreement with the government of the nation should not be treated as the offence of sedition and so it should be decriminalized.

10. BIBLIOGRAPHY

A. Primary Sources

1. Statutes

- The Arms Act, 1959
- The Code of Criminal Procedure, 1973
- The Explosive Substances Act, 1908
- The Indian Constitution Act, 1950
- The Indian Penal Code, 1860

2. Case Laws

- Arun Jaitley v. State of Uttar Pradesh (2016)
- Balwant Singh v. State of Punjab (1995)
- De Libellis Famosis case (1606)
- Dutt Niharendra Majumdar v. The King Emperor (1939)
- G.S. Mani v. Commissioner of Police, Delhi & Ors. (2022)
- Kedar Nath Singh v. State of Bihar (1962)
- King Emperor v. Sadashiv Narayan Bhalerao (1943)
- Kishorechandra Wangkhemcha v. Union of India (2021)
- Lamont v. Postmaster General (1965)
- New York Times v. Sullivan (1964)
- Patit Paban Halder v. State of West Bengal
- Queen Empress v. Bal Gangadhar Tilak (1917)
- Queen v. Jogendra Chandra Bose (1892)
- R. v. Boucher (1951)
- Re Debs case (1895)
- R. v. Sullivan (1868)
- Rajina Parbin Sultana v. State of Assam (2020)

ISSN: 2582-6433

- Romesh Thappar v. State of Madras (1950)
- S.G. Vombatkere v. Union of India (2022)
- Shreya Singhal v. Union of India (2015)
- Dr. Vinayak Binayak Sen v. State of Chhattisgarh (2011)
- Vinod Dua v. Union of India (2020)

B. Secondary Sources

1. Books

- Constitutional Law of India by Dr. J.N. Pandey
- Criminal Procedure Code by C.K. Takwani
- Indian Constitutional Law by M.P. Jain
- Indian Penal Code by S.N. Misra

2. Websites referred

- https://www.orfonline.org/expert-speak/the-sedition-law-the-past-present-and-future/
- https://www.indiatimes.com/explainers/news/explained-whats-the-current-sedition-law-in-india-570348.html
- https://www.epw.in/journal/2011/08/perspectives/disaffection-and-law-chilling-effect-sedition-laws-india.html
- https://www.legalserviceindia.com/legal/article-9072-is-democracy-threatened-by-sedition-laws-.html
- https://www.newsclick.in/why-supreme-court-must-declare-sedition-law-unconstitutional