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# **SEDITION LAW: AN ANALYTICAL STUDY**

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## *Abstract*

Almost a year after the Apex Court had stayed the operation of the sedition laws; the Law Commission in its 279<sup>th</sup> report has recommended that the provision related to sedition be retained with few alterations. This begs the question of these colonial laws being relevant in a democratic society, with paramount significance given to fundamental rights, which include the right to speech and expression. While the legislature has made no attempt to remove the law, the judiciary has also held different views on this matter time and time again. The article would first focus on the history of the provision, along with the judicial interpretation. It will also compare the sedition law introduced in the new code. Further, it will then delve into the recommendations of the Law Commission and the relevance of the provision in the present society.

*“If liberty means anything at all, it means the right to tell people what they do not want to hear”*

-George Orwell

## **I. Introduction**

A study of the applicability of Section 124A of the Indian Penal Code was sought by the Ministry of Home Affairs of the Government of India in the year 2016 along with a recommendation for any required revisions. In response to the aforementioned request, the Law Commission published its 279<sup>th</sup> Report, titled *"Use of the Law of Sedition."* This report is so on the backdrop of the Apex Court ordering that the 152-year old sedition law under Section 124A of the Indian Penal Code should be effectively kept in abeyance till the Union Government reconsiders the provision and requesting that neither the Centre nor the State governments file any First Information Reports under the said provision while it was being re-examined.<sup>1</sup>

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<sup>1</sup> KEEP THE SEDITION LAW IN ABEYANCE: SUPREME COURT RULES IN A HISTORIC ORDER available at <https://www.livelaw.in/top-stories/breaking-supreme-court-urges-centre-states-to-refrain-from-registering-firs-invoking-section-124a-ipc-198810> (last visited on April 10<sup>th</sup>, 2024)

The term 'sedition' is derived from the Latin word *seditio* which translates into 'riot'. However, sedition in its usage under English law did not actually mean an act, unlike rioting.<sup>2</sup> The law punishing seditious speech has its inception under English law. In medieval England, libel and slander that would make the rulers unpopular with their subjects were considered sedition.

It would be interesting to note that when the Indian Penal Code was introduced in 1860, this paragraph was omitted. James Stephen, however, immediately got to work correcting this blunder. Sedition became a crime under Section 124A of the IPC as a result of the Special Act XVII of 1870.

The national struggle for freedom ended in the year 1947, and a constituent committee was formed to frame a Constitution to guide the newly independent nation. One of the main contours of this Constitution was the Fundamental Rights given to the citizens, especially the freedom of speech and expression, which was denied by the previous repressive colonial regime. The Constitution's framers debated which model to adopt and finally chose against the "absolutist" approach in favour of the "expressly restrictive" for.<sup>3</sup>

The eight reasonable constraints listed in Article 19(2) as the exclusive limitations on the basic right to free speech and expression are not the only restrictions, it can also be suspended during emergency under Article 358 of the Constitution of India. Thus, as is clear from the discussions held in the Constituent Assembly and the debates and deliberations leading up to the First and Sixteenth Amendments to the Constitution, the entire objective of imposing one after another reasonable restrictions on the freedom of speech and expression was to primarily safeguard the sovereignty, territorial integrity, and security of India as well as securing the interest of public order.

## II. Sedition under Indian Penal Code and Bharatiya Nyaya Sanhita

According to the old penal code, 'The Indian Penal Code', **Section 124A** referred directly to Sedition, it stated "*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*

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<sup>2</sup> Chitranshul Sinha, *The Great Repression: The Story of Sedition in India* 40 (Penguin Random House, India, 2019)

<sup>3</sup> Dr. Ambedkar, Motion Re Draft Constitution, VII CAD 4th November 1948, available at: [https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/?/1948-11-04](https://www.constitutionofindia.net/constitution_assembly_debates/volume/?/1948-11-04) (last visited on April 15, 2024).

*may extend to three years, to which fine may be added, or with fine.”*

The new code *Bharatiya Nyaya Sanhita, 2023* under **Section 150** titled ‘Acts endangering sovereignty unity and integrity of India’ discuss sedition without using the term, it 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.”*

The new section has no doubt expanded the offence. Earlier, sedition might be seen as a crime against the state that punishes material that could incite hatred, contempt, or dislike of the government and lead to public disturbance or violence in the nation. It now provides a list of activities which are seen as seditious such as exciting for secession, armed rebellion, subversive activities, or encourages feelings of separatist activities.

It should be noted that dissatisfaction with the government has been intended to be distinguished from disaffection. Therefore, the people are allowed to voice their disapproval of the government as long as they indicate a desire to submit to its lawful authority.<sup>4</sup> The Supreme Court has observed in *Kedar Nath Judgment*<sup>5</sup> that, “As long as the means adopted by the protesting voices are constitutional and legal, criticism of the government would merely be disapprobation and not disaffection. However, the moment such disapprobation leads to incitement of violence or suggests incitement of violence as the only recourse available, the offence of sedition becomes operative.”

### III. Judicial Interpretation of sedition vis à vis Freedom of Speech

The Courts, starting from the British period, have interpreted the section dealing with sedition. The first trial for sedition was held in the Bangabasi case of *Queen v. Jogendra Chandra Bose*<sup>6</sup>. The owner, editor, manager, and printer of Bangobasi were charged with sedition under Section 124A as a result of the publication of the illegal articles in front of the Calcutta High Court. The jury notified the court that it was unable to reach a unanimous decision after examining the charge

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<sup>4</sup> Law Commission of India “279<sup>th</sup> Law Commission Report: Usage of Law of Sedition” 8 (2023)

<sup>5</sup> 1962 SCR Supl. (2) 769

<sup>6</sup> (1892) ILR 19 Cal 35

and the summation. After declaring that he would only accept a unanimous ruling, Justice Petheram ordered a future jury trial. The prosecution decided not to pursue its case when the accused expressed regret for the articles hence the retrial was never held.

After this there was a famous case of *The Queen-Empress v. Bal Gangadhar Tilak*<sup>7</sup>. Bal Gangadhar Tilak was accused of sedition twice. First, his words against Britons led to unrest that resulted in the deaths of two British officers in 1897. The government later deemed his 1990 article about Maratha warrior Shivaji, which he authored for his newspaper "Kesari," to be seditious. The word "disaffection" was defined in this situation. In order to understand "disaffection," Justice Strachey presented the jury the pertinent evidence, saying: "*It means hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government.*"

A jury of 7 Anglo-Indians and 2 Indians found Tilak guilty with a 7:2 majority, and he was given a sentence of 6 years in jail and a ₹1,000 fine.

Another pre independence case that was important is the case involving *Mahatma Gandhi*<sup>8</sup>. Mohandas Karamchand Gandhi was accused of sedition in 1922 and tried in Bhadra, Gujarat, for his divisive pieces that appeared in the Young India magazine. Gandhi and the publisher of the publication both admitted guilt. At the trial, Gandhi read aloud a statement describing the origins of his anger towards the British government. In his opinion, Section 124A of the IPC violates people's rights to free expression and assembly and makes it impossible to "manufacture affection [against the government]." Gandhi received a six-year prison sentence after being proven guilty.

In the post- independence era, the courts, both High Court and the Supreme Court have dealt with the issue of sedition time and time again. The first case to address the constitutionality of Section 124-A was of *Ram Nandan v. State of U.P*<sup>9</sup> in which the Allahabad High Court declared that because Section 124-A of the IPC contravenes Article 19(1)(a) of the Constitution, it is invalid. 124-A was said to impede free expression.

However, the Apex Court in the *Kedar Nath v. State of Bihar*<sup>10</sup> overturned the decision in Ram Nandan v. State of U.P. In this case, the court determined that this clause should forbid any actions that have the possibility or intention of upsetting the peace or inciting violence. The court ruled

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<sup>7</sup> (1917) 19 BOMLR 211

<sup>8</sup> In Re: Mohandas Karamchand Gandhi ... v. Unknown (1920) 22 BOMLR 36

<sup>9</sup> AIR 1959 All 101

<sup>10</sup> 1962 SCR Supl. (2) 769

that criticism of the government is not considered sedition unless it also advocates or calls for violence. However, it would be against Article 19 of the Indian Constitution if this article were used arbitrarily.

The judgment in Kedar Nath case was the authoritative judgment on the law of sedition, however recently the Delhi High Court in *Kanhaiya Kumar v. The State of Delhi*<sup>11</sup> stated that the essential obligations of every citizen are outlined in Part IV, Article 51A of the Constitution and are one side of the same coin when exercising one's right to free speech and expression under Article 19 (1) (a) of the Constitution. Based on the aforementioned judicial decisions, it has been debated how to characterise seditious actions. In light of this, one may argue that the behaviour does not fall under the purview of section 124A of the IPC unless the words or deeds in question do not endanger public safety or cause a serious public disturbance.

The law of sedition has been temporary put on hold by the Supreme Court in *S.G. Vombatkere v. Union of India*<sup>12</sup>. The Central and State governments are not permitted to prosecute anyone with sedition under Section 124A of the Indian Penal Code, according to the Supreme Court. According to the Court, "All pending trials, appeals, or actions relating to charges established under this section would be placed in abeyance."

#### **IV. Law Commission report on Sedition**

##### ***Grounds to retain***

The Law Commission in its report has mainly relied on the following grounds for retaining the provision related to sedition:

##### ***a) To safeguard the Unity and Integrity of India***

According to the commission, every state, regardless of its form of government, needs to be equipped with the authority to punish those who endanger the security and stability of the state through their actions or spread disloyal sentiments that have the potential to cause public unrest or state disruption.<sup>13</sup> It maintained its contention that Section 124A of the IPC serves as the standard criminal procedure to handle the problem, despite the fact that there are Central and State legislation to deal with cases of terrorism.<sup>14</sup>

##### ***b) Sedition as a Reasonable Restriction under Article 19(2)***

According to the panel, a reading of the Constituent Assembly Debates reveals that sedition was replaced with "which undermines the security of, or tends to overthrow, the State" because the

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<sup>11</sup> 2016 SCC OnLine Del 1362

<sup>12</sup> (2022) 7 SCC 433

<sup>13</sup> Law Commission of India "279<sup>th</sup> Law Commission Report: Usage of Law of Sedition" 70 (2023)

<sup>14</sup> Ibid, pg. 71

Constituent Assembly thought the latter word to be more comprehensive and of more significance. The report further relied on the judgment of Supreme Court in *Janhit Abhiyan v. Union of India*<sup>15</sup> where it stated that, “if two interpretations of a legal provision are possible, one which renders the concerned provision constitutional, and the other, which renders it unconstitutional, the former construction, should prevail over the latter.”

**c) *Existence of Counter- Terror Legislations does not obviate the need for Section 124A***

The Section 124A of the IPC was enacted to prevent the violent, illegal, and unconstitutional overthrow of a democratically elected government established by law. The Commission was of the opinion that special laws and anti-terror legislations dealing with national security seek to prevent or punish the commission of offences targeted towards the state. As a result, not all components of the offence contemplated by Section 124A of the Criminal Procedure Code are implied by the existence of the former.<sup>16</sup>

Furthermore, the commission opined that without a provision like Section 124A of the IPC, any speech that calls for violence against the government would undoubtedly be prosecuted under special laws and counterterrorism legislations, which have far stricter restrictions for how the accused will be treated.<sup>17</sup>

**d) *Sedition being a Colonial Legacy is not a valid ground for its repeal***

The commission was of the opinion that the crime of sedition is frequently referred to as a colonial legacy because of the time period in which it was created, particularly considering its history of use against India's freedom fighters. However, based on that virtue, the Indian legal system's whole foundation is a product of colonialism. Another temporary holdover from the British era is the police force, as well as the concept of an All India Civil Service. Merely ascribing the term 'colonial' to a law or institution does not by itself ascribe to it an idea of anachronism.<sup>18</sup> Only the malicious tendency to instigate violence or produce public disturbance under the cover of enjoying the right to freedom of speech and expression is what Section 124A of the IPC intends to punish.<sup>19</sup>

**e) *Realities differ in every jurisdiction***

The judicial system in every nation must contend with a unique set of circumstances. The ground realities in India differ from other nation and a blind eye could not be to it. The report compared sedition laws in various nations like U.K, U.S, Canada, etc., and observed that these nations have

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<sup>15</sup> 2022 SCC OnLine 540

<sup>16</sup> Law Commission of India “279<sup>th</sup> Law Commission Report: Usage of Law of Sedition” 74 (2023)

<sup>17</sup> Ibid, pg 74

<sup>18</sup> A Barra. "What is "Colonial" About Colonial Laws?" 31(2) American LIniversity International Law Review (2016).

<sup>19</sup> Law Commission of India “279<sup>th</sup> Law Commission Report: Usage of Law of Sedition” 75 (2023)

histories, geographies, and populations, levels of diversity, and legal systems that are not comparable to those in India. It also stated that contrary to popular belief, some of these nations have combined their anti-sedition laws with anti-terrorism laws.<sup>20</sup>

### ***Recommendations***

The Law Commission provided the following recommendations:

#### ***a) Incorporation of Ratio of Kedar Nath Judgment in Section 124A.***

The Supreme Court's criteria in Kedar Nath Singh judgment is a well-established legal principle. The act would not be covered by Section 124A unless the words spoken or the actions taken had no tendency to instigate violence, provoke public disorder, or disturb the peace of the community. *The new code provide more clarity with a list of activities which includes exciting for secession, armed rebellion, subversive activities, or encourages feelings of separatist activities.*

#### ***b) Procedural Guidelines for preventing any alleged misuse of Section 124A.***

The Commission has proposed a change to Section 154, CrPC, 1973 to add a proviso that stipulates that a FIR for the crime of sedition may only be filed after a preliminary investigation has been conducted by a police officer with at least the rank of Inspector and after permission has been granted by the Central Government or the State Government, as applicable, on the basis of the preliminary investigation report<sup>21</sup>. This safeguard is being recommended by the Law Commission taking into consideration the observations made by the Apex Court in *S.G. Vombatkere v. Union of India*<sup>22</sup>. *However, no such change has been made in the new Bharatiya Nagatik Suraksha Sanhita.*

#### ***c) Removal of Oddity in punishment prescribed for section 124A of IPC***

The Law Commission recommended that sedition be made punishable with life imprisonment or for a term up to 7 years or with fine on the ground that the scheme of punishment should be brought in parity with the other offences under Chapter VI of IPC. *The new code has incorporated the same.*

## **V. Conclusion**

Although, the Law Commission has provided reasonable grounds for retaining the provision for sedition, it still remains that it is a huge restriction on the fundamental right of speech and expression. A democratic Society is characterized by freedom of expression. This freedom is meant to help people find their own sense of fulfillment, aid in the search for the truth, improve

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<sup>20</sup> Ibid, pg 75

<sup>21</sup> Ibid, pg. 77

<sup>22</sup> *Supra* 12

their capacity for making decisions, and help strike a balance between societal change and stability. Sedition laws should be used with caution by the Government and deliberated carefully by the Courts.

Although sedition laws have a colonial legacy; that does not mean that in the ground reality it is need for securing the sovereignty of a country that is surrounded by nations who may not have its best interest in their hearts.

