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# **THE LAW OF SEDITION AND WHY IT NEEDS TO BE SCRAPPED**

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## **ABSTRACT**

With the increase in recent cases and incidents of students, activists and journalists being slapped with the charge of sedition, the question has been raised time and again on the constitutionality of sedition and whether sedition has a place in a democratic country like ours. Where a number of developed nations all around the world, including the United Kingdom, who in the first place introduced the law of sedition in India have abolished their laws regarding sedition, what is it that India is waiting for?

In this research paper, I aim to bring together all debates against the law of sedition and why it should be scrapped.

## **INTRODUCTION**

One of the most important features of a democracy is the freedom of speech guaranteed to the citizens and freedom of speech is termed as the essence of a free society. The Sedition law in India was enacted by the British Government to suppress any form of dissent from Indians. The Supreme Court of India has repeatedly said that the law of Sedition must only be used in serious circumstances and not on the whims and fancies of the police officials or the ruling party. This colonial law cries for its abolition especially when the country that introduced the law of sedition in India, has abolished their laws related to sedition.<sup>1</sup>

When the Indian Penal Code was enacted in 1860s, Sedition was not a part of the law, it was later introduced in 1870. A number of Indian Freedom Fighters, including Mahatma Gandhi and Bal Gangadhar Tilak, etc. were on numerous accounts charged with sedition.

One of the most famous victims of the law of sedition was Lokmanya Tilak, who was tried for his writings in the newspaper Kesari, and Mahatma Gandhi was tried and prisoned for his writings in Young India. These incidents show that this law was enforced in order to muzzle the spirit of freedom and freedom of speech and expression of the people of India. The first

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<sup>1</sup> [Shastri Ramachandaran](https://www.outlookindia.com/website/story/opinion-section-124a-the-case-against-the-much-misused-sedition-law/347936), Section 124A: The Case Against the Much-misused Sedition law (June 15, 2020, 3:44pm) <https://www.outlookindia.com/website/story/opinion-section-124a-the-case-against-the-much-misused-sedition-law/347936>

prime minister of India, Jawaharlal Nehru, in his speech said that “*this provision is highly obnoxious and the sooner we get rid of it the better.*”<sup>2</sup>

In recent times, in the wake of protests against the Citizenship Amendment Act, 2019 many teenagers, scholars, human rights activists, journalists etc. were arrested under the charge of sedition. Though in most cases the charges were dropped but it shows how the government is trying to oppress dissent.

## **WHAT IS SEDITION?**

Chapter VI of the Indian Penal Code, 1860 talks about the Offences Against the State- Section 124-A of the Indian Penal Code, 1860 covers sedition although it does not define what sedition is, it covers the crimes that come under sedition.

The Section states that any person who either by words- oral or written or by any visible representations, brings or attempts to bring any hatred, contempt or disaffection towards the Government of India shall be punished with imprisonment for life or for a term which may extend to three years or fine or both. It is a non-bailable offence.

Here, disaffection means any kind of disloyalty or feelings of enmity.

The explanation mentions that comments which express disapproval of any measure taken by the government and which do not incite violence or hatred or disaffection against the government do not fall under the purview of the section.<sup>3</sup>

## **LEGAL FRAMWORK OF SEDITION:**

Sedition is not just covered under the Indian Penal Code, 1860, the Criminal procedure code, 1973, the Prevention of Seditious Meetings Act, 1911 and the Unlawful Activities (Prevention) Act, 1967 also covers Sedition.

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<sup>2</sup> What is Sedition law : Explained (June 15, 2020, 3:55pm) <https://timesofindia.indiatimes.com/india/what-is-sedition-law-explainer/articleshow/73168127.cms>

<sup>3</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)



1. **CRIMINAL PROCEDURE CODE, 1973-** Section 95 of Criminal Procedure Code, 1973 gives the government the right to forfeit all material which is punishable under Section 124A. The government is required to give reasons under this section.
2. **PREVENTION OF SEDITIOUS MEETINGS ACT, 1911-** This legislation was specifically enacted by the British Government to control the dissent of Indians. Section 5 of the Act gives the power to a District Magistrate or the Commissioner of Police to prevent a public meeting in a public place. Since this legislation was specifically enacted to reduce the meetings of people with nationalist feelings under the British Government, its continuation seems unnecessary.
3. **UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967-** According to Section 2(o), any person who supports the claims of secession or who questions the national integrity or causes disaffection against India shall fall under unlawful activity and may be imprisoned for a period extending to seven years and a fine.

### **HISTORY OF SEDITION:**

As mentioned above, sedition is found in a number of laws in India and the common feature in all the laws is the term “disaffection”. In the colonial context, “disaffection” can be understood as exactly the feeling which should not exist between the ruler and the ruled, disaffection means disloyalty or feelings of enmity whereas the only feeling which could exist between the ruler and the ruled was a feeling which was opposite to the feeling of disaffection which is a feeling of loyalty and contentment.

Under the British Raj, sedition was added to the Indian Penal Code, 1860 as a way to curb and counter nationalist feelings and since the very reason of inserting this section was the curb and counter such feelings, there is no use of such a section in a democracy like India.

The first recorded case under Section 124A, Indian Penal Code, 1860 was of *Queen Empress v Jogendra Chandra Bose*<sup>4</sup> in 1891. In this case, the editor of a newspaper named Bangobasi,

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<sup>4</sup> Queen Empress v Jogendra Chandra Bose, ILR (1892) 19 Cal 35 (India)

who wrote an article which criticized the Age of Consent Bill, he was charged with sedition, the charges were however dropped as the jury could not reach a unanimous decision.

Another famous case was that of *Queen Empress v Bal Gangadhar Tilak*<sup>5</sup> where the government claimed that Bal Gangadhar Tilak's speeches on the killing of Afzal Khan by Shivaji had incited the killing of two British officers.

Another case was of *Annie Besant v Advocate General of Madras*<sup>6</sup> where the alleged seditious material of Annie Besant's press was confiscated by the government by adhering to the previous interpretations of sedition.

Mahatma Gandhi was also tried under this section for writing three politically sensitive articles in his weekly journal – Young India<sup>7</sup> and in regard of this charge he made a very famous statement, he said that “ *this section was designed to suppress the liberty of citizens and that affection cannot be manufactured or regulated by law.* ”<sup>8</sup>

It is important to note that individuals who were charged under this section in the British era were called ‘*RAJDROHI*’, meaning a person who rebels against the government and in the current scenario, the people who are charged under this section are call ‘*DESHDROHI*’, which means anti-national, but the law nowhere states that a person being charged under this section is an anti-national.

After independence, the constitutionality of Section 124A, Indian Penal Code, 1860 has been challenged in many cases. As mentioned above in the introduction, Jawaharlal Nehru made the statement- ‘*Section 124A is obnoxious and objectionable and that it does have deserve a place in our Penal Code*’ in 1951 and yet decades have passed and here we are in 2020, saddled with the same law which is being used by the Government in a draconian manner to curb all forms of dissent.

### **LAW COMMISSION REPORTS ON SEDITION:**

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<sup>5</sup> Queen Empress v Bal Gangadhar Tilak, ILR (1898) 22 Bom 112 (India)

<sup>6</sup> Annie Besant v Advocate General of Madras, AIR 1919 PC 31 (India)

<sup>7</sup> Republic of Dissent: Gandhi's sedition trial (June 16, 2020, 11:01am)

<https://www.livemint.com/politics/news/republic-of-dissent-gandhi-s-sedition-trial-1548352744498.html>)

<sup>8</sup> A.G. NOORANI, INDIAN POLITICAL TRIALS: 1775-1947 235 (2009)

The issue of sedition has been taken up by the Law Commission of India at many occasions-

1. In **39<sup>th</sup> Law Commission Report** which was titled “The Punishment of Imprisonment of Life under the Indian Penal Code” it was recommended that offences like sedition need not be punishable with life imprisonment, rather the punishment should be of maximum three years but not more.
2. In the **42<sup>nd</sup> Law Commission Report** which was titled “Indian Penal Code”, three important suggestions were made in reference to Sedition-
  - a) It was recommended to incorporate mens rea in the Section.
  - b) It was recommended that the scope of the section be widened to include Constitution of India, Legislature, Judiciary and Executive against who no disaffection can be tolerated.
  - c) It was also recommended that the punishment be reduced to seven years (since the earlier recommendation was not accepted by the Government)
3. Then in the **43<sup>rd</sup> Law Commission Report** titled “Offences Against the National Security”, it was more or less a reiteration of what the 42<sup>nd</sup> Report said.
4. In the **267<sup>th</sup> Law Commission Report** which was titled “Hate Speech”, a distinction was made between hate speech and sedition and it was stated that while the former affects the public tranquility and sedition directly affects the State.

### **CONSTITUTIONALITY OF SEDITION:**

After the Constitution came into effect, Section 124A of the Indian Penal Code, 1860 was challenged in the courts a number of times.

The Constitution provides us with the Fundamental Right of freedom of speech under Article 19(1) and it was on this ground that Sedition was challenged as being unconstitutional.

Article 19(1)(a) of the Constitution of India provides every citizen with the freedom of speech and expression. This right gives every citizen the right to speak against or in favour of any government structure, scheme, policies etc. but the right under the above Article is not an

absolute right. Article 19(2) provides for certain reasonable restrictions with regard to the freedom of speech and expression as provided under Article 19(1)(a).

The reasonable restrictions include restrictions in the interest of sovereignty and integrity of the nation, security of the State, public order, decency and morality.<sup>9</sup> Sedition is nowhere mentioned as a reasonable restriction the freedom of speech and expression.

In the case of *Romesh Thappar v State of Madras*<sup>10</sup>, the Madras Government while exercising their power prohibited the circulation of the petitioner’s newspaper in Madras. The Supreme Court, however, ruled in favour of the petitioner and said that the restriction by the Madras Government was in excess of their powers and was violative of the freedom of speech and expression.

In *Tara Singh v State of Punjab*<sup>11</sup>, the court held Section 124A of the Indian Penal Code, 1860 to be unconstitutional because it infringed the fundamental right provided by the Constitution. Sedition agreeably was relevant and necessary during the colonial period but now India is a democratic state and sedition has become obsolete.

After Tara Singh’s judgement, the words “in the interest of” and “public order” were added to Article 19(2) by the 1951 Amendment.

In *Ram Nandan v State of Uttar Pradesh*<sup>12</sup> it was held that sedition infringes upon the freedom of speech and expression which cannot be saved by the expression “in the interest of public” and hence, sedition was declared ultra vires the Constitution of India.

However, Section 124A was upheld in the case of *Kedar Nath Singh v State of Bihar*<sup>13</sup>, the court said that it is true that Section 124A imposes restriction of the freedom of speech and expression but it is in the interest of public order and hence it is not ultra vires the Constitution. The court also limited the application of Section 124A to acts which intended to create any disorder or incite violence.

Then again in *Maneka Gandhi v Union of India*<sup>14</sup>, the Supreme Court said that criticising the government’s measures or policies regarding certain things do not bring disaffection towards

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<sup>9</sup> INDIA CONST, art. 19, cl. 2.

<sup>10</sup> *Romesh Thappar v State of Madras*, AIR 1950 SC 124 (India)

<sup>11</sup> *Tara Singh v State of Punjab*, AIR 1951 EP 27 (India)

<sup>12</sup> *Ram Nandan v State of Uttar Pradesh*, AIR 1959 All 101 (India)

<sup>13</sup> *Kedar Nath Singh v State of Bihar*, AIR 1962 SC 995 (India)

<sup>14</sup> *Maneka Gandhi v Union of India*, AIR 1978 SC 597 (India)

the government and it is in sync with the freedom of speech and expression. But sedition offends the freedom guaranteed under Article 19(1)(a).

In the recent case of *Shreya Singhal v Union of India*<sup>15</sup> the Supreme Court made a clear distinction between “advocacy” and “incitement” and said only “incitement” can be punished. Therefore, advocating does not amount to sedition, only incitement amounts to sedition.

## **SEDITION LAWS IN OTHER COUNTRIES:**

### **1. United Kingdom-<sup>16</sup>**

The offence of sedition can be traced back to 1275 and it was mentioned in the Statute of Westminster. The offence of sedition was mainly formulated to prevent any uprising or revolt against the crown or the government. At that time, no matter if that seditious speech was true or false, it was punishable.

The Law Commission in the United Kingdom in its report in 1977 examined the need of seditious libel in a modern democracy which marked the beginning of a movement which eventually led to its abolition in 2009. The Human Rights Act was enacted in 1998 and seditious libel was entirely against the principles of the Act. Finally in 2009, sedition was abolished with the enactment of The Coroners and Justice Act, 2009.

### **2. United States of America-<sup>17</sup>**

The Constitution of the United States of America prohibits the government from passing any law which would infringe on the first amendment rights of their citizens. The first amendment gives the right to expression. It is argued by many jurists whether the first amendment aimed at abolishing seditious libel or not. In 1798, through the Sedition Act of 1798, the offence of

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<sup>15</sup> *Shreya Singhal v Union of India*, (2013) 12 S.C.C. 73 (India)

<sup>16</sup> Law Commission of India, Consultation Paper, August 2018

<sup>17</sup> Law Commission of India, Consultation Paper, August 2018

sedition was made punishable in the United States of America. This Act was abolished in 1820 but was enacted again in 1918 to protect their interests in the First World War.

### 3. Australia-<sup>18</sup>

The first legislation which contained the offence of sedition was the Crime Act of 1920. The definition in this Act was much broader than the common law definition and the essentials did not include intention per se or incitement to violence. It was recommended by the Hope Commission that the definition of Sedition be made in sync with the Commonwealth definition. Later, in 1991, suggestions were made to limit the convictions of sedition to cases where violence was incited. Finally, in 2010, the word sedition was removed, and it was replaced with the words “urging violence offences”.

### 4. Nigeria-

In Nigeria, the law of sedition was also introduced in the colonial period under the British Government. Nigerian writers have concluded that sedition was introduced as a way of curbing nationalist sentiments during the British rule.

## **RECENT INCIDENTS IN INDIA:**

As seen above, the attitude of the judiciary is varied in regards the application of the law. The recent incidents of individual’s being charged under Sedition include liking a Facebook page or criticising a famous yogi or supporting the Pakistani cricket team, etc.

In 2012 when cartoonist, Asim Trivedi was charged with sedition for publishing a cartoon which depicted the then chief minister of the state of West Bengal, sedition became a major controversy and serious doubts arose as to the application of the law<sup>19</sup>. Novelist and activist,

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<sup>18</sup> Law Commission of India, Consultation Paper, August 2018

<sup>19</sup>Anti-corruption cartoonist Aseem Trivedi arrested on sedition charges (June 16,2020, 7:13pm)  
<http://indiatoday.intoday.in/story/anti-corruption-cartoonistaseem-trivedi-arrested-on-seditioncharges/1/216643.html>

Arundhati Roy was charged with sedition for criticising the acts of barbarity by the armed forces in the north eastern states.

In the last decade there has been a huge outcry over the law of sedition being charged in an arbitrary manner. One of the most famous case in the recent years is of Kanhaiya Kumar who was charged with sedition who spoke against the capital punishment given to the Indian Parliament Attack convict, Afzal Guru. The charges and arrests were met with much hue and cry and criticism by the citizens on the grounds that the ruling party was attempting to curb political dissent. There have been a number of arbitrary arrests in such cases.

With the amendment in the Citizenship Act in 2019, anti-citizenship act protests were seen all over the country from mid-December 2019 till March 2020. A number of people were charged with sedition. During the anti-citizenship amendment protests, a play was organized by a school and the students, teachers as well as their parents were questioned for hours, and a number of them were also charged with sedition. Another case was of a 19 year old girl was charged with sedition for using the phrase “Pakistan Zindabad” but was release on default bail as the police failed to file the charge sheet. The charges are rarely proved in cases of sedition, but it causes a lot of problems to the accused, he has to live without his passport, cannot apply for a government job, etc.

### **CONCLUSION:**

As we have seen in the above paragraphs, the law of sedition was enacted by the British Government to curb nationalist sentiments in the citizens of India and to avoid any dissent.

After independence, there have been many instances where the courts have rendered the provision unconstitutional. The first Prime Minister of India also said that India needs to do away with the provision of sedition as soon as possible, so did Mahatma Gandhi, the Father of the Nation said that Section 124A is a provision to curb the liberty of the citizens.

Yet, here we are in 2020 and the arbitrary use of the section is still prevalent. The Law Commission of India has time and again emphasised the need to add mens rea to the definition of sedition or to abolish it. The question remains that where the United Kingdom repealed their Sedition Act back in 2009, why is India still living under the archaic and draconian law? If it

cannot be repealed at least the conviction should be limited to the acts which cause violence or disrupt the public tranquility. It is high time that the judiciary realises that sedition is an obsolete law and must be scrapped.