

## **SEDITION: A BOON OR A BANE EVEN AFTER 75 YEARS OF INDEPENDENCE**

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Definition of sedition as per the Cambridge Academic Content Dictionary is language or behavior intended to persuade other people to oppose their government and change it sometimes by using violence

Sedition is once again the topic of debate as Supreme Court is hearing pleas challenging it. The pleas filed by Editor's Guild of India and Major General (Retd.) SG Vombatkere state that the law causes a chilling effect on free speech and is an unreasonable restriction on free expression which is a Fundamental Right under Article 19(1)(a) of the Constitution of India.

Former Chief Justice of India, NV Ramana, addressing to Attorney General of India, Mr. KK Venugopal asked, "Is this law necessary after 75 years of Independence?",

Sedition was basically extensively used by the colonial rulers to political dissent during our independence movement, to suppress our freedom struggle and prosecute our leaders of freedom movement. Unfortunately even in independent India, our governments are misusing this legal provision to harass and punish all those who speak against the government of the day. Presently, a large number of people are victims of gross misuse of this provision. This issue has been dealt with by our courts on numerous occasions that have provided relief to a number of people who were unnecessarily implicated in seditious cases.

### **SECTION 124 A**

124A. Sedition.—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 shall be punished with , to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

## HISTORICAL PERSPECTIVE

The law on Sedition was enacted by British Historian-Politician Thomas Babington Macaulay in 1837. It was supposed to be section 113 of the Code. However, the law was not included anywhere in the original Code. In 1890, sedition law was included in the Code through a Special Act due to the efforts of Sir Barnes Peacock. The punishment then prescribed was 'transportation beyond the seas for the term of his or her natural life.' It was amended to 'life imprisonment' in 1955.

## WHAT CONSTITUTES SEDITION?

1. (i) Words, either spoken or written, or  
(ii) signs, or  
(iii) visible representation, or  
(iv) otherwise
2. That bring or attempt to bring hatred or contempt ,or
3. excite or attempt to excite hatred against the Government of India.

Explanation 2 of section 124 A makes it clear, "Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

## SEDITION LAW PRE INDEPENDENCE INDIA

The first trial was conducted in the case of *Jogendra Chandra Bose*<sup>1</sup> (also known as *Bangobasi case*). The accused was editor of the newspaper named "Bangobasi". An article was published by him, criticizing the Age of Consent Bill. The article gave a negative impact on the British colonialism. However the Jury could not give a unanimous verdict and hence the accused was released on bail.

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<sup>1</sup> 1. (1892) ILR 19 Cal 35

2. <https://indianhistorycollective.com/queen-empress-vs-bal-gangadhar-tilak-an-autopsy/>

In *Empress vs. Bal GangadharTilak*<sup>2</sup>, LokmanyaTilak was prosecuted under this section for publication of two articles in his Marathi language newspaper ‘Kesari’. The first is in the form of a poem titled ‘Shivaji’s Utterances and signed “Mark of the Bhawani Sword”. The second article is a report on three days of the Shri Shivaji Coronation Festival in Poona. The jury comprised six Europeans and three Indians. They took forty minutes to pronounce him guilty, by a vote of six to three. He was sentenced to rigorous imprisonment for eighteen months.

This was an important moment in India’s political history as it marked the criminalisation of dissent as a grand spectacle of a political trial, narrativised by the press across British India. More importantly, it set the pattern for legal engagement with discursive violence in the years to come<sup>3</sup>.

In the second seditious trial of Bal GangadharTilak<sup>4</sup>, his writings were found to be ‘highly seditious’ with Bombay High Court Judge DD Davar terming them as “seething with sedition”. He was sentenced to six years of imprisonment.

In the third seditious trial of Bal GangadharTilak<sup>5</sup>, he was accused of making provocative speeches in Marathi. A paragraph in the first speech mentioned to keep Indians in a position of slavery or servitude. A paragraph in the second speech describes government as an alien government mainly to its own interest. However, no objection was taken to the main theme of the speeches ie, Swarajya or Home Rule of India. The charges of sedition were eventually dropped.

In *Rex Imperator v. M. K. Gandh*<sup>6</sup>, Mohandas Karamchand Gandhi was charged with sedition and tried at the Sessions Court in Bhadra, Gujarat, for his politically sensitive articles in the Young India journal. Both Gandhi and the publisher of the journal pled guilty and sentenced to six years in prison.

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<sup>2</sup>. <https://www.newsclick.in/no-unrest-no-sedition-lokmanya-tilak-challenged-section-124A>

<sup>3</sup>. <https://thewire.in/history/how-bal-gangadhar-tilaks-1897-trial-marked-the-criminalisation-of-dissent>

<sup>4</sup>. <https://www.theindiaforum.in/article/great-trial-1922>

<sup>5</sup>. AIR 1939 Cal 703

*In Nithrendu Dutt Majumdar vs. the King Emperor*<sup>7</sup>, Federal Court of India defined sedition as leading to ‘public disorder or the reasonable anticipation or likelihood of public disorder is the gist of the offence’. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.”

This decision was subsequently overruled by the Privy Council in *King Emperor v Sadashiv Narayan Bhalerao*<sup>8</sup>. The court held, “the express words of the section, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt.”

### **SEDITION LAW IN CONSTITUTIONAL ASSEMBLY DEBATES**

The contentious law had been employed to imprison freedom fighters for a long time. Congress leader and educationist K.M. Munshi, a key voice in the Constituent Assembly, said that there should be no room for ‘sedition’ in independent India. He argued: “Now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore, the word ‘sedition’ has been omitted. As a matter of fact the essence of democracy is criticism of Government.”<sup>9</sup>

Though many significant founding fathers opposed the despotic law, the real credit for sedition not finding a place in the Constitution goes to Bhupinder Singh Mann who argumentatively put forth the idea for upholding liberty—and appealed to the other members of the assembly to vote against embedding sedition into the Constitution.

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<sup>6</sup> <https://www.newsclick.in/no-unrest-no-sedition-lokmanya-tilak-challenged-section-124A>

<sup>7</sup> AIR 1943 PC 82

<sup>8</sup> <https://theprint.in/opinion/how-our-constitution-makers-debated-rejected-the-draconian-sedition-law/183548/>

Attempts to weave 'sedition' into Article 13 (as it then was right to freedom of speech and expression) as a reasonable restriction on the freedom of speech and expression were defeated owing to the efforts of the Constitution's founding leaders. But successive elected Indian governments have happily—and indiscriminately—used the offending clause to throttle voices critical of them.

## SEDITION LAW POST INDEPENDENCE OF INDIA

In *SamskarMarathe vs. State of Maharashtra*<sup>10</sup>, Aseem Trivedi, a political cartoonist and social activist was arrested for allegedly committing the offence of sedition punishable by section 124A of IPC. Among Trivedi's offending cartoons is an image of India's national emblem where he replaces lions with foxes and skull-and-bones. Instead of "Truth Alone Triumphs," he wrote "Corruption alone Triumphs." Another cartoon showed an image resembling India's parliament building, calling it the "national toilet"<sup>11</sup>. The Bombay High Court however, dropped the charges under section 124A of IPC and cited that , " A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comments, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The section aims at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence." The court observed that the police action breached the political cartoonist's freedom of speech and expression.

In *Shreya Singhal vs. Union of India*<sup>12</sup>, the Supreme Court struck down section 66A of Information Technology Act,2000 as being violative of article 19(1)(a) of the Constitution of India. The Court observed that Section 66A has nothing to do with

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9. Cri.PIL 3-2015

10. [https://www.washingtonpost.com/blogs/blogpost/post/indian-political-cartoonist-aseem-trivedi-jailed-in-sedition-case/2012/09/10/0df1fc04-fb44-11e1-b153-218509a954e1\\_blog.html](https://www.washingtonpost.com/blogs/blogpost/post/indian-political-cartoonist-aseem-trivedi-jailed-in-sedition-case/2012/09/10/0df1fc04-fb44-11e1-b153-218509a954e1_blog.html)

11.(2013) 12 S.C.C. 73

"incitement to an offence". The facts of the case are that the Mumbai police had arrested two women, ShaheenDhada and Rinu Srinivasan in 2012, for posting allegedly offensive and objectionable comments on Facebook about the propriety of shutting down the city of Mumbai after the death of a political leader, Bal Thackeray. A Writ petition was thereafter filed under article 32 of the constitution. The erstwhile section 66A of the impugned act punished any person who sends through a computer resource or communication device any information that is extremely offensive, or with the knowledge of its falsity, the information is transmitted for the purpose of causing annoyance, inconvenience, danger, insult, injury, hatred, or ill will.

The famous *Kanhaiya Kumar*<sup>13</sup> case, on February 9, 2016, Umar Khalid, Bhattacharya and others had organised a "poetry reading" session titled "The country without a post office", after Agha Shahid Ali's poem of the same name, to mark the third anniversary of the execution of 2001 Parliament attack convict Afzal Guru. In the session, which was violently disrupted by the RSS's student arm, the AkhilBharatiyaVidyarthiParishad (ABVP), Kanhaiya Kumar, who was then president of the JNU Students' Union, along with others, was accused of chanting "anti-national" slogans. All the accused are currently out on bail.

In a more recent example, a man named Niaz was arrested in a sedition case for allegedly celebrating Pakistan's victory against India in the T-20 World Cup match. He had posted the picture of Pakistani flag and wrote objectionable comments in support of Pakistan on Facebook after the match, according to a complaint filed against him. Uttar Pradesh Chief Minister Yogi Adityanath said on October 28 that sedition law will be invoked against those celebrating Pakistan's victory against India in the recent T-20 World Cup match." Those celebrating Pakistan's victory will face sedition," a tweet posted on the official handle of Adityanath's office said.<sup>14</sup>

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12. <https://thewire.in/law/jnu-sedition-case-umar-khalid-kanhaiya-kumar-delhi-court>

13. <https://www.thehindu.com/news/national/other-states/up-man-held-in-sedition-case-after-fb-post-celebrating-pakistan-win-in-t20-match-goes-viral/article37207214.ece>

14. <https://indianexpress.com/article/india/ncrb-report-76-sedition-cases-in-2021-most-in-andhra-8119678/>

## **NATIONAL CRIME BUREAU REPORT ON SEDITION CASES<sup>15</sup>**

The latest edition of the NCRB's Crime in India report showed that 76 sedition cases were registered across the country in 2021, a marginal increase from the 73 registered in 2020. The data for sedition cases is available from 2014. The number of these cases stood at :-

- 93 in 2019,
- 70 in 2018,
- 51 in 2017,
- 35 in 2016,
- 30 in 2015, and
- 47 in 2014.

The most number of sedition cases in the last 8 years came from Assam accounting for 14.52% of the 475 cases reported from 2014 to 2021.

However the conviction rate is very low. In 2018, not a single person was convicted. Similarly, in 2019 only two were convicted. Similarly in 2020, no one was convicted of sedition.

## **INTERNATIONAL PERSPECTIVE**

**United Kingdom-** The genesis of the offence of sedition was made in the United Kingdom. It was first introduced with the passage of the Sedition Act of 1661 to protect His Majesty 'against Treasonable and Seditious practices and attempts.' In 2009, the United Kingdom abolished sedition to be a criminal offence through Coroners and Justice Act, 2009. As of today only few kinds of treasonous activity remains which are-

- If a man tries to harm or kill the Monarch, hurt him or hinder his personal space with an intention to threaten him or restrict him from carrying out his duties as sovereign
- kill or hurt his spouse, kill or hurt his eldest son or his eldest heir, or
- His majesty's chancellor, justices, ministers and treasurers<sup>16</sup>.

**United States of America-** The United States first introduced the offence, through the Alien and Sedition Act, 1798 which was introduced by the then President John Adams. As of today in the US, the offence of sedition exists only in two forms-

- The United States Code has the offence of Seditious Conspiracy, which punishes any attempt or conspiring to harm, overthrow, the government of the United States of America or any attempt or conspiracy to take over any property of the United States of America.
- The US also makes it a seditious offence to spread any misinformation about the armed forces in any attempt to spark insubordination or unrest within the army or misinformation spread with the intention of hindering the work of the armed forces of the United States.<sup>17</sup>

Although Sedition does exist its usage is seriously limited.

**Singapore-** Last year, Singapore, which like India inherited colonial English law, repealed its sedition law 83 years after it was first introduced to curb local opposition to British colonial rule.<sup>18</sup>

**New Zealand-** The act of 'sedition' ceased to be a crime following the introduction of The Crimes (Repeal of Seditious Offences) Amendment Bill in 2007 that came into effect from January 1, 2008.

## CONSTITUTIONALITY OF SECTION 124A OVER THE YEARS

The Punjab and Haryana High Court in *Tara Singh Gopi Chand vs. State of Punjab*<sup>19</sup>, held that Section 124A, Indian Penal Code has become void as contravening the right of freedom of speech and expression guaranteed by Article 19 of the constitution.

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<sup>15</sup> <https://www.discoverlaw.in/the-law-of-sedition>

<sup>16</sup> <https://www.indiatoday.in/law/story/how-countries-junked-sedition-law-supreme-court-section-124a-1948152-2022-05-11>

<sup>17</sup> 1951 CriLJ 449

<sup>18</sup> AIR 1959 All 101, 1959 CriLJ 1



In *Ram Nandan vs. State*<sup>20</sup>, the appellant had made a speech the gist of which is: In the Congress regime thousands of Sitas were being abducted and women were turning into prostitutes for the sake of food and clothing. Taxes were being imposed on deaths and births. Cultivators' and labourer's blood was being sucked through foreign capitalists. Labourers of U. P. had now organized themselves. Now they will not beg for pity but will take up cudgels and surround the ministry and warn it that if it did not concede their demands it would be overthrown. If it was thought desirable that cultivators and labourers should rule the country. Jawaharlal Nehru turned out to be such a big traitor that he divided the country into two parts. He was found guilty of sedition and was awarded imprisonment for three years. On appeal to the Allahabad High Court, the constitutionality of section 124A was challenged. The Court held that the provisions of Section 124-A, I. P. C. have become void with the enforcement of the Constitution. The applicant has therefore committed no offence and his detention was illegal. He was thus acquitted.

However, the decisions of the above cases were overruled by the Apex Court in *KedarNath vs. State of Bihar*<sup>21</sup>. A 5-Judge Bench of the SC upheld the constitutional validity of the Section 124A of the IPC. The Court conceded that while the criminalization of sedition imposed a restriction on the Right to Free Speech under Article 19(1)(a) of the Constitution of India, it was nevertheless a 'reasonable restriction' within the meaning of Article 19(2) and could not be struck down. The Court also ruled that criticism of the Government cannot be considered sedition unless it is coupled with encouragement or call for violence. Hence the Court construed it narrowly and stated that the offence would only be complete if the words complained of have a tendency of creating public disorder by violence

ARTICLE 19(1)(a), ARTICLE 19(2) and SECTION 124A

According to Austin, law is the command of the sovereign. It is the fear of the punishments that impels a person to follow the rules and regulations. If a person abides by law, he is awarded. If a person opposes law or expresses his contentment, he is punished. However, this concept of law is traditional and hence no longer applicable today. It ignores the basic human rights of the subjects. The modern concept of law couples law with Fundamental Rights. The world has moved from a monarchical form of government to a democratic one. Freedom of Speech and Expression constitute the foundation stone for every free and democratic society. India is the largest democracy in the world. The Constitution guarantees this right under Article 19(1)(a) of the Constitution, placing reasonable restrictions on its usage in Article 19(2). Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. Sedition law, though pre-colonial followed got itself a place in the Indian law being a reasonable restriction on freedom of speech and expression. While Section 124-A has often been used to curb various anti national activities, it has, in the recent years misused to crush dissenting voices. It has been extensively used against intellectuals, human rights activists, students and most importantly, journalists. Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. Analysts say that sedition charges are often framed to intimidate and incarcerate the dissenters. Sedition is one of the most anti-democratic laws of the country. It disparages people from expressing its criticism of the government and hence encroaches upon the right of freedom of speech and expression which is the hallmark of a democratic society. The Preamble to the Constitution begins with the words, "We the People of India" signifying that Power lies in the hands of the people of India. With the second largest population in the world, India is a marketplace of ideas. Sedition law is the death of this pluralism of ideas. Despite Supreme Court's 1962 judgment requiring incitement of violence for charge under sedition, the impugned act is used ruthlessly. Besides dissent, the law is used to ensure that everyone has the same set of views.

## SEDITION AND JOURNALISM

- Siddique Kappan was arrested along with three others in October 2020 while he was on his way to Hathras in Uttar Pradesh, and was charged under Unlawful Activities Prevention Act by Uttar Pradesh Police and accused of attempting to create unrest and instigate protests in connection with the incident. The then Chief Justice of India, UU Lalit said that every person has the right to free expression and asked the UP Police if propagating an idea that a victim requires justice for the victim was a crime in the eyes of law.<sup>22</sup>
- A Manipur-based political activist, Leichombam Erendro, was arrested for sedition – for writing “cow dung and cow urine don’t work” on Facebook. The Supreme Court ordered the release of the journalist and observed that continued detention amounts to a violation of the right to life and personal liberty<sup>23</sup>.
- Vinod Dua, a journalist was prosecuted under Sedition law for a Youtube video in which he remarked against the Prime Minister on his handling of the COVID crisis. Supreme Court held that remarks made by Mr. Dua constituted criticism of the governmental policy and could not be termed seditious.

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19. <https://indianexpress.com/article/explained/explained-manipur-activist-leichombam-erendro-case-released-sc-7413610/>

20. <https://www.scoobserver.in/journal/a-missed-opportunity-vinod-duas-sedition-case/>

21. <https://www.thehindu.com/news/national/sc-asks-centre-states-to-not-file-fresh-firs-in-sedition-cases/article65403622.ece>

## CONCLUSION

The Supreme Court on May 11 put on hold the colonial-era penal law on sedition till an “appropriate” government forum re-examines it, and directed the Centre and the states to not register any fresh FIR invoking the offence. Besides the lodging of FIRs, ongoing probes, pending trials and all proceedings under the sedition law across the country will also be held in abeyance, a Supreme Court bench headed by former Chief Justice of India NV Ramana had ruled<sup>24</sup>.

Last but not the least, the following lines from Rabindranath Tagore’s poem can be stated,

*Where the clear stream of reason has not lost its way;  
Into the dreary desert sand of dead habit;  
Where the mind is led forward by thee;  
Into ever-widening thought and action;  
Into that heaven of freedom, my Father, let my country awake.*