

LAW OF SEDITION OF INDIA

A TAIN ON 'FREEDOM OF SPEECH' OR NOT

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CHAPTER I : INTRODUCTION

THE INDIAN PENAL CODE

The draft of the Indian Penal Code¹ was prepared by the First Law Commission, chaired by Thomas Babington Macaulay in 1834 and was submitted to Governor-General of India Council in 1835. The drafting was completed in 1850 and the Code was presented to the Legislative Council in 1856, but it did not take its place on the statute book of British India until a generation later, following the Indian Rebellion of 1857, which itself ended in 1858. The draft went a final revision by the hands of Barnes Peacock, and was passed as law in 1860. The Code was operational on 1 January 1862.

SECTION 124A

In the year 1860, when the IPC was finally released as Law, Chapter VI carried sections pertaining to the offences against the 'State'. It carried a total of 12 sections. Of these, we shall talk about the Section 124A which puts before us the term "Sedition", defining whatever that comes under it clearly.

124A. Sedition² —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.

¹ IPC HISTORY https://en.wikipedia.org/wiki/Indian_Penal_Code

² Indian Penal Code <https://www.hyderabadpolice.gov.in/acts/Indianpenalcode1860.pdf>

It enlists three explanations under this law,

Explanation 1— The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2— 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.

Explanation 3 — Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

LOSS OF CONTEXT

But the essence of this Law is misinterpreted and is thus misused in today's India. The law puts emphasis only on the word "**Government**" and the presence of the terms "**Country**" and "**National Security**" are unknown. This is a consequence of the superannuation of laws and regulation in modern-day governance in India. In simpler words, there are some laws which have not been updated since the British Raj and are still being used to define criminal acts, the 124A being one of them.

The ludicrousness of this statement comes from the fact that at the time when this section was formulated, the British Raj was the "Government" in India, which is miles different from the present democratic Government which we elect after every 5 years. Even more hapless is the fact that Great Britain itself was **not a democracy**, but rather a **constitutional monarchy**³, during the drafting and release of the IPC.

³ History of Government in UK

https://en.wikipedia.org/wiki/Government_of_the_United_Kingdom

A **Constitutional Monarchy**⁴ is where the Monarch's powers are suppressed by a written or non-written form of the constitution where the limits of one's powers are established within a legal framework.

Let us also discuss the limitations that the **Magna Carta**⁵ or the **Great Charter** brought about in Great Britain. In the 12th century, a group of English Barons rebelled against their King, John Lackland⁶. The **Magna Carta** was the peace deal, where the Crown handed over some power, such as limiting the Crown's ability to tax his vassals, etc. This was the actual onset of the **Democratization of the Crown**.

The cherry on the top of all of this is that there is also a fine line between the constitutional monarchy of today and the constitutional monarchy of the 1800s in Great Britain. It was not until the **Representation of People act of 1918 and 1928**⁷ that Great Britain became a "**Democracy**⁸", figuratively. Back in the 18th century, only the High-Class men could vote people for the Parliament in Great Britain, consolidating the power to only a small group of people, which changed in the Representation of People Act 1928, where both men and women of all classes could vote.

Now, let us precipitate this information into two major points -

1. The British were in a transition period, from Monarchy to Democracy since the Magna Carta in 12th Century down to the 21st with the Representation of People Act, meaning, that Great Britain itself wasn't a full-fledged democracy in the 19th century.

⁴ Constitutional Monarchy <https://www.britannica.com/topic/constitutional-monarchy>

⁵ Magna Carta https://en.wikipedia.org/wiki/Magna_Carta

⁶ Simplified Summary of the Magna Carta
https://www.reddit.com/r/explainlikeimfive/comments/3a0ctk/eli5what_is_the_magna_carta/

⁷ Representation of People Act
https://en.wikipedia.org/wiki/Representation_of_the_People_Act_1918

⁸ UK government through time <https://www.bbc.com/bitesize/guides/zbtg87h/revision/1>

2. At the advent of the IPC in India, the British defined the term “Government” as the British Colonial Rule in India ONLY, and did not account for any kind of democratic campaigns that India could taste in the coming decades.

In conclusion

The actual meaning of the IPC section 124A has been lost due **to change in context** and needs to be updated carefully to rightfully serve the country and not be used as a means to silence the voices of our countrymen.

CHAPTER II

PURPOSE OF 124-A

BRITISH RAJ

The main purpose of this law was served during the British Era. At the time of its inception, it was simply used to silence the war-cries of the valiant Freedom Fighters of our Motherland. The law mainly targeted newspaper editors and authors who tried to instill a feeling of patriotism in order to overthrow the British Government. It was seen as an unquestionable weapon at the disposal of the Colonial Government.

Lokmanya Tilak⁹ was charged under 124-A twice in his lifetime, for writing Anti-British articles in his newspaper *Kesari*. **Mahatma Gandhi**¹⁰ was charged with the same for promoting ideologies of non-violence to overthrow the British Empire in his newsletter called *Young India*. Gandhi was tried in 1922 in Ahmedabad but did not

⁹ Lokmanya Tilak was an Indian Nationalist, lawyer, teacher and a freedom fighter during British Raj <https://www.mapsofindia.com/on-this-day/july-3-1908-bal-gangadhar-tilak-is-arrested-for-sedition-by-the-british>

¹⁰ Gandhi 1922 Sedition Row <https://www.livemint.com/politics/news/republic-of-dissent-gandhi-s-sedition-trial-1548352744498.html>

oppose the verdict and pleaded guilty. He stated that it was a **privilege** to be charged under sedition, and that this law was **designed to suppress the liberty of a citizen.**

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The 124-A received flak from the likes of numerous activists of that period, one example is of **Jawaharlal Nehru** who regarded the section as something “**highly objectionable and obnoxious**” which carried no place in any body of laws.

“**The sooner we get rid of it the better.**”

WHY IT STILL EXISTS

The Law still exists to remove any lethal elements in the country who could defile the honor and integrity of the government. The Supreme Court itself states that the Law can be rightfully used in some cases and thus it should be preserved. Tainting the nation should not go unpunished and thus here the section 124-A comes in handy, providing apt punishment to the party that is found guilty.

"Sedition Law is Absolutely Necessary. If Democracy Has To Survive, Then There Should Be Some Restrictions On The People Talking Against The Country" - **Santosh Hegde¹¹, Former Karnataka Lokayukta, Former Justice Of Supreme Court Of India & Former Solicitor General Of India**

SEDITION VS PUBLIC RIGHTS

The **Article 19¹²** of the Constitution of India, under sub-clause (a) of clause (1) states that All Citizens of India have the right to the freedom of speech and expression, with the exception that the State can impose restrictions on this right on the grounds of **sovereignty and integrity of India**, security of the **state**, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offence.

¹¹ Santosh Hegde, <https://www.thehindu.com/news/national/sedition-law-needed-to-stop-antiindian-rants-santosh-hegde/article8267498.ece>

¹² Article 19 <https://indiankanoon.org/doc/1218090/>

However, when we reiterate the wordings of **124-A** we find the Law only contains the word “**Government**”. Nowhere in the exception of **Article 19(1)(a)** do we find the word government mentioned, which simply means that our Freedom Of Speech can be used in criticism and dissent of the current ruling party, so long as it **does not harm** the integrity and national security of India.

Kedar Nath vs State of Bihar sedition case (1962)¹³

The Supreme Court had constitutionalised and limited the scope of sedition in *Kedar Nath Singh v. State of Bihar* by restricting it to instances where individuals through their speech and expression disrupt the law or provoke and incite violence. Mere strong words used to express disapproval of the measures of Government with a view to their improvement or alteration by lawful means is **NOT** sedition.

Comments, **however strongly worded**, expressing disapprobation of actions of the Government, **without** exciting those feelings in others which could generate the inclination to cause public disorder by acts of violence is **NOT** sedition.

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HOWEVER, present trends and activities pertaining to this law show us that people have been charged under 124-A for mere criticism of the government despite the stipulation of this law by the Supreme Court after the Kedar Nath vs State of Bihar Case.

RECENT CASES

BINAYAK SEN¹⁴

¹³ Kedar Nath vs State of Bihar Case Summary
<https://indiankanoon.org/doc/111867/>

¹⁴ Binayak Sen Introduction <https://www.hindustantimes.com/india/who-is-binayak-sen/story-u4uumVVkJYVB1gUlan0rbK.html>

Binayak Sen is a renowned academician, paediatrician, public health specialist, human rights activist. After his arrest in May of 2007, he was labeled as a Maoist and a traitor by the Chattisgarh Court. He was an able doctor and was graced with numerous felicitations throughout his life.

On May 14, 2007, Binayak Sen was arrested as a consequence of the allegations that said that he acted as a courier for the Maoist leader Narayan Sanyal, lodged in the Raipur jail. He was charged with life imprisonment for treason, criminal conspiracy, and **sedition**. A Bench of Justices H.S. Bedi and C.K. Prasad, after hearing senior counsel Ram Jethmalani for the petitioner and senior counsel U.U. Lalit for the State, granted bail to Dr. Sen. Mr. Justice Prasad told Mr. Lalit: "We are a democratic country. He may be a **sympathiser**. That **does not make him guilty of sedition**. **No case of sedition is made out on the basis of materials in possession** unless you show that he was actively helping or harbouring them [Maoists]."

ASEEM TRIVEDI¹⁵

In 2012, cartoonist and free-speech activist Aseem Trivedi was charged for sedition for allegedly poking fun at the Parliament and national emblems by drawing cartoons which were circulating in Anna Hazare's Anti Corruption rally in Mumbai.

The Mumbai High Court¹⁶, in its verdict, observed that "every **citizen has the right to criticize state machinery** in strong words and there **has to be incitement of violence to slap sedition charges on someone**."

In its ruling, a division bench of Chief Justice Mohit Shah and Justice GS Kulkarni said, "Citizens have the right to say or write anything criticising the government and its measures **as far as it does not incite violence or create problems in law and order**," reports Hindustan Times.

¹⁵ Aseem Trivedi, cartoonist, activist https://en.wikipedia.org/wiki/Aseem_Trivedi

¹⁶ Court's Decision <https://www.ndtv.com/india-news/aseem-trivedis-cartoons-didnt-incite-violence-says-bombay-high-court-on-sedition-charges-747471>

JNU SEDITION ROW¹⁷

On February 9, 2016, a procession was held in Jawaharlal Nehru University (JNU) against the capital punishment given out to Afzal Guru, convicted for the 2001 Indian Parliament attack. A video was circulated through several news channels where a group of students was seen shouting “anti-India” slogans. The slogans were criticised by many individuals, including political leaders and students of JNU. The JNU Students’ Union President, Kanhaiya Kumar was arrested by the Delhi Police and charged with Sedition. Two other students were arrested including Umar Khalid.

The arrests drew heavy criticism from the society, on the grounds that Bharatiya Janata Party (BJP) was **attempting to silence political dissent.**

Investigations were carried out into the incident both by the Delhi Government and the University. Both found out that the controversial slogans were shouted by outsiders wearing masks and **not the university students.**¹⁸

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The highlight of these cases is the fact that all of them ended with the **Supreme Court** pointing out how sedition **DOES NOT** come into play by mere acts of **sloganeering, sympathising, depictions** through art, poetry and texts, unless and until it poses a threat to the national security of the country, encourages violence, forces civilians to take up arms. **Criticism of the government**, according to the Supreme Court, **does not constitute sedition.**

CHAPTER III - THE REMEDY

¹⁷ JNU Case https://en.wikipedia.org/wiki/JNU_sedition_row

¹⁸ Investigation results https://en.wikipedia.org/wiki/JNU_sedition_row#Investigation_results

We have so far seen how 124-A can be misused by the government to bend situations in its own favours. The law is termed draconian, ancient, outdated and useless. We have seen that from the British Raj to the present day India, the law has always been a subject of controversy. There has been no period in India's history where the existence of this law has been applauded. Currently, 124-A is the arch-nemesis of Freedom of Speech Article 19.1(a).

The law calls for an immediate amendment or repeal.

Possible Amendments

It is very clear how the word "**Government**" in 124-A conflicts with terms like "**Sovereignty and integrity of India**", "**Security of State**" etc. in Article 19.2.

Also keeping in mind the constitutionalization of the law, after Kedar Nath vs State of Bihar Case, according to the Supreme Court-

Seditious speech and expression may be punished only if the speech is an incitement to violence, or public disorder. Criticism of the ruling party does not constitute sedition.

The law should therefore face apt alterations, replacing the term **government** with terms like **national security and integrity**, all the while restricting the applicability of the law to only those instances where an accused is successful in encouraging mob violence, enmity and terrorism against the country by even simple means of holding meetings and giving out speeches.

Complete Annulment

Reiterating the previous points, it can also be argued that the law should be complete repealed from the IPC. No democratic government should be able to put its people behind bars for expressing their views on the working of their country or government. The offence of sedition has no place in democracy.

India can do away with this law efficiently as there are other sections of the IPC¹⁹ which can uphold the essence of the law of sedition.

Section 121 - Waging, or attempting to wage war, or abetting waging of war, against
the Government of India.

Section 120A - Definition of Criminal Conspiracy.

Section 123 - Concealing with intent to facilitate design to wage war.

Section 141 - Unlawful Assembly

CHAPTER IV - CONCLUSION

In the year 2009, through the Coroners and Justice Act, under Gordon Brown's Labour Government, **United Kingdom abolished²⁰ the following offences** -

1. The offences of sedition and seditious libel.
2. The offence of defamatory libel.
3. The offence of obscene libel.

The then Parliamentary Under Secretary of State at the Ministry of Justice, Claire Ward, said at the time of the act's enactment: "**Sedition and seditious and defamatory libel are arcane offences** - from a bygone era when freedom of expression wasn't seen as the right it is today".

"**Freedom of speech is now seen as the touchstone of democracy**, and the ability of individuals to criticise the state is crucial to maintaining freedom".

It is high time that India also re-thinks about the existence of the Law of Sedition. Many a times the demand for amendments was made but none of it has happened, whereas the cases of misuse of this law are increasing.

If, as a democracy, the Government continues the usage of such a law, it would prove as a great threat to the Freedom of Speech and Expression of the country.

¹⁹ IPC <https://www.hyderabadpolice.gov.in/acts/Indianpenalcode1860.pdf>

²⁰ Abolishment of Sedition <https://www.hindustantimes.com/world/sedition-law-in-uk-abolished-in-2009-continues-in-india/story-Pkrvylv6J0T3ddY8uqvKsO.html>