

# REVISITING THE OFFENCE OF SEDITION IN MODERN INDIA

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## ABSTRACT

*The laws of sedition undoubtedly considered as one of the most controversial laws of the colonial period there have been various interpretations from time to time by various competent authorities over the issue. The authors in this paper have tried to trace the historical background of the offence and seek to analyse the concept in a nutshell in light of judicial pronouncements. Moving further the authors have analyzed the key essential and the spirit of the law. In this paper, authors have made an idea in favour of annulling the law of sedition. Authors observed it as uncertain and ambiguous by its very nature and cannot be applied evenly. Authors perceived that sedition is gradually becoming outdated. Problems of disturbing the public order and inciting violence which the law allegedly addresses may instead tackle through other laws that have been enacted for that particular purpose Authors have observed a mixed approach and scrutinized this concept thoroughly and came up with possible solutions.*

**KEYWORDS:** Sedition, colonial period, Indian Penal Code, Government, disaffection, hatred.

## INTRODUCTION

Sedition is known as the illegal acts done to stimulate people against the government in power. Sedition may be any act or speech which inflames anybody to form anti-national views against a government or has the audacity to disrupt the public peace or harmony of the state. The punishment for seditious offences is harsh with a minimum seven years of imprisonment which may extend to life imprisonment. Sedition is a cognizable, non-bailable and non-compoundable offence triable by the court of sessions. § 124A of the Indian penal code requires that the prosecution must prove that the accused possessed the intention to bring hatred or contempt or excite any form of anti-national views towards the government of India or State. It is a reasonable restriction, may be imposed by the government under article 19 (2) of the Indian constitution.

The provision of section 124A is quite wide in its ambit and it includes within its ambit the

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act of defamation of the government. The thing which is to be taken a note of is that this law excludes any criticism in good faith of any particular measures or act of the government.

In order to understand the true meaning and its application we first need to understand the exact meaning of the word sedition. The term sedition according to Cambridge dictionary<sup>2</sup> means ‘language or behavior that is intended to persuade other people to oppose their government.’”

## ORIGIN OF LAW OF SEDITION

The origin of the law related to sedition can be traced back to the Wahhabi movement of the 19<sup>th</sup> century. The Wahhabi movement was a specific Islamic revivalist movement and was headed by Syed Aahmad Barhelvi. This movement saw its activeness in India since the third decade of the 19<sup>th</sup> century ( 1830’s) but it took a form armed conflict or resistance in a way against the British during the period of the ‘sepoy mutiny’ of 1857. In a responsive action the termed the Wahabi protesters as ‘rebels’ and a military operation was also conducted out by the britishers against the protesters who had their involvement directly or indirectly in the movement.

The history of the legal provision concerned with sedition saw its inception in the latter half of the 19<sup>th</sup> century in the year 1870. The law of sedition was for the first time drafted in the year 1837 by Thomas Macaulay who is also termed as the father of IPC.

But due to some unfathomable causes provision dealing with sedition was not made a part of the final draft of the Indian penal code which was subsequently implemented in the year 1860.

Subsequently in the year 1870, through the IPC (amendment) act 1870 the provision related to sedition was introduced by the efforts of Sir James Stephen when he realized the necessity of a particularly specific provision to cope up with the offence of sedition.

The law of sedition in India was partly inferred from the provisions of the Treason Felony Act, was quite precise and less severe.

The first noted state trial for sedition was in the case of *Queen Empress v. Jogendra Chunder Bose*<sup>3</sup>. The Court observed, and laid down the difference between ‘disaffection’ and ‘disapprobation’. Disaffection was defined as the use of spoken or written words to create a disposition in the minds of those to whom the words were addressed, not to obey the lawful authority of the government, or to resist that authority<sup>4</sup>.

When the words that had been used, are found to be calculated and have audacity to stimulate ill feelings against the Government, and with an intention to bring the hatred against the government are sufficient for the section to step in. later on this idea forms the very basis and pave the way for it became the basis for the 1898 amendment to the legislation<sup>5</sup> and provision related to sedition found its place under § 124A of Indian Penal Code.

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<sup>2</sup> Cambridge Dictionary, Sedition at <https://dictionary.cambridge.org/dictionary/english/sedition>

<sup>3</sup>ILR (1892) 19 Cal 35.

<sup>4</sup> Id., 40-42.

<sup>5</sup>Section 4 of Act IV of 1898.

In the almost all elucidations during the colonial India, the Courts, interpreted §124A mainly as stirring a feelings of disaffection towards the government, which enclosed within its domain feelings such as hatred, contempt, dislike, enmity, hostility, and all forms of ill intentions against government. It was observed that it was not the seriousness of the conduct or the intensity of disaffection, but the existence of feelings that was vital and a plain try to excite such feelings was sufficient to establish an offence.

In *Queen Empress v. Ramchandra Narayan*<sup>6</sup> the court further explained the meaning of 'disaffection' and 'disapprobation'. The Court did not come to an agreement with the notion that 'disaffection' was necessarily the opposite of affection, but it promoted that an attempt to excite disaffection amongst the masses was to be construed as an attempt to "excite political discontent and alienation from their allegiance to a foreign sovereign."<sup>7</sup> In *Queen Empress v. Amba Prasad*<sup>8</sup>, the Court however, held that even in cases of 'disapprobation' of the measures of the government, if it can be deduced from a "fair and impartial consideration of what was spoken or written", that the intention of the accused was to excite feelings of disaffection towards the government and therefore it could be considered a seditious act<sup>9</sup>. Thus 'disaffection' would embrace the "absence" or "negation" of affection as well as a "positive feeling of aversion" towards the government<sup>10</sup>.

However the Federal Court in *Niharendu Dutt Majumdar v. King Emperor*<sup>11</sup> came up with a different annotation and observed that the essence of the offence is the incitement of the violence; mere abusive words are not enough, to establish the existence of disaffection, the conduct must incite public disorder or must cause reasonable anticipation of public disorder or likelihood of public disturbance.

Afterward, the ratio of the decision given by the Federal Court in *Niharendu Majumdar Case*<sup>12</sup> was discussed in detail in *King Emperor v. Sadashiv Narayan Bhalerao*<sup>13</sup>. The Judicial Committee of the Privy Council opined that Niharendu Majumdar was decided on the basis of a wrongful construction of §124A<sup>14</sup> and approved the interpretations to the word disaffection placed by Allahabad, Bombay, Calcutta High Courts.

## SEDITION AFTER INDIAN INDEPENDENCE

India got independence on August 15, 1947, even after the constituent assembly expressly excluded it as a ground for the restraint of the right to freedom of speech and expression remaining in operation under §124A of the IPC. Several cases fashioned the ensuing discourse in the law of sedition. In 1950, when the Constitution of India was enacted, a vital question challenging the constitutionality of section 124A, IPC was raised leading to diverged views of Hon'ble court in this regard. It was contended that S.124A is *ultra vires*

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<sup>6</sup>ILR (1898) 22 Bom 152.

<sup>7</sup> Arvind Ganachari, *Combating Terror of Law in Colonial India: The Law of Sedition*, p.62.

<sup>8</sup>ILR (1898) 20 All 55.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>AIR 1942 FC 22.

<sup>12</sup>*Id.*

<sup>13</sup>(1947) LR 74 IA 89.

<sup>14</sup>*Id.*

to the constitution as it put unreasonable limits to the speech and punished mere criticism of the government. In *Tara Singh v State of Punjab*<sup>15</sup>, Watson J. observed that, “*India is now a sovereign democratic state. Government may go and caused to go without the foundation of the state of being impaired. A law of sedition though necessary during the period of foreign rule has become inappropriate by the very nature of the change which has come about*”<sup>16</sup>. And subsequently S.124A was declared unconstitutional for being violative of freedom of speech and expression. First amendment was introduced and ‘in the interest of’ and ‘public order’ were added in Art.19 (2). In *Debi Soren v. state*<sup>17</sup>, Patna High court observed S.124A, IPC to be partly void and partly *intra vires*, but in *Ram Nandan v. State of Uttar Pradesh*<sup>18</sup>, §.124A imposed restrictions that are not in the interest of the general public thereby violating the fundamental rights of speech and expression.

However, supporters on the other hand were of the view that S. 124A, IPC is constitutional as it provides reasonable restriction and is not in contravention of article 19 (1) of Indian constitution. It was contended that the expression ‘in the interest of public order’ has a wider ambit and it rejects all conduct that is likely to disturb the public order and equilibrium. The Supreme Court in 1962, *Kedarnath v State of Bihar*<sup>19</sup> ruled that section 124A, IPC is not *ultra vires* of the constitution. Court observed, the right guaranteed under article 19(1)(a) is subject to such reasonable restrictions as would come within the ambit of clause (2). It was observed that when the provisions §.124A read as whole with illustration provided, it only penalized only such activities as would intended or have the audacity, to create public disorder or may disturb the public peace by recourse to violence. The explanations provided in S.124A makes it clear the criticism, however strongly worded, of the government actions is allowed. Only conducts and expressions that have a tendency to incite violence are made punishable under this section. S.124A tends to make a balance between national interest and the freedom of speech and expression of an individual. It is well understood that the continued existence of government established by law is an essential for the stability of the state. Therefore any conduct (action/omission) which has the potential to threaten the government established by law. Section 124A forbade Disloyalty, revolution, or any conduct that has the audacity to subvert the government established by law and on the other hand encapsulates a positive approach for the criticism, however strongly worded comments for the actions of the government. It should be noted that to avoid confusion with the drafters of the constitution they have used the term ‘security of state’ that was meant to include grave crimes like sedition. The Court in Kedar Nath Case<sup>20</sup> observed that the provision related to sedition was a reasonable restriction both on grounds of ‘public order’ and ‘security of the state’. It was observed to be an intersection with the approach of Fazl Ali, J. in *Brij Bhushan v. State of Delhi*<sup>21</sup> whereby ‘public order’ was akin to ‘security of the State’. Concurring with this reasoning, the Court in Kedar Nath

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<sup>15</sup>AIR 1951 EP 27.

<sup>16</sup>*Tara Singh v State of Punjab* AIR 1951 EP (129).

<sup>17</sup> AIR 1954 Pat. 254.

<sup>18</sup>AIR 1959 All 101.

<sup>19</sup>AIR 1962 SC 955.

<sup>20</sup>*Id.*

<sup>21</sup>AIR 1950 SC 129.

Case, Court has observed that the section related to sedition puts a reasonable limit on both grounds of 'public order' and 'security of the State'; however, distinction has been drawn by courts amid 'public order' and 'security of the state'. The variance, essentially, is one of degree. While in absence of precise definition, public order is tantamount with public safety and tranquility. Security of the state, on the other hand, would encompass such as revolution, civil strife or war. Thus, an argument stating a law justified 'in the interest of public order' would also justify the 'security of the state' seems fallacious. It is understood that disturbance to public peace may be categorised as: transgression against 'law and order', 'public order' and 'security of the state' and Supreme Court in *Ram Manohar v. State of Bihar*<sup>22</sup> held that these may be viewed as three concentric circles, with 'law and order' founding the outermost circle, 'public order' the next circle and 'security of the state' the inmost circle.

It is clear that sedition is a crime against the state; one must keep an eye on the changing nature of the State with time. At the time when sedition was introduced in the IPC, India was still a part of the British Empire and was governed by the British crown. Since all authority derived from the Crown and the subject owed personal adherence to the Crown, it was considered impermissible to attempt to overthrow the monarchs through any means<sup>23</sup>. It have been stressed several times that the courts must give attention to the growing awareness and maturity of its citizenry while determining which speech would be sufficient to incite them to attempt to overthrow the government through the use of violence<sup>24</sup>. Words and acts that would endanger society differ from time to time depending on how stable that society is. Thus, meetings and processions that would have been considered seditious 150 years ago would not qualify as sedition today<sup>25</sup>. This is because times have changed and society is stronger than before<sup>26</sup>.

Section 124A of the Indian Penal Code reads as follows:

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 extent up to 3 years, to which fine may be added, or with fine.<sup>27</sup>

It is based on the rationale every state must conferred power upon itself to punish those who by their conduct put the safety and security of the state at risk or may activate the feeling of disloyalty against government<sup>28</sup>. This section in particular has both the aspects for some scholars it is a positive law and is helpful for the prevention of anti-social and terrorism and on the other side the scene is just completely opposite.

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<sup>22</sup>AIR 1966 SC 740: (1966) 1 SCR 709.

<sup>23</sup>Cass R. Sunstein, *Free Speech Now*, U. Chi. L. Rev. 260 (1992).

<sup>24</sup>Seervai, *Constitutional Law of India* 718 (2010).

<sup>25</sup>*Id.*

<sup>26</sup>*Bowman v. Secular Society Ltd*, 1917 AC 406.

<sup>27</sup>Indian Penal Code (45 of 1860).

<sup>28</sup>*Laws of Sedition in India, Essay on the Indian Penal Code*, (ILI 1966), p.135.

## MEANING & INGREDIENTS OF SEDITION

It is nothing but the libel of the authority established by law. Simply in ordinary sense it mean an exciting up of a rebellion against government<sup>29</sup>. The word extends its ambit to such act/ omissions that are calculated in sense and are likely to disturb peace and promote disaffection, hatred against government established by law and public disorder. There are basic requirements that are to be satisfied in order to hold any person guilty of the sedition:

1. Spreading or trying to spread into hatred or contempt or exciting or attempting to excite disaffection towards the government of India.
2. Such act or attempt may be done by (a) By the means of words, either spoken or written (b) Signs (c) By gestures (visible) or representation.
3. Intentional act must be done.

Explanation 1 of §. 124A provides no scope to disaffection and Explanations 2 & 3 provides what is not considered to be seditious conduct. The section focuses on the conduct of a doer, any attempt to excite hatred and disaffection against government, whether successful and unsuccessful both are to be placed on same footing. The offence of Sedition can be classified under following heads of sedition can be numbered depending upon the object of the accused:-

1. Stirring disaffection against the King, Government, and Constitution, Parliament or administration of justice;
2. Promoting any alteration in Church or State by wrongful means or manner;
3. Inciting disturbance of the peace;
4. Raising discontent among the King's subjects; and
5. Exciting class hatred

## HATRED EXPLAINED

Hatred indicates an evil will, and signifies a form of mind in relation to the object. When hatreds spread against the State or an established form of government in a calculated manner, it constitutes an offence under S.124A and is made punishable under the section. It may be made in either verbal or in writing, by sign or representation or other ways that have audacity to pose a threat to security of state or the government established by law. Whoever made any attempt to spread hatred against the state, is entitled to get punishment, whether he actually fails or succeeded is wholly material.

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<sup>29</sup>Kedar Nath v. State of Bihar, AIR 1962 SC 955.

## DISAFFECTION DEFINED

Plying to the explanation 1 of S.124A, disaffection, in sense includes disloyalty and feeling of enmity, and feeling of enmity includes feeling of dislike or anything of similar sense. It has been interpreted several times. It has been observed that disaffection is a feeling and not a want of feeling. It is a positive emotion, with a tendency to influence<sup>30</sup>. It simply means a feeling opposite to affection<sup>31</sup>. This section used disaffection as a collective noun including all negative feelings.

## SUGGESTIVE REFORMS

Sedition was much wider in its scope when interpreted in modern England than how it was applied in India<sup>32</sup>. And the punishment prescribed for committing it was also found to be unreasonable as commission of the act attracted imprisonment for life or a high fine<sup>33</sup>. When criminal and constitutional law began to develop in England, the crime of sedition become outdated and the Law Reform Commission recommended for the abolition of the crime almost thirty years ago<sup>34</sup>. In its report, the Commission report opinionated that most of the harmful acts disturbing public peace that were involved in committing sedition would be punishable separately under various other statutory provisions<sup>35</sup>.

This provision was also found to be inconsistent with the human rights obligations of UK at international level<sup>36</sup>, as UK is a signatory to European Convention on Human Rights<sup>37</sup> and it seems to have a chilling effect on the freedom of expression.

And, the crime of seditious libel was put an end to through the enactment of the Coroners and Justice Act, 2009<sup>38</sup>. Plying to the provisions of Indian Penal Code, it contains offences against public tranquillity in chapter VIII of the code. It envisages offence from being a member of, joining, hiring people to join, or continuing an unlawful assembly<sup>39</sup>. It also include offence punishable for rioting<sup>40</sup>, assaulting or obstructing a public servant trying to

<sup>30</sup>Emperor v. Bhaskar Balwant Bhopatkar, (1906) 8 Bom.LR 421 (428).

<sup>31</sup>Q.E. v. Jogindra Chunder Bose, (1891) 19 ILR Cal 35 (44).

<sup>32</sup>Durga Das Basu, *Commentary on Constitution of India* 2540 (Justice Y.V Chandrachud et al, 8th ed., 2008).

<sup>33</sup>*Id.*

<sup>34</sup> Clare Feikert-Ahalt, *Sedition in England: The Abolition of a Law from a Bygone Era*, October 2, 2012, available at <https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/> (Last visited on September 07, 2020).

<sup>35</sup>*Id.*

<sup>36</sup> Handyside v. United Kingdom, (1976) 1 EHRR 737 (Art. 10 of the European Convention on Human Rights, 1950 guarantees the freedom of expression (which includes the right to hold opinions and to receive and impart information without interference by a public authority). The European Court on Human Rights had previously held that the "Freedom of expression [...] is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population").

<sup>37</sup> As UK is a signatory to European Convention on Human Rights by enactment of the Human Rights Act, 1998.

<sup>38</sup> Press Gazette, *Criminal libel and sedition offences abolished*, January 13, 2010, available at <https://www.pressgazette.co.uk/criminal-libel-and-sedition-offences-abolished/> (Last visited on September 06, 2020).

<sup>39</sup>The Indian Penal Code, 1860, §141.

<sup>40</sup>*Id.*, § 146.

suppress a riot<sup>41</sup>, provocation with the intent to spark a riot<sup>42</sup>, and promoting enmity between different groups on the basis of religion, race, place of birth, residence, language etc.<sup>43</sup> Further, it also contains a provision for punishing acts that were prejudicial to national integration<sup>44</sup>. Thus, any such act that was 'prejudicial to the maintenance of harmony' would be punishable. Thus, the very core of the crimes of sedition, violence, and public disorder, can be contained by the aforementioned provisions of the IPC. There are several specific legislations talking the issue of the maintenance of public order<sup>45</sup>. Accordingly, there would be no necessity for a specific provision for the punishment of acts committed against the state or the government. Other provisions that are not vague and less stern may instead be applied. The law commission suggest suggested the § 124A is of many latent defects and that have to be removed<sup>46</sup>. Report had stated several reforms including the insult to the national flag and anthem to be punishable with imprisonment up to 3 years or fine or both.

## CONCLUSION

Since its origin in England, the law of sedition has been filled with uncertainty and non-uniformity in its application. As the scope of the sedition remained vague, it has been used by the generations of the ruling political class as an instrument to repress any speech that goes against their interests. The law of sedition is always known for its incorrect application and its use as a weapon for harassment. Several instances speak for its traumatized applications. We observed its application for liking a Facebook page<sup>47</sup>, while criticizing a popular yoga expert<sup>48</sup>, cheering for the Pakistani team during a cricket match against India<sup>49</sup>, for asking a question about whether the stone-pelters in Jammu and Kashmir were the real heroes in a university exam<sup>50</sup> and many more. In Kedar Nath Supreme Court has observed several lacunas in how the law is at present understood. It cannot be denied that there has been a swing in understanding the expression 'security of the state' as a ground to put restrictions on the freedom of speech and expression. Further,

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<sup>41</sup>Id., § 152.

<sup>42</sup>Id., § 153.

<sup>43</sup>Id., § 153-A.

<sup>44</sup>Id., § 153-B.

<sup>45</sup>The West Bengal Maintenance of Public Order Act, 1972; the Assam Maintenance of Public Order Act, 1947; the Goa Maintenance of Public Order and Safety Act, 1972.

<sup>46</sup>Law Commission of India, 'forty-Second Report: The Indian Penal Code', Government of India, 1971, para 6.22.

<sup>47</sup>Times News Network, *Facebook "like" case: No evidence of sedition, govt tells HC*, January 30, 2013, available at <https://timesofindia.indiatimes.com/city/kochi/Facebook-like-case-No-evidence-of-sedition-govt-tells-HC/articleshow/18254753.cms> (Last visited on September 06, 2020).

<sup>48</sup>The Indian Express, *Sedition charge against Digvijay over remark against Ramdev*, June 6, 2011, available at <https://indianexpress.com/article/india/latest-news/sedition-charge-against-digvijay-over-remark-against-ramdev/> (Last visited on September 09, 2020).

<sup>49</sup>NDTV, *Outrage over Sedition Charges against Students who cheered Pakistan*, March 6, 2014, available at <https://www.ndtv.com/meerut-news/outrage-over-sedition-charges-against-students-who-cheered-pakistan-553043> (Last visited on September 04, 2020).

<sup>50</sup>India Today, *Kashmir University lecturer released*, January 2, 2011, available at <https://www.indiatoday.in/india/north/story/kashmir-university-lecturer-released-125863-2011-01-02> (Last visited on September 08, 2020).

there has been a fundamental variation in the nature of the government. Encouragement drawn from the repeal of the law of sedition in England, it may also be said that the law of sedition in India is now obsolete. There are various other statutes enacted to oversee the maintenance of public order and may be invoked to ensure public peace and tranquillity. In light of the above annotations, it is argued that this shifts a responsibility on the Indian judiciary and legislature to reexamine the existence of provisions related to sedition. These provisions remain as leftovers of colonial oppression and therefore left an onus on both Indian Legislature & Indian Judiciary to look for a better way forward.