

OVERVIEW OF SEDITION LAW IN INDIA

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ABSTRACT

The Indian Constitution gives us freedom of speech and expression, The Indian Constitution grants people this crucial Fundamental Right, Freedom of Speech and Expression, under Article 19(1)(a). However, this freedom is not absolute and comes with reasonable restrictions under Article 19(2) in the interests of India's sovereignty and integrity, security, cordial relations with other states, public order, decency, or morality, or in connection to contempt of court, defamation, or incitement to an offense. When it comes to Sedition it is always seen as a tool to curb opposition against the government. It is always in direct conflict with the right to free expression. It restricts people to condemn the government for their policies and ask questions. Freedom of Expression is the foundation of democratic government. In a democracy, freedom of expression is critical in shaping public opinion on social, political, and economic issues. British government as well as successive governments of independent India used sedition law against protestors. There have been arguments and discussions on how the government may use sedition to stifle people's voices, but the issue remains, "Does free speech require any sedition laws?"

SEDITION LAW

Section 124A of IPC deals with the Sedition Law in India, Section 124A of the Indian Penal Code defines sedition as: "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 shall be punished with imprisonment for life, to which fine may be added or with fine."¹ Disaffection includes disloyalty and all feeling of enmity. However, comments without excitement or attempt to excite hatred, contempt, or disaffection, will not constitute an offense under this section.

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¹"India Code: Section Details" (*India Code: Section Details*) <https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=45863§ionno=124A&orderno=133> accessed May 30, 2022

Sedition is a cognizable, non-bailable, and non-compoundable offense, and punishment for such an act ranges from the imprisonment of three years to a lifetime, to which a fine may be added, it is one of the harsh punishments that are given for other offenses in IPC. If one is charged with Sedition, he is barred from a government job, has to live without their passport, and must have to present at court when it is necessary and required.

The **Criminal Procedure Code, 1973's Section 95** deals with the right of the government to forfeit material punishable under Section 124 A on stated grounds. It gives the power to issue search warrants for the same. Chapter X of CrPC deals with the maintenance of public order and tranquillity and permits Police, Magistrate, and Armed Forces to cause an unlawful public assembly to disperse, if necessary, by using force and to restore public order.

Unlawful Activities (Prevention) Act, 1967– As indicated by **Section 2(o)** of the said Act, supporting cases of withdrawal, questioning territorial integrity, and causing or intending to cause disaffection against India fall inside the ambit of unlawful activity. Section 13 punishes unlawful action with imprisonment reaching out to seven years and a fine.

These are the laws that deal with the law of sedition law in India. Section 95 of CrPC offers the power to the institution so that correct procedure has to be followed, whilst Section 124A of IPC gives a proper definition of Sedition and what can constitute a seditious charge. Whereas the Unlawful Activities (Prevention) Act, 1967 has been there to strengthen the law of sedition.

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HISTORICAL BACKGROUND OF SEDITION LAW

The law of Sedition was first time enacted in England during the 17th century, The concept of sedition is not new to the Indian Government, it has been there since British Government has control over India, the Sedition Laws in India were first time drafted in 1837 by Thomas Macaulay but when the Indian Penal Code (IPC) was enacted in 1860², it was strangely overlooked. It was inserted into the IPC in 1870 as Section 124A for crimes against the state in reaction to the growing influence of the Wahabi movement led by Syed Ahmed Bareilvi. It was intended to quell rising anti-British sentiment among Indian leaders and politicians for the British to maintain control over the Indian subcontinent, and the punishment for this offense was life imprisonment.

²Hasan and Adil Abbas SM, "An Overview of Sedition Law in India" (*Legal Bites - Law And Beyond*, October 18, 2021) <<https://www.legalbites.in/an-overview-of-sedition-law-in-india/>> accessed May 30, 2022.

Section 124A of IPC was amended in 1898 to add the words "bringing or attempting to bring hatred or contempt towards the Government established by law is punishable," and it was later amended to change the punishment to "imprisonment for life and/or with fine or imprisonment for three years and/or with fine."³ After independence, there were extensive debates in the Constituent Assembly about how ridiculous this Section was and whether it should be waived because it infringed one of the most essential Fundamental Rights, freedom of speech and expression. But it was never really repealed. In 1951, on submitting the first Constitution Amendment Bill, Jawahar Lal Nehru said emphatically that this rule had no place in independent India.

CONSTITUTIONAL VALIDITY OF SEDITION LAW

Section 124A is beneficial in combating anti-national, separatist, and terrorist elements, among others. It protects the elected government from attempts to destabilize it through violent acts and criminal means. Maintaining the legitimacy of the legally created government is a crucial prerequisite for a state's coherence. If contempt of court is punished by criminal prosecution, then contempt of government should be punished as well. The constitutional validity of Section 124A has been challenged from time to time before courts on the ground that it violates Art 19 (1)(a) of the Indian constitution, which gives citizens the fundamental right to freedom of speech and expression. It is argued that the right to speech, criticize the Government, and disagree with its policies is the cornerstone of the democracy, and the rules laid down under sedition laws are against the democratic values.

Indian Courts since independence challenge its validity, In 1950 Supreme Court in *Romesh Thapar v State of Madras*⁴ the Madras Government had banned the Red Cross newspaper owned by the petitioner, the issue before the court was that does it in violation of the fundamental right of freedom of speech and expression, the court held that "criticism of the government exciting disaffection or bad feelings towards it, is not to be regarded as a justifying ground for restricting the freedom of expression and the press unless it is such as to undermine the security of or tend to overthrow the state."

In 1961 a ruling came from Punjab and Haryana High Court, the court held that the sedition law violates freedom of speech and expression guaranteed under Article 19 of the Indian

³Singh V, "Sedition Law In India" (*lawyersclubindia*) <<https://www.lawyersclubindia.com/articles/sedition-law-in-india-14179.asp>> accessed May 30, 2022.

⁴*Romesh Thappar v State of Madras*, [1950] SCR 594 (SC)

constitution and declared it unconstitutional. In 1962 *Kedar Nath Singh vs the State of Bihar*⁵ again constitutional validity of Section 124A of IPC was challenged, Supreme Court in this case upheld Section 124A on the ground that it violates Article 19 freedom of speech and expression. In this case, Supreme Court laid down a certain guideline for registering a case under Sedition, SC said that sedition's offense would only be complete when if the words complaining tend to incite violence.

In *Balwant Singh vs State of Punjab*⁶ the case, Supreme Court held that the mere chanting slogan for few times does not amount to sedition. Balvantsingh and a few others are arrested, for chanting the slogan in the cinema of "Khalistan Zindabad...", under Section 124A of IPC. The Supreme Court ruled that the two lone appellants' shouting a slogan a few times did not represent a threat to the government of India or the dissemination of any animosity towards any people or government. *Dr. Vinayak Binayak Sen v. State of Chhattisgarh*⁷ The court also ruled that a person might be guilty of sedition even if she did not write or distribute the seditious statement. The Allahabad High Court ruled that a writer's criticism of a Supreme Court decision on the National Judicial Appointment Commission is not an act of sedition, but rather constructive.⁸

SEDITION LAW IN OTHER COUNTRIES

United Kingdom- the one who brings sedition law in India (Britishers) removed it from their Constitution. In the UK sedition law was not used that many times as in India, the last case of sedition was logged in 1972. In 2009 the sedition law was abolished by the coroners and justice act, 2009 on the ground that at present there is no need for the sedition in our constitution.

United States of America- Sedition law in the USA in 1798 under the presidency of John Adams. But it was removed in 1801. Again, the sedition case was seen during world war I time, section 3 of the Sedition Act, 1918 was introduced to punish, if anyone found to make a false statement regarding the U.S. government that can harm its war efforts, it also includes insulting the national flag, military, and government.

⁵*Kedar Nath Singh v State of Bihar*, [1962] SCR 769 (SC)

⁶*Balwant Singh v State of Punjab*, [1995] 2 SCR 411 (SC)

⁷*Dr. Vinayak Binayak Sen v. State of Chhattisgarh*[2011]Indiankanoon (SC)

⁸*Arun jatily v state of up*, [2015]SCC OnLine All6013 (SC)

New Zealand– Till the 20th century there was sedition law in New Zealand and sedition cases were frequent at that time. But in 2007 Sedition law was repealed by the introduction of The Crimes(Repeal of Seditious Offenses) Amendment Act, 2007 which came into force in 2008, and the sedition law became a dead letter.

Singapore – Like in India, sedition law in Singapore was also introduced by the British to curb local opposition against the British government. Sedition laws were first time implemented in Singapore through the Sedition Ordinance, of 1938. After 83 years in 2021 Sedition law was repealed in Singapore.⁹Other pieces of legislation have been added throughout the years to address certain areas of the Act in a more focused and calibrated manner.

CONCLUSION

In India, sedition has been highly contentious legislation with seemingly endless controversies. The fundamental rights and sedition laws are believed to be two sides of the same coin since one safeguards citizens' rights while the other defends the country's safety and integrity. These laws have been utilized arbitrarily on several occasions, and it has been proposed that they are incompatible with the country's current circumstances and that they should be repealed or altered to meet the needs of the country. Furthermore, Sedition must be reinterpreted to ensure its application to words, acts, and publications directed against the nation rather than the government, as the basic concept of a democratic country is to invite discussion from both sides. Transparency, accountability, public engagement, equality, and representation may all be guaranteed in a democratic political system by maintaining Article 19(2) of the Indian Constitution and striking down any law that violates the abovementioned Article.

Article 13(1) of the Indian constitution stipulates that all legislation in existence in India before the beginning of this constitution is invalid if they are inconsistent with the Fundamental Rights. the definition of sedition violates fundamental rights henceforth it should be declared unconstitutional or the government should reframe it according to the present situation. Recently the central government made a statement that colonial legislation requires “re-consideration and re-examination” after that SC put on hold all sedition

⁹“Singapore Parliament Repeals Sedition Act after 83 Years” (*The Straits Times*, October 5, 2021) <<https://www.straitstimes.com/singapore/politics/singapore-parliament-repeals-sedition-act-after-83-years>> accessed May 30, 2022.

proceedings till re-examination of the sedition law has not been completed. SC held that "We hope and expect Centre and State Governments will refrain from registering any FIR, continuing investigation, or taking coercive steps under Section 124A IPC when it is under reconsideration. It will be appropriate not to use this provision of law till further re-examination is over."¹⁰ Sedition law is a good tool for national security if it is used lawfully not for the sake of the being in the power for a long time, also it needs a few changes as per the need of the time because at present we giving more importance to person's fundamental rights enshrined under part III of the constitution. So our lawmakers have to implement new laws that can make a balance between a person's fundamental rights and national security & integrity.



¹⁰*S.G. Vombatkere v Union of India* [2022] LiveLaw 470 (SC)