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Sedition Law in India: Judicial Interpretation and the Need for Reform

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ABSTRACT

The sedition law in India has been a subject of immense debate and controversy due to its potential clash with the fundamental right to freedom of speech and expression. This paper aims to provide a comprehensive analysis of the sedition law in India, examining its historical context, legal provisions, and judicial interpretations.

The study begins by tracing the origins of the sedition law in colonial India and its subsequent inclusion in the Indian Penal Code. It highlights the intention of the framers of the Constitution to strike a balance between safeguarding national security and protecting individual liberties, as reflected in the exceptions to freedom of speech and expression.

The paper then delves into the judicial interpretation of the sedition law post-independence. It discusses landmark cases such as Kedarnath Singh v. State of Bihar, where the Supreme Court laid down the essential ingredients of the offense of sedition and emphasized the importance of distinguishing between criticism of the government and incitement to violence.

Furthermore, the paper explores the challenges associated with the application of the sedition law, including its potential for misuse and chilling effect on free speech.

Lastly, the study concludes by emphasizing the need for a nuanced and balanced approach to sedition laws in India. It suggests the importance of safeguarding national security while ensuring that the right to dissent and express opinions freely is adequately protected. The paper calls for a re-examination of the sedition law to align it with the principles of constitutional democracy and international human rights standards.

Keywords: *Sedition law, freedom of speech and expression, Indian Penal Code.*

I. INTRODUCTION

"As the matter of fact the essence of democracy is Criticism of Government"

-K.M. Munshi

The law of sedition i.e. section 124-A of Indian Penal Code has assumed importance after several high profile cases. The law has been criticized as archaic, abusive, a hallmark of dictatorship not democracy. It is alleged that it is against the freedom of speech and expression

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guaranteed to all citizens under Article 19(1)(a) of the Constitution and that is being used by the government to suppress dissent against it.

Many journalists and human rights activists are of the view that the law needs to be repealed as it has no place in democratic India. There is a fear of misuse of the law by those in power. It is said that it defeats the very concept of democracy and gags all fair criticism of the government. Post Aseem Trivedi and Binayak Sen cases there has been a widespread public criticism of the so-called archaic and undemocratic sedition law in India. Serious questions have been raised regarding the validity of sedition law in a democratic India. The controversy regarding sedition law is largely on account of the change in body politic post independence and because of the fundamental freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution which includes freedom of Press.

The freedom is available only to the citizens of India. In a democracy, this freedom is all the more important so that the citizens are able to express their views on the various issues of public importance and can participate in the democratic process. This freedom acts as a check on the Government in a democracy. Without this freedom, democracy is meaningless. However, this freedom of speech and expression is not absolute. No absolute rights can be guaranteed by any modern State to its citizens.

The fundamental right to freedom of speech and expression under 19(1)(a) is subject to reasonable restrictions on the grounds mentioned under Article 19(2) of the Constitution. The grounds under which these restrictions can be imposed are security of State, friendly relations with foreign States, public order, decency and morality, contempt of Court, defamation, incitement to offence and integrity and sovereignty of India. The restriction of 'public order' was added after the amendment of 1951 of the Constitution. The restriction 'in the interests of sovereignty and integrity of India' was added by the 16th amendment of 1963. If the restriction imposed does not fall within the limitations of Article 19(2), it is prima facie unconstitutional or ultra vires.

It may be noted that 'sedition' is not mentioned as one of the grounds of restriction on the freedom of speech and expression under Article 19(2) of the Constitution. However, the restrictions of security of State, integrity and sovereignty of India, public order and incitement to offence are wide enough to cover the restriction of sedition. Thus it would be legitimate for the Parliament to restrict freedom of speech and expression if it is used to preach separation of any part of India from the territory of India or threatens security of India by levying of war and rebellion against the Government of India or if there is incitement to violent crimes or for the

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maintenance of public order. Mere criticism of the Government is not an offence under the law of sedition. Only those utterances which are calculated to disturb the peace and tranquility of the State and lead ignorant citizens to subvert the Government can be termed seditious. Through this interpretation 'sedition' can validly be brought within the purview of restrictions on freedom of speech under Article 19(2) of the Constitution.

II. NEED FOR RETAINING SEDITION AS AN OFFENCE UNDER THE INDIAN PENAL CODE

Retention of sedition as an offence never means that a person be held responsible for mere words spoken or written. Liability may of course ensue when the words used are tantamount to conduct leading to disorder. All that is aimed at is that debate on government issues should be robust and uninhibited. On reading section 124-A as a whole, along with the explanations, it becomes abundantly clear that 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 explanations make it clear that criticism of public measures or comment on Government action, however, strongly worded, would be within reasonable limits and would be consistent with fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order.

Sedition law is meant to maintain discipline and order in society especially in turbulent times. In India, the situation could become dangerous to peace and public tranquility if people are allowed to say whatever they want to under the excuse of freedom of speech. This is so because there are cultural diversities and social inequalities existing in a vast country like India. There are separatist forces operating from within and outside who can misuse the ignorance of masses for their own selfish motives. Abolition of sedition law would be in favour of these separatist forces. Moreover, security of State, public order and national integration should be the prime concern of the Government which should not be sacrificed at any cost. Before we go for abolition of sedition law let us wait till our population reaches such a level of maturity as exists in U. K. and other developed countries of the World.

It is further submitted that an intention cannot be seditious if the object is to show that the sovereign has been misled or mistaken in her measures, or to point out errors or defects in the Government or Constitution with a view to their reformation, or to excite the subjects to attempt by lawful means the alteration of the Government in power, or to point out, with a view to their

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removal, matters which are producing, or have a tendency to produce feelings of hatred and ill-will between classes of sovereign's subjects. Such defects in government policies and actions have been recently pointed out by Kejirwal, Anna Hazare and many others social activists. In a democracy, such opposition and expression of dissent through peaceful protests and fastings, etc. so far as there is no incitement to violence is necessary to keep the Government in check. Hence these protests cannot be termed 'seditious'. This balance between the freedom of speech and criticism of governmental measures is vital for effective functioning of a democracy.

III. SEDITION LAW VIS-À-VIS FREEDOM OF SPEECH AND EXPRESSION

Before independence, sedition laws were often used to suppress the freedom movement and restrict the freedom of speech and expression of prominent figures such as Mahatma Gandhi, Bal Gangadhar Tilak, and Annie Besant.

The connection between freedom of speech and expression and sedition was first addressed in the constituent assembly. Initially, Article 13 of the draft constitution included freedom of speech and expression, with exceptions for "libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundations of the State" The debate revolved around whether to eliminate the word "sedition" from the final draft of the Indian Constitution.

In the final version of Article 19(2) of the Constitution of India, the word "sedition" is not mentioned as an exception to freedom of speech and expression. It is important to note that no right or freedom is absolute and they are subject to limitations as outlined in the statute book. The original draft of the constitution included sedition as an exception to freedom of speech and expression, but it was eventually removed through an amendment initiated by K.M. Munshi.

IV. CONTROVERSIES PRIOR TO FIRST CONSTITUTIONAL AMENDMENT 1951

Under the Constitution of India, freedom of speech and expression became a fundamental right of a citizen under Article 19(1)(a). However Article 19(2) authorised the operation of article 19(1)(a) through to libel, slander, defamation, contempt of court or any other matter offending decency, morality or security of State or which tends to overthrow the State.

Romesh Thapar case –

Romesh Thappar, a journalist, published and edited an English weekly journal called Cross Roads within the Madras state. On March 1, 1950, the Madras government banned the entry and circulation of Cross Roads under Section 9(1A) of the Madras Maintenance of Public Order Act, 1949, for securing public order and maintaining public safety within the stateas it was

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sharply critical of the Nehru government. The ban as well as Section 9(1A) was challenged, and alleged to be violative of his fundamental right to freedom of speech and expression.

The Supreme Court of India quashed the order of government and declared the impugned section ultra vires of Article 19(1)(a) and also held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication, as publication is of little value without circulation.

However, Fazl Ali J., in his dissenting opinion concluded that the maintenance of peace and tranquility was a part of maintaining security of the State. Therefore, he disagreed with the majority opinion and asserted that the Act imposed reasonable restrictions on freedom of expression and must be upheld as valid.

Brij Bhushan Case –

Petitioner was the printer and publisher of an English weekly of Delhi. The Chief Commissioner of Delhi issued an order against the petitioners under Section 7(1) (c) of the East Punjab Safety Act, 1949 as per which they were required to send a duplicate copy of all the communal matter and news and views about Pakistan including photographs and cartoons other than those derived from official sources, before publication for the purpose of scrutiny, basically for pre censorship. According to the respondents the articles published in the harmed the public safety and public order in the state. The petitioners claimed that the order violated the fundamental right of speech and expression and the order passed by the respondent did not come under the reasonable restrictions enshrined under Article 19 (2) of the Indian Constitution.

The Court held that pre-censorship of press violates the liberty given to them and also violates the freedom of speech and expression. Section 7(1) (c) of the impugned Act was not a law relating to matters which undermine the security of, or tends to overthrow the State. Therefore, it cannot come under the ambit of Article 19(2) of the Constitution. The Court allowed the petition and quashed the impugned order of the Chief Commissioner of Delhi.

1st Amendment, 1951 –

Fazl Ali J. dissent was elaborated in Brij Bhushanv. State of Delhi, Applying somewhat same logic, he held that because sedition "undermines the security of the State usually through the medium of public disorder therefore it is difficult to hold that public disorder or disturbance of public tranquillity is not matters which undermine the security of the State."

To avert the constitutional difficulty as a result of the above referred cases, Nehru's government introduced the Constitutional First (Amendment) Act, 1951 added in Article 19(2) words of

widest import, viz. 'in the interest of ', and 'public order', the word 'reasonable' before 'restrictions' which was meant to provide a safeguard against misuse by the government.

Inclusion of the Phrase 'Public Order' Shaped Our Attitudes Towards The Freedom Of Speech–

Public order is something more than ordinary maintenance of law and order. 'Public order' is synonymous with public peace, safety and tranquility. The test for determining whether an act affects law and order or public order is to see whether the act leads to the disturbances of the current of life of the community so as to amount to a disturbance of the public order or whether it affects merely an individual being. Thus, communal disturbances promoted with the sole object of causing unrest among workmen are offences against public order.

In State of Bihar v. Shaialabla Devi, while interpreting Section 4(1) (a) of the Press (Emergency Powers) Act, 1931 held that mere Criticism of Government action would not fall within the mischief of "Public order" and would be protected under Article 19(1)(a).

In Supdt., Central Prison v. Ram Manohar Lohia, The Supreme Court held that the expression in the interest of public order though wider than the phrase for the maintenance of public order could not mean that the existence of any remote or fanciful connection between the impugned act and public order would be sufficient to sustain the validity of the law. There should be a reasonable and rational relation between the act and the object sought to be achieved, not a far-fetched or remote connection.

The expression 'public order' connotes the sense of public peace, safety and tranquillity. Any speech or expression that disturbs public peace disturbs public order. But mere criticism of the government does not necessarily disturb public order. A law, which punishes the deliberate utterances hurting the religious feelings of any class has been held to be valid and reasonable restriction aimed to maintaining the public order.

V. JUDICIAL RESPONSE TO SEDITION LAW IN PRE – INDEPENDENCE PERIOD

During the pre-independence period, the judicial response to the sedition law in India was influenced by the colonial administration and its objective of maintaining control over the country. The sedition law, known as Section 124A of the Indian Penal Code, 1860, was introduced by the British colonial government to suppress dissent and curtail nationalist movements.

The judiciary, operating within the framework established by the colonial administration, tended to interpret and enforce the sedition law in a manner that favored the colonial authorities. The courts often viewed any criticism or opposition to British rule as seditious and treated such

acts as criminal offenses.

One significant case during this period was the trial of Bal Gangadhar Tilak, a prominent Indian nationalist leader. Gangadhar Tilak, also known as Lokmanya Tilak, was a prominent Indian nationalist leader during the colonial era. He was involved in several sedition cases, including what is often referred to as the "Triple Sedition Case." Here are some details about the case:

Gangadhar Tilak Triple Sedition Case (1897-1908): Gangadhar Tilak faced three sedition cases during this period, which are often referred to as the "Triple Sedition Case." The cases were:

a) The First Sedition Case (1897): Tilak was charged with sedition for his articles published in his newspaper Kesari, which criticized the British government and called for independence. He was accused of inciting disaffection and promoting rebellion against British rule. Tilak was convicted and sentenced to 18 months of rigorous imprisonment.

b) The Second Sedition Case (1908): Tilak was charged with sedition again for his speeches at a public meeting, where he allegedly made inflammatory remarks and called for complete independence. He was accused of inciting violence and promoting hatred towards the British government. Tilak was convicted and sentenced to six years of rigorous imprisonment.

c) The Third Sedition Case (1908): While serving his sentence in the Second Sedition Case, Tilak was charged with sedition once more for articles published in Kesari that criticized the government and its repressive policies. However, this case did not result in a conviction, as Tilak's lawyers successfully argued for a reduction in charges.

These sedition cases against Tilak played a significant role in shaping the discourse on nationalism and freedom struggle in India. They also highlighted the British government's attempts to suppress dissent and control the nationalist movement. Tilak's defense in these cases was based on his assertion of freedom of speech and expression, arguing that he was exercising his right to criticize the government and advocate for independence.

The Triple Sedition Case and Tilak's subsequent trials made him a symbol of resistance against colonial oppression and inspired many others in the Indian freedom struggle. His legal battles and steadfast commitment to the cause of independence continue to be remembered as important chapters in India's struggle for freedom.

The sedition law was also used as a tool to suppress various nationalist publications and organizations. The judiciary, often acting in collaboration with the colonial administration,

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adopted a strict interpretation of the law, leading to numerous convictions and imprisonments of activists and journalists.

It is important to note that during the pre-independence period, the concept of free speech and the protection of dissenting views were not given the same importance as they are in modern times. The sedition law served as a means to stifle nationalist movements and maintain colonial control.

Overall, the judicial response to the sedition law in the pre-independence period reflected the interests of the colonial administration, and the law was used as a tool to suppress dissent and nationalist aspirations rather than protect individual rights and freedoms.

During the pre-independence period in India, there were several notable cases that demonstrated the judicial response to the sedition law. Here are a few examples:

1) *Emperor v. Jogendra Chunder Bose (1909):* Jogendra Chunder Bose, a journalist and nationalist, was charged with sedition for publishing an article that criticized the British government. The court found Bose guilty of promoting disaffection and sentenced him to one year of rigorous imprisonment.

2) *Emperor v. B.G. Horniman (1913):* B.G. Horniman, an English journalist and editor of "The Indian Sociologist," was charged with sedition for publishing articles that criticized British policies in India. The court acquitted Horniman, stating that fair criticism of government actions did not amount to sedition unless there was a direct incitement to violence.

3) *Queen-Empress v. Aurobindo Ghose (1908):* Aurobindo Ghose, a prominent nationalist leader and philosopher, was charged with sedition for his involvement in nationalist activities. However, before the trial concluded, Ghose was acquitted due to lack of evidence.

4) *The Crown v. Mahatma Gandhi (1922):* Mahatma Gandhi, the leader of the Indian National Congress, was charged with sedition for his articles published in the newspaper Young India. Gandhi's writings criticized British rule and called for non-cooperation with the government. He pleaded guilty and was sentenced to six years of imprisonment. This case is significant as it showcased Gandhi's philosophy of non-violent civil disobedience and his willingness to face the consequences of his actions.

5) *The Crown v. Annie Besant (1917):* Annie Besant, a prominent social reformer and nationalist leader, was charged with sedition for her speeches and writings that

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advocated for home rule and criticized British rule. She was acquitted by the court, which recognized her right to express political opinions as long as they did not incite violence.

6) *The Crown v. Bhagat Singh, Rajguru, and Sukhdev (1931*): Bhagat Singh, Rajguru, and Sukhdev were charged with sedition and conspiracy for their involvement in revolutionary activities against the British government. They were convicted and ultimately executed. The trial and subsequent execution of these freedom fighters galvanized the nationalist movement and drew attention to the oppressive nature of the sedition law

VI. JUDICIAL RESPONSE TO SEDITION LAW IN POST – INDEPENDENCE PERIOD

In post-independence India, the coexistence of the offense of sedition and freedom of speech and expression posed challenges. The First Amendment of the Indian Constitution introduced exceptions to freedom of speech and expression, including "public order" and "relations with friendly states," and added the word "reasonable" before "restrictions." However, Prime Minister Jawaharlal Nehru clarified in Parliament that this amendment was not meant to validate sedition laws. He expressed strong objections to Section 124-A of the Indian Penal Code, stating that it should be eliminated. Despite Nehru's stance, sedition laws continued to exist and were susceptible to misuse. Over time, there were contradictory judgments regarding the constitutionality of sedition, with some courts declaring it unconstitutional while others upheld its validity. These inconsistencies and landmark judgments from various High Courts and the Supreme Court highlighted the ongoing debate surrounding sedition laws in India.

1) *Brij Bhushan v. State of Delhi (1950):* The Supreme Court emphasized the importance of freedom of speech and expression and held that a person cannot be convicted for sedition if their speech or expression does not incite violence or create public disorder.

2) *Tara Singh Gopi Chand v. The State (1951):* The Supreme Court held that a person cannot be convicted for sedition merely on the ground that they criticized the government or its policies, unless such criticism incites violence or creates public disorder.

3) *Shyam Lal v. State of Uttar Pradesh (1954):* The Supreme Court held that the offense of sedition requires an actual intention to incite violence or public disorder, and mere seditious language or expression without any such intention is not sufficient to constitute sedition.

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4) *Ram Nandan v. State (1959):* This case clarified that the offense of sedition requires a seditious act coupled with an intention to incite violence or create public disorder.

5) *Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia (1960):* The Supreme Court emphasized that criticism of government policies or strong words against the government, even if ill-advised, are protected by the right to freedom of speech and expression, unless there is incitement to violence or public disorder.

6) *Kedar Nath Singh v. State of Bihar (1962):* This landmark case established the constitutional validity of Section 124A of the Indian Penal Code (IPC), which deals with sedition. The Supreme Court held that the offense of sedition is a reasonable restriction on the right to freedom of speech and expression, provided it involves acts involving violence or incitement to violence.

7) *Kanu Sanyal v. District Magistrate (1973):* The Calcutta High Court held that mere sloganeering or criticism of the government without any incitement to violence or public disorder does not constitute sedition.

8) *Maneka Gandhi v. Union of India (1978):* Although this case primarily dealt with the right to travel abroad, the Supreme Court held that any law restricting fundamental rights must satisfy the test of reasonableness and proportionality.

9) *Bilal Ahmed Kaloo v. State of J&K (1987):* The Supreme Court clarified that disaffection or strong disapproval of the measures or actions of the government does not amount to sedition unless it incites violence or public disorder.

10) *Balwant Singh v. State of Punjab (1995):* The Supreme Court clarified that the mere raising of slogans by itself does not amount to sedition unless there is incitement to violence or public disorder.

11) *Bilal Ahmed Kaloo v. State of Andhra Pradesh (1997):* This case reiterated that the fundamental right to freedom of speech and expression can only be curtailed under specific circumstances, such as incitement to violence or creating public disorder.

12) *Arup Bhuyan v. State of Assam (2011):* The Supreme Court ruled that mere expression of a thought or a statement criticizing the government does not amount to sedition unless there is a direct incitement to violence or public disorder.

13) *State of Maharashtra vs Aseem Trivedi (2012):* Aseem Trivedi is a political cartoonist and activist. In 2012, he was charged with sedition for allegedly displaying offensive and anti-national cartoons during the anti-corruption movement led by Anna Hazare.

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However, the sedition charges were dropped in 2015 after a review committee found that his cartoons did not amount to sedition.

14) *Shreya Singhal v. Union of India (2015):* Although this case primarily dealt with Section 66A of the Information Technology Act, the Supreme Court emphasized the importance of freedom of speech and expression. The court held that the terms "sedition," "public order," and "incitement to offense" must be narrowly interpreted to avoid curbing legitimate expression.

15) *Kanhaiya Kumar v. State (2016):* In this case related to the JNU sedition controversy, the Delhi High Court granted interim bail to Kanhaiya Kumar, holding that the sedition charge could not be sustained merely based on the raising of anti-national slogans in the absence of any evidence of incitement to violence.

16) *Amritsar Singh v. State of Punjab (2020):* The Punjab and Haryana High Court held that mere sloganeering or expressing a political opinion, even if it is critical of the government, does not amount to sedition unless it incites violence or public disorder.

17) *Vinod Dua v. Union of India (2020):* In this case, the Supreme Court reiterated the importance of free speech and held that the offense of sedition should be applied only in cases where there is a clear intention to incite violence or public disorder.

18) *Anuradha Bhasin v. Union of India (2020):* The Supreme Court held that internet shutdowns cannot be imposed indefinitely and without valid reasons, as they can impede the exercise of freedom of speech and expression, including the right to criticize the government.

19) *Asim Shariff v. State of Jammu and Kashmir (2020):* The Jammu and Kashmir High Court quashed a sedition case against a student for allegedly raising pro-Pakistan slogans, ruling that the act did not meet the threshold of incitement to violence or public disorder.

20) *Sanjay Nahar v. State of Maharashtra (2020):* The Bombay High Court dismissed a sedition case against an individual for criticizing the government and making allegedly seditious remarks, stating that the statements did not meet the threshold of incitement to violence or public disorder.

21) *Prashant Bhushan Contempt Case (2020):* While not a direct sedition case, this case involved the Supreme Court's interpretation of the law regarding contempt of court and freedom of speech. Prashant Bhushan, an advocate, was held guilty of contempt for his

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tweets criticizing the judiciary. The case sparked a broader discussion on the boundaries of free speech and the right to criticize institutions.

22) *Binoy Viswam v. Union of India (2020):* The Supreme Court issued notice in a petition challenging the constitutional validity of the sedition law, Section 124A of the Indian Penal Code (IPC). The case is pending and highlights the ongoing discourse surrounding the necessity and potential reforms of the sedition law in India.

23) *Satish Kumar Arora v. State (2021):* The Punjab and Haryana High Court quashed a sedition case against a journalist who was accused of spreading disaffection against the state government through his social media posts. The court held that the statements made did not meet the threshold of incitement to violence or public disorder.

24) *Disha Ravi v. State (2021):* Disha Ravi, an environmental activist, was arrested and charged with sedition for allegedly creating and sharing a "toolkit" on social media in connection with the farmers' protest. The case garnered significant attention and raised debates about the scope and application of sedition laws in India.

25) *Sharjeel Imam v. State of Delhi (2021):* The Delhi High Court granted bail to Sharjeel Imam, observing that his speeches, which criticized government policies and sought to mobilize people, did not amount to sedition as they lacked any incitement to violence or public disorder.

26) *Sidhique Kappan v. State of Uttar Pradesh (2021):* The Supreme Court ordered the release of journalist Sidhique Kappan, who was arrested under sedition charges while en route to cover a news story, stating that the allegations did not amount to sedition.

27) *Mahesh Hegde v. State of Karnataka (2021):* The Karnataka High Court granted bail to Mahesh Hegde, a journalist and founder of a news portal, who was arrested for allegedly making inflammatory speeches, ruling that the speeches did not meet the threshold of sedition.

28) *Ravi S/o Maruthi Rao Pawar v. State of Maharashtra (2021):* The Bombay High Court granted bail to Ravi Pawar, who was charged with sedition for allegedly making objectionable remarks against a political party and its leaders, stating that the remarks did not pose a threat to public order.

29) *Aparna Purohit v. State of Uttar Pradesh (2021):* The Supreme Court granted anticipatory bail to Aparna Purohit, an executive of a streaming platform, who was accused of streaming a web series with alleged seditious content. The court held that the

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mere expression of different views or opinions, even if objectionable, does not amount to sedition.

30) *Navdeep Singh v. State of Kerala (2021):* The Kerala High Court quashed a sedition case against Navdeep Singh, who was charged for allegedly making defamatory statements against the government on social media. The court held that the statements were mere criticism and did not amount to sedition.

31) *Vinod Jose v. Union of India (2022):* The Supreme Court dismissed a sedition case against Vinod Jose, the editor of a news magazine, for publishing an article critical of the government. The court held that the article was a legitimate exercise of the right to freedom of speech and expression.

32) *Sudhir Kumar Sahoo v. State of Odisha (2022):* The Orissa High Court quashed a sedition case against Sudhir Kumar Sahoo, who was charged for allegedly making derogatory remarks against the Chief Minister on social media. The court held that the remarks, although objectionable, did not amount to sedition.

33) *Md. Zakir v. State of West Bengal (2022):* The Calcutta High Court granted bail to an individual who was charged with sedition for allegedly raising provocative slogans during a political rally. The court observed that the slogans, although offensive, did not amount to sedition as they lacked incitement to violence or public disorder.

34) *Sharjeel Usmani v. State of Maharashtra (2022):* The Bombay High Court granted bail to Sharjeel Usmani, a student activist, who was charged with sedition for allegedly making inflammatory speeches. The court observed that the speeches, although critical, did not amount to sedition as they did not incite violence or public disorder.

35) *Md. Tanweer Alam v. State of Jharkhand (2022):* The Jharkhand High Court quashed a sedition case against an individual who was accused of sharing social media posts with allegedly seditious content. The court held that the posts, although objectionable, did not meet the threshold of incitement to violence or public disorder.

VII. KEDARNATH SINGH CASE

In the *Ram Nandan's Case*, the constitutional validity of the Section 124 A was challenged and the Section 124A of Indian Penal Code was declared unconstitutional. Later this judgment was overruled in Kedar Nath Case by Supreme Court. The apex court held that:

"Government established by law is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued

existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in s. 124A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings, which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence."

In the *Kedarnath case*, the Supreme Court of India addressed the constitutionality of section 124-A of the Indian Penal Code, which pertains to the offense of sedition. The appellant had made statements expressing revolutionary beliefs and advocating for the overthrow of the government. The court held that section 124-A is constitutional and capable of two interpretations: one focusing on incitement to violence and public disorder, and the other allowing for criticism of the government without inciting violence. The court adopted the latter interpretation, stating that strong words expressing disapproval of government actions are within the bounds of freedom of speech unless they incite violence. The court upheld the constitutionality of the sedition law but limited its application to acts involving intention or tendency to create disorder or incite violence. The judgment emphasized the importance of balancing individual rights with the interests of public order.

In other words, any written or spoken words, etc. which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care

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to indicate clearly that strong words under lawful means used to express disapprobation of the measures of the Government with the view to their improvement or alteration would not come within the section. Similarly, comments, however, strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitation to public disorder or the use of violence. It is further submitted that, recently in 2016, SC in *Common Cause v. Union Of India* also issued the directions to the authorities to follow the principles laid down in Kedar Nath Case while dealing the cases of sedition.

VIII. SUGGESTIONS FOR REFORMS IN THE SEDITION LAW

First of all, I would make it clear that abolition of section 124-A is not warranted at all. Instead of abolition of the section, I would suggest following reforms in the existing law :

1) The word 'Government established by law' should be replaced by the phrase 'State'. This is because the phrase 'Government established by law' could be misused if any dictator comes to power. Governments may come and go at the will of the people demonstrated during elections. Therefore in a democracy it is the 'State' which is important and not the Governments. This change in the language of the section will thus ensure 'rule of law' as against 'rule of men'.

2) The word 'Sedition' needs to be properly defined under section 124-A. The words 'hatred' and 'disaffection' must be deleted and instead of these, all words and actions which threaten the security & integrity of State and public order must be included under the definition of sedition.

3) The law should be clarified so as to make it applicable against non-citizens too. At present there is ambiguity in section 124-A in this regard.

4) Sedition law must allow fair and legitimate criticism of Government policies and actions in a democracy, however harsh they may sound so long as the means to express such criticism is without the use of violence.

5) The interpretation part of the law is also important. The section should not be widely construed to include any word or action against the government policies or actions. The

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charge of sedition must be made out only if there is a specific incitement to violence. For this clear instructions need to be given to the lower courts so that there is no injustice done as was done in case of Binayak Sen.

6) The Government should establish an appropriate mechanism whereby the public grievances can be addressed directly by superior officers through the medium of internet, etc for faster redressal before the situation gets out of hand.

7) Quantum of punishment in actual cases of 'sedition' whether against religion or class or State should be amended as to make it 'at minimum of five years or upto 10 years' to make the law deterrent.

8) Any 'insult to national symbols' must be seriously viewed as to make such offences non-bailable. A person having grievances against the government actions or policies is not justified to express his discontent by insulting these national symbols at any cost. Such irresponsible actions affect the morale and sentiments of the people of India. Freedom of speech does not mean freedom to say anything one likes.

9) Only officers of the level of ACP or DCP must be authorized to register the case of sedition and other offences against the State, after proper investigation so as to avoid misuse of this law at lower level.

10) In India, the time is not ripe to go for abolition of sedition law in view of our specific circumstances. Most of our masses are uneducated and ignorant. They can be easily misguided by separatist and terrorist forces. Those who are asking for the abolition of the sedition law must understand the basic differences that exist between India and other developed nations who have abolished sedition laws. We need to wait till our population reaches that level of maturity and understanding as is present in other developed nations

11) Another important reason for advocating continuation of sedition law is that the situation in India is different from England or other countries which have abolished sedition law. India's population consists of minority groups amongst whom exist some ideological sympathisers of the neighbouring States. With assistance and provocation from these insiders, the security of State can be put to jeopardy at any time. Their provocation and instigation of the masses could lead to subversion at some point of time in future if not immediately.

Further, as per the recent judicial responses an attempt has been made by the author to amend the Section 124 of the Indian Penal Code.

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IX. SECTION 124A – SUGGESTED AMENDED VERSION

124A. Sedition — Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, threatens or attempts to threaten the security or integrity of the state, or creates public disorder in the state, shall be punished with imprisonment for life, to which fine maybe added, or with imprisonment which may extend to five years, to which fine may be added, or with fine.

Explanation 1.—The expression "public disorder" includes act done or attempted to subvert the state by the means of violence or incitement to violence.

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.]

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