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# Right to Free Speech vs. Sedition under Section 124A of the Indian Penal Code

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## ABSTRACT

*Freedom of speech is a precious gift given by our constitution. But sedition law under Section 124 A of the Indian Penal Code, which was enacted by the British to oppress and suppress the criticism by the people of India directed towards British rule, infringes with the sacred fundamental right promised by our constitution. After the independence, the sedition law somehow managed to find its way to exist in the Indian legal system and became an active tool for shaping Indian politics. From time to time, the judiciary has tried to establish the constitutionally valid interpretation of the sedition law; regardless, the government has managed to use this draconian colonial law as a weapon against the individuals who criticize and raise dissenting opinions against the government. These political vendettas backed by sedition law cause mental and physical harassment to innocent individuals, violating human rights. This research paper discusses the sedition law under Section 124 A of the Indian Penal Code, its history, how it has been misused to silence dissenting opinions, and some possible suggestions.*

*"Section 124 A is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence."<sup>3</sup> – Mahatma Gandhi*

## I. INTRODUCTION

Article 19 (1) (a) enshrined in the Constitution of India guarantees the freedom of speech and expression to all the citizens of India. It is one of the most potent fundamental rights of a democracy that allows its citizens to advance their ideas, opinions, and grievances relating to the various matters of the state. However, the sedition laws of our country have restrained

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<sup>3</sup> D.G. Tendulkar, Mahatma: Life of Mohandas Karamchand Gandhi 137 (The Publications Division, Ministry of Information and Broadcasting, Government of India 1951).

citizens from exercising this significant right. The recent spate of invoking sedition charges against journalists, human rights activists, students, and various other intellectuals under S. 124 A of Indian Penal Code, 1960, has brought a 150-year-old draconian colonial law into light as to how the government is increasingly using it to suppress dissent and regulate free speech. The conviction of many people for an offence defined under this law in recent times has led to its widespread public criticism and has put forth various questions challenging the constitutional validity of this provision. Sedition law incorporated under Section 124 A of the Indian Penal Code has been imposed as a handy tool by the government to silence its critics. This research paper deals with the sedition law under Section 124 A of the Indian Penal Code, its history, and how it has been misused to silence dissenting opinions.

## **II. HISTORICAL BACKGROUND**

Sedition law is a colonial relic primarily contained in Section 113 of T.B. Macaulay's Draft of Penal Code, 1837. The said section of the draft described Sedition as 'exciting or attempting to excite feelings of disaffection against the government.' The proposed punishment for such a vaguely defined offense was imprisonment for life.<sup>4</sup> However, due to some clerical error, this section was dropped from the final draft of the Indian Penal Code adopted in 1860. Mr. James Stephan, the architect of the Criminal Procedure Code, rectified this omission in 1870 by introducing an amendment to the Indian Penal Code, which inserted Section 113 of T. B. Macaulay's draft into the Indian Penal Code as Section 124 A. One of the reasons for the introduction of Sedition as an offense in colonial India was the British government's fear of a Wahabi uprising or a religious war against the government. The Indian Penal Code (Amendment) Act, 1898 amended Section 124 A of the Indian Penal Code to include 'bringing or attempting to bring in hatred or contempt against the government' wherein earlier Sedition was described only as 'exciting or attempting to excite feelings of disaffection against the government.'<sup>5</sup>

The history of the Sedition law in India points out that it was enacted by the British to repress the voices of Indian freedom fighters or anyone who dared to raise his voice against colonial rule. Even though Sedition under Section 124 A allowed disapprobation of the government, any significant criticism of the government was interpreted as 'disaffection,' which was given comprehensive meaning under Section 124 A.<sup>6</sup> After independence, it was believed that all the draconian laws such as Sedition would cease to exist, and a government that is open to

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<sup>4</sup> Prenavpreet Kaur, "Sedition under Section 124-A of the Indian Penal Code: An Analysis" 2 IJLMH 1 (2019).

<sup>5</sup> Law Commission of India, Consultation Paper on Sedition (August, 2018).

<sup>6</sup> Prenavpreet Kaur, "Sedition under Section 124-A of the Indian Penal Code: An Analysis" 2 IJLMH 1 (2019).

active criticism and performance analysis will be established. There was serious opposition against the inclusion of Sedition as a regulation on the right to freedom of speech and expression in the Constituent Assembly debates, and hence the word sedition was not included in our Constitution.<sup>7</sup> However, even when England abolished Sedition as an offence 11 years ago, it remains an offence under Section 124 A of the Indian Penal Code in India.

### III. SEDITION LAW IN INDEPENDENT INDIA UNDER SECTION 124 A OF IPC

Section 124 A of the Indian Penal Code defines the offence of 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 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.*"<sup>8</sup> The word 'otherwise' in the abovementioned section indicates the universality of how the offense may be committed.<sup>9</sup> Sedition under section 124 A of the Indian Penal Code may be committed through words, visual representations, or in the absence of words by gestures, motions, and actions. Explanation 1 to the section, instead of defining the word 'disaffection,' merely states that the term includes disloyalty and all the feelings of enmity. Therefore, government authorities interpreted the term 'disaffection' broadly to signify political alienation or feeling of disloyalty against the government, which tends a person to resist or subvert the government.<sup>10</sup>

### IV. JUDICIAL INTERPRETATION AND DEVELOPMENT

Section 124 A of the Indian Penal Code, which was used by the British for the suppression of indigenous voices for justice, made its way to independent India and became the weapon to repress any criticism against the government. However, the judiciary has acted as a shield against unnecessary prosecutions initiated by the government under section 124 A of the Indian Penal Code. The said section was challenged for the first time after the independence in the case of Romesh Thapar vs. the State of Madras<sup>11</sup>, wherein the Hon'ble Supreme Court held that unless the right to freedom of speech and expression endangers the 'security or tends to overthrow the state,' any statute relegating the right will not come within the purview of Article 19 (2) of the Indian Constitution.<sup>12</sup> Later, in the case of Tara Singh Gopi Chand vs.

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<sup>7</sup> Law Commission of India, Consultation Paper on Sedition (August, 2018).

<sup>8</sup> Indian Penal Code, 1860 (Act 45 of 1860), s 124 A.

<sup>9</sup> Prenavpreet Kaur, "Sedition under Section 124-A of the Indian Penal Code: An Analysis" 2 IJLMH 1 (2019).

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

<sup>11</sup> *Romesh Thapar v. State of Madras*, AIR 1950 SC 124.

<sup>12</sup> Law Commission of India, Consultation Paper on Sedition (August, 2018).

The State, the Punjab High Court, while referring that the sedition law has become inappropriate by the shift to democracy, held section 124 A of the Indian Penal Code unconstitutional as it violated the right to freedom of speech and expression enshrined under Article 19 (1) (a) of the Constitution of India.<sup>13</sup>

The constitutional validity of section 124 A of the Indian Penal Code was brought up again in the case of *Kedar Nath Singh vs. the State of Bihar*, wherein the Hon'ble Supreme Court upheld the constitutional validity of section 124 A of the Indian Penal Code.<sup>14</sup> The court differentiated between the terms 'the government established by law' and the persons for the time being carrying on the administration. 'Government established by law' was held to be the visible symbol of the state, as the very existence of the state is threatened if the government established by law is subverted, and the continued existence of the Section 124 A of the Indian Penal Code was held essential for the stability of the state. The court maintained the balance between the right to freedom of speech and expression and the power of section 124 A of the Indian Penal Code, which curtails that right. It was held that it is no doubt that the right to freedom of speech and expression is the sine qua non of a democracy, but this freedom must be guarded against becoming a license for vilification of the government, which could incite violence or public disorder.

## V. FREEDOM OF SPEECH AND SEDITION

Asserting the importance of the right to freedom of speech, John Stuart Mill endorsed the free flow of ideas and expressions in a democracy. He argued that stability in society could not be reached by suppressing the voice of citizens, however dissenting it might be. To reach the right conclusion in any matter, open discussions are inevitable. The fundamental right to freedom of speech helps highlight popular opinions and acts as a platform for the suppressed people to raise their views and opinions. There will always be different and dissenting opinions on any given matter in a democracy. Still, democracy is not the same as majoritarianism, and it is essential in a democracy to consider the viewpoints of the majority and acknowledge the conflicting opinions. In the case of *Shreya Singhal vs. Union of India*<sup>15</sup>, the Apex court, while declaring Section 66 A of the Information and Technology Act, 2000 unconstitutional as it violated the right to freedom of speech and expression, stated that "under the Constitutional scheme, for the democracy to thrive, the liberty of speech and

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<sup>13</sup> *Tara Singh Gopi Chand v. The State*, AIR 1951 Punj. 27.

<sup>14</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

<sup>15</sup> *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

expression is a cardinal value and of paramount importance."<sup>16</sup>

However, the right to freedom of speech and expression should not be absolute, and there should be some reasonable restrictions on it. These restrictions can be justified based on the 'harm principle,' which states that unless a speech does not cause some harm, it should not be suppressed. However, the standard of such harm should be high and should potentially endanger the state's very existence or disturb public disorder.

## VI. CURTAILMENT OF FREE SPEECH THROUGH SEDITION TRIALS

The state and central governments continue to initiate frivolous sedition cases that violate the above-stated rules to suppress dissenting voices. In one such case, Amnesty International had organized an event to seek justice for victims of human rights violations in Jammu & Kashmir, and some heated arguments led to pro-Azadi sloganeering between two groups.<sup>17</sup> The police charged Amnesty International under Section 124 A of the Indian Penal Code, which was later set aside by the court. In yet another case political cartoonist, Aseem Trivedi was charged under section 124 A of the Indian Penal Code for displaying drawings satirizing widespread corruption among elite Indian politicians.<sup>18</sup> A petition was also filed against former Jammu & Kashmir CM Farooq Abdullah in the Supreme court seeking his trial under sedition law for disagreeing with the government against the abolition of Article 370 and separating the Jammu and Kashmir into two union territories. The Hon'ble Supreme Court said that dissenting or disagreeing with the government is not seditious, or expressing the views against the government is not a crime. It was held that disagreeing or dissent is free speech and should be saved as a fundamental right under the constitution.<sup>19</sup>

Even though the Apex Court held it in *Balwant Singh v. the State of Punjab*<sup>20</sup> that just reciting of slogans cannot be held an offence under the sedition law since it does not incite any violence or affect the public sphere. In February 2016, Kanhaiya Kumar was charged with sedition for reciting anti-India slogans after a protest by the students against the charge, and he was released on bail later.<sup>21</sup> These are only a few frivolous sedition cases initiated by the government. According to the National Crime Records Bureau (NCRB), 179 people were arrested, and 112 sedition cases were filed between 2014 and 2016, with only two cases

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<sup>16</sup> Law Commission of India, Consultation Paper on Sedition (August, 2018).

<sup>17</sup> Prenavpreet Kaur, "Sedition under Section 124-A of the Indian Penal Code: An Analysis" 2 IJLMH 1 (2019).

<sup>18</sup> *Id.*

<sup>19</sup> Utkarsh Anand, "Disagreeing with govt is not sedition, says SC", Hindustan Times, March 04, 2021, available at Disagreeing with govt is not sedition, says SC | Hindustan Times (visited on March 5, 2021).

<sup>20</sup> *Balwant Singh v. Punjab*, AIR 1976 230.

<sup>21</sup> Abhishek Sharma, "SEDITION – THREAT TO FREE SPEECH IN DEMOCRATIC SOCIETY" 6 IJLESS 37 (2019).

resulting in conviction.<sup>22</sup> The courts have disposed of most of these cases expeditiously. Still, even then, the mental trauma and harassment inflicted on innocent individuals clearly violate human rights and freedom of speech and expression, and no individual should face such trauma in a democratic country India.

## **VII. SUGGESTIONS FOR REVISING SECTION 124 A**

Various leaders and non-governmental organizations have regularly made suggestions to amend penal provisions regarding sedition. The Indian Penal Code (Amendment Bill) recommending the revocation of section 124 A from the Indian Penal Code was presented by former Rajya Sabha Member Mr. D. Raja in 2011<sup>23</sup> because the said section was used by the British rulers to curb the freedom of expression of Indians and to oppress & suppress the criticism against the Crown. Further, it was argued that sedition under section 124 A of the Indian Penal Code violates the fundamental right to free speech and expression enshrined in our constitution after independence.

To promote the basic human right of freedom to express and to stop the misuse of the penal provision of Section 124 A of the Indian Penal Code, it is reasonable to abolish the said section. Mr. Shashi Tharoor introduced another private member bill in Lok Sabha, titled The Indian Penal Code (Amendment) Bill, 2015, which also recommended amending the said section in the Indian Penal Code. The bill advocates that only those words/actions that initiate violence or extend incitement to the violence or that directly result in the use of violence should be termed seditious.<sup>24</sup> If even the minute criticism of the government is termed as seditious, the Indian democracy will be in danger, and India will only be a step away from totalitarian rule.

## **VIII. ABOLITION OF SEDITION LAW IN ENGLAND**

Committing the crime of sedition in modern England was a lot more extensive in its degree than how it was applied in colonial India. With the development of criminal and constitutional law in England, the crime of sedition started to become ineffective, and very few people were charged with sedition over the last century.<sup>25</sup> Even the Law Reform Commission advised repealing the crime of sedition almost thirty years ago. The Commission advocated that even the most dangerous activity that has been recorded under the crime of

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<sup>22</sup> *Id.*

<sup>23</sup> Prenavpreet Kaur, "Sedition under Section 124-A of the Indian Penal Code: An Analysis" 2 IJLMH 1 (2019).

<sup>24</sup> *Id.*

<sup>25</sup> Nivedita Saksena & Siddhartha Srivastava, "An analysis of the modern offence of sedition" 7 NUJS L 144 (2014).

sedition could have been prosecuted under various other statutory provisions.<sup>26</sup> The provision of sedition infringes with the freedom of expression, which makes the law contradictory with the human rights and as the UK was a signatory to the European Convention on Human Rights,<sup>27</sup> henceforth, with the enactment of the Coroners and Justice Act, 2009,<sup>28</sup> the crime of sedition was abolished in the U.K.

## IX. JUSTIFICATIONS FOR ABOLITION IN INDIA

The progressive increase of registration of cases under the law of sedition presents that authorities use the law indiscriminately. The National Crime Records Bureau (NCRB) data shows a rise of sedition cases by 165% under the current government.<sup>29</sup> The conviction rate of those cases is meager. In 2019, the conviction rate of sedition cases was only 3.3%.<sup>30</sup> Most of the cases do not even make it to the court, and even if they do, judges hesitate to grant bail due to the label of “sedation.” The sedition law has become a handy tool that the government can use it at its whim to protect itself from active criticism. Section 124 A of the Indian Penal Code has given the power to the government to silence and torture innocent individuals who dare to speak against them by initiating frivolous cases. Most of the cases are just indoctrination by the state, and in the name of nationalism, sedition has become a mockery of the constitution.

Sedition law has been long defended on the grounds that it is a necessary provision to protect the national security and sovereignty of our country. However, almost all of the offenses covered under the sedition law can also be covered under other provisions such as Unlawful Activities (Prevention) Act, 1967, Sections 121,122,123,131,141,143,153-A of the Indian Penal Code, Contempt of Court Act, 1971, and Prevention of Insults to National Honour Act, 1971.<sup>31</sup> All these provisions provide enough safeguard to protect the integrity of our country. Therefore, there is no such need for the draconian law of sedition under section 124 A of the Indian Penal Code, and hence it should be abolished. It is ironic to see that country like England considered sedition as a danger to democracy. A functional democracy is in which people can actively criticize the government's actions, can raise questions, and can demand

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<sup>26</sup> Clare Feikert-Ahalt, Sedition in England: The Abolition of a Law from a Bygone Era, October 2, 2012, available at <http://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-alaw-from-a-bygone-era/> (visited on March 4, 2021).

<sup>27</sup> Nivedita Saksena & Siddhartha Srivastava, "An analysis of the modern offence of sedition" 7 NUJS L 144 (2014).

<sup>28</sup> *Id.* at 145.

<sup>29</sup> Leah Verghese, NCRB 2019 data shows 165% jump in sedition cases, 33% jump in UAPA cases under Modi govt, The Print, 12 October, 2020, available at <https://theprint.in/opinion/ncrb-2019-data-shows-165-jump-in-sedition-cases-33-jump-in-uapa-cases-under-modi> (Visited on March 5, 2021).

<sup>30</sup> *Id.*

<sup>31</sup> Prenavpreet Kaur, “Sedition under Section 124-A of the Indian Penal Code: An Analysis” 2 IJLMH 1 (2019).

accountability<sup>32</sup>. However, the sedition law provides a weapon in the hands of the government to suppress all of the abovementioned activities. The misuse of sedition law can change the political climate of a country from democracy to authoritarian rule. Despite the ongoing criticism against penal provisions of sedition, the government has provided no sign of planning to repeal or abolish this draconian colonial law.

## **X. CONCLUSION**

In a democracy, the citizens should have the liberty to express their affection for their country in whatever way they like, including constructive criticism, pinpointing loopholes in government policy, etc. Expressions used in such cases may be harsh and irksome for many, but every such action cannot be rendered seditious, and section 124 A of IPC should only be invoked in cases where such actions tend to disrupt the public disorder or incite violence to overthrow the state. Every irresponsible use of the right to freedom of speech and expression, which might be due to some reason, such as frustration over the state of affairs, should not be charged under Sedition. There will be very little difference between pre-and post-independence India if the state is not open to constructive criticism and debate. While the protection of national integrity is essential, the sedition law should not be misused to curb free speech. Hence, every restriction on the right to freedom of speech and expression should be scrutinized.

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<sup>32</sup> *Id.* at 15.