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## Clearing the blurred image between Sedition and Right to Protest

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*Sedition occurs whenever someone seeks to incite hatred or disdain for the "government established by law" through his or her speech or writing, or when he or she strives to destabilise public peace by instigating people to commit violence. The perpetrator should then be prosecuted for sedition. Unfortunately, the government presently portrays sedition in a terrible way, implying that if individuals demonstrate or stand out against government policies, laws, or reforms, then they would indeed be charged with sedition. As an outcome, their right to free speech and expression is violated, which is a fundamental right that should be safeguarded. Furthermore, the government has continued to impose unjustifiable limitations on those who condemn them and their actions. As a result, there is an urgent need to delineate the fine line between what could be considered a violent protest and the lawful use of their rights.*

**Keywords:** *hatred, sedition, fundamental right, violent, protest.*

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### INTRODUCTION

The theory of sedition is also not unfamiliar to the government, as it dates back to the time when Britishers ruled us. A British historian and a Whig politician, Thomas Macaulay, introduced the sedition law. The law established section 124-A<sup>1</sup> for offenses against the state

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<sup>1</sup> Indian Penal Code, 1860, s 124A

and the government in 1870, despite the existence of the Indian penal code. Because the British wanted control over India at the time, they implemented it to silence the voices of Indian leaders and politicians who opposed them. The punishment for sedition was life imprisonment. There is an urgent need to clear the image between sedition and the right to protest, as nowadays, people who exercise their "right to freedom of speech," even those who are innocent, are charged with sedition. The Chief Justice had clarified that sedition has gone behind the intent with which it is made.

The CJJ has made it clear that the court is sensitive to the public demand for a judicial review of how law enforcement authorities use the sedition law to control free speech and imprison journalists, activists, and dissenters.<sup>2</sup>The government uses it as a tool for those who are speaking against them. Dissent and criticism are essential pillars of democracy. The court said its primary concern was "law abuse," which increased cases. Non-bailable clauses make speeches and statements that cause or attempt to cause hatred or contempt or cause or attempt to cause dissatisfaction with the government established in India. This is a criminal offense

**ANNEXURE**  
**L.S.S.Q.NO. 281 FOR 16.03.2021**

State/UT-wise Cases Registered (CR), Cases ChargeSheeted (CCS), Cases Convicted (CON), Cases in which Trials Completed (CTC) and Conviction Rate (CVR) under Sedition during 2014-2019

SL	State/UT	2014					2015					2016					2017					2018					2019				
		CR	CCS	CON	CTC	CVR	CR	CCS	CON	CTC	CVR	CR	CCS	CON	CTC	CVR	CR	CCS	CON	CTC	CVR	CR	CCS	CON	CTC	CVR	CR	CCS	CON	CTC	CVR
1	Andhra Pradesh	1	0	0	0	-	0	0	0	0	-	1	1	1	1	100	0	0	0	0	-	1	0	0	0	-	0	1	0	0	-
2	Arunachal Pradesh	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
3	Assam	1	1	0	0	-	0	0	0	0	-	0	0	0	0	-	19	7	0	3	0	17	11	0	10	0	17	7	0	12	0
4	Bihar	16	0	0	0	-	9	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
5	Chhattisgarh	1	1	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	3	3	0	0	-	1	0	0	0	-
6	Goa	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
7	Gujarat	0	0	0	0	-	2	1	0	0	-	0	0	0	0	-	0	1	0	0	-	0	0	0	0	-	0	0	0	0	-
8	Haryana	0	0	0	1	0	3	2	0	2	0	12	7	0	1	0	13	9	0	1	0	1	1	1	1	100	2	0	0	0	-
9	Himachal Pradesh	1	0	0	0	-	0	0	0	0	-	1	1	0	0	-	5	1	0	0	-	0	0	1	1	100	1	0	0	0	-
10	Jammu & Kashmir*	0	0	0	0	-	1	0	0	0	-	0	0	0	0	-	1	0	0	0	-	12	1	0	0	-	11	2	0	0	-
11	Jharkhand	18	10	1	3	33.3	0	2	0	2	0	0	0	0	0	-	1	0	0	0	-	18	17	0	0	-	3	0	0	16	0
12	Karnataka	0	0	0	0	-	3	1	0	0	-	3	1	0	0	-	0	0	0	0	-	2	2	0	1	0	22	13	0	0	-
13	Kerala	5	0	0	0	-	3	0	0	0	-	3	0	0	0	-	1	0	0	0	-	9	0	0	0	-	4	0	0	0	-
14	Madhya Pradesh	0	0	0	0	-	0	0	0	0	-	2	1	0	0	-	1	1	1	2	50	1	1	0	0	-	1	1	0	0	-
15	Maharashtra	0	0	0	0	-	1	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
16	Manipur	0	0	0	0	-	1	0	0	0	-	0	1	0	1	0	0	1	0	0	-	4	0	0	0	-	1	0	0	0	-
17	Meghalaya	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
18	Mizoram	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
19	Nagaland	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	8	5	1	1	100
20	Odisha	2	2	0	0	-	0	0	0	0	-	1	0	0	0	-	3	0	0	0	-	0	0	0	0	-	2	4	0	0	-
21	Punjab	0	0	0	0	-	1	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
22	Rajasthan	0	0	0	0	-	1	0	0	0	-	1	2	0	0	-	1	1	0	0	-	0	0	0	0	-	4	1	0	0	-
23	Sikkim	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
24	Tamil Nadu	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	3	1	0	0	-	1	1	0	0	-	4	0	0	0	-
25	Telangana	0	0	0	0	-	1	0	0	0	-	2	0	0	0	-	0	1	0	0	-	0	0	0	0	-	1	0	0	0	-
26	Tripura	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
27	Uttar Pradesh	0	0	0	0	-	0	0	0	0	-	6	2	0	0	-	1	1	0	0	-	0	0	0	0	-	10	5	0	1	0
28	Uttarakhand	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
29	West Bengal	2	0	0	0	-	4	0	0	0	-	1	0	0	0	-	1	3	0	0	-	0	1	0	0	-	0	1	0	0	-
	TOTAL STATE(S)	47	14	1	4	25	30	6	0	4	0	33	16	1	3	33.3	51	27	1	6	16.7	69	38	2	13	15.4	92	40	1	30	3.3
30	A&N Islands	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
31	Chandigarh	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
32	D&N Haveli**	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
33	Daman & Diu**	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
34	Delhi	0	0	0	0	-	0	0	0	0	-	2	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
35	Lakshadweep	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
36	Puducherry	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
	TOTAL UT(S)	0	0	0	0	-	0	0	0	0	-	2	0	0	0	-	0	0	0	0	-	1	0	0	0	-	1	0	0	0	-
	TOTAL (ALL INDIA)	47	14	1	4	25	30	6	0	4	0	35	16	1	3	33.3	51	27	1	6	16.7	70	38	2	13	15.4	93	40	1	30	3.3

Source: Crime in India Conviction Rate = (Cases Convicted) / (Cases in which Trials Completed) \* 100 Note: Due to non-receipt of data from West Bengal in time for 2019, Data for 2018 has been used.  
\*Now UT of Jammu and Kashmir and Ladakh \*\* Union Territories of Dadra and Nagar Haveli and Daman and Diu have now been merged.

<sup>2</sup> Krishnadas Rajgopal, 'Sedition law | Supreme Court sends strong message to government' (*The Hindu*, 16 July 2021) <<https://www.thehindu.com/news/national/sedition-law-supreme-court-sends-strong-message-to-government/article61441546.ece>> accessed 22 December 2021

punished by the maximum life sentence<sup>3</sup>. Because of this, there is a difficulty in the distinction between what can incite violence and what cannot. Also, the exact meaning of some words in the definition is not clear, like hatred and disaffection. Because of this, there are some misconceptions about the words and sometimes misinterpretations are also happening. People have to suffer because of this, like if they are charged under sedition. The trial goes on for a long time, and the charges are proved wrong, and in the end, ultimately, the conviction rate is very less. This is the data attached to people charged with sedition within every state, along with cases sent out to trial, cases in which a charge sheet has been filed, and how many of them got convicted till 2018.

## LITERATURE REVIEW

Nevertheless, the words in the definition of sedition themselves are ambiguous. They are not clear. The words offer a more comprehensive view of legal interpretation than most. It is ironic for a democratic nation like India, which is granted freedom of speech and expression under the Constitution of India and is exercising power under the Constitution of India. They have been charged with sedition. According to the Rights and Risks Analysis Group report, the government attacked up to 55 journalists on March 25 and May 31 to disseminate information about the government's response to the COVID-19 pandemic. The agitation of the masses is a heinous crime that must be punished. Section 124A penalties range from up to three years in prison to life imprisonment to which a fine may be added. It is also worth noting that those charged under this law will be expelled from government work. Constitutionally, you have to live without a passport. Furthermore, it was found that the collapse of public order and morals was nothing but a threat to endanger or overthrow the nation's foundation. These rulings prompted the first constitutional amendment to rewrite Article 19(2)<sup>4</sup> to undermine national security, public order, and morals. " In 1962, Kedar Nath Singh issued a landmark ruling against Bihar. The Supreme Court has issued its ruling on the constitutional validity of Judgment 124A. The Supreme Court upheld hate speech's constitutional validity. However, it

<sup>3</sup> '326 sedition cases registered in India between 2014 and 2019, only 6 convictions' (*India Today*, 19 July 2021) <<https://www.indiatoday.in/india/story/326-sedition-cases-registered-india-only-6-convictions-1829733-2021-07-19>> accessed 22 December 2021

<sup>4</sup> Constitution of India, 1950, art. 19(2)

limited its application to "acts related to the disorder, public order, and morals, or the intent or tendency to incite violence." She distinguished this from using "powerful speeches" or "energetic words" that strongly criticised the government<sup>5</sup>. Also, people who protest against the government are charged with sedition, and nowadays, the government is using this as a tool to suppress the voice of people against government policies. Also, the government interprets the section according to its convenience and benefit. It is a clear violation of Article 19(1)(a)<sup>6</sup>, which is Freedom of Speech and Expression. However, this is subject to the government's reasonable restrictions. However, they are abusing and taking advantage of it. They are charging people with sedition who oppose them and are charging them with imprisonment. Sardar Valla Bhai Patel chairs the fundamental rights committee. Sedition has been introduced as one of the grounds for registering freedom of speech and expression under Article 19(1)(a) through this committee. Article 19<sup>7</sup> of the Indian Constitution, guarantees citizens numerous different fundamental rights, one being freedom of speech and expression, this freedom of expression and speech was not absolute. It was subject to certain constraints, one of which, according to the S. Patel Committee, was sedition, which was included in the draught constitution. Several debates and discussions were held to avoid including sedition as a ground for restricting free speech and expression. Finally, sedition was rejected as a reasonable restriction on free speech and expression. There are currently nine grounds for a reasonable restriction on freedom of speech and expression.<sup>8</sup>

The Constitution says that people can speak and write whatever they want. They can criticise and oppose the government's policies for improving and altering them, as dissent and criticism are essential pillars of democracy. A person cannot be charged with sedition unless the accused incites people to violence against the government or disrupts public order. Still, if we see what is happening nowadays, it is just the opposite of what the law states. The

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<sup>5</sup> Raju Kumar, 'Freedom of speech & sedition law in India : An analysis in the light of recent controversy' (*The Daily Guardian*, 18 June 2021) <<https://thedailyguardian.com/freedom-of-speech-sedition-law-in-india-an-analysis-in-the-light-of-recent-controversy/>> accessed 24 December 2021

<sup>6</sup> Constitution of India, 1950, art. 19(1) (a)

<sup>7</sup> Constitution of India, 1950, art. 19

<sup>8</sup> Navin Kumar Jaggi, 'Law of Sedition and Freedom of Expression: The Interplay' (*Linkedin*, 22 June 2021) <<https://www.linkedin.com/pulse/law-sedition-freedom-expression-interplay-navin-kumar-jaggi>> accessed 24 December 2021

government has begun abusing it by charging people under it. We can take the recent cases where the government charged people with sedition by misinterpreting their acts to fulfill certain conditions for sedition.

## **TREASON AND SEDITION LAWS ARE COMMONLY THOUGHT TO BE SYNONYMOUS**

Treason as well as sedition is usually believed to be synonymous. These can be used in instances where people or organizations have behaved in defiance of the establishment. The main distinction is a severe offense, as treason is considered more severe than sedition. Treason occurs when one owes allegiance to the government but commits the crime of betraying one's own country by attempting to kill or overthrow the government or assisting an enemy state. Contrary to popular belief, sedition restricts people from functioning in a certain manner, such as by anti-national remarks or any other acts that call for violence. As a result, the fundamental difference between sedition and treason is a cause of action.

## **DISTINCTION BETWEEN GOVERNMENT AND ADMINISTRATIVE PERSONNEL**

The court in Kedar Nath attempts to distinguish between "the government established by law," as defined by section 124A of the IPC, and the people involved in the administration for the time being, while attempting to define the contours of the crime of sedition. The state's viewable symbol is what symbolizes the latter. Any effort to undermine the lawful government would place the state's existence in grave danger. On the other hand, any dissenting opinion of government officials targeted at enhancing government functioning, on the other hand, will not be deemed illegal under this section. This exception was formed to defend journalists who criticize laws and policies. On close examination, however, it is opined that this demarcation is murky and hard to implement practically. Any individual engaged in the day-to-day administration of the government or taking actions as a representative of the people in the government would invariably be a visible manifestation of the state. As a result of this blurry distinction, a contradictory situation arises. While categorizing all government

bureaucrats as "thugs and profiteers" is not really a seditious act, Attributing the same characteristics to the government would indeed make the speech illegal.<sup>9</sup>

## LEGISLATIVE FRAMEWORK

Any person who, by his words, be it spoken or written or signs and visible representation, bring or attempts to bring hatred, contempt, or disaffection towards the government established by the law is charged with sedition.

- The expression "disaffection" encompasses both disloyalty and all sentiments of hostility.
- Comments that express dissatisfaction with any attempt to persuade enmity, contempt, or displeasure are not prohibited under this provision.
- This is not an offense here under the section to express displeasure of the government's administrative or some other activities without provoking or striving to spread hate, contempt, or disillusionment.

Section 124A is described as actions as per its subject or as a natural result of the illegitimate expression of displeasure with the government or even the current social order. Five distinct sorts of sedition may be identified based on the perpetrator's intent. This may be either:

- To incite dissatisfaction with the king, the government, or the constitution, or with parliament or the administration of justice
- To promote any change in church or state through illegal means
- To incite a disturbance of the peace.
- To raise discontent among the king's subjects
- To excite class hatred.

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<sup>9</sup> Nivedita Saksena & Siddhartha Srivastava, 'An Analysis of The Modern Offence of Sedition' (*Manupatra*) <<http://docs.manupatra.in/newslines/articles/Upload/37E592F0-BE2A-475F-AF99-2F6909F3CF11.pdf>> accessed 25 December 2021

**"Words, Signs, Visible Representation, or otherwise":** As in the definition, the word itself is not clear; there is some ambiguity in the interpretation of these words. The following term is used in visible representation as the term is itself not defined as it means any communication that is visible to the eye. It also includes pictures and dramatic performances where no words are spoken. The following words or phrases indicate the generality of how the offense might well be committed. Besides that, the allocation and dissemination of seditious material is a seditious offense. But even so, if a person does not intentionally cause disorder or disturb public peace by engaging in violence, he or she would not be charged with sedition.

**"Brings or Attempts to Bring into Hatred or Contempt":** Pursuant to Section 124A, if any visual expression or other means, whether verbal or written, is used in a manner that is contemptible or objectionable to the government established by law, however, it does not constitute contempt in this section. the real cause of hatred or contempt, but whether he is successful or not in spreading hatred or contempt is utterly irrelevant; even an attempt to incite hate or violent behavior is satisfactory.<sup>10</sup>

**"Law Commission of India Report 2018":** As per the Law Commission of India, dissent and criticism are absolutely vital pillars of democracy. Furthermore, the commission, the center's strongest law-making body, approved a consultation paper in which it strongly suggested that sedition should be declared unconstitutional.

**Right To Free Speech:** The commission had decided to seek public opinion on the possibility of reinterpreting or nullifying Section 124A in the world's largest democracy by trying to argue that since one of the most crucial aspects of democracy is the right to free speech and expression, then why would India continue to maintain sedition when the Britishers who legislated it to suppress Indians have dismantled it in their very own country? The commission also clarified that such an emotion of disgruntlement with state affairs could not be deemed sedition.

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<sup>10</sup> V.L. Vibhute, *PSA Pillai's Criminal Law* (14<sup>th</sup> edition, Lexis Nexis 2019) 377

**Safety Valve:** An individual should never be charged under such a section for merely stating an opinion that differs from the existing government's policy. The right to condemn one's own history, as well as the right to offend, are both shielded by free speech. While it is essential to preserve integrity, it should never be abused or be used to limit freedom of speech. Individuals should be allowed to convey their love and respect in whatever manner they find fit. It also asserted that any restrictions imposed on sedition must be closely watched in order to minimize unjustified restrictions.<sup>11</sup>

**Right to Protest:** India has a long heritage of protest dating back to the pre-independence era, and also because the right to protest is a fundamental right under Article 19(1)(a), every citizen does have a fundamental right to peacefully assemble and protest peacefully without resorting to violence or trying to disrupt public order. Article 19(2) permits reasonable limitations on all fundamental rights, including freedom of speech and expression lest people protest when they are disenchanted with government statutes and regulations or when government misuses its own power and influence by implementing draconian laws. The first condition of liberty, however, is freedom of expression. Freedom of expression is the soul of a free and democratic society in modern life and must be secured. The first principle of a liberal society is that everyone has the right to express their ideas without fear of repercussions. It is amongst the most fundamental liberties given against state repression. The Universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, legislation, and the Constitution all guarantee freedom of expression. These proclamations, in particular, call into question free speech and expression protections.

**Article 19 (1) (a):** It entails the freedom to express one's personal opinions and values on any subject via any channel like **words of mouth, writing, publishing, photographs, movies, etc.** As a result, it offers us the freedom of speech and also the right to spread or disseminate a perspective.

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<sup>11</sup> Krishnadas Rajgopal, 'Law Commission calls for re-think on sedition clause' (*The Hindu*, 30 August 2018) <<https://www.thehindu.com/news/national/law-commission-backs-dissent-in-a-democracy/article24822850.ece>> accessed 25 December 2021

**Article 19(1)(b):** Article 19(2) establishes appropriate limits on the things described in Article (19)(1) (a). The right to free expression must not be misconstrued with the freedom to make level baseless and reckless charges against the judiciary.

This is worth noting because the state can restrict any citizen's freedom of expression through both action and inaction. Thus, a failure by the state to guarantee the fundamental rights to freedom of expression and expression to all of its citizens, regardless of their circumstances or class, would be inconsistent with Article 19 (1)(a) The basic right to free expression is recognized among the most essential pillars of a functional democracy since it empowers citizens to adequately engage in political participation. This right is available only to Indian citizens, not to foreign nationals. Nevertheless, this freedom is not unconditional, because it facilitates the government to implement laws that levy satisfactory constraints in the best interest of India's sovereignty and integrity, protection, pleasant alliances with foreign entities, civil order, decency, and morality, and also contempt of court, defamation, and provocation to an offense. But, Article 19(2) of the constitution provides that this right is not unconditional and is subjected to some constraints that will be imposed by the state. It also includes the right to express one's view. Under the constitution natural as well as artificial persons have the right to invoke Article 19 through writ petition under articles 32 and 226<sup>12</sup> of the constitution. The court also gave a verdict that commercial speech comes under Article 19.<sup>13</sup>

## JUDICIAL PRECEDENTS

*Queen-Empress v Jogendra Chunder Bose & Ors., (1892) ILR 19 Cal 35-* The editors of a Bengali magazine slammed British government policy initiatives, notably the Age of Consent Act of 1891. The publishers argued that the formation of seditious content is penalised and not its publication and they also questioned the law's very existence. They asserted that sanctioning people for standing up for their rights was completely counter to the original spirit of the law. Calcutta High Court overruled the decision that removing liability from the publishers only because they had not written anything is itself wrong.

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<sup>12</sup> Constitution of India, 1950, art. 32 and 226

<sup>13</sup> Tanu Priya, 'Freedom Of Speech And Expression' (*Academike*, 2 September 2014)

<<https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>> accessed 24 December 2021

*Queen-Empress v Bal Gangadhar Tilak & Keshav Mahadev Bal, (1897) ILR 22 Bom 112* - Bal Gangadhar Tilak had been arrested under sedition law for provoking abhorrence by his speech due to which two Britishers were killed. A single-judge bench of Bombay High Court agreed with the interpretation that was given in the Jogendra Chunder Bose case. It asserted that if there is any hatred toward the government then irrespective of the level of hatred, that act will become a criminal one. The High Court effectively excluded all legitimate criticism in this manner. It went on to suggest that there didn't have to be any material outcomes to qualify as a sedition offense. The court determined that in sedition cases, the perpetrator's intention supersedes everything else, and it can be deduced from the material, viewers, and situations of their seditious speech.

*Emperor v Bal Gangadhar Tilak, (1917) 19 Bom LR 211*- Tilak tried sedition again for an article he wrote about two decades later. He recommended swarajya ('self-rule') for Indians. Tilak clearly and unambiguously conceded his fealty to the British Monarchy in the article, but he rebuked the state services, contending that state service and government are separate from each other, Bombay High Court reject Tilak's claim that state service got their authority from the state. Nevertheless, the High Court stated clearly that a critique of the state's civil service should really be deemed seditious. The court takes a fairly progressive stance in this case, denying the perception of "disaffection" provided by the same court's single-judge bench in *Queen-Empress v Tilak & Bal*, which came with a vast range of understanding as being anything opposite to admiration. The above decision positively impacted free speech since it took into account the real effect of the accusation of seditious speech on the audience while interpreting the perpetrator's desire.

*Tara Singh Gopi Chand v The State (1951 CriLJ 449)*: This was the first case in independent India where the judge decided the validity of sedition. As India is an independent republic now, the provisions of the Constitution took supremacy well over British Constitution. Here, the Punjab High Court acknowledged that sedition was a constraint of Article 19 of the Constitution and abrogated that section. Eventually, after self-governing India's first parliament enacted the Constitution (The First Amendment) Act, 1951, that intended, among

some other things, to rectify the legal oddity in the laws established by Tara Singh Gopi Chand decision.

*Kedar Nath Singh vs State Of Bihar 1962 AIR 955, 1962 SCR Supl. (2) 769* - In this case, the Supreme Court established a five-judge constitutional bench, which enshrined the constitutional authenticity of Section 124-A and made clear the stance of sedition law in India. Kedar Nath Singh, a representative of Bihar's Forward Communist Party, was arrested in connection with sedition charges for making derogatory remarks about the governing Indian National Congress (INC) government. The Supreme Court declared that section 124A cannot be used to curb self-expression and that this could really be invoked if this could be shown that the seditious expression is a threat to the security of the nation, at issue called for violence or would lead to public unrest. Kedar Nath's speech won't amount to sedition because he rebuked the Congress Party instead of the Indian state, and it did not provoke violence.

*Balwant Singh &Anr. v The State Of Punjab, 1995 (1) SCR 411-* Following Indira Gandhi's assassination, the accused was charged with sedition for his involvement in campaigning for an independent Sikh majority state. The court contended that since the speech, in particular, did not obstruct public peace and also was unlikely to excite violent nature in the brains of people, his act cannot be termed as a seditious act.

*Bennet and Coleman & Co. v Union of India (1973) 2 SCR 757 and Indian Express Newspapers (Bombay) P. Ltd v Union of India ('86) A.SC. 515* - Here, the companies filed a writ petition and challenges the constitutionality of alerts given by the government. Subsequently to the debates, the court ascertained that Article 19 won't be rescinded in order to restrain citizens' business activities. The restrictions on exercising the right under Article 19(1)(a) that don't even fall within the four edges of 19(2), on the other hand, are invalid.

*Romesh Thappar v State of Madras (AIR 1950 SC 124)* - Freedom of the press is a crucial component in a democratic country and this right is not restricted to newspapers but also to other sources of information.<sup>14</sup>

## RECENT CASES

**Disha Ravi Case (Climate Activist):** In that case, Delhi Police arrested Disha Ravi on suspicion of sharing a toolkit related to a farmer's protest on social media. She was charged with sedition under Section 124 (A).

**Vinod Dua Case (Journalist):** In that case, on a complaint by BJP leader Ajay Shyam, Police arrested Vinod Dua for his YouTube video because he accused the Prime Minister of using "death and terror attacks" to gain votes and is charged with sedition. 124-A Section<sup>15</sup>.

**Siddique Kappan Case (Kerala Journalist):** In that case, Siddique Kappan was arrested while on his way to cover the story about the rape and murder of a young Dalit girl in Hathras, Uttar Pradesh, on the grounds of Sections 124 A (sedition), 153A (promoting enmity), 295A (outraging sentiments) and 120 B (criminal conspiracy) of the IPC.<sup>16</sup>

**Red Fort Violence on Republic Day:** In that case, Delhi police filed a case against actor Deep Sidhu in connection with the Red Fort incident, as thousands of protesting farmers clashed with police. They hoisted the flag at the national monument's ramparts, where the prime minister unfurled the national flag and was charged with sedition under Section 124 A.

**JNU case:** In that case, JNU student union president Kanhaiya Kumar and nine others were accused of leading and supporting seditious slogans raised on the JNU campus to mark the hanging of Parliament attack Afzal Guru and were charged with sedition under Section 124-A.

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<sup>14</sup> Tanu Priya (n 13)

<sup>15</sup> Vasundhara Singh, 'Sedition Law in India' (*Lawyers Club India*, 22 July 2021)

<<https://www.lawyersclubindia.com/articles/sedition-law-in-india-14179.asp>> accessed 25 December 2021

<sup>16</sup> Shubhra Agarwal, 'The Siddique Kappan Case: How Freedom of Speech Got Incarcerated' (*Academike*, 23 June 2021)

<<https://www.lawctopus.com/academike/journalist-siddique-kappan-case-status/>> accessed 25 December 2021

## ANALYSIS

Every protest cannot be labeled as violent because the government should examine it twice before charging individuals with sedition. They must ascertain whether the aspects required to charge someone with sedition are fulfilled or not, because we've seen numerous instances in which an individual is charged with sedition and the trial lasts for so long, and finally the government has failed to prove the charges and that individual has been acquitted, but nobody really thinks about that individual who ended up getting a label for doing that non-bailable offence. His entire life is ruined because of a certain tag. He will also face several ramifications, as seen in the **Disha Ravi and Vinod Dua** instances. Also, till now, there seems to be no correct interpretation of words; as an outcome, no one can realise the primary intended meaning behind the law. Besides this, the government has begun seeking to impose unfair constraints on Article 19, as a consequence, anybody identified as condemning the government has been charged with sedition, and because of this, his fundamental rights were infringed. This should be upheld at all times, along with reasonable restrictions which are available for national security interests. As a result of this, judicial intervention is required to interpret the laws in conformance with their natural and ordinary meaning.

- Can every demonstration intended to criticise government policies and legislation be charged with sedition?
- Can the government constrain freedom of speech and expression for its own benefit?

One can refer to the judgment that was delivered in *Queen-Empress v Jogendra Chunder Bose & Ors.*, (1892) ILR 19 Cal 35.

Recently, the Supreme Court decided that just condemning a government doesn't really entail sedition and also that individuals cannot be penalised for sedition for such an act. There could be no sedition complaint filed unless the essence of Section 124A of the Indian Penal Code is achieved prima facie. Section 124A of the IPC considers it a non-bailable offence against those who incite displeasure with such a government and advocate violence to overthrow it. Meanwhile, the Supreme Court announced that it would shortly clarify what characterised

sedition. Criticism of public policies and commentary on state action, irrespective of how harshly phrased, would be well within acceptable parameters and consonant with the fundamental right. This is deemed an offence not to appease the wounded vanity of the government, but because where the government and the laws cease to be honored as no respect is felt for them, instability may follow, it is claimed. The crux of the crime is, therefore, civil unrest, or the realistic chance or likelihood of public disruption.

One can refer to the judgment given in *Bennet and Coleman & Co. v Union of India (1973) 2 SCR 757* and *Indian Express Newspapers (Bombay) P. Ltd v Union of India ('86) A.S.C. 515*.

It is very essential to protect and promote freedom of speech and expression; nonetheless, it's also very essential to formulate some curbs on this freedom to achieve public peace and some restrictions have to be imposed. As a consequence, under Article 19(2) of the Indian Constitution, the state might enact laws imposing "reasonable restrictions" on Article 19 for the welfare of the people. Currently, there are nine grounds under Article 19(2) within which the government can impose some constraints. As per the preceding analysis, the justifications specified in Article 19(2) are all associated with the interests of the country or the welfare of society. The very first set of premises, namely India's sovereignty and integrity, state security, peaceful relations with foreign entities, and public security, are of national interest, whereas its second set of grounds, notably decency, morality, contempt of court, defamation, and incitement to an offence, are all of societal concern.<sup>17</sup>

## CONCLUSION

For the proper functioning of democracy, its citizens must indulge in criticism and debates against things that they think are wrong, pointing out loopholes in the laws and policies of the government. The expression used in people's thoughts might be harsh to the government, but people do not intentionally do that, and because of this speech, they should not charge people with sedition. Sedition can only be invoked when someone has the intention of trying to disturb public order. Every reckless use of the right to free speech and expression, as well as

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<sup>17</sup> Tanu Priya (n 13)

the right to protest, cannot be designated as seditious action. So, when the government is disgruntled with the opinions of the people, they use sedition as a weapon, and it becomes a tendency. They charge them with sedition. At this time, the judiciary, also known as the "**third pillar of democracy**," is doing its work to understand citizens' rights and duties and correctly interpret the law. Judges also believe in the idea of individual liberty that each person has. Hence, every protest cannot be termed a violent protest, as protests are not violent from the beginning. They start doing violent activities when no one is ready to listen to their problems and solve them. If people stop protesting, then how can one know whether the policies that the government is framing are doing the welfare of people or not, or whether they are contrary to the public's welfare? So, a fine line has to be drawn between freedom of speech and expression and hate speech, or speech capable of producing disaffection, because not every word spreads hatred. Also, there is an urgent need to interpret the words correctly in the definition itself. So, there will be fewer chances of ambiguity in the meaning of words, and also, it will help reduce the multiplicity of cases.