



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## The Dichotomy of the Application of the Sedition Law (Section 124A IPC): Should the Law be removed or made more Stringent

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Received 18 July 2022; Accepted 14 August 2022; Published 17 August 2022

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*"All terrorists are criminals but not all criminals are terrorists". This is where the dichotomy with the sedition law begins. In recent years eminent journalists such as the likes of Arnab Goswami<sup>2</sup> have been unlawfully charged under this section but alleged terrorist activities plotters such as Varavara Rao<sup>3</sup> and Sharjeel Imam<sup>4</sup> are not being taken to task with the help of these laws and thus shows the failure of these laws to curb terrorism in India. My article is an attempt to prove why the laws must be revamped and not abolished to meet the demands of national security. Journalist Arnab Goswami<sup>5</sup> was charged with multiple FIRs for allegedly hurting religious sentiments during a live television debate and was assaulted, harassed, and arrested by the Mumbai police and sent to judicial custody at taloja jail which reeks of curbing of freedom of speech guaranteed under article 19 of the*

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<sup>1</sup> Utkarsh Anand, 'Will re-examine and reconsider sedition law provisions: Centre tells SC' (*Hindustan Times*, 10 May 2022) <<https://www.hindustantimes.com/india-news/will-review-sedition-law-provisions-centre-to-sc-101652119764097.html>> accessed 17 July 2022

<sup>2</sup> Poornima Advani, 'Why Arnab Goswami's arrest puts India's long-cherished freedom of speech in danger' (*The Print*, 15 November 2020) <<https://theprint.in/opinion/why-arnab-goswamis-arrest-puts-indias-long-cherished-freedom-of-speech-in-danger/537410/>> accessed 17 July 2022

<sup>3</sup> Abhishek Banerjee, 'Varavara Rao is an anti-national and possibly a terrorist' (*OpIndia*, 19 July 2020) <<https://www.opindia.com/2020/07/varavara-rao-is-an-anti-national-and-possibly-a-terrorist/>> accessed 17 July 2022

<sup>4</sup> Amanpreet Kaur, 'Sharjeel Imam: The man who 'wanted to cut off' Assam from India' (*India Today*, 29 January 2020) <<https://www.indiatoday.in/india/story/sharjeel-imam-the-man-who-wanted-to-cut-off-assam-from-india-1641380-2020-01-29>> accessed 17 July 2022

<sup>5</sup> *Arnab Ranjan Goswami v Union of India* (2020) 14 SCC 12

*Constitution. However, activists such as the likes of Disha Ravi<sup>6</sup> and Varavara Rao are granted bail by the courts of the country where one is accused of being an alleged mastermind of an international conspiracy to carry out large-scale violence in the national capital during farmers' protests and the latter a Naxalite allegedly carrying out anti-national activities in the country, thus the law isn't stringent enough to put to task individuals posing a clear threat to the nation's security.*

**Keywords:** *naxalite, article 19, sedition law, stringent laws.*

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## INTRODUCTION

Sedition is outlined in Section 124A<sup>7</sup> as: "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law shall be punished with imprisonment for life, to which fine may be added..." The clause has the following three justifications:

1. The term "disaffection"<sup>8</sup> includes disloyalty and all hostile feelings.
2. This clause is not violated by remarks that criticise government actions with the intention of changing them legally without invoking or seeking to invoke hostility, contempt, or disaffection.
3. Criticism of administrative or other government acts without instigating or seeking to instigate hostility.

The legislation against sedition was included in Thomas Macaulay's draught of the Indian Penal Code, but it was not included in the final version that was adopted in 1860. Legal professionals think this omission was unintentional. Through the Special Act XVII, sedition was added to the list of crimes covered by section 124A of the IPC in 1890. In 1955, the sentence, which had originally been life in prison, was changed to transportation "beyond the seas for the rest of his or her natural life. "To quell political disagreement during the Independence struggle, the clause

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<sup>6</sup> Jignasa Sinha, 'Disha Ravi toolkit case: With probe making no headway, closure report may be an option' (*The Indian Express*, 27 October 2021) <<https://indianexpress.com/article/cities/delhi/disha-ravi-toolkit-case-with-probe-making-no-headway-closure-report-may-be-an-option-7590653/>> accessed 17 July 2022

<sup>7</sup> Indian Penal Code, 1860, s 124A

<sup>8</sup> Avinash Kumar Yadav & Amartya Vikram Singh, 'Decoding the history of Sedition law in India' (*The Leaflet*, 8 June 2021) <<https://theleaflet.in/decoding-the-history-of-sedition-law-in-india/>> accessed 17 July 2022

was frequently invoked. The disapprobation "must be 'compatible' with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority," according to the courts' literal interpretation of the provision.<sup>9</sup>

Indian law known as the Unlawful Activities (Prevention) Act aims to stop organisations in India from engaging in unlawful activities.<sup>10</sup> The UAPA 2019's<sup>11</sup> provisions, according to special rapporteurs for the UN, violate a number of articles of both the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. The UAPA was referred to as a harsh anti-terror statute by the Indian opposition parties. According to the BBC, getting bail is difficult for those who have been detained and charged under UAPA.<sup>12</sup>

## IMPORTANCE OF SEDITION LAW

One of the many pre-Constitutional laws that independent India imported from colonial India is the seditiousness legislation. According to the Indian Penal Code of 1860, sedition is defined as an act that incites or attempts to incite hatred, contempt, or disaffection toward a legally established government. It is a non-bailable offence, and the maximum sentence is life in prison, with the option of an additional fine. A person accused of sedition is prohibited from leaving the country, is not qualified for government employment, and is compelled to appear in court as needed. They also have to give their passports. Calls for the repeal of the sedition statute as a whole have arisen in response to the current issue surrounding the re-examination of sedition. It is crucial to comprehend the specifics of sedition law because there can be some opposition to the action at the same time.<sup>13</sup>

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<sup>9</sup> Apurva Vishwanath, 'Explained: What is the sedition law, and why Supreme Court's fresh directive is important' (*The Indian Express*, 12 May 2022) <<https://indianexpress.com/article/explained/sedition-law-explained-origin-history-legal-challenge-supreme-court-7911041/>> accessed 17 July 2022

<sup>10</sup> Unlawful Activities (Prevention) Act, 1967

<sup>11</sup> Unlawful Activities (Prevention) Amendment Act, 2019

<sup>12</sup> Ministry of Home Affairs, 'Parliament passes the Unlawful Activities (Prevention) Amendment Bill, 2019' (*Press Information Bureau*, 2019) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=192449>> accessed 17 July 2022

<sup>13</sup> Snehil Kunwar Singh & Sushant Arsh Massey Khalkho, 'Why sedition law must be revised but retained in India's statute book' (*First Post*, 12 May 2022) <<https://www.firstpost.com/opinion/why-sedition-law-must-be-revised-but-retained-in-indias-statute-book-10662861.html>> accessed 17 July 2022

## POST-CONSTITUTIONAL POSITION ON SEDITION

In the spirit of continuity, Article 372 of the Constitution allows pre-constitutional legislation to be applied to even independent India. In independent India, some pre-constitutional legislation was also revoked. It's interesting to note that India has kept the sedition statute in place since gaining independence. In fact, the State has used this statute actively and has done so regularly up to this point. According to the State, sedition legislation is necessary to safeguard the integrity and sovereignty of the country. The problem of overbreadth is frequently attempted to be resolved by officials promising to apply the law correctly.<sup>14</sup>

## MARCH OF THE LAW ON SEDITION

The Supreme Court of India supported the law's validity in *Kedarnath v Bihar State* (1962), noting that the State needed this kind of power to defend itself. By saying that a person could only be charged with sedition if their actions "caused instigation to violence or intention or tendency to create public disorder or cause disruption of the public peace," the highest court endeavoured to clarify the boundaries of the law in this ruling. It's interesting to note that the Law Commission of India rejected the suggestion of abolishing the clause in its 39th Report in 1968. In reality, the Law Commission endorsed the notion of broadening the definition of sedition to encompass the Constitution, the legislature, and the judiciary in addition to a legitimately established government in its 42nd report from 1971.

## LEGAL CHALLENGES

*Romesh Thapar v Madras State*,<sup>15</sup> decided by the Supreme Court in 1950, stated that "*criticising the government that arouses disaffection or bad feelings toward it, is not to be regarded as a justifying ground for restricting the freedom of expression and of the press unless it is such that it undermines the security of or tends to overthrow the state.*" Justice Patanjali Shastri justified the liberal interpretation of the legislation by pointing out that the Constituent Assembly had left the word "sedition" out of the Constitution. The Punjab and Haryana High Court in *Tara Singh Gopi*

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<sup>14</sup> *Ibid*

<sup>15</sup> *Romesh Thappar v State of Madras* (1950), AIR 124

*Chand v The State* (1951) and the Allahabad High Court in *Ram Nandan v State of Uttar Pradesh* later declared Section 124A of the IPC to be unconstitutional (1959). Both of these decisions claimed that the provision was primarily used by colonial masters to stifle national unrest. However, *Kedarnath Singh v State of Bihar*, a 1962 case, brought the question before the Supreme Court.<sup>16</sup>

### **FRESH CHALLENGE TO SEDITION LAW: -**

The Supreme Court agreed to consider a new challenge to the rule<sup>17</sup> after numerous applications, including those from journalists Mahua Moitra, Kanhaiya Lal Shukla, and Kishorechandra Wangkhemcha.<sup>18</sup> A seven-judge panel would have to assess if the Kedar Nath<sup>19</sup> decision was made correctly in this case. The government has informed the court that it is considering conducting a new examination of the colonial statute, after first defending the clause by claiming that "isolated examples of misuse" do not need the repeal of the actual provision.

The petitioners claim that other laws, such as strict anti-terror laws like the Unlawful Activities Prevention Act, can deal with the limited Kedar Nath definition of sedition. The significance of the court's decision can be seen in the fact that, if the section is found to be illegal, the Kedarnath ruling must be reversed and earlier rulings that were more tolerant of free expression must be upheld. If the government decides to review the law, the phrase might still be resurrected in a modified form, either by reducing the language or repealing it.

### **CRITICISM OF SEDITION LAW**

The following are arguments against the law of sedition:

1. Restrictions on the constitutionally established right to free speech and expression are an argument against the law of sedition.

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<sup>16</sup> Snehil Kunwar Singh & Sushant Arsh Massey Khalkho (n 13)

<sup>17</sup> *S.G. Vombatkere v Union of India* (2022) SCC Online SC 660

<sup>18</sup> Bhadra Sinha, 'Politicians, editors, a retired Major General: The petitioners taking on sedition law in SC' (*The Print*, 12 May 2022) <<https://theprint.in/india/politicians-editors-a-retired-major-general-the-petitioners-taking-on-sedition-law-in-sc/952091/>> accessed 17 July 2022

<sup>19</sup> *KedarNath Singh v State Of Bihar* (1962), AIR 955

2. In a thriving economy, dissent and criticism of the government are crucial components of lively public discourse.
3. Sanjay K. Chadha, a highly regarded Supreme Court attorney, added that genuine criticism is not seditious and that it is very damaging to our country's democracy when the government exploits the power of sedition to make individuals afraid to express their disagreement with the government policies.
4. The word "mentioned disaffection" is ambiguous and open to many interpretations depending on the examining officer's whims and preferences.
5. It is also used inappropriately to target political dissent.<sup>20</sup>

**Revamping of sedition law:** -According to a three-page affidavit submitted through the Union home ministry, "The government of India has chosen to re-examine and reconsider the provisions of Section 124A (sedition) of the Indian Penal Code, which can only be done before the competent forum."<sup>21</sup>

### IMPORTANT JUDGMENTS ON SEDITION

Over the years, a number of major instances have helped to restructure Section 124A:-

#### *The Queen-Empress v Bal Gangadhar Tilak*<sup>22</sup>

One of the most well-known historical examples of sedition is when our nation's independence fighters fought against colonial rule. Two different times, the valiant proponent of Indian freedom, Bal Gangadhar Tilak, was charged with sedition. It was given the first penalty in 1897 for speeches that were said to have incited others to act violently, killing two British officers. He was tried in 1909 for publishing seditious articles in his newspaper Kesari, which he was then the owner of, after being found guilty in 1898 and given bail for the crime.

The first definition and application of Section 124 A occurred in 1897. According to the court, the ruling Privy Council considered the encouragement of violence and revolt unimportant

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<sup>20</sup> Jaagatjot Singh, 'Citizenship and Sedition - Laws That Need Clarity' (*Legal Service India*)  
<<https://www.legalserviceindia.com/legal/article-6360-citizenship-and-sedition-laws-that-need-clarity.html>>  
accessed 17 July 2022

<sup>21</sup> Utkarsh Anand (n 1)

<sup>22</sup> *Queen-Empress v Bal Gangadhar Tilak* (1897) ILR 22 Bom. 112, 151

when deciding who was to blame for a defendant facing sedition charges. This situation serves as an illustration of how to define the word "disaffection. "Hatred, disagreement, animosity, disrespect, and any other negative feelings against the government are all examples of disaffection.

***Dr. Binayak Sen v State of Chhattisgarh***<sup>23</sup>

Sedition charges were brought against Dr. Binayak Sen at the Raipur Session's Court for his association with the Naxalites, and he was sentenced to life in jail. He was accused of helping active Naxalites by allegedly transmitting SMS outside the prison, from one prisoner to another. According to him, doing something like that was never a possibility because he was constantly under the supervision of a prison official; rather, his condemnation of Salwa Judum's involvement in their deaths is what ultimately led him to this situation. I was informed that this organisation was receiving assistance from the state government in its endeavours to clear village land and mine for diamonds, bauxite, and iron ore from it.

***Balwant Singh and Anr. v Punjab State***<sup>24</sup>

The accused in the following case screamed the phrase "Khalistan Zindabad" in front of a movie theatre after Indira Gandhi, former Prime Minister was killed. The court came to the decision that two people casually raising chants could not be regarded as encouraging opposition to the government. Section 124A would not apply in this case due to the circumstances.

***Aseem Trivedi v State of Maharashtra***<sup>25</sup>

In 2010, sedition-related charges were brought against Aseem Trivedi, a prominent political cartoonist, and activist known for his anti-corruption efforts and caricatures against corruption. The following year, he was granted bail and released. According to the complaint made by Amit Katarnayea, a legal counsel for a Mumbai-based NGO, Trivedi is charged with displaying "insulting and derogatory" sketches at the Anna Hazare-organized anti-corruption activism and

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<sup>23</sup> *Dr Binayak Sen v State of Chattisgarh* (2011) SCC Online Chh 30

<sup>24</sup> *Balwant Singh and Anr v State of Punjab* (1976), AIR 230

<sup>25</sup> *SanskarMarathe v The State of Maharashtra and Ors.*, (2015) 2 AIR Bom R (Cri) 478

uploading them to social networking sites, including one that depicted the Parliament as an outhouse and another that showed the National Emblem with the lions replaced by wild animals.

### ***Kanhaiya Kumar v State of Delhi***<sup>26</sup>

On February 12, 2016, Kanhaiya Kumar was taken into custody by the Delhi Police for breaking Sections 124A and 120B of the Indian Penal Code. At a JNU student-organized rally honouring the hanging of Afzal Guru, he was charged with insulting the nation's dignity by shouting chants that were offensive to the nation's dignity. Kanhaiya Kumar asserted that he did not utter anything seditious and refuted all of the allegations. Right, and left-wing political activists in the United States were furious about his detention. The event was investigated by the university, which also fined Kumar Rs. 10,000 and instituted disciplinary measures against those responsible. The Delhi High Court later overturned the fine, stating that the committee's choice was "illegal, uncommon, and arbitrary." "The university's administration was unable to operate as a result of the strike that was started after the arrest.

### **ANALYSIS**

It is encouraging to see that the Supreme Court asked the most pertinent question regarding this matter, "Why does Section 124A stay in the statute book even after 75 years of independence?" when declaring its desire to revisit the Indian Penal Code's sedition provision. The government has been reminded by Chief Justice N. V. Ramana that the colonial regime utilised this legislative tool to repress the freedom movement and that the police routinely abuse it across the nation. The concerns raised by the Chief Justice of India may serve as the starting point for a thorough re-examination of a section that has been repeatedly and improperly applied, particularly in the last few years, to stifle dissent, and criminalise vociferous political criticism, and brand opponents as being "anti-national."

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<sup>26</sup> *Kanhaiya Kumar v State of NCT of Delhi* MANU/DE/0498/2016

Although it is sometimes claimed that a law's misuse alone does not make it unlawful, Section 124A is a specific example that should be struck down due to its inherent propensity for abuse. All regimes have a tendency to cite it without considering whether it applies to the specifics of any situation, according to a pattern of behaviour. Recent cases demonstrate that sedition is used for three political purposes: to quell criticism and opposition to specific government policies and initiatives, to criminalise dissenting viewpoints from human rights advocates, attorneys, activists, and journalists, and to settle political scores, sometimes with communal overtones.

Remember that the 1962 Constitution Bench upheld the section in large part by reading down the meaning of the terms "bring into hatred or contempt" or "to create disaffection towards the government established by law" and limiting its application to only those instances of speech or writing that demonstrate a pernicious tendency to cause public disorder. Without this tempered interpretation, Section 124A's ban on free speech would have been ruled illegal. The 1962 decision is being challenged in a number of cases, citing more recent rulings that have expanded the definition of fundamental rights and later-evolved concepts. Examined issues include the 'chilling impact' that laws may have on free speech as well as the 'overbroad' and 'vague' definition of sedition that makes both provocative and innocent remarks or writings equally subject to prosecution. The government acknowledged in Parliament in 2016 that the concept of sedition is overly broad and needs to be revised. In 2018, the Law Commission also published a consultation paper that stated, "In a democracy, singing the same tunes all the time is not a test of patriotism. People should be free to express their love for their nation in whichever way they want. While updating the law is required, releasing new rules and safeguards is one method of preventing its misuse.

## CONCLUSION

Singing the same songs over is hardly a sign of patriotism in a democracy. People should be free to express their love for their nation in their own unique way. By doing the same, one can engage in discussions or constructive criticism, pointing out the flaws in the government's policy. Although the language used in such ideas may be harsh and offensive to others, this does not

qualify the activities as seditious. Only when an act is intended to disturb public order or to subvert the government using force and criminal methods should Section 124A be used.

No careless exercise of the right to free speech or expression qualifies as seditious. A person shouldn't be prosecuted under this clause for just having an opinion that differs from the current government's stance. Critiques of the current state of affairs, such as declaring India "no country for women" or "a racist country" because of its fixation with skin colour as a measure of beauty, do not pose a threat to the concept of a nation. Sedition cannot be committed and should not be committed by disparaging the nation or a specific component of it. There is not much of a distinction between the pre-and post-independence eras if the nation is closed off to constructive criticism. Free speech safeguards the freedom to offend as well as the right to critique one's own past. Although it is crucial to safeguard national security, it must not be abused to stifle free speech. In a healthy democracy, dissent and criticism are necessary components of a robust public discussion of policy matters. To avoid unjustified limits, every restriction on the right to free speech and expression must be carefully examined.