

# LAW RELATING TO SEDITION IN INDIA

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## 1. Introduction

An insight into history of human civilization reveals that throughout the ages the state has secured a dominant place among all institutions. The concept like '*laissez faire*' and individual liberties attempted to check this dominance to certain extent but state has acquired such a place that affects almost every aspect of social life. According to Max Weber, "the state as a compulsory political organization with a centralized government maintains a monopoly of the legitimate use of force within a certain territory".<sup>1</sup> A state is a community of persons living within certain limits of territory, under a permanent organization which aims to secure the prevalence of justice by self-imposed law.<sup>2</sup>

According to Rousseau, "The state derives its existence and its justification solely from the guarantee of freedom and equality. The state and state law thus remains subject to the general will which creates the state for the better protection of freedom and equality."<sup>3</sup>

The term 'State' has been defined in Part III of Constitution of India, 1950. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.<sup>4</sup> As the state should protect the individual's life and property it should also save itself from all internal and external disorder or aggression. It has to maintain law and order and create conditions for its perfect security. In general, security of the state means the ability of a nation to protect its internal values and people from external threats. The security of the state and organised government is the very foundation of freedom of speech and expression which maintains the

<sup>1</sup>Gordon Scott, *Controlling the State Constitutionalism from Ancient Athens to Today* 4 (2002)

<sup>2</sup> Theodore D. Woolsey. *Introduction to the Study of International Law* 36 (1878)

<sup>3</sup>Dr. B.N. Mani Tripathi, *Jurisprudence: The Legal Theory* 154 (2013).

<sup>4</sup>The Constitution of India, 1950, art. 12.

opportunity for free political discussion to the end that government may be responsive to the will of the people.<sup>5</sup> Therefore it is necessary to keep a proper balance between freedom of speech and expression and security of the state. This balance has been found by the Legislature in Chapter VI of Indian Penal Code, 1860 which defines offences against the state that are taken very seriously.

### **i. Historical Background of Sedition**

Sedition as an offence originated in United Kingdom was punishable under the Statute of Treasons of 1352. The offence of seditious libel was first created in 1606 by the infamous Star Chamber decision in *de Libellis Famosis's case*<sup>6</sup> and continued to exist at Common Law as a species of libel. The history of sedition is a sorrowful litany of cruel repression of political dissent by intolerant and intransigent regimes.<sup>7</sup>

In the early times, governments were very sensitive and did not allow certain kind of publications to be circulated. But with the growth of printing in India, the government had to deal with the problem of restraints on the circulating materials. By the Metcalfe Act of 1835 (also known as the Press Act, 1835) declared that the press in India become free and that it was not subject to any previous restraints like licensing of the press or pre-censorship. It was only required the printer and publisher of every newspaper to declare the location of the premises of its publication.<sup>8</sup> It was hailed as the most liberal Press Act in Indian history.

In India, originally section 113 of Macaulay's Draft Penal Code 1837-39, was dealt with sedition but legislature did not insert sedition as an offence in Indian Penal Code 1860. The reason for the omission of this section from the Code is not clear, but perhaps the legislative body did not feel sure about its authority to enact such a provision in the Code. Be that as it may, Section 124A was not placed on the Statute book until 1870, by Indian Penal Code (Amendment) Act, 1870. There was a considerable amount of discussion at the time the amendment in the Indian Penal Code was introduced by Sir James Stephen.<sup>9</sup> The offence of sedition was incorporated under Section 124A of the Indian Penal Code on November 25, 1870,

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<sup>5</sup>*Manubhai Tribhovandas Patel v. State of Gujarat*, (1917) 12 Guj. L.R.

<sup>6</sup>*De Libellis Famosis's case* (1606) 5 Co. Rep. 125a, v. 208.

<sup>7</sup>F.S. Siebert, *Freedom of the Press: The Rise and Fall of Government Control* 145 (1965)

<sup>8</sup>Reba Chaudhari, *The Economic Weekly*, The Story of the Indian Press, 26 Feb 1955.

<sup>9</sup>Sir James Stephen was a Law Member who prepared the Indian Evidence Act, 1872..

and continued without modification till February 18, 1898. Originally, Section 124A of IPC reads as follow:<sup>10</sup>

“ whosoever by words, either spoken or intended to be read or by sign or by visible representation or otherwise excite or attempt to excite feeling of disaffection to the Government established by law in British India, shall be punishable with transportation of life up to three years to which fine may be added.”

This section was roughly prepared according to the Treason Felony Act, 1848 of England. The Treason Felony Act, 1848, Common law was dealt with the seditious libels and the law relating to seditious actions and also imposed liability on all those who harboured feelings of disloyalty towards the Queen.<sup>11</sup>

In 1921, the Sapru Committee was constituted to examine the existing laws restricting freedom of press in India and to suggest alterations in it. In pursuance of the recommendations of the Committee, the Press Act of 1910 was repealed and power had been given to the government to forfeit all those publications which are of seditious nature.<sup>12</sup>

### ***‘Disaffection’ under the Colonial Regime***

When the provision of section 124A of IPC came before the courts in India, there was no certainty as to the exact definition of the term ‘disaffection’. It was solved after many judgements delivered by the courts. The very first trial for sedition in India was *Queen Empress v. Jogendra Chandra Bose*<sup>13</sup> in which Calcutta High Court laid down the distinction between ‘disapprobation’ and ‘disaffection’. Disaffection was defined as the use of words written or spoken to create a disposition in the mind of people not to obey the lawful authority, or to subvert or resist that authority.<sup>14</sup>

The Bombay High Court further clarified the meaning of ‘disapprobation’ and ‘disaffection’ in *Queen Empress v. Ramchandra Narayan*.<sup>15</sup> and advocated that an attempt to excite feeling of disaffection among the masses to be construed as an attempt to ‘excite political

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<sup>10</sup>The Indian Penal Code, 1870, s. 124A.

<sup>11</sup>The Treason Felony Act, 1848, s. 3.

<sup>12</sup>Law Relating to Press in India, Available at [www.books.google.co.in](http://www.books.google.co.in) (last visited on May 9<sup>th</sup>, 2016)

<sup>13</sup>ILR (1892) 19 Cal 35.

<sup>14</sup>*Id.*, 40-42.

<sup>15</sup>ILR (1898) 22 Bom 152.

discontent and alienation from their allegiance to the sovereign'. Thus, sedition means an attempt by words either spoken or written, to excite the feeling of hatred, enmity, dislike etc. in the mind of people to rebel against the government established by law. A person generally is guilty of a seditious act when he disturbs the public peace through inflammatory speeches or publishes documents that serve no useful purpose other than to encourage violence.

## ii. Meaning of Sedition

Sedition, in Latin *seditio*, compounded of two words i.e 'sed' and 'itio'. 'Sed' means 'apart' and 'itio' means 'going'. Thus the word sedition signifies 'a going apart' that is, the people going apart from the government.<sup>16</sup>

According to Cambridge Advanced Learner's Dictionary, "Sedition means language or behaviour that is intended to persuade other people to oppose the government."<sup>17</sup>

A. H. Blackwell says that "Sedition is a term used to denote a specific type of conduct, which is political in nature and is considered to be against the interest of the established authority".<sup>18</sup>

According to Bouvier's Law Dictionary, "sedition means raising commotions or disturbance in the state. It is revolt against legitimate authority."<sup>19</sup>

Dictionary of Crime defines the offence of sedition as "the actions or spoken words that could incite persons or organizations to rise up in revolt against the state. A person is guilty of a seditious act when he disturbs the public peace through inflammatory speeches or publishes document that serve no useful purpose other than to encourage violence or mayhem against the government".<sup>20</sup>

In general terms sedition means 'advocating treason'. Sedition is said to be nothing more than defamation of the established authority and it 'usually consist of words, not action'.<sup>21</sup> Sedition is a crime against society, nearly allied to that of treason. Sedition in itself is a

<sup>16</sup>George Crabb, *English Synonyms* 454 (1982).

<sup>17</sup>*Cambridge Advanced Learner's Dictionary*, 2004.

<sup>18</sup>Amy Hackney Blackwell, *The Essential Law Dictionary* 449 (2008).

<sup>19</sup>Bouvier's Law Dictionary, 1992.

<sup>20</sup>*Dictionary of Crime*, 331 (1992).

<sup>21</sup> Law Commission of India, 43<sup>rd</sup> Report on Law Relating to National Security, August 1971.

comprehensive term, and includes all those practices, whether by word or action which are calculated to disturb the peace of the state and make people rebel against the authority of the state.<sup>22</sup>

### ***Types of Sedition***

Sedition, as applicable under English law may be defined as a conduct which has, either as its object, or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society. The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused:<sup>23</sup>

- (1) To excite disaffection against the King, Government, or Constitution, or against Parliament or the administration of justice;
- (2) To promote, by unlawful means, any alteration in Church or State;
- (3) To incite a disturbance of the peace;
- (4) To raise discontent among the King's subjects; and
- (5) To excite class hatred.

It must be observed that criticism of political matters is not of itself seditious. The test is the manner in which it is done. Truthful and honest discussion is permitted. The law only interferes when the discussion passes the bounds of fair and honest criticism against the government.

### **iii. International Perspective of Sedition**

Article 19 of the Universal Declaration on Human Rights (UDHR),<sup>24</sup> a United Nations General Assembly resolution, guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression which includes right to receive and impart information and ideas through any media and regardless of frontiers.

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<sup>22</sup>*Reg. v. Alexander Martin Sullivan*, (1867-71) 11 Cox's Cri. Law Cases, 44.

<sup>23</sup>*Stephen Commentaries on the Laws of England*, Vol. IV, 141,142 (1950).

<sup>24</sup>UN General Assembly Resolution 217A (III), adopted in 1948.

It is important to point out that Universal Declaration of Human Rights is though not directly binding on States but parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.<sup>25</sup>

Freedom of expression is also guaranteed in Article 19 of the International Covenant on Civil and Political Rights, 1966,<sup>26</sup> as well as in all three regional treaties on human rights, i.e (a) European Convention on Human Rights, 1950<sup>27</sup>(b) African Charter on Human and People's Rights, 1981<sup>28</sup> and(c) American Convention on Human Rights, 1969.<sup>29</sup>

The right to freedom of expression is not absolute. Both international law and most national constitutions recognise that freedom of expression may be restricted. But such limitations must remain within strictly defined parameters.

Article 29 of the Universal Declaration of Human Rights provides that in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The exercise of the rights provided for in paragraph 2 of the Article 19 of International Covenant on Civil and Political Rights carries with it special responsibilities and duties. It may therefore be subject to certain restrictions which are provided by law and are necessary to:

- (a) protect the rights or reputations of others;
- (b) protect the public order, public health or morals and national security.

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<sup>25</sup>*Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2<sup>nd</sup>Circuit).

<sup>26</sup>Everyone shall have right to hold opinion without interference.

<sup>27</sup>Article 10 "Everyone shall have right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

<sup>28</sup>Article 9 "Every individual shall have the right to receive information. And every individual shall have right to express and disseminate his opinions within the law."

<sup>29</sup>Article 13 "Everyone has right to freedom of thought and expression which includes freedom to seek, receive and impart information or ideas of all kinds regardless of frontiers, either orally, in writing, in print, in the form of art, or any other medium of one's choice."

Any restriction on the right to freedom of expression must meet a strict three-part test approved by both the UN Human Rights Committee<sup>30</sup> and the European Court of Human Rights.<sup>31</sup> This test requires that a) any restriction must be provided by law; b) it must be in favour of public interest; and c) it must be necessary to secure that interest.

In most of the mature democracies, the law of sedition has now either formally been rescinded or is largely defunct. Pronouncements by courts and law reform commissions in a number of common law jurisdictions support the contention that the law of sedition serves no useful purpose, is anachronistic, is palpably undemocratic, and is an unconstitutional encroachment on the right to freedom of expression.

### *Australia*

The crime of seditious libel is the part of Commonwealth Crimes Act of 1914.<sup>32</sup> In 1986, the Federal Parliament amended the Act<sup>33</sup> to limit the crime of sedition to statements or actions carried out “with the intention of causing violence or creating public disturbance or a public disorder.”

### *Canada*

Although the offence of seditious libel remains in the *Criminal Code*, in Canada, it has not been used since 1951, when the Supreme Court of Canada decided the landmark case of *Boucher v. The King*.<sup>34</sup> The accused, a Jehovah’s Witness, had distributed leaflets which were titled “Quebec’s Burning Hate for God and Christ and Freedom is the Shame of all Canada.”<sup>35</sup> Justice Kerwin held: “An intention to bring the administration of justice into hatred and contempt or exert disaffection against it is not sedition unless there is also the intention to incite people to violence against it.”<sup>36</sup>

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<sup>30</sup>*Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7

<sup>31</sup>*Goodwin v. United Kingdom*, 27 March 1996, Application No. 17488/90, paras. 28-

<sup>32</sup>Section 24 make it a crime (a) “to bring the Sovereign into hatred or contempt; (b) excite disaffection against the Sovereign or the Government or Constitution of the United Kingdom or against either House of the Parliament of the United Kingdom; or (c) to excite disaffection against the Government or Constitution of any of the King’s dominions.” The archaic language of the Act, referring as it does to the United Kingdom, reveals it to be an anachronistic holdover from colonial times.

<sup>33</sup>The Commonwealth Crimes Act, 1914, ss. 24C, 24D.

<sup>34</sup>(1951) S.C.R. 265

<sup>35</sup>*Ibid.*,

<sup>36</sup>*ibid*

## *Ireland*

In 1991, in recommending the abolition without replacement of the Common law offence of seditious libel, the Irish Law Reform Commission stated: “As an offence it has an unsavoury history of suppression of government criticism and has been used as a political muzzle.”<sup>37</sup> Furthermore, the matter which is the subject of the offence is punishable in accordance with provisions of Irish legislation.”

## *United Kingdom*

Sedition remains an offence at Common law in the United Kingdom, although in practice it is obsolete and has not been used by the State for many years. Recent attempts to bring private prosecutions for sedition in the United Kingdom have also foundered. Indeed, both the judiciary and the government’s own experts agree that sedition should be completely removed from the law of England, and the United Kingdom’s Law Commission has expressed the view that there was no need to retain the offence.<sup>38</sup>

## *U.S.A.*

As early as 1798, Thomas Jefferson<sup>39</sup> and James Madison<sup>40</sup> condemned the continued existence of the crime of sedition as an aberration of the principle of free and democratic government.<sup>41</sup> When he became President, Jefferson pardoned all those who had been convicted of sedition and, in 1840, the United States Congress repaid all the fines which had ever been levied against individuals convicted under the Sedition Act 1798 on the basis that it was unconstitutional and invalid.

## *Pakistan*

Section 124A of Pakistan Penal Code, 1860 defines the offence of sedition as whoever by words, either spoken or written, or by signs or visible representation or otherwise, brings or attempts to bring into hatred or contempt, or excite or attempts to excite disaffection towards

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<sup>37</sup>Irish Law Reform Commission, *Consultation Paper on the Crime of Libel* (1991), para 217.

<sup>38</sup> United Kingdom, The Law Commission, *Working Paper No 72, The Codification of the Criminal Law, Treason, Sedition and Allied Offences*, para 78 (1977).

<sup>39</sup>Thomas Jefferson was an American Founding Father.

<sup>40</sup>James Madison is hailed as the “Father of the U.S. Constitution”.

<sup>41</sup>*New York Times v. Sullivan* 376 U.S. 254 (1964), 275.

the Federal or Provincial Government established by law 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>42</sup>

#### **iv. Indian Perspective of Sedition**

Sedition under Indian Law can be discussed from different legal angles i.e under Indian Penal Code, 1860, other statutory enactments and in the light of right to freedom under Constitutional framework.

##### ***Sedition as an offence under Indian Penal Code, 1860***

Indian penal code, 1860 (IPC) is a comprehensive code intended to cover all substantive aspects of criminal law. Chapter VI (sections 121 to 130) of IPC deals with the offences against the state. Sedition as an offence against the state is provided under section 124A of IPC. Sedition may be termed as defamation of the state. When a person defames another person, he is liable under section 500 of IPC. When the defamation is against a class or community it would be an offence under section 153A and when against established government, it is offence under section 124A. Law of sedition under Indian Penal Code can be categorised in 3 heads mainly.

Section 124-A of Indian Penal Code, 1860 provides: “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>43</sup>

The following are the essential ingredient of this section, viz.

- (1) Bringing or attempting to bring into hatred; or
- (2) Exciting or attempting to excite disaffection against the Government of India;

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<sup>42</sup>The Pakistan Penal Code, 1860. s. 124A.

<sup>43</sup>The Indian Penal Code, 1860, s.124-A.

- (3) Such act or attempt may be done (a) by words, either spoken or written or (b) by sign or (c) by visible representation; and
- (4) The act must be intentional.

Explanation 1 to Section 124A sets out the scope of disaffection and Explanation 2 and 3 states what is not considered seditious intention as indicated under English Law. That is to say, comments expressing disapprobation of the government measures and administrative and other actions of the government without exciting or attempting to excite hatred or disaffection do not constitute an offence under this section. A mere criticism or denunciation of the government established by law is not objectionable<sup>44</sup>.

Section 153A of Indian Penal Code, 1860 deals with promoting enmity between different groups on grounds of religion, residence, race, place of birth, language etc. by words, signs or visible representation or otherwise, or doing any acts prejudicial to the maintenance of harmony between different groups or caste or communities or disturb the public peace.<sup>45</sup>

Section 295A of Indian Penal Code, 1860 provides the punishment for deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.<sup>46</sup> The said insult must be by words, either spoken or written, by sign or by visible representation or otherwise.

### ***Punishments under Indian Penal Code, 1860***

Sedition is punishable under section 124A of Indian Penal Code, 1860 which provides for punishment of (1) life imprisonment, to which fine may be added; (2) imprisonment up to 3 years, to which fine may be added or (3) fine only<sup>47</sup>. The Criminal Law Amendment Act, 1961 laid down the provision relating to punishment in case of any person who may question the territorial integrity or frontiers of India in a manner prejudicial to the safety and security of the country and for strengthening the law on the prevention or control of seditious activities.<sup>48</sup> The punishment under section 153A of Indian Penal Code, 1860 may extend to three years, or

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<sup>44</sup>*Emperor v. Sadashiva Narayan*, AIR 1947 PC. 82.

<sup>45</sup>The Indian Penal Code, 1860.

<sup>46</sup>The Indian Penal Code, 1860.

<sup>47</sup>The Indian Penal Code, 1860, s.124A.

<sup>48</sup>The Criminal Law Amendment Act, 1961, s. 2.

with fine, or with both<sup>49</sup>. However, the punishment of the offence committed in a place of worship is enhanced up to five year.<sup>50</sup> Section 295A of Indian Penal Code, 1860 provides the punishment of imprisonment either description for a term which may extend to three year, or with fine, or with both.<sup>51</sup>

### ***Other Enactments to Control Seditious Activities***

Besides Indian penal Code, there are various enactments enacted to control different types of seditious activities endangering the security of state.

***The Press and Regulation of Books Act, 1867*** deals with the maintenance of record of various printing presses, their owners, as also of every book or newspaper printed in India, so as to enable the government to ascertain and verify their contents whenever required and if any seditious substance is found, to bring them within the preview of Section 124A of Indian Penal Code.<sup>52</sup>

***The Vernacular Press Act, 1878*** was passed with the purpose to control the printing and circulation of seditious material, specifically that which could raise disaffection in the mind of masses towards the British Government in India.<sup>53</sup>

Under ***The Indian Post Office Act, 1878*** the Government may detain and forfeit any document of seditious nature transmitted by post to any one and thus lay its hands on the activities which may endanger the security of the State.<sup>54</sup>

***The Prevention of Seditious Meetings Act, 1911***, prohibits any kind of public meeting for furtherance or discussion of any subject likely to cause disturbance. It also prescribe the punishment in the event of any public meeting held or conducted contrary to the provision of this Act.<sup>55</sup>

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<sup>49</sup>The India Penal Code, 1860, s.153A(C).

<sup>50</sup>The Indian Penal Code, 1860, s.153A(2).

<sup>51</sup>The Indian Penal Code, 1860, s.295A.

<sup>52</sup>The Press and Registration of Books Act, 1867, ss. 4, 5, 9

<sup>53</sup>The Vernacular Press Act, 1878.

<sup>54</sup>The Indian Post Office Act, 1898, s. 27-B (A) (ii).

<sup>55</sup>The Prevention of Seditious Meeting Act, 1911, ss. 4, 6, 7.

*The Code of Criminal Procedure, 1973* also contains significant provisions to control seditious activities endangering security of the state. Section 95 deals with the power to declare certain publications forfeited if publication of it is punishable under Section 124A or 153A or 295A of the IPC and under Section 96 of the Code the person interested in the book forfeited has a right to apply to High Court to set aside the order of forfeiture made under Section 95 of Code of Criminal Procedure, 1973.<sup>56</sup> Sections 95 and 96 when read together are clearly preventive in nature and are designed to pre-empt any disturbance to public order.<sup>57</sup> Section 106 of the Code deals with the conviction of persons who are a danger to the public by reason of commission of any offence which is punishable under section 153A of Indian Penal Code, 1860 and any other offence which caused or was intended or known to be likely to cause a breach of peace.

**Geospatial Information Regulation Bill, 2016**, though directly not dealing with offence of sedition. It has been prepared to ensure the security, sovereignty and integrity of India by regulating the collection and publication or distributing of geospatial information pertaining in India and 7 years punishment and fine up to Rupees one hundred crore has been proposed for the offence under this Act.

#### **v. Practice and Procedure**

Section 124A of Indian Penal Code is one of those in which court can only take cognizance after having previous sanction of the Central or the State Government.<sup>58</sup> The two sections 95 and 96 of Code of Criminal Procedure, 1973 deal with power to declare certain publications forfeited and application to High Court to set aside the declaration of forfeiture. The power under these sections can only be exercised and notification can only be issued if the government forms an opinion that the publication contains matter which is in an offence under Section 124A, 153A, and 295A.<sup>59</sup> As regard these Sections, it has been held that the order or sanction required need not necessarily specify the seditious matter in respect of which the prosecution has been ordered or sanctioned and that, even were it otherwise, the sanction bars

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<sup>56</sup>The Code of Criminal Procedure, 1973, ss. 95, 96,

<sup>57</sup>*Baragur Ramachandrappa v. State of Karnataka*, (2007) 5 SCC 11.

<sup>58</sup>The Code of Criminal Procedure, 1973, s. 196.

<sup>59</sup>*Sanghraj Damodar Rupawate v. Nitin Godre*, 2007 CrLJ 3860.

only the 'cognizance' and not its trial after committal.<sup>60</sup> Section 108, contemplates the dissemination of matter (spoken or written) so as to commit an offence under section 124A, 153A and 295A of IPC. An offence under this Section is cognizable<sup>61</sup>. It is both non-bailable<sup>62</sup> and non-compoundable.<sup>63</sup>

#### vi. Right to Freedom vis a vis Offence of Sedition

Part III of the Constitution of India, 1950 deals with Fundamental Rights and Article 19(1)(a) provides freedom of speech and expression. The law of sedition under section 124A of IPC was apparently seemed inconsistent with the provisions of Article 19(1)(a) of the Constitution.

First of all, the validity of section 124A of Indian Penal Code, 1860 was challenged before Allahabad High Court and the High Court held that Section 124-A imposed restriction on freedom of speech not in the interest of general public and declared Section 124-A as ultra vires the Constitution<sup>64</sup>. But overruling this decision in *Kedar Nath v. State of Bihar*, Supreme Court held Section 124-A intra vires. Here, the court followed the interpretation given by the Federal Court in *Niharendu Majumdar*<sup>65</sup> case as held that the crime of sedition was established as a crime against public peace and order.<sup>66</sup> The court took into consideration the pre-legislative history and the Constituent Assembly Debates on Article 19 of the Constitution and held that sedition had been excluded as valid ground to limit the freedom of speech and expression even though it was inserted in the Draft Constitution.<sup>67</sup>

Deletion of the word 'sedition' from Draft Article 13(2), therefore, shows that criticism of government exciting disaffection or bad feeling towards it is not to be regarded as a justifying

<sup>60</sup>*Bal Gangadhar Tilak v. Queen Empress*, ILR (1898) 22 Bom 112.

<sup>61</sup>S. 2(c) of Cr.P.C defines cognizable offence as an offence in which, a police officer may, in accordance with the First Schedule or any other law for the time being in force, arrest without warrant.

<sup>62</sup>S. 2(a) of Cr.P.C provides that 'bailable offence' means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and 'non-bailable offence' means any other offence.

<sup>63</sup>Generally, there are three types of offences i.e. compoundable, non-compoundable and compoundable with consent. Compoundable are those in which compromise can be done. Non-compoundable are serious offences and compromise cannot be done. In compoundable with consent, the permission of court is required before compounding.

<sup>64</sup>*Ram Nandan v. State of U.P.*, AIR 1959 All 101.

<sup>65</sup>*Niharendu Dutta Majumdar v. King Emperor*, AIR 1942 FC 22.

<sup>66</sup>*Rex v. Aldred*, (1909) 22 Cox CC 1.

<sup>67</sup>*Kedar Nath v. State of Bihar*, AIR 1962 SC 955.

ground for restricting the freedom of speech and expression and of the press, unless there is danger to public security.<sup>68</sup> This was indicative of a legislative intent that sedition not be considered a valid exception to freedom of speech and expression.

As a consequence, sedition could only fall within the preview of constitutional validity if it could read into any of the six grounds listed in Article 19(2) of the Constitution. Out of the six grounds in Article 19(2), 'security of state'<sup>69</sup> has been considered as the best ground to support the constitutional validity of Section 124A of the Indian Penal Code, 1860.

### **vii. Judicial Attitude Towards the Offence of Sedition**

The Judiciary in India is a part of the democratic process and it not only administers justice but also protects the right of citizens and acts as interpreter and guardian of Constitution. Judiciary enjoys the power of judicial review by virtue of which it decides the constitutional validity of any law. After declaring the section 124A of IPC as intra vires to Constitution of India by Supreme Court in *Kedar Nath v. State of Bihar*,<sup>70</sup> the courts have applied the law of sedition in many cases.

In the case of *Gurjinder Pal Singh v. State of Punjab*,<sup>71</sup> in which accused petitioned the Punjab and Haryana High Court for an order to quash the FIR that had been filed against him under section 124A and 153B of IPC. In this case petitioner gave a speech to the people presenting advocating the establishment of a buffer state as Khalistan and called the Constitution of India as a 'useless' book. The High Court cited the decision of the Supreme Court in *Balwant Singh v. State of Punjab*,<sup>72</sup> and held that mere casual raising some slogans by accused person without intention to create disorder would not attract the provision of section 124A and 153B of IPC. In another controversial case of *Simranjeet Singh Mann v. Union of India*, in which Simranjit Singh Mann who was president of Shromani Akali Dal-Amritsar, was charged with four different cases of sedition registered against him. He was booked for raising pro-Khalistan slogans and helping Bhindranwale and his men by distributing arms while posted as Senior Superintendent of Police in Faridkot. His name was also involved in the assassination

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<sup>68</sup>*Id.*

<sup>69</sup>*Id.*

<sup>70</sup>*Id.*

<sup>71</sup>(2009) 3 RCR (Cri) 224.

<sup>72</sup> AIR 1995 SC 1785.

of former Prime Minister Indira Gandhi. The Supreme Court held that mere raising of slogans does not amount to sedition and therefore the case registered under Section 124A deserved to be quashed.<sup>73</sup>

The Kerala High Court in *P. J. Manual v. State of Kerala*,<sup>74</sup> observed that it needs to be examined whether the publication or preaching of protest, or even questioning the foundation or form of government should be imputed as “causing disaffection towards the government” in modern democracy. The contents of the offence of sedition must be determined with reference to the letter and spirit of the Constitution. Acquittals were also obtained by filmmaker who made a documentary that highlighted the violence that affects the life of people in Kashmir,<sup>75</sup> and by a cartoonist who drew cartoons highlighting and lampooning the corruption in the government.<sup>76</sup>

In case of *Asit Kumar Sen Gupta v. State of Chattisgarh*<sup>77</sup> in which the person was accused of “inciting” and “provoking” people to join the organisation, with the intention of overthrowing the current “capitalist” government through armed rebellion. And the Court held that merely circulating or distributing seditious material could make a person liable under Section 124-A.

The latest two sedition cases, one is relating to spearheading protests to demand a quota for a community and another one is for raising anti-India slogans by university students, are still pending in front of Gujarat High Court and Delhi High Court.

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<sup>73</sup>AIR 1993 SC 280.

<sup>74</sup>ILR (2013) 1 Ker 793.

<sup>75</sup>*Pankaj Butalia v. Central Board of Film Certification*, WP (C) 675 of 2015 (Del).

<sup>76</sup>*Sanskar Marathe v. State of Maharashtra*, Cri PIL No.3 of 2015.

<sup>77</sup>Cri. App No. 86 of 2011.