

Criminalization of Peaceful Expressions and Law of Sedition in India

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Abstract

Earlier Sec. 124 A of IPC, 1860 used to deal with 'Sedition'. Now, it has been removed. However, Section 152 of BNS, 2023 criminalizes the acts that 'incite secession, armed rebellion, or subversive activities, separatist activities that endanger India's sovereignty, unity, and integrity'. Sedition punishes material that incites hate, contempt, or disaffection for the government because it might cause vehemence or public disorder. Criticizing government legislation or administration is not seditious. It is a highly condemned and controversial provision that is principally employed to conquer discord in politics. It allegedly restricts free speech and expression. The government must define the jurisprudential limits of sedition law or it will be misused and the state unable to guarantee free speech and democracy. This article explores the justification for outlawing sedition before placing India's experience in historical perspective in light of its colonial background and current regime. The law's usage as a political tool is discussed in the article's conclusion, and it is debated as to whether it should be abolished or changed in order to save Indian democracy from a crisis of the rule of law.

Keywords: Sedition, India, Free Speech, Democracy

1. Introduction

In the Anglo-American common law tradition, seditious behavior has an extensive past. The current definition of 'sedition', formerly described as "notion of inciting by words or writing disaffection towards the state or constituted authority," emerged in the 'Elizabethan age'.¹ Until 1870, sedition law was not included in the 'Indian Penal Code, 1860'. Even after the addition of 'Section 124A', 'Exciting Disaffection' terms were used in the borderline note but not in actual text of the provision.² The 1898 revision removed the word "sedition".³ India's Criminal Code was drafted in 1837 by Lord Macaulay. 'Section 113' was the original section for sedition, but it was removed from final draft, and the Indian Penal Code of 1860 was put into effect on January 1st, 1862, without a sedition legislation.⁴ Purpose behind this deletion wasn't made clear, though.⁵ The British initially came to India with the intention of trading, but their goal eventually became to govern. Sedition is an offence that involves trying to harm the sovereign, ministers, officers, or judges by inciting hatred or contempt in large numbers, encouraging discontent among the subjects of the state, or even attempting to incite people to disrupt the Constitution and disturb the peace of the nation, which is considered to be a high misdemeanor and the subject of any such information or an indictment. Any action is not considered seditious unless its malicious motive is widely known. Seditious libel is the term for seditious language used in writing.⁶ A seditionist is someone who commits an act of sedition.⁷

¹ Anish Bachchan, "The Law of Sedition Under Indian Penal Code, 1860: An Analysis," *Legal Service India*, accessed February 15, 2023, <https://www.legalserviceindia.com/legal/article-11883-the-law-of-sedition-under-indian-penal-code-1860-an-analysis.html>.

² Anushka Singh, "Resistance, Suppression, and Patriotism: Sedition in Colonial India," in *Sedition in Liberal Democracies* (Oxford University Press, 2018).

³ India Law Offices LLP, "Sedition Law in India," accessed February 15, 2024, <https://www.indialawoffices.com/legal-articles/sedition-law-in-india>.

⁴ Apurva Vishwanath, "What Is the Sedition Law, and Why Supreme Court's Fresh Directive Is Important," *The Indian Express*, 2022, <https://indianexpress.com/article/explained/sedition-law-explained-origin-history-legal-challenge-supreme-court-7911041/>.

⁵ Vishwanath, "What Is the Sedition Law, and Why Supreme Court's Fresh Directive Is Important".

⁶ The Oxford Guide to the United States Government, "Seditious Libel" (Oxford Reference), accessed February 15, 2024, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100452298>.

⁷ "The Law of Sedition Under Indian Penal Code, 1860: An Analysis."

In India, political dissent has been arbitrarily suppressed through the use of the law. It is used against students, educators, artists, and human rights advocates.⁸ For instance, Arundhati Roy was under arrest threat due to her participation on a panel discussing the political climate in Kashmir.⁹ Text messages attacking the prime minister, questioning the government's actions during the Gujarat floods, and denouncing atrocities against underprivileged communities are just a few of the claimed offenses.¹⁰ This demonstrates how, despite the fact that they are not the same thing, the nation and the government have been combined in practice.¹¹ Furthermore, the judiciary is nationalizing more and more, making it harder to tell what is legal and what is illegal and blurring the lines between "sedition" and "antinational".¹² Recent news stories about people being imprisoned for tweets or Facebook posts have succeeded in igniting a public debate about the Internet regulations in India.¹³ Criminalization of internet speech and expression gained widespread attention as a result of the arrests of Ambikesh Mahapatra, Aseem Trivedi, and Shaheen Dhada.¹⁴ But surprisingly little research has been done on the specifics and structure of this phenomenon. The government deploys draconian commandments to conquer dissent, including the criminal defamation statute, sedition provision of the criminal code, and legislation addressing hate speech. These laws have frequently been employed for political reasons against opponents at the central and state levels.¹⁵ They are imprecisely worded, too broad, and open to abuse. Many people putting peaceful expressions have been imprisoned in pre-trial custody and prosecuted.¹⁶ This study describes how peaceful expression is silenced in India through the use of the

⁸ Meenakshi Ganguly, "Dissent Is 'Anti-National' in Modi's India Government Continues to Clamp Down on Criticism" (Human Rights Watch), accessed February 15, 2024, www.hrw.org/news/2019/12/13/dissent-antinational-modis-india.

⁹ Gethin Chamberlain, "Arundhati Roy Faces Arrest over Kashmir Remark," *The Guardian*, 2010, <https://www.theguardian.com/world/2010/oct/26/arundhati-roy-kashmir-india>.

¹⁰ Reuters, "At Least 40 Arrested after Religious Clashes in Gujarat" (Thomson Reuters, 2014), <https://www.reuters.com/article/india-violence-idINKCN0HN0MY20140928/>.

¹¹ Mythili Mishra, "Criminalising Dissent: Sedition Laws in India," no. 1 (2020): 14–24.

¹² Mishra, "Criminalising Dissent: Sedition Laws in India".

¹³ HT Correspondent, "Arrest over a Facebook Status: 7 Times People Landed in Jail for Posts against Politicians," *Hindustan Times News*, 2017, <https://www.hindustantimes.com/india-news/arrested-over-a-facebook-status-7-times-people-landed-in-jail-for-posts-against-politicians/story-ON1jukoStfV6T8aYcJEVGJ.html>.

¹⁴ Shehla Rashid and Anja Kovacs, "Criminalising Dissent? An Analysis of the Application of Criminal Law to Speech on the Internet through Case Studies" (New Delhi: Internet Democracy Project, 2013).

¹⁵ Rashid and Kovacs, "Criminalising Dissent? An Analysis of the Application of Criminal Law to Speech on the Internet through Case Studies".

¹⁶ Human Rights Watch, "India: Stop Treating Critics as Criminals," 2016, <https://www.hrw.org/news/2016/05/25/india-stop-treating-critics-criminals>.

criminal law. It provides examples of how ambiguous regulations are applied to suppress dissent, harass journalists, limit NGO activities, arbitrary block Internet sites or remove material, and target peaceful protests and criticisms.

2. Historical Brief

A. Before Independence

'Section 124A of the Indian Penal Code (IPC)', has a lengthy and contentious past. A number of historical cases have had a lasting influence on how this legislation is interpreted and applied. Since one of the earliest cases on sedition, the classic '*Bangobashi case*', officially known as '*Queen-Empress v. Jogendra Chunder Bose & Ors.*', the Privy Council interpreted the law.¹⁷ According to High Court of Calcutta's elucidation of phrases disaffection and disapprobation, "Disaffection indicates a sentiment opposed to attachment, in other words, hate or hatred".¹⁸ Disapprobation, in lieu, simply means disapproval.¹⁹ For his writings in Kesari newspaper that criticized British colonial rule, *Tilak* was accused of sedition.²⁰ The trial served as a turning point for the nationalistic movement and prompted the country to redefine its sedition laws. The legendary revolutionary and freedom fighter *Bhagat Singh* and his companions were suspected of treason for their participation in the Lahore Conspiracy Case.²¹ The case attracted a lot of attention and brought to light the youth of the country's fervor for independence. Generations have been inspired by Singh's sacrifice and his eloquent judicial testimony, which has influenced the conversation about sedition and nationalism. A renowned Indian independence activist named Raja Mahendra Pratap was charged with sedition for his participation in the Ghadar Party, which sought to oust the British. His trial raised awareness of the political upheaval and colonialism-resistance in India.²² Despite

¹⁷ Simran Srivastava, "The Scrimmage of a Free Democracy: Is It Time to Bring the Sedition Law in Line with the Republican Era?" *Constitutional Law Society, NLU Odisha* (blog), 2022, <https://clsnluo.com/2022/10/26/the-scrimmage-of-a-free-democracy-is-it-time-to-bring-the-sedition-law-in-line-with-the-republican-era/>.

¹⁸ Srivastava, "The Scrimmage of a Free Democracy: Is It Time to Bring the Sedition Law in Line with the Republican Era?"

¹⁹ "The Applicability and Enforcement of Sedition Laws in India Vis-À-Vis the Right to Free Speech and Expression."

²⁰ Simran Agarwal, "How Bal Gangadhar Tilak's 1897 Trial Marked the Criminalisation of Dissent," *The Wire*, 2020, <https://thewire.in/history/how-bal-gangadhar-tilaks-1897-trial-marked-the-criminalisation-of-dissent>.

²¹ Sudhanshu Mishra, "Controversial Application of India's Sedition Law: A Look at Landmark Cases," *The Statesman*, 2023.

²² Mishra, "Controversial Application of India's Sedition Law: A Look at Landmark Cases."

Pratap's eventual acquittal, the case contributed to the discussion on using sedition to stifle anti-colonial activities.²³

In 1946, a Nagpur bench judge defined sedition as not merely criticizing the government, however vehemently or forcibly, or seeking its overthrow by constitutional means to install a constitutional government.²⁴ Sedition only occurs when individuals try to break the law and disrespect authority. In '*Kedar Nath Case*', the Supreme Court upheld its 1946 decision in '*Bhagwati Charan Shukla v. Provincial Government*'. Chief Justice B.P. Sinha declared that, strongly phrased opposition of government conduct without inciting violence will not be penalized.²⁵

B. After Independence

After India gained independence in 1947, Constituent Assembly deliberated about applicability of sedition statute for a long period.²⁶ After an intense discussion, the Constituent Assembly voted to remove the word 'sedition' from the constitution while keeping 'Section 124-A' of the IPC.²⁷ However, the contentious 1st Amendment, which was implemented by Jawaharlal Nehru, took this law into actuality.²⁸ Nehru government enhanced this colonial statute by adding the phrases 'friendly relations with a foreign state' and 'public order' as justifications for placing 'reasonable restrictions' on free speech under 'Article 19(2)'. This was done in addition to reinstating the sedition law. Section 124A of the IPC has been probed in a number of academic works where it has been researched and pointed over that the statute of sedition is retrogressive and needs to be changed. It has been argued that 'a balance should be struck between the government's use and enforcement of the sedition law without

²³ Nishant Kumar, "Religious Offense and The Censorship of Publications in India: Law, Legal Process and The Role of Judiciary" (Doctoral Thesis, London, King's College London, 2017).

²⁴ Kruthika R and Varsha Singh, "Is Sedition Constitutional? From Tara Chand [1950] to Aditya Ranjan [2021]," *Supreme Court Observer* (blog), 2021, <https://www.scobserver.in/journal/is-sedition-constitutional-from-tara-chand-1950-to-aditya-ranjan-2021/>.

²⁵ "The Landmark 1962 Judgment That Supreme Court Quoted in Vinod Dua Sedition Case," *The Indian Express*, 2021, <https://indianexpress.com/article/explained/explained-keदार-nath-singh-judgment-the-1962-verdict-sc-quoted-in-vinod-dua-sedition-case-7343003/>.

²⁶ Lok Sabha Secretariat, New Delhi, "Constituent Assembly Debates 28-4-1947 to 2-5-1947 Vol III," 2014, https://eparlib.nic.in/bitstream/123456789/762962/1/cad_29-04-1947.pdf.

²⁷ Gaurav Raj Grover, "What Is Sedition?" *Ipleaders* (blog), 2019, <https://blog.ipleaders.in/what-is-sedition/>.

²⁸ Meher Manga, "Sedition Law: A Threat to Indian Democracy?" (Observer Research Foundation, 2021), <https://www.orfonline.org/expert-speak/sedition-law-threat-indian-democracy>.

impinging on the citizens' fundamental right to free speech and expression'.²⁹ Similarly, it has been pointed out in the several Supreme Court rulings that 'Law of Sedition' in India is required to be reviewed by the legislature because it is out of date under a modern democratic system of governance.³⁰

In '*Romesh Thapar v State of Madras*', Supreme Court ruled in 1950 that State of Madras's decision to forbid the distribution of a left-leaning periodical on the basis of 'public safety' was a vindication of 'Art. 19(1)(a) of Indian Constitution'.³¹ Term 'sedition' was explicitly removed by the Constituent Assembly as an exemption to freedom of expression, Justice Patanjali Shastri highlighted.³² A 5-Judge Bench of the apex court maintained the constitutional legitimacy of 'Section 124A of the IPC' in '*Kedar Nath Singh v. State of Bihar*'.³³ It was acknowledged that, although 'Article 19(1)(a) of Constitution 'places restrictions on the right to free speech, criminalization of sedition was nonetheless a 'reasonable restriction' as defined by 'Article 19(2)' and could not be overturned. Justice P.B. Sinha explained in a court report that disparagement of the regime does not constitute sedition lest it is joined with a demand for violence or acts of provocation.³⁴ The Court emphasized the need to distinguish between criticism of a particular party or individuals and the words 'Government established by law' under 'Section 124A'. IPC's relevant chapter, which is titled 'Offences against the State', the court declared, lends weight to this view.³⁵ The Court additionally considered that utterances covered by section 124A would upset public order because State machinery is crucial to upholding concord and solidity. However, it was ruled that the crime of sedition is committed when spoken words have 'prospect or intent to incite disruption or disturb the peace of the community by the use of force'.

²⁹ Kruthika Venkatesh, "The Applicability and Enforcement of Sedition Laws in India vis-à-vis the Right to Free Speech and Expression," *The Law Brigade (Publishing) Group* 4, no. 2 (2018): 168-175.

³⁰ Nivedita Saxena and Siddhartha Srivastava, "An Analysis of the Modern Offence of Sedition" 7, no. 2 (2014): 121-47.

³¹ Global Freedom of Expression, "*Romesh Thappar vs The State of Madras*" (Columbia University, Newyork), accessed February 15, 2024, <https://globalfreedomofexpression.columbia.edu/cases/thappar-v-madras/>.

³² Saiyid Fazal Ali, *Romesh Thappar vs The State of Madras*, AIR 124 (The Supreme Court of India 1950).

³³ Bhuvneshwar P. Sinha, *Kedar Nath Singh v. State of Bihar*, AIR 955 (The Supreme Court of India 1962).

³⁴ Malavika Parthasarathy, "Sedition Law in India: A Timeline" (Supereme Court Observer, 2022), <https://www.scobserver.in/journal/sedition-in-india-a-timeline/>.

³⁵ *Kedar Nath Singh v. State of Bihar*.

In "*Balwant Singh v. State of Punjab*" A two-judge SC bench upheld its earlier ruling in Kedar Nath.³⁶ After Prime Minister Indira Gandhi's murder, the petitioners in the Balwant Singh case allegedly chanted inflammatory slogans and were found guilty of sedition by lower courts. The SC cleared the petitioners, ruling that sedition was not committed by just shouting slogans without taking any additional steps to encourage violence. The SC set aside the sedition accusation linking to the anti-Indian chants '*Khalistan Zindabad...Hindustan Murdabad*'. As per the ruling, merely innocuous phrases that have no bearing on public order in footings of 'inciting violence' do not qualify as sedition.³⁷ Justice Shah further clarified: It was concluded that 'raising of some lonesome slogans, a couple of times... which neither evoked any response nor reaction from anyone in the public' didn't resulted into sedition, for that an extra overt act was expected, rather than simply considering the 'tendency' of the words to trigger public unrest.³⁸ It was stated that the offence under Section 153-A of the IPC can only be brought to light when the written or spoken words can source public chaos, disturb public order, or affect public calm.³⁹ In the present case, the facts alone demonstrate that there was no 'commotion or appearance of uproar of law and order, of public order, or peace and quiet'. The appellants then failed to establish guilty intent. As a result, there were no violations of that clause.

For posting criticism of government officials on social media networks in 2018, two journalists were charged with sedition.⁴⁰ They submitted a writ petition to the SC in 2021 contesting the legality of Section 124A. They stated that clause violates 'Article 19(1)(a) of Constitution' and that Article 124A's restriction is not a 'reasonable restriction' as defined by Article 19(2). They also asserted that the 1962 precedent set by the SC in Kedar Nath is out-of-date since it has not kept up with recent legislation pertaining to public order, safety, and security. This petition has also been associated with others that question the constitutionality of Art. 19(2). For his views on the Prime Minister's conduct during Coronavirus pandemic, late journalist

³⁶ Balwant Singh & anr. vs. State of Punjab, SCC 214 (Supreme Court of India 1995).

³⁷Legal Correspondent, "Supreme Court Dismisses Plea on Sedition," *The Hindu*, 2021, <https://www.thehindu.com/news/national/supreme-court-dismisses-plea-on-sedition/article33794433.ece>.

³⁸ EPW Engage, "Sedition in India: Colonial Legacy, Misuse and Effect on Free Speech," *Economic and Political Weekly (Engage)*, accessed February 15, 2024, <https://www.epw.in/engage/article/sedition-india-colonial-legacy-misuse-and-effect>.

³⁹ Lords of Law, "Balwant Singh & Anr Vs State of Punjab," 2021, <https://lordsoflaw.com/balwant-singh-anr-vs-state-of-punjab/>.

⁴⁰ "Sedition Law in India: A Timeline."

Vinod Dua was the target of a sedition FIR that was later dismissed by a two-judge SC bench in 2021.⁴¹ Even though Dua had criticized the administration, Justice U.U. Lalit ruled that his remarks could not be classified as seditious.⁴² In addition, Dua's appeal requested that the SC set up a committee to review FIRs filed against journalists. The Court upheld its prior ruling in Kedar Nath in its judgement in this case, but it declined to form a screening committee because doing so would violate the legislative branch's authority.

The 279th Report on usage of 'Law of Sedition' by Law Commission of India was published recently.⁴³ The Report does not just suggest keeping the colonial rule but also recommended to increase the prescribed punishment from three years to seven years. The Law Commission claims that while misuse of Section 124A is just claimed, risks to India's internal security are real.

3. Laws relating to Sedition in India

a) Article 19(1)(2) of the Constitution of India.

A person is prohibited by 'Article 19(1)(2)' from acting in a way that undermines India's integrity and sovereignty.⁴⁴ This justification was subsequently added by the Constitution 16th Amendment Act of 1963.⁴⁵ Central goal of this is to forbid anybody from making claims that undermine sovereignty and integrity of the nation.⁴⁶ For the greater good of state security, reasonable limitations on 'right to free speech and expression' can be imposed. For the sake of maintaining state security, all statements that put at risk internal or external aggression, war, or other acts of armed conflict, or other acts of violence designed to topple the government, may be restrained.

⁴¹ Satya Prasoona, "A Missed Opportunity: Vinod Dua's Sedition Case," *Supreme Court Observer* (blog), 2021, <https://www.scobserver.in/journal/a-missed-opportunity-vinod-duas-sedition-case/>.

⁴² Krishnadas Rajagopal, "Supreme Court Sends Strong Message to Government," *The Hindu*, 2021.

⁴³ Gauri Kashyap, "279th Law Commission Report Recommends Stricter Sedition Laws," *Supreme Court Observer* (blog), 2023, <https://www.scobserver.in/journal/279th-law-commission-report-recommends-stricter-sedition-laws/>.

⁴⁴ EPW Engage, "Article 19: Mapping the Free Speech Debate in India" (Economic and Political Weekly Engage), 19, accessed February 15, 2024, <https://www.epw.in/engage/debate-kits/article-19-mapping-free-speech-debate-india>.

⁴⁵ GOI, "The Constitution (Sixteenth Amendment) Act, 1963" (india.gov.in, 1963), <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-sixteenth-amendment-act-1963>.

⁴⁶ Ashwani Kumar, "Law of Sedition a Comparative Study" (Doctoral thesis, Kurukshetra University, 2016).

b) Section 124-A of IPC and Section 152 of BNS, 2023

It defined sedition as an offence committed when “any person 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”.⁴⁷ Disobedience and all hostile sentiments are encompassed in term ‘disaffection’.⁴⁸ However, words that do not provoke or seek to provoke ‘hatred, contempt, or disaffection’ were not to be considered ‘Sedition’ under this provision.

Explanation 1 states “The expression ‘disaffection’ includes disloyalty and all feelings of enmity”.

Explanation 2 states “Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section”.

Explanation 3 states “Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section”.⁴⁹

Therefore, requisites for ‘*Offence of Sedition*’ under ‘*Sec. 124A of IPC*’ were:

- Expression could be ‘Oral, written, behavioral, and nonverbal’.
- Articulation of animosity, disdain, disappointment, or animosity towards government.
- Primary elements: engaging in acts of violence or inciting others to engage in acts of violence.
- Provoking outrage or dissent via violent demonstrations or public disturbance may be deemed sedition.

⁴⁷ “Indian Penal Code,” Pub. L. No. 45, § 124 A (1860).

⁴⁸ Harshit Kumar, “Law of Sedition in India,” *Legal Service India*, accessed February 15, 2024, <https://legalserviceindia.com/legal/article-9028-law-of-sedition-in-india.html>.

⁴⁹ “Indian Penal Code,” Pub. L. No. 45, § 124 A (1860).

As to section 124A, sedition was punishable by one of the following penalties: imprisonment for a maximum of 3 years, life imprisonment, life imprisonment along with a fine, or only a fine.

‘Sedition’ has now been eliminated from BNS, 2023 enabling the incorporation of ‘secession, armed rebellion, subversive activities, separatist activities, and endangering India's sovereignty and unity’ under Section 152 of the BNS.⁵⁰ According to Section 152, “engaging in any activity that incites or attempts to incite secession, armed rebellion, or subversive activities is considered a criminal offence”. Nevertheless, the BNS also expands the scope for authorities to interpret, resulting in a certain level of ambiguity. The BNS identifies ‘electronic communication’ and ‘financial means’ as methods that can be utilized to incite secession, armed rebellion, or separatism, and are subject to penalties under Section 152. Electronic communication encompasses various forms such as emails, WhatsApp messages, text messages, and content disseminated on social media platforms. The interpretation of Section 152 of the BNS is unclear, but it specifies that remarks criticizing government measures or actions, without inciting or attempting to incite any activities, will not be considered an offence under this provision. The punishment term specified in Section 152 of BNS has been extended from 3 years to 7 years, thereby broadening scope of previous ‘Sedition’ law and imposing stricter penalties. Therefore, having superseded the colonial-era Indian Penal Code, the Bharatiya Nyaya Sanhita 2023 has expanded the existing sedition statute without the protective measures established by courts so far.

c) The National Security Act, 1980

‘Preventive detention’ is one of the provisions of the National Security Act.⁵¹ In some circumstances and in relation to specific issues. This act states that the Central Government and state government may take action if somebody is discovered to be planning to forbidding him from acting in a way that would be detrimental to India's legal-politico atmosphere, its relationship with international countries, its security, or with the intention of forging preparations for his eviction from India, he may issue an order for the detention of that individual.

⁵⁰ “Bhartiya Nyaya Sanhita,” Pub. L. No. 45, § 152 (2023).

⁵¹ “Law of Sedition a Comparative Study.”

d) UAPA, 1967

'The Unlawful Activities Prevention Act 1967' was enacted in 1967 with the objective of preventing associations engaged in illegal activities.⁵² Dealing with actions taken to undermine India's sovereignty and integrity is its primary goal. Anti-terror law is another name for UAPA. Any action conducted by a person or group with the intention of undermining India's territorial integrity and sovereignty is referred to as an unlawful activity. The statute grants the central government total authority, allowing it to declare an activity illegal if it so chooses through an official gazette. The most severe penalties are the death penalty and imprisonment.

4. Landmark Judicial Pronouncements

Three significant rulings regarding sedition laws were made in the 1950s. These cases included '*Ram Nandan v. State*', '*Sabir Raza v. State*', and '*Tara Singh Gopi Chand v. the State*'.⁵³ In first two cases, Tara Singh and Sabir Raza, the courts held that S.124A of the Indian Penal Code was no longer valid as a result of the implementation of the Indian Constitution. The Allahabad High Court declared that Section 124-A of the Indian Penal Code is ultra vires of Article 19(1) of the Constitution because it is not in the interests of public order and because the restrictions imposed by it are not justifiable restrictions in '*Ram Nandan v. State of U.P.*', the first case to address the constitutionality of S. 124(A).⁵⁴ However, in '*Kedarnath Das v. State of Bihar*', Supreme Court reversed this judgement and concluded that 'Section 124A' was intra vires.⁵⁵ 'Disloyalty to Government established by Law is not the same as commenting in strong terms upon the measures or acts of Government, or its agencies, in order to improve the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means', the judgement stated.⁵⁶

In '*Shreya Singhal & Ors. v. Union of India*', Supreme Court emphasized on distinction between 'advocacy and incitement', emphasizing how limitations under 'Article 19(2)' should be

⁵² "The Unlawful Activities (Prevention) Act," Pub. L. No. 37 (1967).

⁵³ "Is Sedition Constitutional? From Tara Chand [1950] to Aditya Ranjan [2021]."

⁵⁴ R. K. Misra, "Freedom Of Speech And The Law Of Sedition In India," *Indian Law Institute* 8, no. 1 (1966): 117-31.

⁵⁵ Prithivi Raj, "Sedition Law In India: A Critical Analysis," *South Asian Law Review Journal* 7 (2021).

⁵⁶ Satvik Varma, "Dissent Is Not Sedition," *Bar and Bench*, 2021, <https://www.barandbench.com/columns/dissent-is-not-sedition>.

strictly construed to not take in 'innocent speech'.⁵⁷ The Supreme Court had previously reaffirmed these crucial safeguards in September 2016. According to the SC, "The intelligible difference is clear – the internet provides any individual with a platform through which to air his views at very little or no cost."⁵⁸ The petitioner in '*Kanhaiya Kumar v. State (NCT of Delhi)*' who was accused under section 124A appeared before the Delhi High Court seeking the granting of bail.⁵⁹ "While exercising the right to freedom of speech and expression under Article 19(1)(a) of the Constitution, one has to remember that Part-IV Article 51A of the Constitution provides Fundamental Duties of every citizen, which form the other side of the same coin", the Court held.

5. Criminalization of Peaceful Expressions

Thriving in a free and open society necessitates 'freedom of thought and expression', which is also a fundamental right under Indian Constitution. From a legal standpoint, the foundation of liberal constitutionalism is freedom of expression, together with other freedoms i.e. 'conscience and religion; thought, belief, opinion, including that of the press and other channels of communication; peaceful assembly; and association'.⁶⁰ Since Second World War, it has also been a crucial element of egalitarianism. Even though sedition convictions are uncommon, the police continue to book and detain public for it. According to NCRB of the government of India, there was registration of 5613 instances of offences against state nationwide.⁶¹ Out of which there were 73 cases of sedition registered.

One recent instance is the FIR that the Bengaluru police filed against Amnesty International grounding of a complaint from 'Akhil Bhartiya Vidyarthi Parishad (ABVP)' after some Kashmiris shouted '*Azadi(Freedom)*' at an event it hosted as part of a campaign to demand

⁵⁷ Pranjal Sharma, "Sedition Law in India: Critical Analysis," *Lexforti*, 2020, <https://lexforti.com/legal-news/sedition-law-in-india/>.

⁵⁸ R.F. Nariman, *Shreya Singhal vs Union of India*, MAD LJ 162 (Supreme Court of India 2015).

⁵⁹ Pratibha Rani, *Kanhaiya Kumar vs State Of Nct Of Delhi*, No. 558/ 2016 (Delhi High Court March 2, 2016).

⁶⁰ Aniceto Masferrer, "The Decline of Freedom of Expression and Social Vulnerability in Western Democracy," *Int J Semiot Law*, 2023, 1-33.

⁶¹ Divya Trivedi, "2020 NCRB Report of Crimes in India: Year of the 'Anti-National,'" *Frontline*, 2021, <https://frontline.thehindu.com/the-nation/ncrb-report-2020-year-of-the-anti-national/article36796884.ece>.

justice for those who had been subjected to human rights violations in Kashmir.⁶² As a result of the severe penalties that can be imposed under section 124A, including life in prison, free speech is negatively impacted, making it a powerful device for stifling dissent and criticism.⁶³ A student union spearhead at Jawaharlal Nehru University named Kanhaiya Kumar was detained by Delhi police in February 2016 after the right wing students alleged him of making anti-government statements at a gathering held on campus. However, later in court, the Delhi police acknowledged that Kumar had not been seen chanting 'anti-national' slurs in videos that were accessible. Later on, the Delhi High Court granted him bail.

a) Internet Regulation

The UN Special Rapporteur on Freedom of Expression, Mr. Frank La Rue, voiced his worry that "legitimate online expression is being criminalized in contravention of States' international human rights obligations, whether through the application of existing criminal laws to online expression, or through the creation of new laws specifically designed to criminalize expression on the Internet", in his report on 'Internet and freedom of expression' in 2011.⁶⁴ There is a mounting worry that, given new opportunities for free expression that Internet offers, criminal law is more and more being in use to smother legitimate expression because it upsets or is unpopular with governments, even though there are some exceptional circumstances in which criminal action may be justified.

A video clip showing police mistreatment in Kashmir was revealed and quickly became popular.⁶⁵ Police in Kashmir were seen beating and stripping some young people in the footage. As a substitute of opening an investigation, police filed a case under section 66A of IT Act, 2000, thereby charging person who exposed the film and anyone else who spread it. Five students were detained in Bangalore in May 2014 after they were accused of sending a

⁶² FE Online, "Amnesty-ABVP Row: Amnesty Denies Shouting Anti-India Slogans by Its Employees," *Financial Express*, 2016, <https://www.financialexpress.com/india-news/amnesty-international-abvp-akhil-bhartiya-vidyarthi-parishad-row-amnesty-shouting-anti-india-slogans-sedition-row/348795/>.

⁶³ Aparna Viswanathan, "Is There Any Place for Sedition in a Democracy?" *The Wire*, 2016, <https://thewire.in/law/is-there-any-place-for-sedition-in-a-democracy>.

⁶⁴ Frank La Rue, "Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression" (Human Rights Council, May 16, 2011).

⁶⁵ "Criminalising Dissent? An Analysis of the Application of Criminal Law to Speech on the Internet through Case Studies."

message on the messaging app 'WhatsApp' that was disparaging of Indian Government.⁶⁶ Ambikesh Mahapatra, a chemistry professor at Jadavpur University in West Bengal, was detained under section 66A in April 2012 after he forwarded an email that mocked Mamata Banerjee, the chief minister of the region.⁶⁷ A month later, Puducherry police detained a businessman for tweeting comments that questioned the fortune accumulated by the son of the nation's finance minister. The Supreme Court regarded as Section 66A unconstitutional in March 2015.⁶⁸ In order to bring section 66A into compliance with constitutional requirements, the administration has stated that reviewed the Supreme Court's ruling.

b) Media Regulation

Due to its disguised pretense of actual freedom, the Indian media has come to be criticized on international media forums.⁶⁹ All that is required to comprehend this is a quick glance at the 'Global Rankings of Press freedom Index'.⁷⁰ Based on the organization's own evaluation of the nations' press freedom records in the year 2023, India now ranks 161 out of 180 nations in Global Press Freedom Index. A new report from the '*Committee to Protect Journalists*' reveals troubling statistics about the dangers faced by media professionals and journalists.⁷¹ In 2022, there were a staggering 67 deaths in this field, marking a shocking 50% increase from the previous year. This grim number is also the highest seen since 2018. Of these fatalities, the CPJ has confirmed that at least 41 were targeted for their work. The majority of these deaths happened in just three countries: Mexico, Haiti, and Ukraine, with 13, 7, and 15 deaths respectively. This represents a 50% increase from 2021 and the maximum number of fatalities since 2018. Of the 67, CPJ has verified that no less than 41 were slain 'in direct connection with their work'. More than half of these fatalities took place in Mexico (13), Haiti (7), and Ukraine (15).

⁶⁶ HRW, "Stifling Dissent the Criminalization of Peaceful Expression in India" (Human Rights Watch, 2016), <https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india>.

⁶⁷ Himadri Ghosh, "Professor Who Forwarded Mamata Banerjee Cartoon Is Still Facing Charges Under a Scrapped Law," *The Wire*, 2021, <https://thewire.in/rights/mamata-banerjee-cartoon-section-66a-it-act>.

⁶⁸ Bosco Dominique, "Puducherry Man Who Was Booked under Section 66A of IT Act Hails Supreme Court Verdict," *The Times of India*, 2015.

⁶⁹ Barkha Dutt, "India's Changing Media Landscape" (Center for The Advanced Study of India, University of Pennsylvania, 2022), <https://casi.sas.upenn.edu/saluja/barkha-dutt>.

⁷⁰ Reporters Without Borders, "Press Freedom Index," accessed February 15, 2024, <https://rsf.org/en/index>.

⁷¹ Jennifer Dunham, "Deadly Year for Journalists as Killings Rose Sharply in 2022" (Committee to Protect Journalists, 2023), <https://cpj.org/reports/2023/01/deadly-year-for-journalists-as-killings-rose-sharply-in-2022/>.

Horrific killings of K. J. Singh, Gauri Lankesh, and Rajesh Mishra continue to remain mysteries, with no perpetrators brought to justice.⁷² Their deaths have sparked much debate among media professionals and intellectuals, with various speculative theories being discussed. Gauri Lankesh, known for her strong advocacy for social causes such as reintegrating outlawed Maoists into society, has yet to receive closure for her untimely death. Despite the police releasing possible suspect images, they have not been able to make any arrests at the time of writing this story. The Hindu released an editorial on Gauri Lankesh the day after she passed away, titled "Death of an Activist: on Gauri Lankesh". It defined her as a journalist and an activist.⁷³ Political cartoonist and social activist Amit Trivedi, one of the parties in *Sanskar Marathe v. The State of Maharashtra*⁷⁴, it was asserted that his drawing libeled Indian Parliament, the Constitution, and Ashok Emblem. Accordingly, a FIR for sedition was filed against him for publishing a cartoon on the 'India against corruption' website in an effort to incite animosity and disdain towards the government. The Bombay High Court ruled that citizens have freedom to express their opinions and criticism of government policies as long as doing so does not provoke vehemence against the legally recognized government or cause a public disturbance. A political leader filed a FIR against veteran journalist Vinod Dua for sedition, public annoyance, publishing defamatory materials, and public mischief over a YouTube video criticizing the Prime Minister's COVID-19 answer. The Supreme Court rejected the petition. Every journalist will be protected under Kedar Nath Singh, as every prosecution under Sections 124A and 505 of the IPC must comply with ambit of said Sections as explained in, and entirely in harmony with law established in *Kedar Nath Singh*.⁷⁵

c) *Right to Criticize*

As long as there is no invitation to violence, citizens have the right to criticize the government, and this does not constitute sedition. The Government cannot file charges of sedition against what the Bombay High Court classified as "fair criticism," which includes amusing cartoons

⁷²Siddhartha Deb, "The Killing of Gauri Lankesh" (Columbia Journalism Review, 2018), https://www.cjr.org/special_report/gauri-lankesh-killing.php.

⁷³C. S. H. N. Murthy, "Safety and Security of Journalists: Yet Awaiting Intervention from Indian Academy and Industry," *Asia Pacific Media Educator* 28, no. 1 (2018): 131-49.

⁷⁴Dnyaneshwari Patil, "Sedition Law and the Attack on Journalists," *Ipleaders*, 2021, <https://blog.ipleaders.in/sedition-law-attack-journalists/>.

⁷⁵Vinod Dua v. Union of India, SCC 414 (SC 2021).

and caricatures.⁷⁶ When accused of sedition (along with Geelani, Varavara Rao, and others) for speaking at a Kashmir seminar labeled as 'Azadi: the only way' held in Delhi in 2010, Arundhati Roy responded in the news media, "Some have accused me of giving Hate Speech and of wanting India to break up".⁷⁷ She claimed that my opinions are inspired by love and pride.⁷⁸ It stems from a desire to stop people from being killed, sexually assaulted, locked up, or having their fingernails taken off in order to make them claim to be Native Americans. It results from a desire to live in a society that makes an effort to be just. The Court ruled that, regardless of how forcefully phrased, criticism of public policies or commentary on government action would fall within acceptable bounds and be harmonious with constitutional right to free speech.⁷⁹ Yet, not all hate speech directed at the government constitutes sedition. Sedition is a more serious offence than hate speech. The Law Commission of India on Hate Speech has drawn a line between hate- speech and sedition.⁸⁰ While sedition is a clear violation against the state, hate speech affects the peace of the public indirectly. Sedition is not just about breaking law.

One could argue that the sedition statute is nothing more than a tool employed by ruling political party to temporarily stifle opposition. However, the fact that the sedition statute targets people who are obviously exercising their individual liberty, like activists, students, and journalists, implies that the law is being shaped by the state into a modern monitoring instrument.⁸¹ The targets of monitoring in this case are not merely specific remarks or movements, but rather the "all-powerful force of public opinion", which Alexis de Tocqueville saw as the most perilous tool in a democracy. According to Law commission, which was led by Justice B.S. Chauhan in 2018, Soaring from the same hymnal is not a test of patriotism in a democracy.⁸² In its 2023 statement, it emphasized the importance of allowing individuals to

⁷⁶ "Stifling Dissent, The Criminalization of Peaceful Expression in India."

⁷⁷ *Sedition Laws & The Death of Free Speech in India* (Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore & Alternative Law Forum, Bangalore, 2011).

⁷⁸ "Law of Sedition a Comparative Study."

⁷⁹ "Arundhati Roy Faces Arrest over Kashmir Remark."

⁸⁰ Alexander Brown, "What Is so Special about Online (as Compared to Offline) Hate Speech?," *Ethnicities* 18, no. 3 (2017), <https://doi.org/10.1177/1468796817709846>.

⁸¹ Ayesha Pattnaik, "The Art of Dissolving Dissent: India's Sedition Law as an Instrument to Regulate Public Opinion" (London School of Economics, 2019), <https://blogs.lse.ac.uk/southasia/2019/10/04/long-read-the-art-of-dissolving-dissent-indias-sedition-law-as-an-instrument-to-regulate-public-opinion/>.

⁸² The Wire Staff, "Disagreeing with Govt Not Sedition; People Have the Right to Criticise: Law Commission," *The Wire*, 2018, <https://thewire.in/law/disagreeing-with-govt-not-sedition-people-have-the-right-to-criticise-law-commission>.

freely express their patriotism in a manner that reflects their personal identity. To achieve this, individuals can participate in discussions or provide constructive criticism by highlighting the shortcomings in a government's approach. While the language employed in these ideas may be obnoxious to some, it does not count the activities as seditious. Section 124A can only be invoked in cases where an act is intended to disturb public order or overthrow the government using force and criminal means.

6. Suggestions & Conclusion

The dearth of precision in sedition law is one of its core issues. While preventing the Andhra Pradesh government from taking negative action against two Telugu news networks charged under Section 124A (sedition) of IPC, Justice D.Y. Chandrachud recently brought attention to this subject. Justice Chandrachud remarked, “*Everything cannot be seditious*”.⁸³ India has ratified several international conventions, including the ‘International Covenant on Civil and Political Rights (ICCPR)’, which places a strong emphasis on defending right to free speech. The right to express divergent opinions is unnecessarily restricted by India's sedition laws, according to critics, who claim that these laws violate individual liberties and fall short of the criteria set by these international agreements.

In 2023, the Law Commission recommended to increase the punishment of sedition under IPC from 3 years imprisonment to 7 years.⁸⁴ This report mostly ignores recent court rulings and international agreements pertaining to free speech and the right to disagree. Neither the *Shreya Singhal decision*, which invalidated Section 66A of IT Act, nor the *Kaushal Kishor decision* by the Constitution Bench, which addressed the free speech rights of public officials, are mentioned in the report.

Sedition's misuse can be prevented by defining it more precisely and narrowly. The emphasis should be on actions or statements that directly call for violence or really threaten the nation's territorial integrity or sovereignty. In order to protect citizen's freedom of speech and

⁸³ Radhika Roy, “‘It’s Time We Define Limits of Sedition’: Supreme Court Stays Coercive Actions Against Telugu Channels on Sedition FIR,” *Live Law*, 2021, <https://www.livelaw.in/top-stories/its-time-we-define-limits-of-sedition-supreme-court-stays-coercive-actions-telugu-channels-on-sedition-fir-174948>.

⁸⁴ Kaleeswaram Raj, “Sedition Law Report: A Regressive Step by Law Commission,” *Frontline*, 2023.

expression, measures should be taken that permit active public discourse and the peaceful expression of divergent viewpoints. It is important to create procedures to encourage accountability and openness in the enforcement of sedition legislation. This contains precise rules for law enforcement organizations, frequent case reviews, and severe penalties for breaking the law.

Nevertheless, Section 152 of the BNS seeks to protect India's sovereignty, unity, and integrity, although it does so use imprecise and sweeping language. Both laws limit the constitutional right to freedom of speech and expression under Art. 19(1)(a). The BNS exhibits significant flaws in terms of its lack of careful equilibrium and is susceptible to challenges built on its potential violation of Article 14 of the Constitution. The Supreme Court has established five situations in which an order or decision may be considered arbitrary. One of these situations occurs when there is a complete lack of consideration for the rights of the parties and the public interest, indicating a failure to apply proper thought. The focus of harm in section 124A of the IPC is Government established by law, which has been modified under section 152 of the BNS as India. This expands the range of the offence, raising doubts about the government's intentions. The lack of clarity in terminology presents a stark contrast to the exactitude demanded by legal interpretations of sec. 124-A, resulting in arbitrary enforcement and infringement upon Article 14 of the Constitution. Recognition of freedom of speech and expression as a basic human right is widely acknowledged on a global scale.

The Supreme Court has provided clear guidance that laws such as sedition should not impede right of citizens to express their dissent. Impact described in section 152 of the BNS is not as reasonable and does not fall within the scope of Article 19(2). The legal provision, while eliminating the term 'Sedition', broadens the scope of the offence by incorporating terms such as 'electronic communication' and 'by financial means'. Furthermore, it seems that the provision has preserved all the elements of the colonial law on sedition, yet it fails to offer any clear definitions of the terms 'Secession' and 'Subversion'. This lack of lucidity may result in the clause being misused and misinterpreted. The scope of activities that pose a threat to the sovereignty and integrity of India is extensive and has not been fully documented. It remains ambiguous whether Sedition law has been annulled or if it has been further reinforced.