

## Contemporary Sedition Laws: Reviewing Recent Criminal Legislation and its Impact on “Freedom of Speech and Expression”

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### Abstract

This study examines the contemporary status of sedition laws within the framework of recent criminal legislation. Sedition, historically used to suppress dissent and critique against the state, has been a contentious legal issue globally due to its potential for infringing upon freedom of speech and expression. This paper provides an overview of the evolution of sedition laws, analyzing their application in various jurisdictions and their compatibility with modern legal standards. Additionally, it assesses recent developments in criminal legislation pertaining to sedition, including reforms, amendments, and challenges to existing laws. Through a comprehensive review of case law, scholarly literature, and legislative changes, this study aims to offer insights into the current landscape of sedition laws and their implications for fundamental rights and civil liberties.

Sedition laws have long been a cornerstone of legal frameworks, ostensibly designed to protect the integrity and stability of the state. However, in recent times, these laws have come under increasing scrutiny for their potential to stifle dissent and curtail freedom of expression. This paper undertakes a comprehensive examination of the current status of sedition laws within the context of contemporary criminal legislation. Drawing on jurisprudence, legislative reforms, and scholarly discourse, it navigates the intricate terrain of sedition laws to discern their evolving role in modern societies.

**Keynotes-** Sedition, S.G-Solicitor General, A.G- Attorney general, Legislative, Constitutions.

### Introduction

India is currently faced with the challenge of reconciling its colonial heritage with contemporary values along with the complexities of modern democracy. One such challenge is the antiquated sedition law, a relic of British rule that restricted freedom of expression. This paper examines the historical context of the sedition law, its

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incompatibility with democratic principles and the imperative of its abolition in the present context. Through critical analysis of legal and social realities, it is argued that the sedition law undermines India's constitutional commitment to freedom of expression and whether it should be repealed to preserve democratic ideals.<sup>3</sup> as stated by the Second Law Commission in its report. Drawing insights from constitutional law, human rights discourse and historical perspective, advocates judicial intervention to pave the way for a more inclusive and democratic society in India.<sup>4</sup> This paper revolves around the need to repeal or abolish the sedition law in India due to its conflict with democratic values and the constitutional guarantee of freedom of speech and expression. It highlights the historical background of the sedition law, its relevance in the present context and the implications of its enforcement on individual rights and democratic principles. The discussion also highlights the role of the judiciary in addressing this issue and calls for legal reforms in line with contemporary social realities and constitutional imperatives. The sedition law in India, as defined by Section 124A of the Indian Penal Code (IPC),<sup>5</sup> has been a subject of controversy and debate due to its perceived misuse by elected governments. Despite conflicting views on its constitutionality within the judiciary, the law has remained in use. The recent decision by the Supreme Court to re-examine it highlights the urgency of the matter. Supporters of the law argue that free speech must have limits to prevent public disorder, while critics, often liberals, view it as a colonial relic incompatible with modern democratic values<sup>6</sup>. The inconsistent application of the law and its chilling effect on freedom of speech raise concerns about its compatibility with India's democratic principles.

Three main reasons support the argument for the Supreme Court to strike down Section 124A. Firstly, as the final interpreter of the Constitution, it is the Court's duty to invalidate laws that contradict constitutional values. Secondly, successive governments have disregarded Supreme Court guidelines, using the law to stifle dissent. Lastly, attempts to regulate the law have failed, leading to ongoing abuses. Without a decisive judgment, the status quo persists, undermining democracy<sup>7</sup>.

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<sup>3</sup>Available at [https://lawcommissionofindia.nic.in/report\\_twentysecond/](https://lawcommissionofindia.nic.in/report_twentysecond/) last visited on 20 march 2023

<sup>4</sup>Available at <https://www.hindustantimes.com/india-news/sedition-to-be-treason-amit-shah-explains-proposed-changes-to-criminal-laws-101703096211979.html> last visited on 22 march 2023

<sup>5</sup> Indian penal code, 1860, Sec.124A, No. 45, Acts of Parliament, 1860.

<sup>6</sup>Bloomberg Quint, <https://www.bqprime.com/opinion/sedition-and-free-speech-an-antithesis>.

<sup>7</sup>Ibid.p.1

**Sec. 124A of the IPC defines sedition as:**

“Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law shall be punished with imprisonment for life, to which fine may be added.<sup>8</sup>”

Section 124A defines sedition broadly, encompassing actions or speech that brings hatred or contempt towards the government. However, its vague language and inconsistent interpretations pose legal and constitutional challenges. While expressions of disapproval are allowed if lawful, any attempt to incite contempt or disaffection towards the government is punishable. These ambiguities contribute to the law's problematic nature and highlight the need for reform. The legal concept of "Government established by law" as used in Section 124A of the Indian Penal Code (IPC) is critical to understanding the offense of sedition. While different political parties interpret this phrase to protect their respective governments from criticism, it's essential to clarify its meaning. "Government established by law" refers to the constitutional system of government, not the specific individuals or party in power at a given time. This distinction was emphasized as early as 1942 during Crown rule by Chief Justice Maurice Gwyer, who stated that sedition laws exist to prevent anarchy, not to protect governments' vanity. Similarly, in post-independence India,<sup>9</sup> the Allahabad High Court in the 1958 case of *Ram Nandan v. State*<sup>10</sup> clarified that criticizing individuals holding government positions does not constitute sedition unless it threatens the constitutional system itself. The judgment distinguished between acts or speech that question the constitutionality of governmental actions and those that merely express discontent with individuals in power.

Critics argue that governments often blur this distinction, using sedition laws to silence dissent against individuals rather than protecting the constitutional framework. This criticism underscores the need to uphold the integrity of the constitutional system while safeguarding freedom of expression. *Ram Nandan* judgment clarified that

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<sup>8</sup>Available at <https://www.thehindu.com/news/national/supreme-court-refers-challenge-to-the-validity-of-sedition-law-to-constitution-bench/article67298224.ece> last visited on 10 April 2023

<sup>9</sup>Available at <https://www.thehindu.com/news/national/supreme-court-refers-challenge-to-the-validity-of-sedition-law-to-constitution-bench/article67298224.ece> last visited on 10 Apr 2023.

<sup>10</sup>Available at <https://indiankanon.org/doc/537326/> last visited on 10Apr 20243

threats to "the security of the State" must involve actions that pose a genuine risk of rebellion or insurrection, not merely ordinary breaches of public peace.<sup>11</sup> This distinction ensures that legitimate criticism or dissent does not unfairly qualify as sedition. the interpretation of "Government established by law" in sedition laws should focus on protecting the constitutional framework rather than shielding individuals in power. Upholding this distinction is crucial for maintaining democratic principles and freedom of expression in India<sup>12</sup>.

The intention of the framers of the Constitution of independent India was not to provide exemption to individuals who seize power. Clearly, the intention of the framers of the Constitution of independent India was not to provide exemption to individuals who seize power. If the intention was to provide a mechanism for individuals to avoid criticism and scrutiny by citizens, it would give birth to constitutional absurdity. This is because the Constitution itself provides for a provision for changing individuals in power through democratic elections. If the intention was to shield individuals from criticism, then the Constitution would provide a permanent rule for those in government Ambiguity "Many and often incompatible interpretations have spread up to dissatisfaction". Another accusation against the sedition law is that it is based on vague standards. Seeing that the offense is based on disagreement, it is not clear how that word should be interpreted because the description of such sentiments is inherently vague<sup>13</sup>.

In a constitutional democracy, every citizen should have the right to fully understand their legal rights and limitations in simple, clear terms, and laws that provide for arrest and curtailment of freedom should describe in which conduct is punishable. Therefore, because the law is ambiguous, it provides room for misuse and arbitrary application by officials. This ambiguity increases the risk of unchecked misuse of the law through subjective interpretation and disproportionate sentencing under section 124A disproportionate and arbitrary punishment.<sup>14</sup> Life imprisonment can be imposed under Section 124A, which may also include a fine, or imprisonment for up to three years with or without a fine. Most other criminal laws have less discretion for the courts. The relevant argument against sedition laws is that even minor offenses can lead to

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<sup>11</sup> Available at <https://indianexpress.com/article/explained/explained-law/sedition-law-repealed-orstrengthened-in-a-new-form-ipc-bill-8887864/> last visited on 11 april 2023

<sup>12</sup> Available at <https://timesofindia.indiatimes.com/india/three-newly-enacted-criminal-laws-to-come-into-effect-from-july-1-all-you-need-to-know/articleshow/107970056.cms> last visited on 11 april 2023

<sup>13</sup> Arvind Ganachari, *Combating Terror of Law in Colonial India: The Law of Sedition*, p.62.

<sup>14</sup> Dr. Ashok Kumar Jain, *Criminal Procedure Code*, Edition: 2nd, ascent publication page no .41-48

lengthy imprisonment, and there are no clear criteria to distinguish it from more serious offenses, which again, creates the danger of arbitrary enforcement. Criminal laws should have clearer standards for punishment and it should be proportional to the offense committed. This proportionality becomes even more important when it involves the infringement of fundamental rights. Since the right to freedom of expression is a fundamental and constitutional principle, any "reasonable restriction" on it should be proportionate to the harm it seeks to prevent. Violates the freedom of expression It is contrary to the idea that there should always be an element of affection towards the state, which is against democratic freedom. Citizens should be free to express their dissatisfaction with government policies and actions within the framework of India's constitutional plan, where freedom of expression is a fundamental right under Article 19<sup>15</sup>. The clearest comment on section 124A was made by Mahatma Gandhi, who, when accused of sedition in 1922, said that the sedition law was created by the Indian Penal Code "to suppress the freedom of citizens between the political classes of the Indian Penal Code created to suppress the freedom of citizens." He further said, "The crime committed in law is ... a civil duty that I consider the highest duty of a citizen."<sup>16</sup> Thus, in his opinion, the sedition law not only reduced freedom but also violated the duty of citizens to criticize the government when necessary. Besides curbing freedom of speech, the law does not specify when a speech becomes seditious only when it creates or can create public disorder. Unlike most other criminal laws, the sedition law also does not specify criminal intent (criminal intent)<sup>17</sup>.

It is generally accepted that to be punishable under criminal law, an act should be done with criminal intent or knowledge that it will have a certain consequence. However, under section 124A, anything that can be interpreted as disapproval of the government can be punished, which again makes it prone to arbitrary misuse. To better understand these legal issues, it will be useful to identify the legal challenges of sedition laws in recent years.<sup>18</sup> Legal challenges for years Sedition was punishable under IPC when India was under British rule. Thus, until India's independence, many cases were already underway, the most notable being the case of Queen Empress v.

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<sup>15</sup> Available at <https://www.scoobserver.in/journal/law-commission-recommends-strictor-sedition-laws/> last visited on 12 april 2023

<sup>16</sup> Indian Penal Code (45 of 1860) last visited on 14 april 2023.

<sup>17</sup> The Hindu Sedition law | Supreme Court refers petitions challenging <https://www.thehindu.com> › News › India last visited on 14 april 2023

<sup>18</sup> Ibid

Bal GangadharTilak<sup>19</sup>, in which Justice Arthur Strachey defined 'dissatisfaction' as "absence of affection". This interpretation was not liked by many leaders, including Mahatma Gandhi, who, in 1922, when accused of sedition, said that affection cannot be forced by law. And, if someone lacks affection towards any arrangement or person, they should be free to express their dissatisfaction until it is so<sup>20</sup>.

### **Judicial disagreements on section 124A.**

In the case of Ram Nandan vs. State of Uttar Pradesh in 1958<sup>21</sup>, the Allahabad High Court stated that the restrictions imposed under section 124A were excessive and amounted to a curtailment of freedom of expression that was contrary to the interests of the public. It is also significant that it declared section 124A unconstitutional while adjudicating on the provisions of the section. Section 124A became void with the enforcement of the IPC Constitution. However, even after the bans imposed by the previous amendments, judicial approval for freedom of speech deteriorated in 1962 when unfavorable weather prevailed, as the Constitution Bench of the Supreme Court ruled in the case of Kedar Nath vs. State of Bihar<sup>22</sup>. Section 124A had undergone constitutional scrutiny. The court said that although the opinion of previous benches on this matter was contrary. "Every state, regardless of its government, should be invested with the power to punish those who endanger the security and stability of the state by their conduct, or spread sentiments of disloyalty that have a tendency to create disturbance." or public disorder."<sup>23</sup> At the same time, the court realized the possibility of misuse of the law and attempted to limit it by issuing guidelines on when a speech criticizing the government would qualify as sedition, attempting to define it. Crucially, the court clarified that not all dissatisfaction, disrespect, or resentment would amount to sedition. There should be an incitement or tendency to disturb the "public order.

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<sup>19</sup> 1897) I.L.R. 22 Bom. 112, 151

<sup>20</sup> Available at <https://indianhistorycollective.com/queen-empress-vs-bal-gangadhar-tilak-an-autopsy/> last visited on 13 April 2023

<sup>21</sup> AIR 1959 All 101

<sup>22</sup> AIR 1962 SC 955

<sup>23</sup> David Lieberman, *The Province of Legislation Determined* (Cambridge: Cambridge University Press, 1989), chapter 6;



## **Violation of Article 19(1)(a) of the Constitution (Kedar Nath Singh vs Union of India, 1962).**

In the current context, the significance of Kedar Nath<sup>24</sup> is that it was the case on which the Solicitor General (SG) based his arguments. He argued that Sec. 124A, as it stands, constitutes a good law because the case had clearly decided on the constitutionality of the sedition law, and the guidelines issued in the case align with Article 14 (Right to Equality), 19 (Freedom of Speech), and 21 (Right to Life) of the Constitution.<sup>25</sup> Furthermore, the reasoning of the judgment has been reaffirmed by the courts, including the recent case of Vinod Dua vs. Union of India<sup>26</sup>. The SG further argued that in the ordinary legal system of India, a law declared by the Supreme Court under the umbrella of the law is the law of the land. Article 141 of the Constitution and precedents are binding for future courts. the SG believes that if there is a constitutional issue that is unresolved, or if there is a need to reconsider it, as it is clearly unconstitutional - which, he argues, was not the case in this matter - then only a larger constitutional bench should reconsider it. Assessing the validity of the challenged law<sup>27</sup>. Therefore, as the decision on Kedar Nath was made by the Constitution Bench of five judges, the current petition should be referred to a bench of seven judges if the current bench of three judges feels inclined to do so. The misuse of the sedition law arises from both the vague language of the statute and the vague guidelines provided in the Kedar Nath case<sup>28</sup>. Even six decades after the Kedar Nath verdict, the sedition law continues to be misused. While the SG rightly argues that misuse alone cannot be a ground to challenge the constitutionality of a statute, it must be emphasized that the sedition law can be misused both by the vague words of the statute and by the vague guidelines provided in Kedar Nath. . These guidelines do not bring clarity in the application of sedition law. In fact, as A.G. The Kedar Nath decision relied on old British law and contradicted the Romesh Thapar decision, In fact, as A.G. Noorani argued<sup>29</sup>that the Kedar Nath decision was a decision relying on old British law (cited in the judgment), as opposed to the Romesh Thapar decision.

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<sup>24</sup>Ibid

<sup>25</sup>Available at <https://ddashboard.legislative.gov.in/sites/default/files/COI...pdf> last visited on 17 april 2023

<sup>26</sup> Vinod Dua vs. Union of India (UOI) and Ors. (03.06.2021 – SC): MANU/SC/0363/2021

<sup>27</sup> Chibber, M. 2019. How our Constitution makers debated & rejected the draconian sedition law, The Print, January 26. [<https://theprint.in/opinion/how-our-constitution-makers-debated-rejected-the-draconian-sedition-law/183548/>] last visit on 17april 2023.

<sup>28</sup> Ahmad, N. M and Sharma, A. 2022. Blasphemy & Sedition Laws: Why these are affecting the actualisation of free speech, Mojo Story, June 15. [<https://mojostory.com/pov/blasphemy-law/>]. last visit on 17 april 2023.

<sup>29</sup> Laws of Sedition in India, Essay on the Indian Penal Code, (ILI 1966), p.135

Quoting the classic work *Freedom of Speech* by Eric Berendt, professor of media law at the University of London<sup>30</sup> explained that the common law crime of treason in England was obscure and unclear. The British definition of treason reflects an archaic view on state-society relations. The principle underlying treason law, which emphasized unquestioning deference to divine monarchs, was clearly irrelevant in a democratic society where governments are accountable to the people<sup>30</sup>. Kedar Nath's argument, which aimed to balance the need to protect the state against disloyalty with the rights of citizens to express their views, has not been realized because it was argued that the law could then be enforced when there is a possibility of "public disorder". Terms as vague and legally problematic as "dissent" and "government established by law". The difference between Kedar Nath's reasoning and its implementation on the ground can be seen from how the law has been implemented in the decades since the judgment.<sup>31</sup> Successive governments have continued to use Sec. 124A even after Kedar Nath to book dissidents in violation of the judgment's guidelines. This abuse of the law is because the police invoke only the words mentioned in the statute without taking into cognizance the court's guidelines.

An analysis by Article 14, which has established a sedition database, shows that 10,938 individuals were accused of sedition since 2010<sup>32</sup>. This trend was rightly defined as "frightening" by Justice Madan Lokur, who states that not only dissent but disagreement is now being criminalized. In the last couple of years, given the visible increase in sedition cases, judges have intermittently expressed ire at the misuse of Sec. 124A.<sup>33</sup> For instance, last year, when there were protests against the Union government's new agriculture laws, a climate activist, Disha Ravi, was booked for sedition for sharing a toolkit to help farmers navigate the government's new laws. The judge who granted her bail, relying on Kedar Nath, reiterated the point that there must be actual incitement of violence for the section to be attracted. Later, Justice D.Y. Chandrachud of the Supreme Court stopped the Andhra Pradesh Government from using the sedition law against news channels observing that "not everything could be

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<sup>30</sup> Federal Court Reports. 1942. *Niharendu Dutt Majumdar v The King Emperor*, Mar - Apr, pp. 38-53 available at <https://tinyurl.com/2v2f3ywu> last visited on 1-May-2023.

<sup>31</sup> *Ibid* p.6

<sup>32</sup> Purohit, K. 2021. Our New Database Reveals Rise in Sedition Cases in the Modi Era, Article 14, February 2. <https://www.article-14.com/post/our-new-database-reveals-rise-in-sedition-cases-in-the-modi-era>. last visited on 1 May, 2023.

<sup>33</sup> . Vasudev, E. 2022. Costs, Konrad Adenauer Stiftung, May 10. <https://www.kas.de/en/web/indien/single-title/-/content/sedition-in-india-origins-challenges-and-reputational-costs>. last visited on 1 May ,2023



sedition.<sup>34</sup>” Again in 2021, the Chief Justice of India, N.V. Ramana, observed that “if the police want to fix somebody, they can invoke Sec. 124A” and that “everybody is a little scared when this section is invoked.<sup>35</sup>”

It was against this backdrop that the Supreme Court, on May 11, 2022, in *S.G. Vombatkere v. Union of India* and other related writ petitions, including one by the Editors Guild, effectively put Sec 124A on hold. A three-judge Constitution bench led by CJI Ramana, in an interim order, held that “All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of the IPC be kept in abeyance.<sup>36</sup>” The Court, which accepted the Government’s sudden change in position that it would “reconsider the law”, however, said that it “hopes and expects” the Union and State governments to refrain from taking coercive measures under Sec. 124A while the issue is under reconsideration. The court also went on to say that it was trying to do a balancing act between “security interests and integrity of the state on one hand, and the civil liberties of citizens on the other”. And, herein lies the problem. The result of not handing down a final judgment creates continuity of the status quo. Despite the restraint of Section Kedar Nath, successive governments have continued to use Section 124A. Cases under Section 124A have been filed even after Kedar Nath for flouting the guidelines of the judgment. This misuse of the law occurs because the police apply the words mentioned in the law without paying attention to the guidelines of the court<sup>37</sup>.

An analysis of Article 14 reveals that since 2010-33, charges of sedition have been leveled against 10,938 individuals. This trend has been described by Justice Madan Lokur as "alarming," stating that dissent, not just disagreement, is on the rise.<sup>38</sup> Despite being granted bail, the activist Disha Ravi was charged with sedition for sharing a toolkit to aid farmers in navigating the government's new laws during

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<sup>34</sup> Anand, U. 2021. It’s time we define what is and is not sedition: SC, Hindustan Times, June 01. <https://www.hindustantimes.com/india-news/its-time-we-define-what-is-and-is-not-sedition-sc-101622486269556.html> last visited on 7 May, 2023

<sup>35</sup> The Indian Express. 2021. Why Section 124A. July 17. [<https://indianexpress.com/article/opinion/editorials/section-124a-supreme-court-sedition-chief-justice-n-v-ramana-7408463/>]. last visited on 7 May, 2023

<sup>36</sup> Rajagopal, K. 2022. Supreme Court puts colonial sedition law on hold, The Hindu, May 11. [<https://www.thehindu.com/news/national/sc-asks-centre-states-to-not-file-fresh-firs-in-sedition-cases/article65403622.ece>]. last visited on 7 May, 2023.

<sup>37</sup> Pai, V. S. 2022. The Constitution and the Court- Sentinel on the Qui Vive, CMR Journal for Contemporary Legal Affairs, February 18

<sup>38</sup> Available at <https://staging.thewire.in/rights/student-activists-natasha-narwal-devangana-kalita-uapa-delhi-police-high-courtlast> visited on 7 May 2023.

protests against the Centre's new agricultural laws last year. The judge, relying on Kedar Nath, reiterated that incitement to violence is necessary to attract this section. Subsequently, Justice D.Y. Chandrachud of the Supreme Court restrained the Andhra Pradesh government from using the sedition law against news channels, stating that "not everything can be termed seditious."<sup>39</sup> Then, in 2021, India's Chief Justice N.V. Ramana said, "If the police want to fix someone, they can apply Section 124A," and that "when this section is applied, everyone gets a little scared". Section 124A despite the restraint the case of Kedar Nath, successive governments have continued to use Section 124A. Cases under Section 124A have been filed even after Kedar Nath for flouting the guidelines of the judgment. This misuse of the law occurs because the police apply the words mentioned in the law without paying attention to the guidelines of the court. An analysis of Article 14 reveals that since 2010-33, charges of sedition have been leveled against 10,938 individuals. Then, in 2021, India's Chief Justice N.V. Ramana said, "If the police want to fix someone, they can apply Section 124A," and that "when this section is applied, everyone gets a little scared."<sup>40</sup>

It was against this backdrop that the Supreme Court effectively stopped Section 124A on May 11, 2022, in various related writ petitions, including *S.G. Vombatkere v. Bharat Sangeet and Editors Guild*. A three-judge Constitution Bench led by CJI Ramana issued an interim order stating that "all pending examinations, appeals<sup>41</sup>, and proceedings related to charges filed under Section 124A of the IPC shall be suspended." The court, while acknowledging a sudden change in the government's stance, stated that it "will reconsider the law<sup>42</sup>," while hoping and expecting the central and state governments to refrain from taking coercive steps under Section 124A while the matter is under reconsideration. Uncertainty in the enforcement of the law another reason that demands the abolition of the section is that it ensures that the governments interpret the directives in the same way. A lack of uniformity in the application of the law is a contributing factor to the consistent filing of cases under

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<sup>39</sup>Available at <https://www.indiatoday.in/india/story/supreme-court-on-sedition-freedom-of-press-andhra-news-channels-1809037-2021-05-31> last visited on 12 may 2023.

<sup>40</sup>Available at <https://cjp.org.in/why-should-the-colonial-construct-of-sedition-limit-free-speech-in-a-democracy/#:~:text=Ramana%20stated%20in%20July%202021,journalists%2C%20activists%2C%20and%20dissenters.last> visited on 12 may 2023.

<sup>41</sup>Available at <https://www.deccanherald.com/india/petitioner-happy-with-supreme-court-interim-order-in-sedition-case-1108406.html> last visited on 12 may 2023.

<sup>42</sup>Ibid

this section.<sup>43</sup>The case for abolishing this section has become even stronger as the judiciary has recently not pushed the government to repeal the law. According to a news report<sup>44</sup>, the government's stance on reconsidering the law is also acceptable because "the directions came from the Prime Minister", resulting in a deviation from the government's stance of rejecting any consideration of opinions against the sedition law. It has been said that in the same news report, reference was also made to the Central Law Minister Kiran Rijju stating<sup>45</sup>, "The government will review and make changes to the provisions as per the current need" - a clear statement that he was not in favor of it. Abolishing the law with regard to the "directives" of the Prime Minister, it should be emphasized that the constitutionality of any law should not depend on the personal directives of temporary governments or individuals at that time. Indeed, it is the duty of the judiciary to address constitutional weaknesses and stamp its institutional authority on them. Doing so will prevent deviation from the directives of individuals, no matter how well-intentioned they may be, and establish the rule of law. Meanwhile, the court has examined under the doctrine of self-incrimination in other cases. 19(2) —when speech can be legally curtailed— is stringent. As Gautam Bhatia says, the court has defined a consistent and necessary relationship between speech and consequential misconduct<sup>46</sup>. This is analogous to scenes in the US Supreme Court, referenced in the Law Commission of India's advisory paper on sedition. In *Schenck v. United States*<sup>47</sup>, while determining the validity of the Sedition Act of 1918 enacted by the US Congress, the Supreme Court of the United States stated that: "Words that are generally protected speech by the First Amendment may be subject to prohibition when of such a nature and used in such circumstances that create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." In India, this was conducted in the case of *Adhikari v. Ram Manohar Lohia*<sup>48</sup>. In *S. Rangarajan v. P. Jagjivan Ram*,<sup>49</sup> the court said that this relationship should be

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<sup>43</sup>Ibid

<sup>44</sup>Available at <https://economictimes.indiatimes.com/news/india/directions-came-from-pm-modi-to-re-examine-reconsider-provision-of-sedition-law-law-minister-kiren-rijju/articleshow/91469975.cms?from=mdr> last visited on 12 may 2023.

<sup>45</sup>Available at Financial Express. 2022. Directions to re-examine sedition law came from PM Modi: Law Minister Kiren Rijju, May 10. [<https://www.financialexpress.com/india-news/directions-to-re-examine-sedition-law-came-from-pm-modi-law-minister-kiren-rijju/2518801/>]. last visited on 20 may 2023.

<sup>46</sup>Available at <https://www.livelaw.in/top-stories/permanent-constitution-bench-specialised-divisions-in-supreme-court-can-help-growth-of-consistent-jurisprudence-gautam-bhatia-250449> last visited on 13 may 2024

<sup>47</sup> 249 US 47 (1919)

<sup>48</sup> 1960 AIR 633

<sup>49</sup> 1989 SCC (2) 574.

"like a spark in a heap of gunpowder", and in *Arup Bhuyan v. State of Assam*<sup>50</sup>, it heightened the standard for incitement to immediate violence. This was reiterated in *Shreya Singhal v. Union of India*<sup>51</sup>. Bhatia argues that since incitement to violence is a current legal test, there is no interpretation of the section. 124A can be made which "can be added with legal scrutiny of the section's words."<sup>52</sup> This leads to the need for the court to clarify the law in this regard, and if it needs to be consistent with its own examples in other cases, then it will have to repeal the section. Giving the government the authority to reconsider the law will not solve the problem. The court also said it was "trying to strike a balance between the security interests and integrity of the State on the one hand and the civil liberties of the citizens on the other." And this is the problem that due to not being able to reach the final decision, there remains uncertainty in the situation.

### **Britain repealed sedition laws in 2009**

Britain repealed sedition in 2009 because it was deemed 'unnecessary' and had a 'chilling effect' on free speech. Ironically, while Indian lawyers and judiciary continued to trust British and American jurisprudence, sedition laws have been overlooked in their case<sup>53</sup>. For instance, where the US prevented its government from enacting laws diminishing freedom of expression in its First Amendment, India added restrictions on freedom of expression in its first constitutional amendment<sup>54</sup>. Additionally, the British government, which first enacted sedition laws in India, repealed sedition in Britain in 2009,<sup>55</sup> citing it as 'unnecessary' and having a 'chilling effect' on free speech. There are still countless problems in the current reality, freedom of speech and expression is the foundation of the free world but is currently binding in the constitutional scheme of India. Restrictions on this freedom based on colonial law, the natural purpose of which is to suppress dissent, cannot and should not continue. Given the checkered history of Indian case law, the judiciary must consider what is right and what is wrong in the context of modern India.

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<sup>50</sup> (2011) 3 SCC 377.

<sup>51</sup> AIR 2015 SC 1523.

<sup>52</sup> Ibid p.4

<sup>53</sup> L. Goldstein, *Precedent in Law* (Clarendon Press: Oxford, 1987)

<sup>54</sup> Daniyal, S. 2015. Why Nehru and Sardar Patel curbed freedom of expression in India, Scroll, January 13. [<https://scroll.in/article/700020/why-nehru-and-sardar-patel-curbed-freedom-of-expression-in-india>]. last visited on 20 may, 2023

<sup>55</sup> Neil Duxbury, *The Nature and Authority of Precedent* (Cambridge: Cambridge University Press, 2008)

## Other laws in India

Many other laws in India similarly encroach upon freedom of expression, including IPC Section 153A (promoting enmity between different groups on grounds of religion, race, place of birth, etc.), 153B (imputations, assertions prejudicial to national integration), 505 (statements conducing to public mischief), and 505(2) (statements creating or promoting enmity, hatred, or ill-will between classes). Under the Unlawful Activities (Prevention) Act, 1967, Section 13(1), participation in or advocating unlawful activities can result in imprisonment for up to seven years. The definition of 'unlawful activities' under this section is akin to the definition of sedition implied in Section 2(1)(o)(iii) of the UAPA. Now, if the government reconsiders or amends sedition laws, it not only remains ongoing in some form but also lends credibility to all such provisions<sup>56</sup>. On the other hand, if the Supreme Court strikes it down, the constitutionality of related provisions also becomes questionable. Although the central government may decide to repeal the section, the consequence of removing Section 124A of the IPC differs if done by the courts. This is because the central government can continue to enforce laws under its jurisdiction that it can only apply to other categories under constitutional scheme. Its removal would obliterate the jurisdiction of local and state governments. Section 124A of the IPC, also known as the sedition law, is proposed to be removed. A new offense, endangering India's sovereignty, unity, and integrity, including acts under the New Indian Penal Code (Amendment) Bill, 2023 (Section 150), has been added. Several additional laws in India place similar constraints on freedom of expression, including IPC Section 153A (which exacerbates enmity between various groups based on religion, race, place of birth, etc.), 153B (allegations or assertions prejudicial to national integration), 505 (statements leading to public unrest), and 505(2) (statements fostering hostility, hatred, or ill-will between different groups). These statutes are encompassed within the Unlawful Activities (Prevention) Act, 1967, Section 13(1),<sup>57</sup> which stipulates penalties of up to seven years' imprisonment for involvement in or advocacy of unlawful activities. The definition of 'unlawful activities' in this context aligns with

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<sup>56</sup>Available at <https://www.hindustantimes.com/india-news/sedition-to-be-treason-amit-shah-explains-proposed-changes-to-criminal-laws-101703096211979.html> last visited on 28 may 2024

<sup>57</sup>Available at <https://indianexpress.com/article/explained/explained-law/sedition-law-repealed-or-strengthened-in-a-new-form-ipc-bill-8887864/> last visited on 20 may 2023

the definition of sedition implicit in Section 2(1)(o)(iii) of the UAPA.<sup>58</sup> The government reconsiders or amends sedition laws; it would not only persist in some form but also lend credence to all related provisions. Conversely, if the Supreme Court nullifies it, the constitutionality of connected provisions also becomes dubious.

Even though the central government might opt to abolish Section 124A of the IPC, the ramifications of such an action would differ if carried out by the judiciary<sup>59</sup>. This is because the central government can continue to enforce laws within its purview that it can only apply to other segments under the constitutional framework. Eliminating it would eradicate the jurisdiction of local and state governments. A proposal has been made to remove Section 124A of the IPC, also known as the sedition law. A new offense, endangering India's sovereignty, unity, and integrity, including actions under the New Indian Penal Code (Amendment) Bill, 2023 (Section 150), has been introduced. Initially introduced by the British in 1870 to suppress the Indian independence movement, sedition laws garnered controversy when they were purportedly misused against activists, journalists, and social media influencers in the 21st century<sup>60</sup>.

#### **Differences between the old sedition law and the new Indian Penal Code (Amendment) Bill, 2023:**

1. Section 150 of the new bill recognizes acts endangering the sovereignty, unity, and integrity of India as offenses<sup>61</sup>.
2. An important change in the draft of Section 150 is the removal of the old provision that allowed the accused in sedition to escape punishment. In Section 150 of the bill, alongside fines, provisions for lifelong imprisonment or imprisonment up to seven years are included. Thus, the punishment has been made more stringent.

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<sup>58</sup> Available at <https://www.ndtv.com/india-news/new-laws-new-criminal-laws-ipc-explained-what-is-section-150-which-will-replace-sedition-law-4289349> last visited on 27 may 2023

<sup>59</sup>Ibid

<sup>60</sup>Ibid

<sup>61</sup> Available at <https://www.thestatesman.com/india/old-sedition-law-vs-new-bharatiya-nyaya-sanhita-bill-2023-whats-the-difference-1503211007.html> last visited on 27 may 2023



3. The name of the sedition law will be replaced, and in its place, the new name of the Indian Penal Code (Amendment) Bill, 2023, will be adopted. Section 124A will be replaced by Section 150.
4. The term "disaffection towards the government established by law in India" has been removed from the old Section 124A of the IPC.
5. It directly targets separatism, sedition, and armed rebellion - words like "disaffection" or "hatred" against the Government of India have been removed.
6. It also includes "electronic communication" and "use of financial resources" as instruments to continue acts endangering the sovereignty, unity, and integrity of India.
7. Previously, there was a need for actions such as harsh words and examples of rebellion against the country under the sedition law. Under Section 150, only the accusation of participating in anti-national activities through words will be attracted.
8. The new law includes offenses of terrorism, organized crime, and criminal activities.

### **Flaws in the new law<sup>62</sup>**

Rather than creating prior conditions for charging with incitement to violence or disruption of public order, proposed Section 150 continues to criminalize any action that "incites or attempts to incite separatist activities" or "encourages sentiments of separatism."

1. It penalizes individuals who "participate in or engage in any such act," leaving it up to law enforcement agencies to determine the extent to which such actions fall within the scope of "endangering the sovereignty, unity, and integrity of India."
2. Section 150 encompasses almost everything, including a speech, a newspaper article, a book, a play - everything that Section 124A of the IPC currently penalizes as sedition.

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<sup>62</sup>Available at <https://indianexpress.com/article/opinion/columns/new-criminal-law-bills-endanger-civil-liberties-9067305/> last visited on 27 may 2024

**Precise wording of the new Indian Penal Code (Amendment) Bill, 2023:**

It states, "Whoever intentionally or knowingly, by spoken or written words, or by signs, or by visible representation, or by electronic communication, or by use of financial resources, or otherwise, incites or attempts to incite separatist activities or encourages sentiments of separatism or undermines the sovereignty or unity and integrity of India; or participates in or engages in any such act shall be punished with imprisonment for life or imprisonment up to seven years, which may be extended to seven years and also be liable to fine<sup>63</sup>".

Terrorism is defined as an act committed by a person who intends to endanger the unity, integrity, and security of India or to terrorize the general public or any section thereof or to disrupt public order, either in India or in any foreign country. It also includes provisions for the confiscation of terrorist property. The law defines offenses such as armed rebellion, subversive activities, separatism, and acts challenging the unity, sovereignty, and integrity of India.

Will the new Indian Code of Justice (Bill), 2023 be applicable to old cases pending under the sedition law?

It will have no effect or effect

- a. The previous operation of the Code is so repealed or anything lawfully done or suffered there under
- b. Any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed.
- c. Any fine, or punishment in respect of any offense committed against the Code so repealed
- d. Any inquiry or measure in respect of any such penalty or punishment;
- e. Any proceeding, inquiry or measure in respect of any such penalty or punishment as is aforesaid, and any such proceeding or measure may be instituted, continued

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<sup>63</sup>Available at [https://www.thehindu.com/news/national/revised-criminal-law-bills-the-key-changes-explained/article67637348.ece#:~:text=Bharatiya%20Nagarik%20Suraksha%20\(Second\)%20Sanhita%2C%202023,Community%20service%20defined&text=The%20original%20Bill%20introduced%20the,%2C%20public%20in%20toxication%2C%20and%20defamation](https://www.thehindu.com/news/national/revised-criminal-law-bills-the-key-changes-explained/article67637348.ece#:~:text=Bharatiya%20Nagarik%20Suraksha%20(Second)%20Sanhita%2C%202023,Community%20service%20defined&text=The%20original%20Bill%20introduced%20the,%2C%20public%20in%20toxication%2C%20and%20defamation).last visited on 27 may 2023

or enforced, and any such penalty may be imposed as if that Code had not been repealed.

### **Old cases of treason are still pending in courts**

1. JNU alumni Sharjeel Imam case 2020
2. Razina Parbeen Sultana vs. State of Assam (2021)
3. .Zakir Hussain vs UT Ladakh (2021): Galwan Valley clash
4. Sikha Sarma vs State of Assam (2021)
5. Patricia Mukhim vs. State of Meghalaya (2021)
6. Toolkit Case: State vs Disha A Ravi (2021)

### **Law Commission says 'no' to repeal of sedition law<sup>6465</sup>**

Two months ago, a Law Commission had recommended retaining IPC section 124A (sedition). It supported amendments to section 124A "so as to bring greater clarity in the interpretation, understanding and application of the provision". The commission said the treason law, which provides for a maximum sentence of life imprisonment or three years, should be amended to increase the alternative punishment to seven years, giving courts more leeway in sentencing in treason cases. According to the scale and seriousness of the act.

### **Conclusion**

India has transformed from a British colony to a nation respected for its democratic principles. Yet, while India is progressing, some old laws such as sedition remain unchanged. Laws are meant to regulate social behavior, but they should also reflect current social realities. Sedition laws originated in a different era, when colonial rule was accepted, democracies were rare, and global institutions like the United Nations Was not present. Genocide was not recognized as a crime against humanity. However, today, freedom of speech and expression is fundamental to the free world and is enshrined in the Constitution of India. The limits on this freedom imposed by

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<sup>64</sup>Available at <https://timesofindia.indiatimes.com/india/law-commission-backs-sedition-law-govt-says-not-bound-by-it/articleshow/100713314.cms> last visited on 28 may 2023.

<sup>65</sup>ibid

colonial-era laws designed to suppress dissent are no longer justified. In conclusion, as India moves into the 21st century as an icon of democracy, it will have to shed the remnants of its colonial past. The development of society demands that laws be in line with contemporary values and principles, especially those enshrined in the Constitution, such as freedom of speech and expression. Upholding such freedom is not only a legal imperative but a moral obligation in a democratic society. is also. Therefore, it is imperative that the judiciary takes decisive action to dismantle the sedition law, thereby ensuring that the country continues to move forward on the path of progress and justice for all its citizens.

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