

A Constitutional Puzzle: Right to Freedom of Speech and Expression and Sedition Law

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Abstract

This paper seeks to address and critically examine the conflict between right to freedom of speech and expression and sedition law confronted by the Constitution of India. Since the Indian Constitution is the ultimate law of the land, all legislative and executive activities must be in accordance with its provisions. Article 19(1)(a) guarantees the right to freedom of speech, and expression which is the most fundamental, innate, and natural right that every human being has from birth¹. Therefore, the most fundamental human right is the freedom of speech and expression, which is incompatible with any contemporary democratic government and amounts to a flagrant breach of those rights when suppressed. Not every situation provides protection for free expression. A restriction on the people's this right is imposed by Section 124A of the Indian Penal Code, 1860, which makes it illegal to express anything that incites hatred, contempt, or disaffection toward an Indian government that is duly established. Given that an accused person under this section may face a sentence of life in prison, the punishment specified by this provision appears pretty ludicrous². This begs the question of how effective it is in the contemporary democratic system. There is constant discussion about the necessity and applicability of this clause in an independent and democratic India. There have been cases of the sedition legislation being abused both before and after independence, raising major questions about whether the law is still necessary today.

Thus, the main purpose of this article is to analyse the current sedition statute in light of Article 19(1)(a) and determine whether or not such a law is necessary given the current state of affairs in India.

Keywords: Indian Constitution, freedom of speech and expression, Democratic and Sedition statute.

Introduction:

The heart of the Article 19 says: *“Everyone has the right to freedom of speech and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information*

and ideas through any media and regardless of frontiers.” The Indian Constitution defines freedom of speech and expression as the right of a person to think, speak, and receive information from others in public forums or through publications without fear of censorship, limitations, or retaliation from the state³. ***No doubt Right to Freedom of speech and expression is a fundamental right, but it is subject to reasonable restrictions under Article 19(2) of the Indian constitution.*** For the interest of public morality, sovereignty, and order, etc. Sedition is generally used to describe an offense that is 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*”.

Right to Freedom of Speech and expression and Sedition Law

Freedom of Speech and freedom of Expression are indispensable conditions for the full development of the person. They constitute the foundation stone for every free and democratic society. The freedom of speech and expression is the first and foremost human right, the first condition of liberty, mother of all liberties, as it makes the life meaningful.

Article 19(1)(a) of the Constitution of India provides freedom of speech & expression, and it's a fundamental right that cannot be taken away. *However, freedom of speech often poses difficult questions, like the extent to which State can regulate individual conduct. Since, individual's autonomy is the foundation of this freedom; any restriction on it is subject to great scrutiny. Although reasonable restrictions can always be imposed on this right in order to ensure its responsible exercise and to ensure that it is equally available to all citizens.*

The importance of freedom of speech and expression cannot be emphasized in any democratic country. A really democratic society is characterized by the freedom to express one's ideas and feelings. However, it's important to note that the right enshrined under Article 19(1)(a) is not absolute and is subject to certain restrictions which are given under Article 19(2) of Indian Constitution⁴.

These restrictions are imposed to:

1. Safeguard the sovereignty and integrity of the country,
2. Prevent incitement of violence or unlawful activities,
3. Counteract hate speech and related harmful consequences.

In the context of the right to freedom of speech and expression and sedition law, striking a balance between upholding individual liberties and safeguarding national interests is a never-ending issue⁵.

The offence of sedition is provided under section 124A of the Indian Penal Code, 1860. The relevance of this section in an independent and democratic nation is the subject of continuous debate. There is an apprehension that this provision might be misused by the Government to suppress dissent and fair criticism⁶.

The sedition law was introduced by the British to suppress freedom of speech and expression during the under **Section - 124A of IPC, 1860**. Many freedom fighters, including Subhas Chandra Bose, Bal Gangadhar Tilak, and Mahatma Gandhi were charged under this law⁷.

Conflict between the right to freedom of speech and expression and Sedition Law

The freedom of speech and the sedition law are at odds. Sedition laws are regularly used by politicians as a means of silencing their critics. The Indian Constitution's Article 19(1)(a) protects the basic right to freedom of speech and expression. Whether this law is required in a democracy is up for dispute. While some contend that the sedition law is an instrument of tyranny, others counter that it is necessary to safeguard national security. A contentious statute that has been applied to stifle free speech and safeguard national security is the sedition law. In a democracy, it is vital to discuss whether this law is necessary.

The colonial past is the source of the current struggle between freedom of speech and sedition legislation. This judicial system was put in place by the British colonial authorities as a way to quell opposition, especially from leaders and freedom fighters who dared to criticize their rule and lessen the perceived threat to their power. Thomas Babington Macaulay was a key contributor to the development of the sedition statute in 1837, and James Stephen's revision in 1870 brought it formally to India.

This rule has come under fire over the years for violating people's fundamental right to freedom of speech and expression and for frequently being used as a political tool to stifle critics. Ironically, the sedition law is still in effect in India even though it has been repealed in the UK, New Zealand, and Ghana. Part 124A of the IPC was repealed by the **Bhartiya Nyaya Sanhita Bill, 2023**.

Total 76 sedition instances were recorded in 2021 alone, according to data from the National Crime Records Bureau (NCRB). The fact that media professionals and journalists have routinely been charged

under this law is even more worrisome. It is crucial to stress that dissent or criticism alone should not be grounds for sedition prosecutions.

The following are a few of the Supreme Court's historic rulings on sedition:

Tara Singh Gopi Chand v The State case⁸, the Punjab High Court ruled in 1950 that the state's sedition statute was unconstitutional due to its unjustifiable limitations on the right to free speech and expression. Jawaharlal Nehru's government was forced by this ruling to impose appropriate limitations on the right to free speech and expression.

Following the aforementioned case in 2010, a Chhattisgarh court found civil rights activist Dr. Binayak Sen guilty of sedition and sentenced him to life in prison for allegedly plotting with Naxalites and trying to create a network against the government. But in 2011, the Supreme Court granted him bail, reiterating that in a democracy, endorsing a cause does not amount to treason.

In the 2015 case of **Shreya Singhal v Union of India**⁹, it was decided by the court that Section 66A of the IT Act violated Article 19(1)(a) by making insulting internet expression illegal. The court reaffirmed that the use of sedition law is limited to situations in which there is an obvious and present risk of violence or public disturbance.

In the year 2016 **Common Cause v Union of India**, the supreme Court of India released recommendations meant to stop the abuse of the sedition laws. The court ordered that no charge sheet may be filed without first receiving legal counsel from a law enforcement official, and no formal complaint could be made for sedition without the consent of a senior police officer. The court emphasized that using sedition laws to suppress dissent and criticism is inappropriate because these expressions are crucial to democracy.

In **Vinod Dua v Union of India** in 2021 case¹⁰, the Supreme Court dismissed a First Information Report (FIR) filed against senior journalist Vinod Dua in Shimla, Himachal Pradesh. This came over a year after local BJP officials accused him of making derogatory remarks against Prime Minister Narendra Modi and the central government on his YouTube show. A bench comprising Justices UU Lalit and Vineet Saran ruled that every journalist is entitled to protection under the Kedar Nath Singh case, which

defined the scope of the sedition law under Section 124A IPC and Disha Ravi, a 22-year-old activist for climate change, was detained on February 13, 2021, on suspicion of sedition for her connection with a “toolkit” connected to the farmer's protest. Nevertheless, the Delhi Court, noting that sedition cannot be used to defend the government's reputation, ordered her release after just one week of her arrest.

In *Kedar Nath Singh v State of Bihar* (1962) case, the Supreme Court upheld the constitutionality of the sedition legislation while attempting to curtail any potential abuses. The Court made it clear that unless a criticism of the government incites violence or public disruption, it is not considered sedition.

India is often recognized as the largest democracy globally. Nonetheless, it is concerning when political interests in a democracy impose restrictions on the right to free expression. India was placed 150th out of 180 countries in the 2022 Press Freedom Index, but dropped to 161st in the 2023 edition. Denmark, Norway, and Finland took the top three spots. Sedition is dangerous for democracy as well as for freedom of speech. One could claim that this law is prone to abuse.

The Supreme Court of India made history on May 2022 when it temporarily halted and dismissed all pending court cases pertaining to Section 124A of the IPC, a law from the colonial era. The Union of India was given authority by the Supreme Court to thoroughly examine this antiquated law. In order to stop future abuse of the legal system, a three-judge panel chaired by former Chief Justice N.V. Ramana decided to postpone all sedition cases.

The Supreme Court has taken a laudable and unusual step in the history of India's sedition statute. It emphasizes how urgent it is to do away with laws that are still harsh from the colonial past. Because the sedition statute is frequently applied incorrectly and stifles freedom of speech and expression, it has proved especially problematic.

Critique has always been beneficial to the advancement of society. No one's right to free speech or the ability to critique the government and its actions should be restricted, regardless of whether the criticism comes from the public or the media. It's critical to understand that voicing disagreement with national laws and policies does not make one anti-national; rather, it is a way to express one's opinions.

Latest development on 12 September 2023, *Kedarnath Singh v State of Bihar* (1962), a three-judge bench led by Chief Justice D.Y. Chandrachud referred a batch of petitions challenging the

constitutionality of sedition law to a larger bench. Specifically, the challenge concerns the offence of sedition under Section 124A of the Indian Penal Code, 1860. The number of judges on the Constitution Bench is yet to be decided—the Chief’s order indicated that it will “at least” comprise five judges. The Constitution Bench will revisit where the Supreme Court upheld the constitutionality of sedition¹¹.

Conclusion

The debate surrounding sedition laws and freedom of speech seems never-ending, but there’s a possibility that this debate could be resolved if the law itself is abolished after passing the **Bhartiya Nyaya Sanhita Bill, 2023**. However, it’s crucial to strike a balance by considering the nation's security concerns. The law should explicitly state that only those who attempt to disrupt public peace or incite violence should be subject to its penalties. The necessity of this law will continue to be a contentious issue. Our primary object should be to safeguard the fundamental right to express ourselves freely without it being curtailed through the misuse of sedition laws. Ultimately, it is necessary that the relevancy of the sedition law in India should be evaluated in light of its potential for misuse and its impact on right to freedom of speech and expression. Thus, it is essential to strike a delicate balance that protects national security while ensuring that individuals have the freedom to express their opinions without fear of reprisal.

End Notes

¹Tejaswini Kaushal (2023), A Bird's Eye View of the Right to Freedom of Speech and Expression in India, *Manupatra*, Available at <https://articles.manupatra.com/article-details/A-Bird-s-Eye-View-of-the-Right-to-Freedom-of-Speech-and-Expression-in-India>,(Access on 24.10.2023)

²Section 124A in The Indian Penal Code

³Article 19(1) of Indian Constitution.

⁴Article 19 of Indian Constitution.

⁵India Today (2019) Use and misuse of Sedition law: Section 124A of IPC New Delhi, Oct 9, 2019 available at <https://www.indiatoday.in/education-today/gk-current-affairs/story/use-and-misuse-of-sedition-law-section-124a-of-ipc-divd-1607533-2019-10-09> (Access on 25.10.2023)

⁶Ibid

⁷Silvasahu (2023)"Sedition v/s Freedom of Speech: A Constitutional Conundrum" *Legal Service India E-Journal*, available at <https://www.legalserviceindia.com/legal/article-13777-sedition-v-s-freedom-of-speech-a-constitutional-conundrum.html>,(Access on 26.10.2023)

⁸1951 CriLJ 449

⁹AIR 2015 SC 1523

¹⁰Writ Petition (Criminal) No.154 of 2020

¹¹Supreme Court Observer (2023),“Constitutionality of Sedition” *Supreme court of India*, available at <https://www.scoobserver.in/reports/constitutionality-of-sedition-law-day-6-cji-led-bench-refers-challenge-to-a-constitution-bench-of-at-least-5-judges/>,(Access on 27.10.2023)