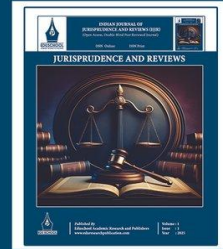


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## Sedition Laws in India: Constitutional Viability

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### Abstract

This article examines the constitutional validity of sedition laws in India, specifically Section 124A of the Indian Penal Code, within the framework of democratic governance and fundamental rights. The provision, a colonial-era relic, has faced sustained criticism for its potential to suppress dissent and curtail freedom of speech. Through doctrinal analysis and jurisprudential examination, this paper evaluates the tension between sedition laws and Article 19(1)(a) of the Constitution, which guarantees freedom of speech and expression. The article analyzes landmark Supreme Court decisions, including *Kedar Nath Singh v. State of Bihar* (1962), which attempted to read down the provision to save it from constitutional invalidity. Contemporary challenges to sedition laws are assessed in light of democratic principles, international human rights standards, and recent judicial and legislative developments. The paper concludes that while the State has legitimate interests in protecting national security and public order, the current formulation of sedition law requires substantial reconsideration to align with constitutional values and democratic imperatives.

**Keywords:** - Sedition Law, Freedom Of Speech And Expression, Article 19, State Of Bihar, Public Order And National Security

## I. INTRODUCTION

Section 124A of the Indian Penal Code, 1860, which defines and punishes sedition, stands as one of the most contentious provisions in Indian criminal law. Enacted during British colonial rule to suppress anti-colonial movements, the provision has survived post-independence India despite fundamental constitutional changes that established India as a sovereign democratic republic. The provision criminalizes acts that bring or attempt to bring into hatred or contempt, or excite disaffection toward the government established by law in India through words, signs, or visible representation (Indian Penal Code, 1860).

The constitutional validity of sedition law presents a fundamental tension between state security and individual liberty. Article 19(1)(a) of the Constitution guarantees all citizens the right to freedom of speech and expression, a cornerstone of democratic governance. However, this right is not absolute and is subject to reasonable restrictions under Article 19(2) in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, and incitement to an offense (Constitution of India, 1950). The challenge lies in determining whether sedition laws, as currently formulated and applied, constitute reasonable restrictions or impermissible encroachments upon fundamental freedoms.

This article undertakes a comprehensive examination of sedition laws through constitutional, historical, and jurisprudential lenses. The analysis proceeds through four principal sections: first, the historical evolution and constitutional framework of sedition law; second, the Supreme Court's jurisprudence and interpretive approaches; third, contemporary challenges and critiques; and fourth, the implications for democratic governance and potential reforms.

## II. HISTORICAL EVOLUTION AND CONSTITUTIONAL FRAMEWORK

Section 124A was introduced in the Indian Penal Code in 1870, modeled on English sedition law, specifically

designed to suppress nationalist movements against British rule. The provision was strategically deployed against prominent freedom fighters including Bal Gangadhar Tilak, Mahatma Gandhi, and numerous independence activists (Nariman, 2013). The colonial administration utilized sedition charges to criminalize political dissent and suppress anti-imperial discourse.

During the Constituent Assembly debates, significant discussion centered on whether sedition laws should be retained in independent India. While the framers of the Constitution did not explicitly include sedition as a ground for restricting freedom of speech under Article 19(2), they incorporated 'public order' and 'security of the State' as permissible grounds for restrictions. The First Amendment to the Constitution in 1951 added 'public order' as a distinct ground, separate from general law and order, thereby enabling more nuanced restrictions on speech (Bhatia, 2016).

The constitutional framework establishes a three-tier analysis for restrictions on fundamental rights. First, any restriction must be imposed by law; second, it must serve one of the enumerated grounds under Article 19(2); and third, it must satisfy the test of reasonableness. The reasonableness doctrine, developed through judicial interpretation, requires a proportionality assessment between the restriction and the legitimate governmental objective (*Rajagopal Reddy v. State of Tamil Nadu*, 1974).

### **III. SUPREME COURT JURISPRUDENCE ON SEDITION**

The constitutional validity of Section 124A was first challenged in *Romesh Thapar v. State of Madras* (1950), where the Supreme Court held that restrictions on freedom of speech in the interest of public safety were not permissible grounds under the original Article 19(2). This decision prompted the First Amendment, which introduced 'public order' as a constitutional ground for speech restrictions.

The landmark case of *Kedar Nath Singh v. State of Bihar* (1962) represents the Supreme Court's definitive constitutional interpretation of sedition law. The Court upheld the constitutional validity of Section 124A while reading it down substantially. The Court held that sedition is constitutionally valid only when speech or expression has the tendency or intention to create public disorder or incite violence. Mere criticism of government, however strong, does not constitute sedition unless accompanied by incitement to violence or intention to create public disorder. The Court emphasized the distinction between disloyalty to the government and disorder, noting that comments, however strongly worded, expressing disapprobation of government actions without exciting disorder or violence do not constitute sedition.

Subsequent jurisprudence has reinforced the *Kedar Nath* principles. In *Balwant Singh v. State of Punjab* (1995), the Supreme Court acquitted individuals who had raised pro-Khalistan slogans, holding that mere sloganeering without incitement to violence does not constitute sedition. The Court reiterated that to constitute sedition, the words or actions must be judged in the context of their tendency to create public disorder or incite violence.

In *Shreya Singhal v. Union of India* (2015), while addressing internet speech restrictions, the Supreme Court emphasized the importance of distinguishing between advocacy and incitement, discussion and instigation. The Court held that mere discussion or advocacy of a particular cause, however unpopular, cannot be prohibited unless it crosses into incitement to imminent lawless action. This standard, borrowed from American jurisprudence in *Brandenburg v. Ohio* (1969), provides a stringent test for speech restrictions.

### **IV. CONTEMPORARY CHALLENGES AND CRITIQUES**

Despite the Supreme Court's interpretive safeguards in *Kedar Nath Singh*, the application of sedition law in practice has raised substantial concerns. Empirical analysis reveals a troubling pattern of sedition charges being filed against journalists, activists, students, and political dissenters for speech that falls squarely within constitutionally protected expression (Amnesty International India, 2016). The colonial-era provision continues to be invoked against critics of government policies, often without demonstrating the requisite nexus to violence or public disorder.

A critical problem lies in the procedural deployment of sedition charges. The mere registration of a sedition case, even if ultimately dismissed, produces significant chilling effects on free speech. The process itself becomes punishment, as individuals face arrest, detention, social stigma, and substantial legal costs regardless of ultimate conviction rates. Data indicates that conviction rates for sedition are remarkably low, suggesting that the provision is often misused for harassment rather than legitimate prosecution (National Crime Records Bureau, 2019).

The vagueness of terms such as 'disaffection' and 'hatred or contempt' toward government creates interpretive uncertainties that enable subjective and arbitrary application. While *Kedar Nath Singh* attempted to provide clarity, ground-level enforcement often diverges from constitutional standards. Police and lower courts frequently fail to apply the stringent tests mandated by the Supreme Court, resulting in sedition charges for peaceful protests, critical journalism, and academic discourse.

From a comparative constitutional perspective, numerous democratic nations have either repealed or substantially reformed their sedition laws. The United Kingdom, which originally inspired India's sedition provision, abolished its sedition law in 2009 as incompatible with modern democracy. Other Commonwealth jurisdictions including Australia and New Zealand have similarly narrowed or repealed sedition offenses. This international trend reflects growing recognition that sedition laws, even with judicial safeguards, pose structural risks to democratic discourse (Mehta, 2018).

The Law Commission of India, in its 279th Report, recommended that Section 124A be repealed or substantially amended to align with constitutional values. The Commission noted that the provision's colonial origins and potential for misuse outweigh its purported utility in maintaining public order, particularly given the availability of alternative legal provisions addressing violence and public disorder (Law Commission of India, 2018).

### **V. DEMOCRATIC IMPLICATIONS AND REFORM PROPOSALS**

The preservation of sedition law in its current form poses fundamental challenges to democratic governance.

Democracy depends upon robust public discourse, including sharp criticism of governmental actions and policies. The threat of sedition prosecution, even if ultimately unsuccessful, creates a chilling effect that discourages citizens from exercising their constitutional right to criticize the government. This chilling effect undermines the deliberative foundations of democratic governance and distorts the marketplace of ideas essential to democratic accountability.

The distinction between government and State, emphasized in *Kedar Nath Singh*, remains crucial. Democratic theory distinguishes between loyalty to the State (a constitutional and territorial entity) and support for the government (the current political administration). Criticism of government policies or actions should not be conflated with disloyalty to the State or nation. Sedition law, however, risks collapsing this distinction by treating strong criticism of government as potential sedition.

Reform proposals vary in scope and approach. One proposal advocates complete repeal of Section 124A on the grounds that existing provisions of the Indian Penal Code adequately address genuine threats to public order and national security. Offenses such as waging war against India (Section 121), promoting enmity between groups (Section 153A), and unlawful assembly (Section 141-149) provide legal tools for prosecuting violence and public disorder without criminalizing dissent.

Alternative reform approaches suggest retaining a narrowly tailored sedition provision that explicitly incorporates the *Kedar Nath* standards into the statutory language. Such reformulation would require demonstration of direct incitement to imminent violence or public disorder, thereby reducing interpretive discretion and preventing misuse. Procedural safeguards, such as requiring high-level authorization for sedition prosecutions or mandatory judicial review before proceeding with charges, could mitigate arbitrary application.

The balancing of security interests with freedom of expression requires recognition that democracy itself constitutes a security interest. A vibrant democracy depends upon citizens' ability to freely criticize government without fear of criminal prosecution. While the State has legitimate interests in maintaining public order and national security, these interests must be pursued through means that minimize infringement upon fundamental rights. The principle of proportionality demands that restrictions be no broader than necessary to achieve legitimate governmental objectives.

## VI. CONCLUSION

The constitutional viability of sedition law in India remains contested terrain between legitimate state security interests and fundamental freedoms essential to democratic governance. While the Supreme Court in *Kedar Nath Singh* attempted to reconcile sedition law with constitutional values through interpretive narrowing, the practical application of the provision continues to raise serious concerns about its compatibility with democratic principles and freedom of expression.

The colonial origins of Section 124A, designed explicitly to suppress democratic aspirations, sit uneasily with India's constitutional commitment to democratic governance and fundamental rights. The pattern of misuse, low conviction rates, and chilling effects on public discourse suggest that the provision's costs to democratic values outweigh its purported benefits to public order and national security.

This article concludes that substantial reform is imperative. Whether through complete repeal or fundamental reformulation with stringent procedural safeguards, sedition law must be reconsidered to align with constitutional values and democratic imperatives. Alternative legal provisions adequately address genuine threats to public order and national security without criminalizing dissent. The path forward requires recognizing that robust protection of free speech, including sharp criticism of government, strengthens rather than weakens democratic governance and national security.

As India continues its democratic journey, the retention of colonial-era sedition law represents an anachronism that demands urgent legislative attention. The choice facing Indian democracy is clear: either embrace the full implications of constitutional freedoms by repealing or radically reforming sedition law, or risk perpetuating a legal framework that undermines the very democratic values the Constitution seeks to protect.

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