# Sedition in India- Origins, Challenges and Reputational Costs

Section 124A of the Indian Penal Code which criminalises sedition is a contentious provision. The debates around it are manifold and range from questions to its present utility, an ambiguous definitions clause and its increasing invocation by the government in derogation of its interpretation by the Supreme Court. In a recent plea filed by the Editors Guild of India, the constitutionality of the provision has been challenged in the Supreme Court which has led to renewed debate about its current place in the Indian legal system. This article presents a brief history of how the law of sedition came to be enacted in India, the leading cases addressing it and the current controversy around it. Finally, it emphasizes that retaining sedition in its present form in the Indian Penal Code posits certain reputational costs that might affect how India is perceived globally.

## What is Sedition?

Sedition is an activity or communication which aims to overthrow governmental authority. Merriam Webster defines it as 'incitement of resistance to or insurrection against lawful authority.' In India, acts of sedition are criminalised through Section 124A of the Indian Penal Code, which defines it as any word(s), gesture(s), representation etc. that attempts to bring into hatred and contempt or excite **disaffection** towards the Government established by law. The punishment for the offence is wide and discretionary and could be 'imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.' Further, the offence is non-bailable and a person charged under the section cannot hold a government job or leave the country without a court's approval.

The provision has been contentious since its inception as several scholars see it as an affront to the freedom of speech and expression. In India, the offence was not a part of the original Indian Penal (IPC) Code enacted in 1860 and was only enacted ten years later by the British Government to curb what they saw as a threat to its rule.

## Colonial Origins

Section 124A was included in the Indian Penal Code in 1870 to curb the activities of the Wahabis, a network of rebels who were part of the first war of Indian independence in 1857 (Ganachari, 2009; Narrain 2011).[1] It was not surprising then that, India's founding leaders chose not to include it in the

[1] Ganachari, A (2009): "Combating Terror of Law in Colonial India: The Law of Sedition and the Nationalist Response" in *Engaging Terror: A Critical and Interdisciplinary Approach*, edited by M. Vandalos, G K Lotts, H M Teixera, A Karzai and J Haig (Boca Raton, Florida: Brown Walker Press).

Constitution of India as a separate provision. The Constituent Assembly in fact vigorously debated the possible misuse of such a law to jail those critical of the government. However, sedition was retained in the IPC. Jawaharlal Nehru, the first Prime Minister of India, faced scathing criticism for its retention. Aware of how the law was perceived as compromising the right to free speech and opinion, Nehru while addressing the Parliament in 1951, said in relation to the offence of sedition[2]:

> "*Take again Section 124-A of the Indian Penal Code. Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it. I do not think myself that these changes that we bring about validate the thing to any large extent. I do not think so, because the whole thing has to be interpreted by a court of law in the fuller context, not only of this thing but other things as well. Suppose you pass an amendment of the Constitution to a particular article, surely that particular article does not put an end to the rest of the Constitution, the spirit, the languages, the objective and the rest. It only clarifies an issue in regard to that particular article*"[3]

Nehru's position, however, was not consistent on the matter. Although, seditious speech was not included as an explicit exception in the reasonable restrictions clause to free speech in the Constitution, the Nehru government later passed an amendment to Article 19 (2).[4] It added two expressions "*friendly relations with foreign state*" and "*public order*" – as grounds for imposing "*reasonable restrictions*" on free speech. And, sedition continued to remain a part of the IPC. Since then, the provision has been used by several governments over the years to curb political dissent (Singh 1998; Narrain 2011). Meanwhile, the provision continued to attract strong criticism particularly for the manner in which it defined the offence.

**Issues with Section 124A**

The sedition provision has two apparent issues on the face of it. Firstly, it relies heavily on the act of inciting 'disaffection' towards the government. The term disaffection is broad, ambiguous and obtuse.

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Narrain (2011). "Disaffection" and the Law: The Chilling Effect of Sedition Laws in India. *Economic and Political Weekly*, *46*(8), 33–37. http://www.jstor.org/stable/41151791

[2] (Narrain 2011), supra.

[3] Parliamentary Debates of India, Vol XII, Part II (1951) p 9621.

[4] Article 19 of the Constitution speaks to the fundamental right of freedom of speech and expression in India. Section 2 of the Article imposes a set of reasonable restrictions on the same.

It has the possibility of rampant misuse as almost any activity which the government sees in opposition to it can be brought under the section. Secondly, the idea that in a democratic setup, each citizen is supposed to have affection towards the government of the day is antithetical. The comments of Mahatma Gandhi provide an adequate summation of these two issues, who when charged with sedition by the British Government in 1922, stated, "Affection cannot be manufactured or regulated by the law. If one has no affection for a particular person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence." The incitement to violence requirement in Section 124A is however, absent. This too makes the threshold of deciding whether a given activity falls under sedition or not vague as there is no clear test as to what amounts to disaffection under the law.

## Constitutional challenges

Due to these shortcomings in the provision, Section 124A has been the subject matter of significant litigation over the years. In 1950, in a case titled *Tara Singh Gopi Chand v. State*, the Punjab and Haryana High Court struck down Section 124A holding the provision to be unconstitutional and violative of Article 19(1)(a) of the Indian Constitution which guarantees freedom of speech and expression. Later in 1958, the Allahabad High Court held in the case of *Ram Nandan v. State of UP* that the restrictions imposed by Section 124A were excessive and curtailed free speech which was not in the interest of the general public. However, in 1962, the Supreme Court overruled these decisions in *Kedar Nath v. State of Bihar* and held the law to be constitutional. This proclamation of constitutionality, however, was imbued with certain caveats protecting the right to free speech. The Court held that comments, even if strongly worded, would not be penalised unless they generated an inclination to cause disorder by acts of violence. The court also observed that if the sedition law was to be given a wider interpretation, it would become unconstitutional. This case continues to be good law and is how the law on sedition stands to date.

### Recent Controversy and increasing prosecution under the Sedition law

The debate on the sedition law was has been renewed in the last few months as several instances have occurred where even slight criticism of government activities has attracted the provision. At the same time this has met with judges reiterating that the law should be used cautiously. Perhaps the most well know instance was a case earlier last year, when climate activist Disha Ravi, was arrested for the formulation of a protest toolkit against the new agricultural laws in India and was charged with sedition and conspiracy. In her case, the judge granting bail to her relied on *Kedar Nath* and held that there must be either actual violence or the incitement to violence associated with the words for the offence of

sedition to be attracted. Another instance was in June 2021, when Justice Chandrachud of the Supreme Court restrained the Andhra Pradesh Government from taking punitive action against two news channels under Section 124A IPC and observed that "*everything cannot be seditious. It is time we define what is sedition and what is not.*" A month later, the Supreme Court speaking through the Chief Justice of India N V Ramana again questioned the remit of the sedition law. The level of mistrust in the remit of the provision was obvious with the CJI stating that "*if the police want to fix somebody, they can invoke Section 124A*" and that "*everybody is a little scared when this section is invoked*." It seems from the recent cases and ongoing debates, that the executive seems to be at odds in its interpretation of the sedition law with what was pronounced by the Supreme Court in *Kedar Nath* in 1962. This has resulted in an increasing number of sedition cases being filed against activists, writers, protestors and even students as was the case in Disha Ravi's prosecution.

This observation is bolstered by data from the National Crime Records Bureau as per which 30 cases were registered in 2015, 35 in 2016, 51 in 2017, 70 in 2018 and 93 in 2019. The convictions on the other hand were only 2 in 2019, 2 in 2018 and 4 in 2017. On the other hand, it is not only the current government which has used the provision liberally. For instance, over the course of the 10-year rule of the United Progressive Alliance (UPA) alone, thousands of cases of sedition were filed.[5] This mismatch between prosecutions and convictions has led to increasing calls to either amend the law and make it more precise or abolish it altogether. Similarly, the debate has also garnered international attention with political analysts alluding to threats to democracy in India.

## Reputational Costs

Whether India chooses to retain the sedition law in its present form, amend it to make it more specific or abolish it is a question which time will answer but in its current form, the law and its application by the Indian government is garnering a negative perception towards Indian democracy. This can be seen from political analysis and media articles in a number of jurisdictions including by independent think tanks and journalists. For instance, India has fallen to the 53rd rank in the Economist Intelligence Unit's democracy index. Further, accusing dissenters of sedition has brought about criticism to the sensitivity of the government towards any negative feedback. The Supreme Court has also questioned the slapping of sedition charges against those who point out drawbacks in the system. The situation then, when looked at in its entirety, has negative reputational effects for Indian democracy. Free speech and democracy have long been central to India's reputation in the world. When these values are under threat in the largest democracy in the world, everyone takes notice. Reputational costs in the long run may have detrimental effects on how law abiding or safe a country is considered for investment, tourism and

[5] Nayak S, Congress grossly misused sedition law in UPA era, *The Sunday Guardian*, January 19, 2019, available at: https://www.sundayguardianlive.com/news/congress-grossly-misused-sedition-law-upa-era.

diplomatic trustworthiness. As India, continues to improve its ease of doing business ranking, which it well deserves, it also must ensure that its reputation as a free democracy continues to hold forth.