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## Law of Sedition - The Chilling Effect on the Right to Freedom of Press in India

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*The present article focuses on the evolution of the concept of Sedition under the Indian jurisprudence from the pre-independence era to the modern era. There exists a plethora of cases wherein Section 124A of the Indian Penal Code, which deals with Sedition has been used by the Indian administration. This article aims to look into the various interpretations and legal standing of sedition as adopted by the Indian Judiciary over the course of time. It is argued that sedition has a ‘chilling effect’ on the right to freedom of press, which is implicit in Article 19(1) (a) of the Indian Constitution. Therefore, the research focuses on the nature of the right to freedom of press and how there is a dire need to explicitly include it under Part III of the Constitution in order to establish a check-and-balance regime with respect to Sedition and Freedom of Press.*

**Keywords:** *sedition, freedom of press, journalism, chilling effect.*

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### INTRODUCTION

The word sedition is derived from the Latin word “*Seditio*” which means “discord.” The very first judgment in which Section 124A of the Indian Penal Code [IPC], 1860, which deals with

Sedition was interpreted and used was *Queen-Empress v. Bal Gangadhar Tilak*.<sup>1</sup> The lack of affection was described by the Court as sedition. As a result, it denotes "hate, enmity, hate, antagonism, disdain, and every other type of ill-will toward the Government." The Court went on to say that no one may incite or seek to incite such disaffection, and that no one should make or strive to make anybody feel animosity toward the state.

Historically, the British Administration utilized sedition laws to suppress nationalist activity in India. The legislation that defines the offence of sedition in the IPC, Section 124A, was initially Section 113 of Lord Macaulay's Draft Penal Code of 1837-39, but the part was omitted when the IPC was enacted in 1860. The British colonial authority enacted Section 124A in 1870 because it considered there was a need for a particular section to handle the offence in order to maintain peace within the nation.<sup>2</sup>

Pandit Jawaharlal Nehru, India's first Prime Minister following liberation, was a vocal opponent of the law. During a free speech discussion in Parliament in 1951, he stated that the sedition statute was "very offensive and offensive." According to an account of the discussion in the Hindu newspaper, "the sooner we get rid of it, the better."<sup>3</sup> Nevertheless, in light of the biased nature of judicial pronouncements in cases of sedition in India, as well as an abrupt increase in the misuse of sedition law to imprison nationalists, the final framers of the Constitution felt the need to exclude sedition from the exceptions to the right to free speech and expression.<sup>4</sup>

It is time and again reiterated by scholars and judges alike that in the case of sedition, due to the extremely subjective nature of this offense, judges must evaluate on a case-by-case premise whether any harm to the stability of the State or its democratic system has occurred. Leaving such a choice to legislative or executive action simply allows an oppressive government to

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<sup>1</sup> *Queen Empress v Bal Gangadhar Tilak* 22 ILR Bom 112 (1898)

<sup>2</sup> W R Donogh, 'A treatise on the law of sedition and cognate offences in British India' (*Archive.org*) <<http://archive.org/stream/onlawofsedition00dono#page/n23/mode/2up>> accessed May 25 2021

<sup>3</sup> Editorial, 'Sedition? Seriously?' (*The Hindu*, 28 June 2016) <<http://www.thehindu.com/opinion/editorial/sedition-seriously/article3882414.ece>> accessed May 25 2021

<sup>4</sup> S J Sorabjee, 'Confusion about Sedition' (*Indian Express*, 12 August 2012) <<http://www.indianexpress.com/news/confusion-about-sedition/987140>> accessed May 25 2021

weaken the protection of free speech.<sup>5</sup> Presently, one of the oddities is that the freedom of the press, which our Founding Fathers valued so highly, is not included in Part III of the Indian Constitution, which protects fundamental rights. There is no explicit protection of freedom of the press, as there is in other nations' constitutions. This inconsistency was discovered during the debates of the Constituent Assembly. Proposals were made to include press freedom as a separate fundamental right. As per Dr. B.N. Rau, the Constitutional Adviser, it was hardly essential to provision for it directly because freedom of expression would entail freedom of the press. Patanjali Shastri, CJ, noted in *Romesh Thapar v State of Madras*<sup>6</sup> that “freedom of speech and of the press lay at the cornerstone of all democratic institution, for without free political discussion, no public education, so necessary for the proper working of the procedure of popular government, is possible.”

Looking at the essential nature of the right to freedom of press and journalism and the absence of its explicit mention in the Indian Constitution, this article aims to provide a basis for incorporating the same in the Constitution and to analyse the chilling effect of Section 124A of the IPC on freedom of journalism in India.

## THE POSITION OF SEDITION IN COLONISED INDIA

There is no dispute that the basic idea of governance in India is founded on British rule, and our Indian Constitution upholds several laws that were in effect at the time. The British additionally left behind the Government of India Act and other statutes designed at centralizing power and bringing immunity to public control.<sup>7</sup> Curiously, Thomas Babington Macaulay's Seditious Act of 1833 was intended to keep a watch on Indian "subjects" so that Indians did not demonstrate "dishonesty" towards the Empress of India who sat in London. Mostly during the nineteenth and early twentieth centuries, the law effectively repressed nationalist dissent in the region.<sup>8</sup> As noted earlier, the legislation that describes sedition in the IPC, Section 124A, was initially Section 113 of Macaulay's Draft Penal Code of 1837-39. The structure for this provision was derived

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<sup>5</sup> E Barendt, 'Interests in Freedom of Speech: Theory and Practice' in Kam Fan Sin (ed), *Legal Explorations: Essays in Honour of Professor Michael Chesterman* (2003) 175

<sup>6</sup> *Romesh Thapar v Union of India* AIR 1950 SC 124

<sup>7</sup> R Dhavan, *Only the Good News: On the Law of the Press in India* (South Asia Books 1987) 285-87

<sup>8</sup> A Ganachari, *Nationalism and Social Reform in A Colonial Situation* (Kalpaz Publications 2005)

from several sources, including the Treason Felony Act (in force in the United Kingdom), the common law of seditious libel, and English law dealing with seditious terms.<sup>9</sup> The civil law of seditious libel covered both actions and statements directed against the government and its citizens, as well as actions and words directed towards communities of people.

In its present incarnation, sedition embodied under Section 124-A of the Indian Penal Code is defined as: "Whoever, by words, whether spoken or written, or by signs, or by visible representation, and 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, shall be punished with imprisonment for life, to which fine may be added." Section 124A's explanation specifically excludes "disapprobation" of the government's acts or activities that do not cause or seek to incite hostility, contempt, or disaffection. Section 124A of the Indian Penal Code, which sanctions sedition, has been used by the state to suppress criticism and dissent since its creation. It has been employed against political dissenters by both the imperial British government and successive governments of independent India.

A person convicted of sedition is punishable by imprisonment ranging from three years to life in jail, a fine, or both, according to Section 124A of the IPC. Sedition is a cognisable offense, which implies that the police can arrest someone accused of sedition without even a warrant. Sedition is a non-bailable offense, which implies that a person apprehended for sedition cannot be released on bail as a point of right by the police. He must ask for bail in front of a Court or magistrate. Sedition is also a non-compoundable violation, which means it cannot be resolved through a mutual agreement between the offender and the victim.<sup>10</sup>

The case of *Queen Empress v. Jogendra Chunder Bose*<sup>11</sup> is the first known trial for sedition. In its widely disputed decision, the Court established a contrast between 'disaffection' and 'disapprobation.' Disaffection was described as the employment of spoken or written words to

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<sup>9</sup> H Mathew & GW Thomas, *The History of the Pleas of the Crown Vol. 1* (1st edn, 1800) 59

<sup>10</sup> Code of Criminal Procedure 1973, Schedule I

<sup>11</sup> *Queen Empress v Jogendra Chunder Bose* 19 ILR Cal 35 (1892)

generate an inclination in the minds of individuals to whom the statements were intended, either not to follow or resist the legitimate authority of the state.<sup>12</sup>

Furthermore, when nationalism erupted in India in the late nineteenth and early twentieth centuries, people publicly began to attack the British Indian government. There were rallies, and notable Indian nationalists and independence fighters published a variety of magazines in a variety of languages. The Vernacular Press Act 1878 and the Dramatic Performances Act, 1876 were additional statutes enacted to restrict oral, written, graphic, or performance-based creative expressions, as well as to help manage Indian language publications. Local language newspapers and journals were incredibly effective at organizing people and educating them about the true causes of their misery. It was one of those laws enacted primarily to silence any expressions of protest at the time. Bal Gangadhar Tilak and Mohandas Gandhi are two prominent personalities who have been charged with sedition under this statute. Among the first cases in which the sedition law was used were several indictments of editors of nationalistic newspapers.

The three sedition trials of Bal Gangadhar Tilak [*Queen-Empress v. Bal Gangadhar Tilak*<sup>13</sup>], which were widely watched by his followers both domestically and internationally, are among the most well-known instances. The government alleged that portions of his statements about Shivaji murdering Afzal Khan prompted the assassination of Plague Commissioner Rand and Lieutenant Ayherst, a British official, and the next week. The two officials were slain on their way back from a dinner celebration at Government House in Pune to commemorate the Diamond Jubilee of Queen Victoria's reign. Tilak was accused of sedition but released in 1898 owing to the involvement of internationally known persons such as Max Weber on the premise that he will do nothing by act, speech, or writing to incite discontent with the administration.

Another well-known case was *Annie Besant v. Advocate General of Madras*.<sup>14</sup> The issue concerned Section 4(1) of the Indian Press Act of 1910, which was drafted similarly to Section 124A.

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<sup>12</sup> *Ibid* 40

<sup>13</sup> *Queen-Empress v Bal Gangadhar Tilak* 22 ILR Bom 112 (1898)

<sup>14</sup> *Annie Besant v Advocate General of Madras* 21 Bom LR 867(1919)

According to the relevant clause, any equipment used for printing/publishing periodicals, books, and other materials carrying words, signs, or other visible manifestations that had the potential to incite hatred or contempt for the administration was prohibited. The Privy Council upheld Justice Strachey's prior interpretation and seized Annie Besant's printing press deposit.

Additionally, The Privy Council examined the matter of *King Emperor v. Sadashiv Narayan Bhalerao*,<sup>15</sup> which concerned the production and distribution of pamphlets conveying unfavourable information. Recognizing Strachey, J.'s literal interpretation approach in the Tilak case, it held that the perspective advocating the implementation of the offence of sedition only on the foundation of encouraging insurrection or violent disobedience to the government was untenable.

During the Indian freedom struggle against British control, the law of sedition was used to suppress opposition against prominent nationalists such as Annie Besant, Bal Gangadhar Tilak, and Mahatma Gandhi as already discussed. Bearing such abuses in mind, Article 13 of the Draft Constitution originally included Freedom of Speech and Expression. In its initial form, this article granted this right subject to constraints imposed by Federal Law in order to protect indigenous tribes and backward classes, as well as to maintain public comfort and security.<sup>16</sup>

Consequently, The Indian Constitution envisions democratic dominance and strives for the welfare of the citizens. Following independence, the Constitution (First Amendment) Act of 1951 introduced the words “public order” to Article 19(2), implying that a citizen's freedom of speech and expression could be subject to legislative constraints in order to ensure public order and stability. Therefore, sedition was declared a felony, despite the fact that then-Prime Minister Jawaharlal Nehru believed that anti-sedition legislation had no place in a post - independence India. Ever since, there have been multiple examples concerning sedition in which the judges have questioned its legitimacy, but the Supreme Court ruled in favour of this law in *Kedar Nath Singh v. State of Bihar*<sup>17</sup>. Thus, it is essential to look into judicial trends regarding sedition

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<sup>15</sup> *King Emperor v Sadashiv Narayan Bhalerao* 74 LR IA 89 (1947)

<sup>16</sup> Constitutional Assembly Debates (7 December 1948) 17

<sup>17</sup> *Kedar Nath v State of Bihar* AIR SC 955 1962

following the Kedar Nath judgment in order to understand the judiciary's stance on this ancient law in modern times.

## THE LEGAL STAND OF SEDITION AFTER THE KEDAR NATH DECISION

Following the trend adopted in the landmark case of Kedar Nath, the Supreme Court's assertion on incitement of "imminent violence" as a litmus test for sedition or the suppression of any kind of speech has been reaffirmed in many subsequent decisions, including *S. Rangarajan v. P. Jagjivan Ram*,<sup>18</sup> *Indra Das v State of Assam*,<sup>19</sup> and *Arup Bhuyan v State of Assam*.<sup>20</sup> The Court concluded in *S. Rangarajan v P. Jagjivan Ram* that "the impact of the remarks must be measured from the standards of sensible, strong-minded, resolute, and brave persons, and not those of feeble and indecisive minds, nor of those who smell peril in every opposing point of view." In another progressive judgment, the Supreme Court in the *Balwant Singh v State of Punjab*<sup>21</sup> case struck aside the allegation of sedition in regard to anti-India slogans raised--"Khalistan Zindabad...Hindustan Murdabad." According to the ruling, even informal statements that have no effect on public order in terms of inciting violence do not establish sedition.

In the case of *Indra Das v State of Assam*, the accused was revealed to be a part of the outlawed organization ULFA. He was also accused of murdering another individual, albeit there was no evidence to support this claim. Using the Court's ruling in Kedar Nath, the Supreme Court determined that no seditious activities could be ascribed to the accused, and the appeal was granted on the basis that the prosecution had failed to show adequate evidence to prove the commission of any seditious deed.

Furthermore, in the 2013 case of *P.J. Manuel v. State of Kerala*,<sup>22</sup> the accused plastered posters to a board at the Kozhikode public library and research centre, urging citizens to boycott the state's general election for the Legislative Assembly. The poster read, "No vote for the rulers who have become fat by abusing the masses, regardless of party affiliation." As a result, criminal

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<sup>18</sup> *S Rangarajan v P Jagjivan Ram* 2 SCC 574 (1989)

<sup>19</sup> *Indra Das v State of Assam* 3 SCC 380 (2011)

<sup>20</sup> *Arup Bhuyan v State of Assam* 3 SCC 377 (2011)

<sup>21</sup> *Balwant Singh v State of Punjab* 3 SCC 214 (1995)

<sup>22</sup> *PJ Manuel v State of Kerala* 1 ILR Ker 793 (2013)

proceedings were filed against him under Section 124A of the IPC for the crime of sedition. The Kerala High Court remarked that in a modern democracy, the printing or preaching of protest, or even contesting the foundation or type of government, should not be construed as “causing disaffection against the administration.” The nature of the sedition offense must be established in accordance with the word and spirit of the Constitution, rather than the criteria employed during colonial administration.

The Supreme Court has also considered the definition of sedition and given it a limited interpretation. According to Moushumi Basu and Deepika Tandon (2016), "the Supreme Court stated in the Kedar Nath Singh v State of Bihar Verdict (1962) that the allegation of sedition may only be supported in the occasion of incitement to violence in a speech, not for advocacy."<sup>23</sup> While delivering the M N Roy Memorial Lecture, Justice A P Shah in 2017 expanded on the Kedar Nath decision by stating that the Hon'ble Court upheld the constitutionality of sedition, but restricted its implementation to actions encompassing the intention or tendency to create disorder, or disruption of law and order, or incitement to violence. It contrasted these activities from "extremely forceful speech" or the employment of "vigorous language" critical of the government.

Even after the progressive approach of the judiciary, it has been observed in the Indian society that whether it is the first information reports (FIRs) targeting demonstrators at Koodankulam or the latest complaints against Kanhaiya Kumar or Amnesty International, Section 124A has been utilized to crush dissent by administrations of all stripes. The very tiny proportion of prosecutions should not obscure the government's intention: *to stifle dissenting expression*. Recently, six senior reporters- Rajdeep Sardesai, Mrinal Pande, Anant Nath, Paresh Nath, Zafar Agha, and Vinod Jose, as well as Shashi Tharoor, a Congress member of Parliament, were charged with "posting tweets and intentionally spreading fake news" about a farmer's death during the farmers' protests in Delhi on January 26, 2021. The accusations against them in the

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<sup>23</sup> Editorial, 'Sedition in India: Colonial Legacy, Misuse and Effect on Free Speech' (*EPW Engage*, 17 February 2021) <<https://www.epw.in/engage/article/sedition-india-colonial-legacy-misuse-and-effect>> accessed 29 May 2021



first information reports [FIRs] encompassed encouraging enmity, participating in conduct harmful to the preservation of religious peace, making remarks promoting hatred or ill-will, and sedition. While the arrests in these FIRs have been delayed by the Supreme Court, charges against journalists and political opponents have become more regular in recent times. According to a new database compiled by Article 14, there would be a 28% increase in the number of sedition charges filed every year between 2014 and 2020, relative to the yearly average between 2010 and 2014.

Moreover, focusing on the sedition charges levelled against young people at Jawaharlal Nehru University, the Central University of Gujarat Teachers' Association (2016) stated unequivocally that phrases and speech can be criminalized and penalized as "sedition" only when they are used to instigate mobs or crowds to aggressive protest.

Among the lesser-known sufferers of this law is a Kashmiri schoolteacher who was labelled seditious for reportedly preparing an examination paper with questions about the Kashmir Valley's turmoil. Sudhir Dhawale, a well-known Dalit civil rights activist and editor of *Vidrohi* in Gondia, Maharashtra, who was arrested for accepting a computer from a representative of the banned CPI (Maoist); Bharat Desai, *The Times of India's* resident editor in Ahmedabad, who was arrested together with a senior reporter and a photographer for doubting police officials' professionalism and accusing links between them and the Maoist.<sup>24</sup>

It should be noted that a scrutiny of international stance on the Law of Sedition is relevant in order to put the Indian law in perspective. The following points are relevant to the ongoing discussion:

1. While eliminating its own sedition statute in 2009, the United Kingdom, the country that gave rise to section 124A, noticed that even occasional applications of the statute had a "chilling effect" on freedom of speech.

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<sup>24</sup> P Singh, 'A Quick History of Sedition Law and Why it Can't Apply to JNU's Kanhaiya Kumar' (*News Laundry*, 16 February 2016) <<https://www.newslaundry.com/2016/02/16/a-quick-history-of-sedition-law-and-why-it-cant-apply-to-jnus-kanhaiya-kumar>> accessed 29 May 2021

2. In New Zealand, where the sedition statute was repealed in 2007, the last sedition trial was in 2006, involving Timothy Selwyn. The case is significant in the Indian context because of how identically and carefully the judiciaries of India and New Zealand construe sedition law. Timothy Selwyn was charged with breaking the glass of the Prime Minister's office window and encouraging other residents to do the same in two leaflets he wrote and circulated. The jury only found him guilty of seditious comments in the leaflet that encouraged New Zealanders to do similar actions.
3. Appallingly, Malaysia is one instance of a democratic society where sedition law is often used. According to the United Nations Human Rights Commission, "in Malaysia, the imperial sedition legislation has been the administration's weapon of choice in an escalating crackdown on dissent, especially online."
4. Lastly, historically, the United States' sedition legislation was used to quell political dissent, particularly communist resistance. The *Brandenburg v. Ohio*<sup>25</sup> decision, on the other hand, was a watershed moment in defending the priority of free expression, in which the US Supreme Court invoked the notion of provocation of impending aggression to rule in favour of the accused.

Thus, it is evident that Section 124A of the IPC is stringent and restrictive of an individual's basic right to freedom of press, journalism, speech and expression as compared to countries like the US or UK. Notwithstanding the best efforts of the higher judiciary, it appears improbable that India's law enforcement forces will prioritize the right to free expression. This is even less probable after Section 66A of the IT Act was repealed (after being struck down by the Hon'ble Supreme Court in *Shreya Singhal vs. UOI*<sup>26</sup>, implying that the sedition statute could potentially be used to suppress online criticism, as it is in Malaysia. Preposterously, inadequate attempts to change the rule have succumbed to linguistic blunders, rendering it even more vulnerable to abuse. Hence, a study of freedom of press in India and the paradoxes surrounding it is essential

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<sup>25</sup> *Brandenburg v Ohio* 395 US 444 (1969)

<sup>26</sup> *Shreya Singhal v Union of India* 5 SCC 1 (2015)

to establish a clear link between freedom of press and sedition and to understand how Indian sedition laws are restrictive of the same.

### **THE FREEDOM OF PRESS IN INDIA: IS IT ABSOLUTE?**

The Indian Press has a longstanding commitment to the country's functioning since the colonial era. Earlier, the British government adopted a variety of laws to control the press, including the Indian Press Act of 1910, the Indian Press (Emergency) Act of 1931-32, and others. During the Second World War (1939-45), the Government employed broad powers under the Defence of India Act and imposed press censorship.

The Supreme Court has concluded in a sequence of rulings dating back to 1950 that freedom of the press is inherent in the protection of freedom of speech and expression in Article 19(1)(a) of the Constitution. Therefore, freedom of the press has been elevated to the status of a basic right under judicial opinion. Nevertheless, there is a substantial body of thought in favour of specifically mentioning press freedom as a fundamental right. The Privy Council declared in *Arnold's case* in 1914 that the freedom of the journalist is an ordinary component of the liberty of the public and that no particular advantage belongs to his profession. In 1959, our Supreme Court supported this viewpoint. The Supreme Court has elevated press freedom to a higher elevation, describing it as "the most treasured and prized freedom in a democracy," "one of the foundations of democracy," "the Ark of the Covenant of Democracy," and "the most valuable of all the rights granted by our Constitution."<sup>27</sup> In principle, free press incorporates the notion of responsibility and allows the press to function as a tool of democratic governance. As a result, protecting and promoting press freedom promotes and promotes democracy, which is a vital aspect of our Constitution. Hence, an explicit mention of the 'freedom of press' should be inculcated in our Constitution along with other fundamental rights.

Unlike the United States Constitution, the Indian Constitution does not expressly allow for freedom of press. Nevertheless, it is now firmly established that the terms "speech and

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<sup>27</sup> S J Sorabjee, 'Press Freedom in India: Problems, Perils and Paradoxes' (2000) 27(3) Media Asia 144

expression” in Article 19(1) (a) cover freedom of the press also.<sup>28</sup> The freedom of the press entails freedom from intervention by authorities, which could meddle with the substance and distribution of newspapers.

In *Union of India v Association for Democratic Reforms*,<sup>29</sup> the Supreme Court stated, "One-sided information, disinformation, misinterpretation, and non-information all simultaneously generate an uninformed populace, which makes democracy a charade. Freedom of speech and expression encompasses the right to give and receive information, as well as the right to hold opinions." Further, the Court ruled in *Indian Express Newspapers v Union of India*<sup>30</sup> that the press serves a critical role in the democratic process. The Courts have a duty to protect journalistic freedom and to nullify any legislation or administrative decisions that restrict it. There are three important components to press freedom. They are as follows: Access to all sources of knowledge; Freedom of publication; and Freedom of distribution.

There have been numerous instances where the legislature has repressed freedom of the press. The Daily Newspapers (Price and Page) Order, 1960, which defined the number of pages and size that a daily might publish at a price, was declared to be a violation of freedom of press and not a justifiable restriction under Article 19(2) of the Constitution of India as held in *Sakal Papers v Union of India*.<sup>31</sup> Likewise, in *Bennett Coleman and Co. v Union of India*,<sup>32</sup> the Court ruled that the Newsprint Control Order, which set the maximum number of pages, was invalid because it violated Article 19(1)(a) and was not a reasonable restriction under Article 19(2). Moreover, in the near times, in the Tehelka Case, the portal Tehelka.com was compelled to shut down totally, and its reporters were constantly harassed as the reporters uncovered the 'scam' in the Defence Ministry involving ex-defence personnel and Central Government Ministers. There have been numerous incidents where reporters have been threatened and even assaulted.

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<sup>28</sup> *Indian Express Newspapers v Union of India* AIR 1986 SC 515

<sup>29</sup> *Union of India v Association for Democratic Reforms* 5 SCC 294 (2002)

<sup>30</sup> *Indian Express* (n 28)

<sup>31</sup> *Sakal Papers v Union of India* AIR 1962 SC 305 (1962)

<sup>32</sup> *Bennett Coleman and Co v Union of India* 2 SCC 788 (1972)

Notwithstanding these challenges the press has had a lot of success over the years. Manu Sharma, the son of a Haryana politician, murdered Jessica Lal on April 29, 1999, when she refused to offer him alcohol in the restaurant where she worked. Due to lack of evidence, the investigation was settled and all of the defendants were released; however, the case was reopened following media and public protest, resulting in Sharma's conviction. In the case of Priyadarshini Mattoo, Santosh Kumar, the son of an IPS officer, raped and killed his colleague Priyadarshini Mattoo in 1996 after she denied his proposal. After a lengthy trial, Priyadarshini's sick and elderly father received a verdict in October 2006. The Delhi High Court chastised subordinate Courts and authorities under inquiry for acquitting defendants. The press also had an important part in this case.

The Indian government, nonetheless, made numerous hurried efforts in the latter week of April 2021 to counter public remarks and articles criticizing its dismal failings in managing the second wave of COVID-19 in India. In this endeavour, the administration was perceived to be using multiple procedures and powers at its command, providing peremptory orders to social media platforms on one level and expressing objections with foreign agencies, including media agencies, on another. Some of the most notable examples of these efforts were a letter from the Indian High Commission in Canberra to Christian Dore, the Editor of the Australian newspaper rebuking the newspaper for defaming the government, and the administration's instruction to twitter to remove up to 50 critical Tweets. The tweets came from well-known people's accounts, including Congress spokesperson Pawan Khera, Member of Parliament Revanth Reddy, West Bengal Minister and Trinamool Congress leader Moloy Ghatak, journalist Pankaj Jha, actor Vineet Kumar Singh, film-maker Avinash Das, and film-maker and former journalist Vinod Kapri. Even, the World Press Freedom Index Report for 2021 maintains India's appalling 142 ranking from the previous year. According to the report, "India is one of the world's most dangerous nations for journalists attempting to do their jobs effectively. They are vulnerable to all types of attacks, involving police assault against journalists, ambushes by political activists, and retaliation by criminal organizations or corrupt local politicians. Nevertheless, criminal cases are frequently used to silence journalists who are sceptical of the administration, with

some prosecutors invoking Section 124(a) of the penal code, which makes 'sedition' punishable by life imprisonment."<sup>33</sup>

Finally, as per an international perspective, many nations have involved the freedom of press in their constitutions. Firstly, in the United States, freedom of speech and press, which are protected by the First Amendment from infringement by Congress, are among the essential personal rights and "liberties" guaranteed by the Fourteenth Amendment's due process provision from infringement by the states. The Virginia Declaration of Rights influenced the First Amendment to the United States Constitution. Secondly, on December 2, 1766, the Swedish parliament passed legislation that is now acknowledged as the world's earliest statute supporting press and information freedom. The Freedom of the Press Act, in short, ended the Swedish government's position as a controller of printed information and publicly revealed the government's official operations. More widely, the law enshrined the idea, which has since become a foundation of democracies all over the world that individual citizens of a state should be free to communicate and spread knowledge without fear of retaliation. Additionally, the freedom of the press is likewise widely respected in the United Kingdom. Citizens have complete freedom to do whatever they want as long as it does not break the rule of common law or statute law.

Therefore, the absence of an explicit mention of the right to freedom of press in the Indian Constitution, there exists difficulties for individuals to express their opinions without having to fear getting charged under Section 124A of the IPC. Hence, an analysis of sedition vis-à-vis freedom of press is essential to understand the influence of sedition charges on this inherent right.

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<sup>33</sup> V Ramakrishnan, 'The Government Tries to Erect a Façade of Media Freedom in Response to India's Low Ranking in Press Freedom Index' (*Frontline*, 21 May 2021) <<https://frontline.thehindu.com/the-nation/indian-govt-centre-bjp-media-press-freedom-fake-index-not-credible-journalism/article34451191.ece>> accessed 30 May 2021

## **SEDITION VIS-À-VIS FREEDOM OF PRESS: THE PRESENCE OF A ‘CHILLING EFFECT’ IN THE INDIAN LEGAL REGIME**

The right to free speech and expression is the most potent of the fundamental rights. Nevertheless, the country's sedition laws have limited this privilege. The increasing surge in the use of sedition laws targeting human rights activists, journalists, and public intellectuals in the nation has generated serious concerns about the undemocratic nature of these laws, which were enacted by the British colonial administration. Arrests under Section 124A of the IPC have sparked considerable public outrage and raised major concerns about the provision's applicability in a contemporary constitutional democracy.

In one instance, cartoonist Aseem Trivedi was imprisoned on sedition charges in *Sanskar Marathe v State of Maharashtra*<sup>34</sup> and others because his posters and caricatures criticized the constitution, parliament, and India's national flag. As a result, the Bombay High Court issued rules for police to follow when invoking the sedition statute against an individual. The case of *Shreya Singhal v Union of India*<sup>35</sup> provides a rather explicit exposition of the distinction between advocacy and incitement. The Court determined that three notions are critical to comprehending the extent of free expression. ‘The first is conversation, the second is advocacy, and the third is incitement,’ the Court stated. Article 19(1) is based on the simple debate or even promotion of a certain cause, no matter how unpopular it may be (a). Article 19(2) applies only where such debate or advocacy approaches the level of provocation.’

In today's world, the sedition legislation appears to be antiquated, requiring citizens not to harbour hostility, disdain, or hatred for the government created by law. Nevertheless, levying sedition charges based solely on words spoken or written should be discouraged. As a result, in its present form, there is a grey area among actual legislation and its application. It has been employed randomly in several cases. As a result, changes to the law are required to reduce the number of grey areas. Yet, one argument in favour of these regulations is that they are necessary

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<sup>34</sup> *Sanskar Marathe v State of Maharashtra* Cri PIL 3 Bom (2015)

<sup>35</sup> *Shreya Singhal v Union of India* 12 SCC 73 (2013)

evils in a country like India, where there are so many destabilizing forces at work. The purpose of such legislation is to prevent actions that promote "violence" and "public disruption."

Recently, on June 3, 2021, the Hon'ble Supreme Court<sup>36</sup> quashed the FIR filed against senior journalist Vinod Dua for sedition as well as other infractions over his YouTube show that included crucial statements about the Prime Minister and the Union Government lodged on May 6, 2020, by a BJP leader under the Indian Penal Code for sedition, public nuisance, publishing defamatory articles, and social mischief. The Court observed in this regard that *"Every journalist is entitled to protection under the Kedar Nath Singh decision (which outlined the scope of the offence of sedition under Section 124APC)."* It further observed that mere dissent does not amount to Sedition unless the said dissent results in inciting violence against the State. As a result, media organizations, including the Editors Guild of India [EGI], applauded the Supreme Court's decision in the sedition trial against renowned journalist Vinod Dua, stating it is a step towards ending the "chilling impact" that sedition laws have on freedom of the press.

Observing the recent stance of the judiciary, it is critical that governments and their agencies carefully adhere to safeguards propounded by the Supreme Court time and again before registering an FIR under Section 124A of the Penal Code. It can be seen that many intellectuals and stakeholders of the system have questioned the existence of sedition laws in India's statute books, and the accompanying criminalization of "disaffection" against the state and government, is undesirable in a democratic country. These laws are unmistakably imperial relics, originating in extraordinarily oppressive methods used by the colonial authority against nationalists fighting for Indian Independence. As a result, it is believed that the offence of sedition violates the fundamental right protected by Article 19(1)(a) of the Indian Constitution and should be repealed, but this should be done while implementing suitable laws, which will keep a check on the use of freedom of speech and expression by the general public. Such a freedom cannot be absolute and unbridled, a less harsh exception to it should be implemented by the Indian Parliament.

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<sup>36</sup> *Vinod Dua v Union of India* WP (Criminal) No 154/2020



## CONCLUSION

It is indeed concerning that laws from the British colonial era are still relevant in the judicial systems of India and Pakistan. The prevalent notion regarding sedition in India is heavily influenced by colonial ideals. The use of sedition law to suppress all forms of criticism directed at the administration, rather than only incitement to violence against the state, has been widely documented through the years.

Moreover, there is no explicit recognition of the right to freedom of press in the Indian Constitution and this paves the way for authorities to exploit such an inherent right. Notably, the attacks on the press increased dramatically in 2019 and 2020. More than 40% of the 154 Indian reporters jailed or experiencing official hostility for their professional job between 2010 and 2020 were in 2020 individually.

Nevertheless, the press has played an important role in the society over the years. For instance, the press played a vital role in Aarushi Talwar's murder case by revealing the flaws in the case, forcing the officers to take measures. While many nations have come to recognize freedom of the press as a general welfare, and it is one of the rights recognized in the Universal Declaration of Human Rights, official censorship and press control have not gone away totally. Reporters without Borders [RSF] is an international organization that analyses journalist circumstances across the world and evaluates nations based on their level of press freedom.

In essence therefore, repealing Section 124A of the IPC and taking into consideration the Fourteenth Amendment to the US Constitution, even India should explicitly mention the right to freedom of press under Part III of the Constitution. This should be done once an adequate system of checks and balances has been established in India so as to prevent such an important freedom from being exploited.