

**SEDITION IN INDIA : A critical examination of the present**  
**legal provisions**  
**By - SMIT**

**JUS IMPERATOR**

The recent conviction of Binayak Sen by a trial court in Raipur on charges of sedition (amongst other charges), and a spate of sedition charges filed against media personnel and human rights activists across the country have turned the spotlight on a 140 year old law, a draconian colonial legacy that has increasingly been used by governments across the country to stifle dissent and curb free speech. S.124A of the Indian Penal Code deals with sedition and states that “Whoever by words either spoken or written, or by signs or visible representation or otherwise, brings or attempts to bring into hatred or contempt, excites or attempts to excite disaffection towards the government established by law in India shall be punished.” The law in its wording disguises between bringing into hatred or contempt or exciting or attempting to excite disaffection towards the government established by law and what is termed in the explanation as expressing disapprobation against the state (which is permissible). This article proposes to examine the law of sedition and its exploitation by the government to curb the free speech of the people and whether such law is really essential in the present day society.

## Introduction

In the present day democracy, people are being arrested for voicing out their opinion, so much for their fundamental rights. The fundamental right encased in article 19(1)(a) of the Indian Constitution guarantees all its citizens their right to freedom of speech and expression. The fundamental rights of the Indian Constitution are placed at the superior most level, yet people are being arrested for supporting team they like, demanding their rights, expressing their creativity, reserving their choice not to stand up during National anthem.<sup>1</sup>

Section 124A of Indian Penal Code<sup>2</sup> lays down the law of sedition. But unfortunately, the incidents of misuse of this law are widespread. The abuse of this section by the government in accord to their own convenience is frowned upon by the courts of law who, time and again, have made clear the true meaning of this section in order to prevent

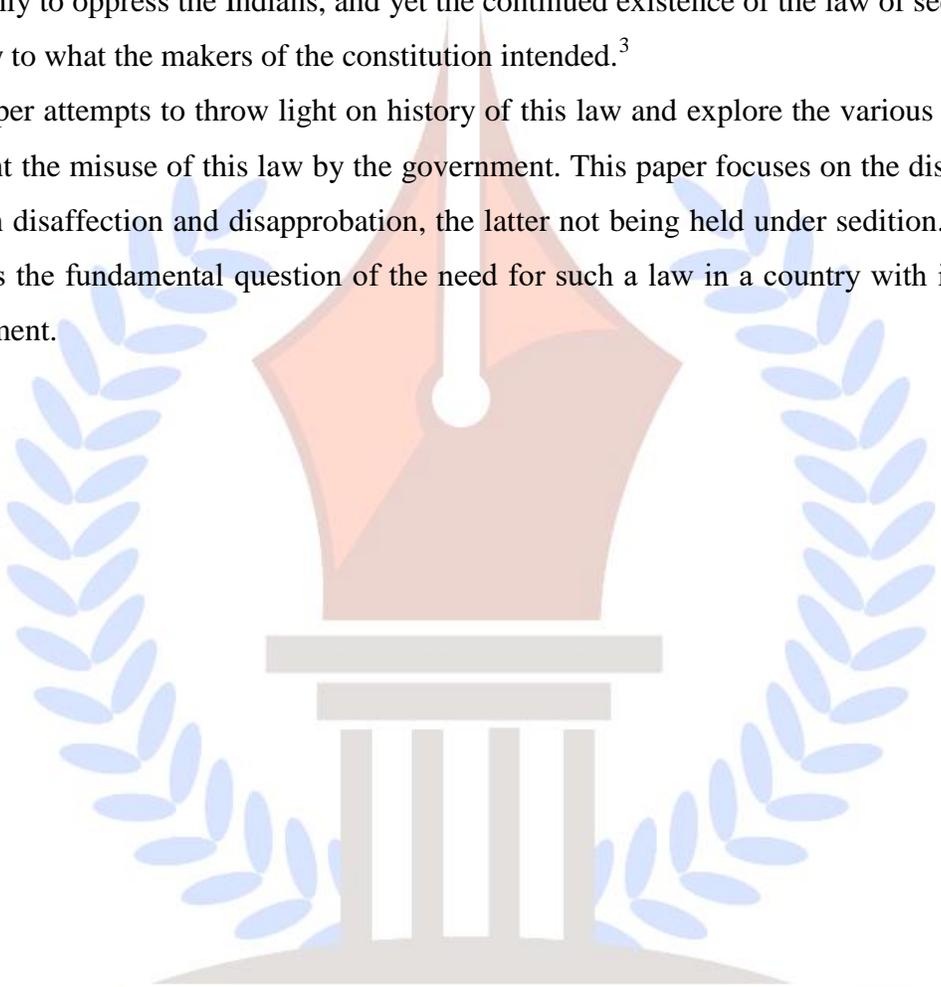
<sup>1</sup> <http://www.bbc.com/news/world-asia-india-37182206>

<sup>2</sup> Indian penal code

any such misuse. Though the court guards the constitution as it is suppose to yet people do face harassment due to the prolonged wait for justice and so much for what, exercising free speech?

The constitution is a forward looking document and the makers of our constitution aimed to make a break from the past, from the draconian colonial laws some of which were made only to oppress the Indians, and yet the continued existence of the law of sedition is contrary to what the makers of the constitution intended.<sup>3</sup>

This paper attempts to throw light on history of this law and explore the various cases to highlight the misuse of this law by the government. This paper focuses on the distinction between disaffection and disapprobation, the latter not being held under sedition. It also explores the fundamental question of the need for such a law in a country with it's own government.



# JUS IMPERATOR

---

<sup>3</sup> Upendra Baxi

## Statement of Problem

The section 124A of the Indian Penal Code i.e. sedition is being misused by the government to suit them self thus restricting the fundamental right of freedom of speech and expression.

## Research Objectives

- To explore history, use and evolution of the sedition law.
- To analyze the misuse of this law by the government.
- To distinguish between disaffection and disapprobation.

## Research Questions

- Whether there really is a need for the law of sedition in the present day world.
- Whether the distinction between disaffection and disapprobation made by the constitution of india is being followed while slapping charges of sedition.
- Whether the use of this section done by government is done in an orderly manner.

## Hypotheses

The continued existence of sedition law in India is like us singing ‘ God Save the Queen’.

## Methodology

The research methodology adopted in this research paper is doctrinal in nature for the qualitative enquiry of the subject matter. The author has relied on this methodology backed by theoretical research of articles, convention, case laws, reports, and statutes; from various sources.

## Need of Sedition Law

### History

The law of sedition entered India with the common law when British East India Company started introducing its own laws for governance. The press in the presidency towns were subjected to the stringent restrictions of the early English Law and did not have the benefit of the latter statutory and judicial liberalisation in England.<sup>4</sup>

The Law Commission appointed in order to enact a criminal law for India by the Legislature under the Charter Act of 1833 proposed a section for sedition, but for some unaccountable reasons, the section was omitted when the Penal Code was enacted in 1860.<sup>5</sup> The probable reason for this is thought to be that after the transfer of power in 1858 when the crown assumed direct administration of the Indian territories and so the council had been undecided as to whether or not it had the competence to enact a law of sedition.<sup>6</sup>

The omission was unnoticed until 1869 when the Wahabi conspiracy started.

---

<sup>4</sup> Historical considerations

<sup>5</sup> *ibid*

<sup>6</sup> *ibid*

Section 124A did not make it into the IPC until 1870 (although a section corresponding to it was present in Thomas Macaulay's Draft Penal Code in 1835). It was brought in 10 years after the IPC was introduced, possibly, to counter the surging Wahabi activities in the subcontinent. At that point, it was a law against "exciting disaffection." The first case was registered, in 1891, when the editor of a newspaper called *Bangobasi* was booked for publishing an article criticising an "Age of Consent Bill." The jury could not reach a unanimous verdict and the judge, in that case, refused to accept any verdict that was not unanimous. The editor was released on bail, and, after he issued an apology, charges against him were dropped.<sup>7</sup>

The Britishers barbarically used this law to curb the Indian independence uprising as seen in a plethora of cases.

The most famous of them was the sedition trial of Bal Gangadhar Tilak in 1897. The government claimed that some of the speeches that referred to Shivaji killing Afzal Khan, had instigated the murder of the much reviled Plague Commissioner Randand another British officer Lieutenant Ayherst, which occurred a week later. The two officers were killed as they were returning from the reception and dinner at Government House, Pune, after celebrating the Diamond Jubilee of Queen Victoria's rule. Tilak was convicted of the charge of sedition, but released in 1898 after the intervention of internationally known figures like Max Weber on the condition that he would do nothing by act, speech, or writing to excite disaffection towards the government. In 1898, the law was amended to reflect Stacey's interpretation. The British included the terms "hatred" and "contempt" along with disaffection. Disaffection was also stated to include "disloyalty and all feelings of enmity". The British parliament while debating these amendments took into account the defence's arguments in the Tilak case, and the decisions in two subsequent cases, to ensure there were no loopholes in the law.<sup>8</sup>

The Federal Court had, in defining sedition in the *Niharendu Dutt Majumdar* case held that in order to constitute sedition, "the acts or words complained of must either incite to

---

<sup>7</sup> <http://www.caravanmagazine.in/vantage/section-124a-sedition-jnu-protests>

<sup>8</sup> Disaffection and the Law: The Chilling Effect of Sedition Laws in India by Siddhartha

disorder or must be such as to satisfy reasonable men that that is their intention or tendency”, but the Privy Council, in the Sadashiv case overruled that decision and emphatically reaffirmed the view expressed in Tilak’s case to the effect that “the offence consisted in exciting or attempting to excite in others certain bad feelings towards the government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small”.<sup>9</sup>

The arbitrary use of this law sadly hasn’t ended with the British rule. It still continues to punish the innocents for voicing out their opinions. As Justice (nhjzdc) said in Tara Singh<sup>10</sup> case, “ India is now a sovereign democratic State. Governments may go and be caused to go without the foundations of the State being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about. It is true that the framers of the Constitution have not adopted the limitations which the Federal Court desired to lay down. “<sup>11</sup>



---

<sup>9</sup>ibid

<sup>10</sup> ibid

<sup>11</sup> ibid

## Disaffection vs. Disapprobation and misuse

[124A. Sedition.—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 in [India], shall be punished with [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.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.<sup>12</sup>

The section 124 of Indian penal code clearly lays down that only disaffection towards government is criminal offence and not disapprobation, but people are being arrested for the measures of the government. The same thing occurred in no of cases like **Tara Singh Gopi Chand vs The State on 28 November, 1950, Ramnandan vs The State, Kedar Nath Singh vs State Of Bihar on 20 January, 1962**. All this cases are basically of disapprobation where this people were wrongfully arrested for voicing their displeasure towards the measures of the government.

Even light humour is not spared where In September 2001, cartoonist Aseem Trivedi was arrested after a complaint that his cartoons mocked the corruption and national emblem. The charges were dropped a month later following widespread criticism and public protests. It is a fundamental virtue of a democracy to raise voice

---

<sup>12</sup> IPC

and express displeasure against the governmental acts and policies. It is undemocratic to punish citizens for the same.

The government also misuses the sedition law to suit its own means. The second largest democracy of the world does not even give its citizen the freedom to express themselves in public.

In March 2014, 60 Kashmiri students in Uttar Pradesh were charged with sedition for cheering for Pakistan in a cricket match against India. Authorities dropped the charges following legal advice from the law ministry.

In August 2014, authorities in Kerala charged seven young men, including students, with sedition after a complaint that they had refused to stand up during the national anthem in a cinema.

In October 2015, folk singer S Kovan was held in Tamil Nadu for two songs criticising the state government for allegedly profiting from state-owned liquor shops at the expense of the poor.

In February 2016, student leader Kanhaiya Kumar was arrested and charged with sedition for allegedly shouting anti-India slogans. He was later freed on bail.

In 2012 and 2013, an astonishing number of 23,000 men and women who protested against a nuclear power plant in Tamil Nadu were held for "waging war against the state" and sedition - 9,000 of them for sedition alone. "Police would name a few accused and then add 2,000 others without naming them while booking them for sedition. That's how arbitrary it is," anti-nuclear activist SP Udayakumar tells me.<sup>13</sup>

---

<sup>13</sup> (n 1)

### **Conclusion**

Since the beginning this law of sedition has been exploited and misused restricting the rights of freedom of speech and expression. Earlier it was been exploited by the britishers to curb the freedom struggle in check and now even our self elected democratic government is doing the same by making arbitrary arrest in name of sedition to suit themselves.

Any disapprobation against the government is also punished under sedition which is the most undemocratic.

There is no need for such a law in a government that is elected by its own people for in such a structure, governments may come and go but the institution remains sacred.

