# INDIAN PERSPECTIVE CHANGES ON THE LAW OF SEDITION, INDIAN PENAL CODE 1860- 2015

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**Abstract:** The law of sedition in India as assumed controversial importance largely on account of change in the body politic and also because of the constitutional provision of freedom of speech guaranteed as a fundamental right. The law of sedition is mainly contained in section 124-A of the Indian Penal Code, 1860. The reasons spate instances of invoking sedition laws against human rights activist, journalist and public intellectuals in the country have raised important questions on the undemocratic nature of these laws, which were introduced by the British colonial government. This article is an effort at bringing together various arguments to make law of sedition more effective. This article deals with meaning of sedition, history of sedition, kinds of sedition, meaning of section 124-A of IPC. Constitutional validity of section 124-A of IPC, comparative studies with different countries and lastly some suggestions are made to make the sedition laws more effective.
**Keywords:** Fundamental Right, Sedition, Human Rights, Democracy

**Introduction:** The law relating to the offence of sedition was first introduced in colonial India through Clause 113 of the Draft Indian Penal Code ('Draft Penal Code'), proposed by Thomas Babington Macaulay in 1837. However, when the Indian Penal Code ('IPC') was finally enacted after a period of 20 years in 1860, the said section pertaining to sedition had inexplicably been omitted. Although Sir James Fitzjames Stephen, architect of the Indian Evidence Act, 1872, and the Law Secretary to the Government of India at the time, attributed the omission to an 'unaccountable mistake', various other explanations for the omission have been given. Some believe that the British government wanted to endorse more comprehensive and powerful strategies against the press such as the institution of a deposit forfeiture system along with more preventive and regulatory measures. Others proffered that the omission was to be primarily attributed to the existence of §§121 and 121A of the IPC, 1860. It was assumed that seditious proceedings of all kinds were to be subject to official scrutiny within the ambit of these sections.

The immediate necessity of amending the law, in order to allow the government to deal more efficiently with seditious activities was first recognized by the British in light of increased Wahabi activities in the period leading up to 1870. With increasing incidents of mutinous activities against the British, the need to make sedition a substantive offence was widely acknowledged, and the insertion of a section pertaining specifically to seditious rebellion was considered exigent. It was the recognition of this rising wave of nationalism at the turn of the 20th century which led to the bill containing the law of sedition finally being passed. The offence of sedition was incorporated under §124A of the IPC on November 25, 1870, and continued without modification till February 18, 1898.

The amended legislation of 1870 was roughly structured around the law prevailing in England insofar as it drew heavily from the Treason Felony Act, the common law with regard to seditious libels and the law relating to seditious words. The Treason Felony Act, extensively regarded as one of the defining Acts of the English law pertaining to treason, imposed liability on all those who harbored feelings of disloyalty towards the Queen. Any thought connoting unfaithfulness or treachery towards the Crown, coupled with the presence of an overt act, *i.e.*, an act from which an apparent criminal intention could be inferred, was subject to punishment within the ambit of this legislation.

After the initiation of the law of sedition in 1870, it was allowed to remain in force, unaltered, for a period of 27 years. Throughout this period, one of the primary objectives of the British Government was to strengthen this law. Therefore, it ultimately approved the enactment of two cognate laws: the

Dramatic Performances Act XIX of 1876 ('DPA') and the Vernacular Press Act (IX) of 1878. These Acts came to be popularly referred to as 'preventive measures'. While the former law was primarily introduced to keep a check on seditious activities in plays, the latter was formulated to actively suppress criticism against British policies and decisions in the wake of the Deccan Agricultural riots of 1875-76.

Since it came into operation in 1870, the law of sedition has continued to be used to stifle voices of protest, dissent or criticism of the government. While the indeterminate invoking of the provision has put it in the media spotlight, there has been very little academic discussion with respect to the nature of the law and its possible repeal.

The punishment for seditious offences is known to be especially harsh compared to other offences in the IPC. It is a cognizable, non-bailable and non-compoundable offence that can be tried by a court of sessions. It may attract a prison term of up to seven years if one is found guilty of comhermitting seditious acts. It is very difficult for a person accused

of sedition to get bail. The highly subjective nature of the offence makes it necessary that courts determine on a case-to-case basis if any threat is caused to the stability of the State or its democratic order. Leaving such a determination to legislative or executive feat only enables a repressive government to undermine the free speech guarantee.

**The origins of sedition law:** In the 13th century, the rulers in England viewed the printing press as a threat to their sovereignty. The widespread use of the printing press thus prompted a series of measures to control the press and the dissemination of information in the latter half of the century. These measures may broadly be categorized as the collection of acts concerning *Scandalum Magnatum* and the offence of Treason. While the former addressed the act of speaking ill of the King, the latter was a more direct offence "against the person or government of the King".

The first category of offences, classified as acts concerning *Scandalum Magnatum*, were a series of statutes enacted in 1275 and later. These created a statutory offence of defamation, which made it illegal to concoct or disseminate 'false news' (either written or spoken) about the king or the magnates of the realm. However, its application was limited to the extent that the information had to necessarily be a representation of facts as the truth. Thus, truth was a valid defense to the act.

The second category of offences was that of treason, subsequently interpreted as constructive treason. Essentially, treason was an offence against the State. It was understood that all the subjects of the rulers owed a duty of loyalty to the king. Thus, if any person committed an act detrimental to the interests of the rulers, they would be guilty of the offence of treason. Initially, the offence required that an *overt* act be committed to qualify as treason.

However, by the 14th century, the scope of the offence was expanded through legislation and judicial pronouncements to include even speech in its ambit. This modified offence was known as constructive reason.

Despite the existence of the aforementioned categories of offences, the rulers faced many hurdles in curbing the expression of undesirable opinions about them. While the 'expression of fact' and truth acted as defences to the offence of *Scandalum Magnatum*, the offence of treason also had various safeguards. Only common law courts had jurisdiction over the offence.

Further, it necessitated a procedure wherein one would have to secure an indictment for the accused before they faced a trial by the jury. Initially, the overt act requirement also acted as a complication while trying to secure convictions.

However, with the expansion in the scope of the crime to include speech, this defense became unavailable. To overcome these procedural and substantive difficulties, the offence of seditious libel was literally invented in the court of the Star Chamber.

The offence of seditious libel was first devised in the Star Chamber decision in *de Libellis Famosis*. In this case, the defendants had confessed to ridiculing some clergymen of high status. While drawing from the common law private offence of libel, the court eschewed the requirements thereof. Instead, it condemned the criticism of public officials and the government and stressed that any criticism directed at them would inculcate disrespect for public authority. Since the goal of this new offence was to cultivate respect for the government in power, truth was not considered a defence. It also evaded the various safeguards of the offences of Treason and *Scandalum Magnatum*that it was modelled on. This judgment cited no precedent, as there was none. Previously, 'libels' were purely private actions for damages.

Henceforth, the offence of seditious libel was used as a ruthless tool for the curbing of any speech detrimental to the government. Over the course of many cases, it came to mean slander or libel upon the reputations and/or actions, public or private, of public officials, magistrates and prelates, which sought to divide and alienate "the *presente* governors" from "the *sounde* and well affected *part* of the *subjects*". If the speech published was true, the offence was only aggravated as it was considered more likely to cause a breach of the peace.

By the 18th century, the crime of seditious libel was viewed as a harsh and unjust law that was used by the ruling classes to trample any criticism of the Crown. However, given its utility; it was seen as a convenient tool in the hands of the rulers. Thus, when a penal code was being drafted for colonial India, where the rulers had the task of suppressing opposition, it was only obvious that seditious libel would be imported into the territory of India.

**Opposition in the constituent assembly:** At the time of the Indian movement for independence from British rule, the law of sedition was applied against great nationalists, such as Annie Besant, Bal Gangadhar Tilak and Mahatma Gandhi, as a tool to curb dissent. Keeping such excesses in mind, the Freedom of Speech and Expression was originally encompassed in Article 13 of the Draft Constitution. In its original form, this provision guaranteed this right subject to restrictions imposed by Federal Law to protect aboriginal tribes and backward classes and to preserve public safety and peace.

A proposal for an amendment to this provision was moved in the Constituent Assembly to permit the

imposition of limitations on this right on the grounds of "libel, slander, defamation, offences against decency or morality or sedition or other matters which undermine the security of the State."

However, in light of the biased nature of judicial pronouncements pertaining to cases of sedition in India, along with a precipitous rise in the abuse of sedition law to incarcerate nationalists, the final drafters of the Constitution felt the need to exclude sedition from the exceptions to the right to freedom of speech and expression.

A prominent objection to the inclusion of sedition as an exception to the freedom of speech and expression was raised by Sardar Hukum Singh, who noted that in the United States of America, any law that limited a fundamental right is mandatorily subjected to judicial scrutiny and must be deemed constitutional. However, by granting a blanket protection to any sedition law that the Parliament may legislate upon, the courts in India would be incapacitated from striking down an errant law for violating the right to the freedom of speech and expression. He also criticised the validation of laws on the ground that they were "in the interest of public order" or undermined the "authority or foundation of the state" as classifications that were too vague.

There was a clear consensus among the members of the Constituent Assembly on the oppressive nature of sedition laws. They expressed their reluctance to include it as a ground for the restriction of the freedom of speech and expression. The term 'sedition' was thus dropped from the suggested amendment to Article 13 of the Draft Constitution.

**Developments in the law Postindependence:** After India attained independence in 1947, the offence of sedition continued to remain in operation under §124A of the IPC. Even though sedition was expressly excluded by the Constituent Assembly as a ground for the limitation of the right to freedom of speech and expression, this right was still being curbed under the guise of this provision of the IPC. On three significant occasions, the constitutionality of this provision was challenged in the courts.

These cases shaped the subsequent discourse in the law of sedition. Following the decision in Niharendu Majumdar, §124A was struck down as unconstitutional in *Romesh Thappar* v. *State of Madras*, *Ram Nandan* v. *State*, and *Tara Singh* v. *State* ('Tara Singh'). In Tara Singh, the East Punjab High Court relied on the principle that a restriction on a fundamental right shall fail *in toto* if the language restricting such a right is wide enough to cover instances falling both within and outside the limits of constitutionally permissible legislative action affecting such a right.

During the debates surrounding the first amendment to the Constitution, the then Prime Minister Jawaharlal Nehru was subjected to severe criticism by members of the opposition for the rampant curbs that were being placed on the freedom of speech and expression under his regime. This criticism, accompanied by the rulings of the courts in the aforementioned judgments holding §124A to be unconstitutional, compelled Nehru to suggest an amendment to the Constitution.

Thus, through the first amendment to the Constitution, the additional grounds of 'public order' and 'relations with friendly states' were added to the Article 19(2) list of permissible restrictions on the freedom of speech and expression guaranteed under Article 19(1)(a). Further, the word 'reasonable' was added before 'restrictions' to limit the possibility of misuse by the government.

In the parliamentary debates, Nehru stated that the intent behind the amendment was not the validation of laws like sedition. He described §124A as 'objectionable and obnoxious' and opined that it did not deserve a place in the scheme of the IPC.

**Distinction between government and people engaged in administration:** While defining the contours of the crime of sedition, the court in Kedar Nath also sought to distinguish between 'the Government established by law' as used in §124A of the IPC from people engaged in the administration for the time being. The former was said to be represented by the visible symbol of the State. Any attempt to subvert the government established by law would jeopardise the very existence of the State. However, any *bona fide* criticism of government officials with a view to improve the functioning of the government will not be illegal under this section. This exception was introduced to protect journalists criticising any government measures.

It is submitted, however, that on closer scrutiny, this distinction is murky and is difficult to practically implement. Any persons involved in the daily administration of the government or acting as a representative of the people in the government would also necessarily constitute a visible symbol of the state. As a result of this tenuous distinction, a conflicting situation is created.

While calling all the bureaucrats of a government "thugs and profiteers" does not qualify as a seditious act, attributing the same qualities to the government as a whole would bring the speech within the ambit of sedition.

**Post-independence change in nature of government:** It must be noted that the Court was still driven by the notion of sedition as a crime that affected the very basis of the State. It had thus been included under the section related to 'Offences against the State' in the IPC.

The rationale for the criminalization of such acts is generally that it fosters "an environment and

psychological climate conducive to criminal activity" even though it may not incite a specific offence.

Given that sedition is a crime against the state, one must take into consideration the changing nature of the State with time. At the time when sedition was introduced in the IPC, India was still a part of the British Empire and was ruled by the British monarchs. Since all authority emanated from the Crown and the subject owed personal allegiance to the Crown, it was considered impermissible to attempt to overthrow the monarchs through any means.

Subsequent to the attainment of independence, however, all authority is derived from the Constitution of India, rather than an abstract 'ruling state'.

The 'State' now consists of the representatives of the people that are elected by them through democratic elections. Thus, a crime that is premised on preventing any attempt to alter the government loses its significance. It is possible for governments to come and go without the very foundations of the State being affected.

In fact, in Tara Singh, while striking down §124A as being *ultra vires* Article 19(1)(a) of the Constitution, the Court drew a distinction between a democratically elected government and a government that was established under foreign rule. In the former, a government may come in power and be made to abdicate that power, without adversely affecting the foundations of the state. This change in the form of government has made a law of the nature of sedition obsolete and unnecessary.

Lastly, it has also been emphasised that the courts must take into consideration the growing awareness and maturity of its citizenry while determining which speech would be sufficient to incite them to attempt to overthrow the government through the use of violence. Words and acts that would endanger society differ from time to time depending on how stable that society is. Thus, meetings and processions that would have been considered seditious 150 years ago would not qualify as sedition today. This is because times have changed and society is stronger than before.

This consideration becomes crucial in determining the threshold of incitement required to justify a restriction on speech. Thus, the audience must be kept in mind in making such a determination. In *S. Rangarajan* v. *P. Jagjivan Ram* ('Rangarajan'), the Court held that "the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view." It gives an indication of what sort of acts might be considered seditious, when it observes that the film in question did not threaten to overthrow the government by unlawful or unconstitutional means, secession or attempts to impair the integrity of the country.

**Analyzing judgments Between 2000-2015:** Since the eponymous decision of the Supreme Court in Kedar Nath, the courts have applied the law of sedition on various occasions. To examine how the courts have dealt with cases of sedition in the recent past, we have examined all cases that came before the high court's and Supreme Court between the years 2000 and 2015. Of these cases, the cases where the question of sedition was not directly in issue or where the court did not address the issue of sedition were eliminated. It was found that there have been only fourteen cases of sedition in the last fifteen years, of which only two were heard before the Supreme Court. Further, there have been only three convictions, of which one conviction was made by the Supreme Court. In this part of the paper, we will briefly analyse these cases. For the purpose of clarity, we have categorized them as 'Clear Acquittal Cases', 'Grey Area Cases' and 'Convictions'. While the Clear Acquittal Cases are those where it could easily be determined that the requirements for sedition were not satisfied, the Grey Area Cases are where the courts acquitted the accused, but where these acquittals give us crucial guidance on what activities *do not* qualify as sedition.

**Clear Acquittal Cases:** Of the fourteen cases of sedition before the courts, six can be categorised as Clear Acquittal Cases. As per Kedar Nath, it is necessary that the act causes disaffection towards the government established by law and that it incites people to violence and to disrupt public order. It can be seen from the facts of these cases that the acts involved clearly did not satisfy these requirements.

The courts recorded findings to this effect, and acquitted the accused in these cases. In one such case, *P.J. Manuel* v. *State of Kerala*, the accused affixed posters on a board at the Kozhikode public library and research centre, exhorting people to boycott the general election to the Legislative Assembly of the state. The poster proclaimed, "No vote for the masters who have become swollen exploiting the people, irrespective of difference in parties."

Consequently, criminal proceedings were initiated against him under §124A of the IPC for the offence of sedition.

The Kerala High Court observed that it needs to be examined whether the publication or preaching of protest, or even questioning the foundation or form of government should be imputed as "causing disaffection towards the government" in a modern democracy. The content of the offence of sedition must be determined with reference to the letter and spirit of the Constitution and not to the standards

applied during colonial rule. In support of its view, it cited authority to demonstrate that even the shouting of slogans for the establishment of a classless society in line with the tenets of socialism would not be punishable as sedition. Further, it noted that §196 of the Code of Criminal Procedure, 1973, ('CrPC') mandates that the government must expressly authorize any complaint filed for an offence against the State (under Part VI of the IPC) before the Court can take cognisance of such an offence. It thus held that the impugned act did not constitute the act of sedition and quashed the criminal proceedings against the petitioner.

The courts reached a similar conclusion in a case where the editor of a newspaper published articles claiming that the Police Commissioner of Ahmedabad city was corrupt and was responsible for a high profile murder, where the publisher and editor of an Urdu weekly was charged for publishing articles that claimed denounced the 'injustice' being done to Muslims and claimed that former Prime Ministers Indira Gandhi and Atal Bihari Vajpayee had conspired against Muslims, and where the Chief Minister of Jammu and Kashmir had tweeted that if their Assembly had passed a resolution pardoning the death sentence of a terrorist (as had been done by the Tamil Nadu Assembly), the reactions would not have been so muted. Acquittals were also obtained by a filmmaker who made a documentary that highlighted the violence that affects the life of people in Kashmir, and by a cartoonist who drew cartoons highlighting and lampooning the corruption in the government.

**Grey Area Cases:** In five cases of sedition before the courts, the accused also managed to obtain acquittals on this charge. However, these cases have been categorized as Grey Area Cases as they involved acts that could be categorized as anti-national, secessionist or terrorist activities. However, the courts found that in the absence of an immediate threat of violence, these ideologies could not be criminalized. In *Gurjatinder Pal Singh* v. *State of Punjab*, for example, the accused petitioned the Punjab & Haryana High Court for an order to quash the First Information Report ('FIR') that had been filed against him under §§124A and 153B of the IPC. At a religious ceremony organised in memory of the martyrs during Operation Blue Star, the petitioner gave a speech to the people present advocating the establishment of a buffer state between Pakistan and India known as Khalistan. He stated that the Constitution was a "worthless/ useless" books for the Sikhs. The supporters of the petitioner then raised aggressive slogans and naked swords were raised in the air. The High Court cited the decision of the Supreme Court in *Balwant Singh* v. *State of Punjab*, where it was held that the mere casual raising of slogans a couple of times without the *intention* to incite people to create disorder would not constitute a threat to the Government of India. Crucially, it held that even explicit demands for secession and the establishment of a separate State would also not constitute a seditious act. Thus, the FIR against the accused was quashed.

Courts have also consistently found that criminal conspiracies and acts of terrorism did not constitute seditious acts. In *Mohd. Yaqub* v. *State of W.B.*, the accused had admitted to being a spy for the Pakistani intelligence agency ISI. He would receive instructions from the agency to carry out antinational activities. He was thus charged for sedition under §124A of the IPC.

Citing the elements of sedition that were laid down in Kedar Nath, the Calcutta High Court found that the prosecution had failed to establish that the acts were seditious and that they had the effect of inciting people to violence. Thus, the accused were found not guilty as the strict evidentiary requirements were not met.

Similarly, in *Indra Das* v. *State of Assam* ('Indra Das'), the accused had been shown to be a member of the banned organisation ULFA. It was also alleged that he had murdered another man, even though there was no evidence for the same. Applying the decision of the Court in Kedar Nath and Niharendu Majumdar, the Supreme Court found that no seditious acts could be imputed to the accused, and the appeal was allowed. This strict evidentiary requirement was also echoed in the decision of the courts in *State of Assam* v. *Fasiullah Hussain* and *State of Rajasthan* v. *Ravindra Singhi*, where the courts acquitted the accused of the charge of sedition on the grounds that the prosecution had failed to produce sufficient evidence to prove that they had committed a seditious act.

**Convictions:** Finally, there were only three cases where the accused was convicted of the charge of sedition. While two of these cases were before the Chhattisgarh High Court, one was before the Supreme Court. However, as will be argued in this part, these cases were *per incuriam* and were based on an incorrect application of the law and failure to take into cognisance the legally binding precedent on the matter.

In *Binayak Sen* v. *State of Chhattisgarh*, one of the accused Piyush Guha made an extra-judicial confession that Binayak Sen, a public health advocate, had delivered certain letters to him to be delivered to Kolkata. These letter allegedly contained naxal literature – some contained information on police atrocities and human rights. Convicting the accused of sedition, the High Court cited the widespread violence by banned Naxalite groups against members of the armed forces. However, it did not explain how the mere possession and distribution

of literature could constitute a seditious act. Further, the High Court did not address the question of incitement to violence, which was evidently absent in this case. Consequently, the judgment of the Chhattisgarh High Court in this case has also been the subject of immense criticism.

In *Nazir Khan* v. *State of Delhi* ('Nazir Khan'), the accused underwent training with militant organisations such as *Jamet-e-Islamic* and *Al-e-Hadees*, and was given the task of carrying out terrorist activities in India. He then kidnapped British and American nationals visiting India, and demanded that ten terrorists that were confined in jail be released in exchange for the release of the foreign nationals. However, he was caught by the police after one of the hostages managed to escape. He was subsequently tried for several offences, including sedition. The Trial Court had convicted the accused on this charge, stating that they were trying to 'overawe' the Government of India by criminal force and arousing hatred, contempt and dissatisfaction in a section of people in India against the government. Further, they had collected materials and arms to carry out these acts. The Supreme Court noted that the "line dividing preaching disaffection towards the Government and legitimate political activity in a democratic set up cannot be neatly drawn." However, it then disposes of its analysis of whether the act qualified as sedition in a paragraph without citing any precedent. It does not give any reasons why the particular acts in this case were seditious, but instead merely posits that "the objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion." It then states that the offence under §124A has been "clearly established".

In this case, the Court appears to blur the distinction between the 'act' and the 'incitement' to the detriment of public order by suggesting that the act of sedition itself has the tendency to incite people to insurrection and rebellion. It thus disposes of the need to examine whether the acts of the accused had the tendency to incite people to disrupt public order, as the act itself constitutes the incitement. We argue that this interpretation of the Court is *per incuriam*, as it has been made without reference to several cases that operate as binding legal precedent on the matter. Most significantly, it ignores the decision in Kedar Nath, which was passed by a five-judge bench and was thus binding on the two-judge bench in this case. In Kedar Nath, as has been explained in Part III of this paper, the Court drew a clear distinction between the act of sedition and the incitement to public disorder. Inciting disaffection against the government would not constitute sedition unless it was accompanied by the direct incitement to violence. In fact, it was this distinction that rendered the provision constitutional. Thus, the decision of the Court in Nazir Khan is incorrect in holding that seditious acts themselves constituted incitements to violence.

In *Asit Kumar Sen Gupta* v. *State of Chhattisgarh* ('Asit Gupta'), the appellant challenged his conviction *inter alia* under §124A of the IPC before the Chhattisgarh High Court (Bilaspur Bench), for which he had been sentenced to undergo rigorous imprisonment for three years and a fine of Rs. 500. He was found to be in possession of Maoist literature and was a member of the banned organisation Communist Party of India (Maoist). He was accused of "inciting" and "provoking" people to join the organisation, with the intention of overthrowing the current "capitalist" government through armed rebellion. In coming to its conclusion, the Court cited the decision of the Supreme Court in *Raghubir Singh* v. *State of Bihar*, where it was held that the accused does not necessarily have to be the author of seditious material for a charge of sedition to be established. It was enough to prove that the accused had circulated or distributed the seditious material. Thus, it concluded that in this case it was enough that the accused was in possession of this Naxalite literature and was propagating the information contained therein. However, while the Court established that merely circulating or distributing seditious material could make a person liable under §124A, we argue that its reasoning with respect to the content of the offence was lacking in several respects.

To determine the content of the offence of sedition, the Court applied the decision of the Supreme Court in Nazir Khan, to conclude that "the very tendency of sedition is to incite the people to insurrection and rebellion".

However, as we have explained above, the decision of the Court in Nazir Khan was *per incuriam*, and thus the Court in Asit Gupta incorrectly applied it as precedent. The binding authority in this matter still remains Kedar Nath, and the courts must apply the ratio in that case faithfully.

**Conclusion:** Since its origin in the court of Star Chamber in England, the law of sedition has been defined by uncertainty and non-uniformity in its application. By keeping its scope deliberately vague, generations of members of the ruling political class have ensured that they have a tool to censor any speech that goes against their interests.

The courts have also been unable to give a clear direction to the law. While the final position on the law in India was laid down as early as 1960, the law of sedition is characterised by its incorrect application and use as a tool for harassment. Thus, some of the reasons for which people have been booked under the

provision (and often incarcerated) include liking a Facebook page, criticising a popular yoga expert, cheering for the Pakistani team during a cricket match versus India, asking a question about whether the stone-pelters in Jammu and Kashmir were the real heroes in a university exam, making cartoons that allegedly incite violence and making a speech at a conference highlighting the various atrocities committed by the armed forces.

An analysis of the judgment of the Supreme Court in Kedar Nath itself demonstrates certain deficiencies in how the law is currently understood. There has been a shift in how we understand 'security of the state' as a ground for limiting the freedom of speech and expression. Further, a change in the nature of the government and the susceptibility of the common people to be incited to violence by an inflammatory speech has also reduced considerably. Even the maintenance of 'public order' cannot be used as a ground to justify these laws as it is intended to address local law and order issues rather than actions affecting the very basis of the State itself.

Drawing inspiration from the repeal of the law of sedition in England, it may also be argued that the law of sedition is now obsolete. Various other statutes govern the maintenance of public order and may be invoked to ensure public peace and tranquility. In light of the above observations, it is time that the Indian legislature and judiciary reconsider the existence of provisions related to sedition in the statute books. These provisions remain as vestiges of colonial oppression and may prove to undermine the rights of the citizens to dissent, protest against or criticize the government in a democracy.

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