**CRITICAL ANALYSIS OF SEDITION LAW IN INDIA WITH RECOMMENDATION OF 279th LAW COMMISSION REPORT**

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Abstract

*This article provides a comprehensive examination of sedition laws, its historical context, interpretation, and proposed changes. Further the article delves into historical context of sedition law in India and in world. Through landmark cases the interpretation and application of sedition law by judiciary is analysed. There is comparative analysis of different nation in regard to sedition law in current scenario. The critical evaluation Law Commission recommendation, its previous report and country specific assessment has been provided. At the end the hypothesis taken is proved and suggestion has been made. The aim of study is to tell that the there is a need of sedition law in country like India in current scenario.*

Keywords: Sedition Law, Law Commission Report, Indian Penal Code (IPC), Misuse

# Research Methodology

The method adopted for the research is basically content analysis of the available secondary data. Content analysis is a methodology in social sciences by which text are studied as to authorship, authenticity or meaning. Content analysis is the summarizing, quantitative analysis of text that relies on the scientific methods and does not limit it as to the type of variables that may be measured or the context in which new text are presented or created. In this research the methodology of content analysis is used for analysing internet data comprising of various secondary and primary sources such as articles, previous researches, reports of various institutions and books, etc. For the study secondary data collection is followed by researcher as it is a doctrinal study.

## OBJECTIVES

* To do critical analysis of Law Commission Report.
* To do comparative analysis of Sedition law in different countries.
* To know the historical background of Sedition Law.

## HYPOTHESIS

H0**:** There is need of Sedition Law in India

H1: There is no need of Sedition Law in India

# LITERATURE REVIEW

* By **B S UDAY KIRAN[[2]](#footnote-2),** this paper is based on study of Indian Sedition Law. Simply by explaining the concept and background, further the paper consider whether the sedition law fits under Article 19(2) under the reasonable restriction or violates Article 19 (1) (a) guarantees freedom of speech and expression to the citizen of the country. And is also talks about the relevancy of sedition law.
* By **Jhalak & Shantanu**[[3]](#footnote-3), this paper analysis sedition law by in bringing together all the debates of repealing and amending these laws. The existence of this law in our statute books and its criminalization seems unjustified in our democratic society.

# **Introduction**

The sedition law in India, which dates back to the introduction of the Indian Penal Code in 1860, has grab an attention and discussion of people due to a recent report by the Law Commission. This report is critically scrutinize by people through article, blog and debate as it raises concerns about the law's compatibility with fundamental rights and its potential to suppress dissent and silence individuals who express critical views against the government it give an immense power to charge anyone under this section. Since India's independence, the sedition law has undergone scrutiny by numerous leaders and has been evaluated by various judges regarding its application. Even today, the law remains in existence. Chief Justice N.V. Ramana and Mahatma Gandhi are among those who have expressed their views on the sedition law.

Chief Justice N.V. Ramana, in a statement which is thought-provoking, questioned the necessity of this law in our country after 75 years of independence. He remarked, “Is the law still necessary in our country after 75 years of Independence? Dispute is it is a colonial law, the very same law was used by the British to silence (Mahatma) Gandhi”[[4]](#footnote-4).

During the trial, Mahatma Gandhi, despite pleading guilty to the offense, vehemently criticized Section 124A of the Indian Penal Code, which pertains to sedition. Gandhi expressed, “Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to express his or her disaffection provided one does not contemplate, incite or involve violence.”[[5]](#footnote-5)

These profound words by Gandhi highlight the essence of freedom of expression and the right to dissent. They underscore the inherent value of allowing individuals to express their discontent and criticism within the bounds of non-violence. Gandhi's stance reflects his belief that genuine affection and loyalty cannot be forced or regulated through legal means.

Moreover, Chief Justice N.V. Ramana's question, and Gandhi ji perspective, accentuates the need for a critical analysis and critique of the sedition law recommended by the Law Commission. Through this article we focus on how this law violates the fundamental rights of article 19(2) of Indian constitution and there is a potential chance where it may be used to silence dissenting voices. By delving into these aspects, we can gain a complete understanding of the implications of the sedition law and its impact on the principles of free speech and democratic values which were given in constitution by we the people of India which we give ourselves.

## Background and History of Sedition Law

### Origins and Evolution of Sedition Laws

Sedition laws, which aim to suppress or punish speech or actions deemed subversive or threatening to the established order, have a long and varied history across different countries. Understanding the background and evolution of sedition laws provides valuable insights into their context and impact. Here is a brief overview of the background and history of sedition laws worldwide:

### Sedition law in Ancient period

In ancient civilizations, sedition-like laws existed to maintain political stability and protect the ruling elite class from slave and normal people. Here is a detailed discussion on ancient sedition laws:

1. Ancient Greece:

In ancient Greece, laws against "seditious activities" were enacted to safeguard the stability and order within the city-state. Athens, in particular, had laws prohibiting actions that threatened the unity or integrity of the polis. These laws were aimed at preventing rebellions, uprisings, and the spread of dissenting ideas that could undermine the authority of the ruling class.

The Athenian law of “*eisangelia*” (indictment for treason) allowed citizens to bring charges against individuals deemed to be engaging in seditious activities. Such activities included inciting insurrection, spreading false rumours, or encouraging disobedience to the state. The penalties for sedition in ancient Greece ranged from fines and loss of civic rights to exile or death.

2. Ancient Rome:

In ancient Rome, sedition laws were closely associated with the concepts of “treason and disloyalty”. The Roman state aimed to maintain control over its vast empire and prevent internal threats to its authority. Laws against sedition and treason were used to protect the interests of the ruling class and suppress dissent.

The Lex Julia Maiestatis was a set of laws enacted by Emperor Augustus to combat sedition and treason. It criminalized actions such as inciting rebellion, conspiring against the state, or undermining the emperor's authority. Violators faced severe penalties, including exile, confiscation of property, or even execution.

The authorities used sedition laws to maintain social order and prevent the spread of ideas that could challenge the established power structures. These laws were intended to protect the rule of Roman Empire and ensure the loyalty of its subjects (citizen of that country).

### Other Ancient Civilizations:

Similarly concepts related to sedition law are existed in other ancient civilizations as well. Like In ancient Egypt, for instance, laws prohibited actions that threatened the stability of the pharaoh's rule or the social order. Violators could face severe punishments, including imprisonment or even death.

Similar laws against sedition or treason existed in various other ancient societies, including ancient China, Babylon, and Persia. These laws aimed to protect the authority of the ruling class and maintain social cohesion by suppressing dissent and rebellious activities.

We can note that the specific provisions and enforcement of ancient sedition laws varied across different civilizations and time periods. But the common objective was to preserve political stability, protect the ruling elite, and suppress any actions or ideas deemed threatening to the established order.

### Sedition law in medieval periods

At a time of the medieval period, sedition laws played an important role in maintaining social order and upholding the authority of the monarch. The power relationships between the royal, the church, and the general populace were closely related to these laws. Specific sedition laws varied across regions and time, they shared a common objective of suppressing dissent voices and preserving the established social, religious, and political hierarchy.

During medieval Europe, sedition laws were closely interpreted with laws against heresy and blasphemy. The Church held vast influence over that time, and any challenge to its doctrines or authority was seen as a threat to the religion and an insult to god's order. Laws against heresy were enacted to combat deviations from the accepted religious orthodoxy, while blasphemy laws aimed to protect the sanctity and dignity of the church. These laws were used as tools to suppress alternative religious beliefs, maintain the dominance of the Church, and ensure conformity among the masses.

Sedition laws were also employed to curb political dissent and preserve the power of the ruling elite. Expressing criticism of the monarchy or advocating or purposing political change was deemed seditious and treated as a serious offence. The ruling powers used sedition laws to suppress opposition, maintain their authority, and prevent potential uprisings or rebellions. The punishment for sedition charges is ranged from fines and imprisonment to more severe punishments such as torture and execution, serving as a deterrent to dissent.

The enforcement of sedition laws in the medieval period was often carried out by special tribunals. The Enquiry Trail was established by the Church to identify and eliminate heresy, and its reach extended to suppressing sedition as well. The questioning conducted trials, investigations, and interrogations to root out individuals considered seditious or heretical, thereby exerting control over religious and political discourse.

The application of sedition laws during the medieval period helped maintain social stability, preserve the authority of the ruling classes, and protect the interests of the church. These laws ensured conformity and discouraged challenges to the established order. However, they also stifled intellectual and political dissent, limiting freedom of expression and inhibiting social progress.

## Sedition law in evolution in different countries

Sedition laws have a significant history and have evolved differently in various countries. Here is a brief overview of the history and evolution of sedition laws in Britain, Australia, Canada, the United States, Sweden, and Norway:

1. Britain:

Evolution of Sedition laws in Britain goes back to the medieval period when they were used to suppress political opinion which is against authority and maintain the rule of the ruling class or monarch. Over the passage of time 17th century, specific sedition acts were enacted, such as the Sedition Act of 1661, which targeted criticism of the government and the established Church of England. These laws were used to suppress opposition voices and protect the monarchy. The laws evolved, and by the 19th century, sedition became a criminal offence. With the growth of democratic principles and free speech movements in Britain in the late 20th century, sedition laws in Britain gradually lost their relevance. And ultimately repealed in 2009 with the introduction of the Coroners and Justice Act.

2. Australia:

Country of Australia is a part of a British colony, sedition laws were inherited from Britain during the colonial era. The Australian colonies adopted the Act of 1661, and sedition offences were established into the colonial criminal codes. These laws aimed to protect the government and maintain order during periods of political unrest. However, with the emergence of independent nationhood and a focus on human rights, sedition laws in Australia faced criticism in 2010, the Australian government repealed sedition provisions from the Criminal Code Act, recognizing their potential impact on the fundamental right of freedom of speech.

3. Canada:

As both Canada and Australia are British colonies have a similar history related to sedition law that of Australia. British sedition laws were initially applied in colonial Canada to suppress dissent against the Crown and maintain social order. The Canadian Sedition Act of 1800 specifically targeted rebellious activities. With the passage of time, sedition laws faced challenges in the context of free expression and democratic rights. Due to this in 1987, Canada repealed its sedition laws through amendments to the Criminal Code, recognizing the need to protect freedom of speech and avoid the potential misuse of these laws.

4. United States:

Due to the United States constitution's protection of free speech and the rigidness of the US Constitution, the United States has approached sedition statutes differently. The Sedition Act of 1798 was put into effect at a time when political unrest was high; it was met with fierce resistance and was eventually allowed to expire. It is difficult to enforce laws that restrict free speech because the U.S. Supreme Court routinely interprets the First Amendment to offer broad protection.

5. Sweden and Norway:

Sedition laws in Sweden and Norway have undergone prominent changes over time. Sedition laws were enacted during the medieval period to maintain social order and protect the ruling class. With the growth of fundamental rights and an emphasis on freedom of expression, sedition laws does not fit well and faced criticism. Due to this Both Sweden and Norway repealed their sedition laws in the 20th century, recognizing the importance of protecting free speech and avoiding the misuse of such legislation.

# SEDITION LAW: OVERVIEW AND HISTORICAL CONTEXT

## Definition and Concept of Sedition Law

### Section of Indian Penal Code

According to Section 124A of IPC[[6]](#footnote-6),

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.]

According to Justice D.Y. Chandrachud

"A person can be said to be charged with sedition when his words or actions are aimed at creating public disorder or inciting violence."[[7]](#footnote-7)

"Sedition encompasses any expression or action that aims to challenge or subvert the established authority, create public unrest, or incite rebellion against the Indian government." - Ramachandra Guha, "India After Gandhi: The History of the World's Largest Democracy"

"Sedition is an act that involves any form of speech, writing, or other expressions aimed at inciting rebellion or resistance against the established authority of the Indian government." - Shashi Tharoor, "An Era of Darkness: The British Empire in India"

"Sedition refers to the act of promoting or encouraging disaffection, hatred, or contempt towards the Indian government, often through inflammatory or subversive means." - Romila Thapar, "The Past as Present: Forging Contemporary Identities Through History"

### Historical Context of Sedition in India

#### Pre-Independence Era (British Period)

The Sedition clause was not in the draft made by Lord Macaulay i.e. Indian Penal Code, 1860 but it was introduced in 1870 by James Stephen. And this clause was originally used by Britisher to suppress the right to freedom of speech at that era so that they can rule peacefully and violate the right of people in India. And if anyone says anything true against them they made him guilty under sedition clause in Indian Penal Code.

Further, there was only one explanation in this provision till 1898 after the amendment in 1898 two more explanation were added and the provision was made wider.

The case of *Queen Empress v. Jogendra Chunder Bose & ors*[[8]](#footnote-8) was first notable case as in this case court emphasised on the distinction between term disaffection and disapprobation and it was clearly stated that only disaffection is penalised not disapprobation which means this offence does not take people right away to freedom of speech.

In this case of *Queen Express V. Bal Gangadhar Tilak & Keshav Mahadev Bal*[[9]](#footnote-9) and *Queen Express v. Tilak & Bal*[[10]](#footnote-10) single judge bench was there and the justice widened the scope of “Disaffection” and said that it also include disloyalty toward government. And also said that intention is foremost thing to the offence of sedition and it can be presumed as per audience, content and circumstances of the speech.

In the case *In Re: Mohandas Karamchand Gandhi v. Unknown*[[11]](#footnote-11) it was held by court that Gandhi Ji was guilty of offense of sedition as he has written articles in Young India Journal which were seditious in nature and court given punishment of imprisonment for six years under section 124A of IPC.

*Niherendu Dutt Majumdar v. The King Emperor*[[12]](#footnote-12) in this case the Federal Court given the definition of sedition “public disorder or the reasonable anticipation or likelihood of public disorder”. Further in the case of *King Emperor v. Sadashiv Narayan Bhalerao*[[13]](#footnote-13) Privy Council rejected the interpretation of federal court and held that sedition does not require incitement to public disorder or violence.

#### Post-Independence Era

During the debate in Constituent assembly the proposal of Vallabh bhai patel i.e. sedition is an exception to freedom of speech was rejected as the proposal by K.M. Munshi was accepted that sedition is the provision of colonial period and how it can be used by British government to curb the freedom of speech.

*Tara Singh Gopi Chand v. The State*[[14]](#footnote-14) in this case the constitutional validity of section 124A of IPCwas challenged as against the freedom given in Article 19 of the Constitution of India[[15]](#footnote-15) and it was held by Punjab High Court that it is not in contravention of fundamental right of freedom of speech and expression and it does not place restriction on fundamental right.

*Kedar Nath Singh v. State of Bihar*[[16]](#footnote-16) in this case constitutional validity of sedition was challenged and court upheld the constitutional validity. And court also held that sedition will be invoke when there is some incitement to violence or would result in public disorder as interpreted in case of *Niharendu Dutt Majumdar v. King Emperor*[[17]](#footnote-17).

*Balwant Singh & Anr. Vs State of Punjab*[[18]](#footnote-18) in this case court held that the speech said by accused was not to incite people to commit violence and does not lead to public disorder.

*Vinod Dua vs Union of India*[[19]](#footnote-19) in this case court held that the measures of the Government can be criticized or comment can be made upon the same and it will be not an offense unless it incite people to violence or create public disorder.

*S.G Vombatkere v. Union of India*[[20]](#footnote-20) in this case the constitutionality of the sedition provision was challenged and apex court said that no fresh FIR will be registered until the next order is passed and if anything is filled then accused can seek relief from the court. The apex court also asked Law Commission to submit report on the same.

## Interpretation and application of sedition law by the judiciary

### *Queen Empress v. Bal Gangadhar Tilak & Keshav Mahadev Bal*[[21]](#footnote-21)

#### Facts

Bal Gangadhar Tilak was the editor of newspaper “Kesari”. He has written two article in that newspaper first “The Country’s Misfortune” and in this article government handling of plague in Pune was criticized and called Indians to rise against the rule.

Whereas, second article heading was “Shivaji Utterances” and it talked about the speeches given by Tilak in Shivaji festival, explained that Maratha King resisted Mughal rule with Glory.

#### Issue

The main issue was that speeches and article given by Bal Gangadhar Tilak would be considered seditious under section 124A.

#### Judgement

The speeches and article given by Tilak contain “Incitement” and promotes disaffection towards government which is an offense under 124A and Tilak was sentenced rigorous imprisonment of 18 Months. The court interpreted the sedition as an act which incite people to commit violence or create public disorder in the society.

### *Kedarnath singh v. State of Bihar*[[22]](#footnote-22)

#### Facts

The case is related to use of wrong words for the party, Kedarnath singh he was the member of Forward Communist Party Bihar, he used the word dogs for C.I.D. officers and used the word goondas for the Indian National Congress party, he went on saying that he believe in revolution, which will come and in the flames of which the capitalists, zamindars and the Congress leaders of India, who have made it their profession to loot the country, will be reduced to ashes and on their ashes will be established a Government of the poor and the downtrodden people of India[[23]](#footnote-23).

#### Issue

Whether the speech of Kedar Nath will considered to be seditious under section 124A of IPC.

Whether the section 124A of IPC is ultravirus to Article 19 (1) (a) read with article 19(2)[[24]](#footnote-24).

#### Judgement

The Apex Court interpreted that the provision of sedition is intra virus to the Constitution and it was held that mere criticism of government or expression of disapproval towards government does not make a statement seditious in nature but, the act amount to sedition when it is done to incite violence and public disorder.

The court acquitted Kedar Nath on the ground that the statement made by him neither incite violence nor create public disorder. In this case the apex court interpreted the narrowly to ensure protection of freedom of speech and expression.

# Comparative Analysis: Sedition Laws in Other Countries

## Sedition Law in Pakistan:

1. History:

* The sedition law in Pakistan, Section 124-A of the Pakistan Penal Code (PPC), has its origins in British colonial rule.
* Enacted in 1860, it was a sign of British colonial influence on the legal system.

2. Act in Which Sedition is mentioned:

* Sedition is mentioned in Section 124-A of the Pakistan Penal Code (PPC).
* Section 124-A states that anyone who brings hatred or contempt, or excites disaffection towards the Federal or Provincial Government through words, signs, visible representation, or other means shall be punished.

3. Current Position:

In recent case, Justice Shahid Karim of the Lahore High Court in Pakistan has annulled Section 124-A of the PPC, dealing with sedition. The verdict was given in response to identical petitions seeking the annulment of the sedition law. The petitioners argued that Section 124-A is inconsistent with fundamental rights guaranteed under the Constitution of Pakistan, including the right to freedom of expression. The petition stated that the sedition law has been used as a tool to suppress dissent, free speech, and criticism. It further mentioned that over the years, politicians, journalists, and activists have been booked under Section 124-A, leading to concerns about its misuse.

## Sedition Law in Australia

History of Sedition Laws in Australia:

Sedition laws have a long history in Australia, with early prosecutions dating back to the 19th century, such as the conviction of Henry Seekamp for seditious libel over the Eureka Rebellion in 1854 and the conviction of trade union leaders during the 1891 Australian shearers' strike. Sedition laws were also used during the First World War against opponents of conscription and war

Acts and Amendments:

* The first comprehensive legislation containing the offense of sedition in Australia was the Crime Act of 1920, which had broader provisions than the common law definition (Crime Act, 1920).
* In 1984, the Hope Commission recommended aligning the Australian definition of sedition with the Commonwealth definition (Report on the Australian Security Intelligence Organization, 1985).
* The Gibbs Committee in 1991 suggested retaining the offense of sedition but limiting it to acts inciting violence for the purpose of disturbing or overthrowing constitutional authority (Report on Fighting Words, n.d.).
* In 2005, amendments were made under the Anti-Terrorism Act (No. 2) 2005, which brought significant changes to the sedition laws (Anti-Terrorism Act (No. 2) 2005).

Penalties:

* Under the previous sedition laws, penalties ranged from imprisonment up to 12 months for summary prosecutions to imprisonment up to three years for indictable offenses (Crime Act, 1920).
* In 2005, the maximum penalty for sedition was increased to seven years of imprisonment (Anti-Terrorism Act (No. 2) 2005).

Current Situation:

The NSLA, 2010 implemented the recommendation of the Australian Law Reform Commission (ALRC) to remove the term "sedition" and replace it with references to "urging violence offenses"

The current laws define an urging violence offense as intentionally urging others to use force or violence to overthrow the Constitution, government, or lawful authority or to target specific groups based on race, religion, nationality, national or ethnic origin, or political opinion.

The offense carries penalties of up to seven years of imprisonment. The laws include provisions for acts done in good faith as a defence and have extended geographical jurisdiction for offenses.

## Sedition Law in USA

History:

When it comes to free speech, the United States has a long history. The United States Constitution, notably the First Amendment, has served as the framework for defending this essential right. The First Amendment forbids the government from implementing laws that restrict free speech, ensuring that individuals have the right to express their thoughts, ideas, and opinions without fear of censure or retaliation from the government.

However, via major court cases and legal concepts, the interpretation and application of the First Amendment have developed through time. The United States Supreme Court has played a critical role in developing the idea of free speech rights and determining the permissible limits on this right.

Current Position:

In the current legal geography, the United States maintains a strong commitment to freedom of speech, but certain limitations and doctrines have been established to balance this right with other important societal interests. Then are some crucial doctrines and considerations that inform the current position on freedom of speech

1. Clear and Present Danger Test: The Clear and Present Danger Test, established in the case of Schenckv. United States, examines whether speech poses a clear and present peril of bringing about specific substantial immoralities that the government has a right to prevent. However, it may be subject to restriction, if speech is set up to present an immediate trouble to public safety or public security.

2. Reasonable Listeners Test: The Reasonable Listeners Test assesses how a reasonable person, with average intelligence and understanding, would interpret the speech in question. This doctrine takes into account the implicit impact and consequences of the speech on public safety or welfare. However, it may be subject to restriction, if the speech would be nicely understood as inciting imminent lawless action or posing a clear peril.

3. Fighting Words Doctrine: The Fighting Words Doctrine recognizes that certain types of speech, specifically words probably to provoke an immediate violent response from the average person, may not be defended by the First Amendment. Speech that constitutes fighting words, directed tête-à-tête at an individual, may fall outside the realm of defended speech due to its implicit to disrupt public peace and incite violence.

## Sedition Law of Canada

History of Sedition Offenses in Canada

The history of sedition offenses in Canada can be traced back to the Court of Star Chamber, where the concept originated. Sedition laws were initially developed in Canada to limit civil liberties following the Revolution Settlement of 1688-89, which established the supremacy of acts of Parliament and the liberties of the subjects, including freedom of speech. The offense of seditious libel was particularly significant and evolved over time in accordance with the changing social and political context.

Offences Related to Sedition

The Criminal Code governs sedition offences in modern-day Canada. The many acts that constitute sedition are defined in Section 59 of the Criminal Code, and they include:

1. Seditious Words: Using seditious words, which are defined as utterances with a seditious aim. Seditious statements or words are those that inspire others to rebel against the government or governing authority.

2. Libellous Slander: Publishing a seditious libel, which is a written publication with a seditious aim. It entails using illegal tactics to incite hatred, contempt, or disaffection towards the government or the Crown.

3. Seditious Conspiracy: Being a part of a seditious conspiracy, which involves two or more people agreeing to carry out a seditious intention. This involves collaborating to sow discontent and disaffection, as well as stir feelings of jealously, hatred, and ill will towards the administration.

Penalties for Sedition Violations

In Canada, sedition is an indictable offence, and the Section deal with sedition is section 61 of the Criminal Code. The maximum punishment is 14 years in jail for sedition law.

Sedition Offences: Current Position

Sedition offences remain an element of Canadian law. However, due to changes in society standards, judicial precedents, and constitutional considerations, the interpretation and enforcement of sedition laws may shift over time.

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| --- | --- | --- | --- | --- | --- | --- |
| Country | Sedition Laws | Abolished/Modified or change in law/ annulled down by court | Criticism and Concerns | Focus on Counterterrorism | Maximum Penalty | Notable Features |
| Canada | Use of speech to incite rebellion or disturb state's tranquility. | Modified | Balancing freedom of expression and public order | No specific emphasis | Up to 14 years | Emphasis on legitimate criticism of government |
| Australia | Acts promoting discontent, disobedience, or ill will towards the government | change in law | Broad interpretation, potential stifling of dissent | yes | Up to 7 years | Broad sedition provisions, controversial enforcement |
| Pakistan | Acts inciting hatred, contempt, or disaffection against the government | Annulled by court | Controversial application, impact on freedom of expression | No specific emphasis | Up to life imprisonment | Wide interpretation, controversial use against dissent |
| United Kingdom | Sedition laws repealed | Abolished | Focus on counterterrorism and hate speech | Yes | Varies | Shifted focus to counterterrorism and hate speech laws |
| India | Acts promoting hatred or contempt towards the government, promoting disaffection, or inciting violence | Not abolished | Controversial application, curbing freedom of expression and dissent | No specific emphasis | Up to life imprisonment | Broad sedition provisions, recent debates on reform |

# The 279th Law Commission Report: Changes Proposed

## Overview of the 279th Law Commission Report[[25]](#footnote-25)

### Incorporation of Ratio of Kedar Nath Judgment in Section 124A of IPC

The test laid down by the Supreme Court in Kedar Nath Singh is a settled proposition of law. Unless the words used or the actions in question do not tend to incite violence or cause public disorder or cause disturbance to public peace, the act would not fall within the ambit of Section 124A of IPC. However, in the absence of any such express indication, a plain reading of Section 124A may seem to be vague and confusing, resulting in its misinterpretation and misapplication by the concerned authorities. Consequently, we recommend that the ratio of Kedar Nath Singh may be incorporated in the phraseology of Section 124 so as to bring about more clarity in the interpretation, understanding and usage of the provision.

### Procedural Guidelines for Preventing any Alleged Misuse of Section I24A of IPC

In our considered opinion, to prevent any alleged misuse of Section 124A of IPC, it is suggested that a mandatory recourse similar to as provided under Section 196(3) of the Code of Criminal Procedure, 1973 (CrPC) should be undertaken prior to registration of a FIR with respect to commission of an offence under this section. This can be achieved by introducing certain procedural safeguards that can be laid down by the Central Government through issuance of model guidelines in this regard. Alternatively, an amendment may be introduced in Section 154 of CrPC by incorporating a proviso in the following manner:

*"Provided further that no First Information Report for an offence under section 124A of the Indian Penal Code, 1860 shall be registered unless a police officer, not below the rank of Inspector, conducts a preliminary inquiry and on the basis of the report made by the said police officer the Central Government or the State Government, as the case may be, grants permission for registering a First Information Report."*

The said police officer, not below the rank of Inspector, shall conduct a preliminary inquiry within seven days for the limited purpose of ascertaining as to whether a prima facie case is made out and some cogent evidence exists. The said police officer shall record the reasons for the same in writing and only thereafter, permission shall be granted under the aforesaid proposed proviso. This safeguard is being recommended by the Law Commission taking into consideration the observations made by the Hon'ble Supreme Court in S.G. Vombatkere v. Union of India[[26]](#footnote-26).

### Removal of the Oddity in Punishment Prescribed for Section 124A of IPC

The 42nd Report of the Law Commission termed the punishment for Section l24Ato be very 'odd'. It could be either imprisonment for life or imprisonment up to three years only, but nothing in between, with the minimum punishment being only fine. A comparison of the sentences as provided for the offences in Chapter VI of the IPC suggests that there is a glaring disparity in the punishment prescribed for Section 124A. It is, therefore, suggested that the provision be revised to bring it in consonance with the scheme of punishment provided for other offences under Chapter VI. This would allow the Courts greater room to award punishment for a case of sedition in accordance with the scale and gravity of the act committed.

### Proposal for Amendment in Section 124A of I PC

It is proposed that section 124A should be amended as follows:

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, with a tendency to incite violence or cause public disorder shall be punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven 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.

Explanation 4.-The expression "tendency" means mere inclination to incite violence or cause public disorder rather than proof of actual violence or imminent threat to violence.

# Critical Analysis of Report

## Analyzing the Law Commission's recommendations and proposed changes by referencing a previous Law Commission report

When we combine and see previous the recommendations from the 279th[[27]](#footnote-27), 39th[[28]](#footnote-28), 42nd[[29]](#footnote-29), and 267th[[30]](#footnote-30) Law Commission reports on sedition, then we found several areas of concern and potential risk of misuse of sedition law can be identified:

1. Narrowing the Scope of Sedition: The Kedar Nath case is used by the commission to argue that incorporating the judgement into Section 124A's wording could lead to a more narrow view of sedition that concentrates only on inciting violence or public disorder. This limited view ignores sedition's larger definition, which includes attempts to instigate discontent or foster hatred of the government. It necessary to Striking a balance between maintaining the validity of sedition law and concerns related to its clarity in interpretation is important.

2. Inadequate Safeguards: While the 279th report recommends procedural safeguards to prevent the abuse of sedition legislation, the need that preliminary inquiries be done by a specific rank of police officer may raise some questions. These safeguards risk being exploited or delaying legitimate inquiries. To find the proper balance between safeguarding free expression and dealing with potential threats to public order, substantial deliberation and openness are required.

3. Disparity in Punishment: The 42nd report emphasized the uniqueness of Section 124A punishment, which allows for life imprisonment or a maximum of three years in prison with no intermediate sentencing choices. However, the recommendation in the 279th report to increase the punishment to seven years in prison with no intermediate options reintroduces the imbalance. This may result in inconsistent punishment, which fails to account for the varying degree of seditious acts, resulting in disproportional sanctions.

4. Lack of Mens Rea Consideration: The 42nd report correctly emphasized the importance of including mens rea in the sedition provision. The 279th report, however, does not directly address this issue. Failure to assess the mental element and intent behind seditious conduct may result in the provision being abused and legitimate dissent being curtailed.

5. Differentiating Sedition and Hate Speech: The 267th report on Hate Speech makes an appropriate distinction between sedition and hate speech, recognizing their distinct effects on public order and the state. However, the 279th report's proposals fail to distinguish between sedition and hate speech. This lack of differentiation raises worries regarding potential confusion and infringement on lawful free expression.

In summary, the proposals of the 279th Law Commission report on sedition legislation, while aiming to address specific problems, require more examination. Potential critiques include a contraction of the scope of sedition, insufficient protections, disparities in penalty, a disregard for mens rea, and an inability to distinguish between sedition and hate speech. It is critical to maintain a balanced and nuanced strategy that protects both national security and fundamental principles of free expression and dissent.

## Critical analysis on basis of country

When we critical analysis of the Law Commission's recommendations on Section 124A of the Indian Penal Code it is important to assess the effectiveness and fairness of these recommendations, we can do this by examine sedition laws and practices in various countries, including the United Kingdom, Pakistan, Canada, Australia, and the United States which we took to analysis our law commission report.

### United Kingdom:

The United Kingdom has a long history of sedition laws and it is where we have taken our sedition law, however in 2007 from serious crime act of UK in which sedition law is mentioned is effectively abolished the offence. The United Kingdom recognized the antiquated nature of sedition laws and their potential for abuse against political opponents and government critics. The UK set an example for changing sedition laws by prioritizing free speech protection and relying on existing criminal laws to address threats to public safety. The Law Commission's proposals should take into account the UK approach and assess the need to keep sedition in the Indian legal framework.

### Pakistan:

It is critical to examine the Sedition laws in Pakistan, which gained independence at the same time as India and was a part of India before to 1947. Sedition laws in Pakistan have been widely criticized due to their broad language and potential for abuse. According to political thinker, the law's ambiguous phrasing empowers the government to target dissenting voices and political opponents. And in recent due to this criticism, the Lahore High Court recently annulled the sedition law. The Law Commission's proposals should take into account the recent verdict in which a Pakistani court overturned the sedition charge due to flaws in Pakistan's sedition law, as well as worries about potential abuse. To prevent misuse and protect freedom of expression, more guidelines and clearer definitions are required. By incorporating safeguards against misuse, the Commission can ensure that the offense of sedition remains a necessary and proportionate tool for maintaining national security.

### Canada:

Canada's approach to sedition offences is relatively limited, with laws focusing on acts encouraging violence against the government. The Canadian Supreme Court has emphasized the value of free expression and limited the applicability of sedition statutes to cases where violence is incited. Before charging someone with sedition, the Law Commission's proposals should consider taking a similar approach, emphasizing the need for a direct and imminent threat to public safety. This would ensure that the offence is construed narrowly and in accordance with international principles of free expression.

### Australia:

Sedition laws in Australia have been significantly revised in order to find a compromise between national security concerns and free expression. The Anti-Terrorism Act of 2005 replaced sedition offences with measures relating to inciting violence against the government or engaging in acts preliminary to terrorism. The Law Commission could investigate Australia's legislative changes and their impact on national security and basic rights. An examination of this type will provide useful insights into developing recommendations that are sympathetic to the Indian environment while respecting democratic norms.

### United States:

Sedition laws have frequently been challenged in the United States due to concerns about their capacity to stifle dissent. The First Amendment to the United States Constitution guarantees free expression, and courts have read sedition provisions narrowly, requiring a clear encouragement to impending illegal action. The Law Commission should analyze the US approach to striking the correct balance between national security and free expression. Any proposals on sedition should take into account the ideals contained in the Indian Constitution as well as international human rights standards.

In brief, the Law Commission's proposals on IPC Section 124A would benefit from a thorough examination of sedition laws and practices in the United Kingdom, Pakistan, Canada, Australia, and the United States. The Commission can address concerns about potential abuse, ambiguous terminology, and disproportionate restrictions on freedom of expression by learning from these countries. The recommendations should prioritize fundamental rights preservation while taking into account growing worldwide norms on sedition offences. This would allow for the creation of a balanced and just legislative framework capable of efficiently protecting national security while preserving democratic norms.

# Conclusion:

In summary, the critical analysis of the Law Commission's recommendations on sedition legislation highlights several areas of concern and potential risks of misuse. These include the narrowing scope of sedition, inadequate safeguards, disparities in punishment, lack of mens rea consideration, and the failure to differentiate between sedition and hate speech. It is importance to establish a balance between maintaining the validity of sedition laws and solve the issue related to concerns to protect both national security and fundamental principles of free expression and dissent against government if we not satisfy with government decision.

By analysis conducted in this paper, it can be said that the alternate hypothesis is partially supported. But there is some justifications for having a sedition law in India to protect national security and maintain public order, the proposed changes and recommendations need to be carefully reviewed and modified to ensure they do not curtail fundamental rights given in constitution. The concerns raised in the critical analysis suggest that the sedition law should be reformed to prevent misuse and provide clearer definitions and safeguards but it not done end properly to full fill what it meant for do.

## Suggestions:

Through this analysis, the Law Commission should consider the following suggestions:

1. Establishing a Balance: The Commission should aim to strike a balance between maintaining the validity of sedition laws and addressing concerns related to their interpretation and potential misuse. This can be resolved by clearly defining the scope of sedition and by incorporating proper and strict safeguards to prevent abuse of it.

2. Procedural Safeguards: While establishing procedural safeguards, the Commission should ensure that they do not hinder legitimate inquiries or result in unnecessary delays. Consideration and openness are need establish proper balance between safeguarding freedom of speech and expression and addressing potential threats to public order or national security.

3. Proportional Punishment: The Commission should consider revisiting the recommendation to increase the punishment for sedition to seven years and life time imprisonment without intermediate options. It is essential to establish a system that accounts for the varying degrees of seditious acts and ensures proportional and consistent sanctions.

4. Inclusion of Mens Rea: The Commission should address the issue of mens rea and include it in the sedition provision. Considering the mental element and intent behind seditious conduct is crucial to prevent abuse and protect legitimate dissent.

5. Differentiating Sedition and Hate Speech: The Commission should clearly differentiate between sedition and hate speech in its recommendations. Recognizing their distinct effects on public order and the state will help prevent confusion and protect lawful free expression and misuse of law.

## Scope of Future Research:

Future research can focus on several aspects related to sedition laws and their impact on freedom of speech and expression and national security. Some of research areas are given below which include:

1. Comparative Analysis: we use only five countries USA, Pakistan, Canada, UK and Australia but by doing Further comparative studies on sedition laws in different countries like Denmark, Sweden, Norway, China and other countries can provide valuable information about their effectiveness, fairness, and potential for abuse. By examining various legal frameworks and their outcomes can help develop comprehensive recommendations for India.

2. Case Studies: Conducting case studies on instances where sedition laws have been invoked can shed light on their practical implications and potential misuse. This research can help identify patterns and develop guidelines to prevent abuse while maintaining national security.

3. Public Opinion and Awareness: survey of public opinion and awareness of sedition laws can help us to understand and perceptions of the general population. Through This type research not only make paper but it help in people educate and raise awareness about the importance of free expression and the potential pitfalls of sedition legislation.

4. International Human Rights Standards: A test of alignment of sedition laws with international human rights standards can provide a broader perspective on the issue. By analyzing relevant conventions and treaties which our country has signed can guide the formulation of recommendations that align with global norms which had signed.

5. Analysis Data of NCRB: By analyzing recent year NCRB data reveals the number of people charged with sedition and their conviction rates. Court cases highlight government misuse of sedition laws to curtail freedom of speech under the guise of reasonable restrictions.

A researcher can conduct future research in mentioned areas, policymakers and legal experts can used this for making informed decisions regarding sedition laws, ensuring they establish the right balance between safeguarding national security and protecting fundamental rights through understand the main concern and problem with Sedition law.

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17. Supra note 10. [↑](#footnote-ref-17)
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