

## **Sedition as a Restriction on Freedom of Speech and Expression**

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### **Introduction**

Sedition is a form of political speech, an expression against the authority of the government and State, which is forbidden for exceeding the limit of legitimate criticism, and therefore, not protected by the right to freedom of speech and expression. By raising the issue of the conditions under which speech may be freely exercised, or alternatively legitimately curbed, sedition reveals a problem within democratic countries. This problem unfolds in the tensions between the relative precedence and the relationship between freedom of speech and expression of citizens and obligations of the State.<sup>1</sup>

The law of sedition is one of the many restrictions on the right to freedom of speech and expression. Hence it is imperative to mention at the onset that any analysis on this account would not make any weeping claims about democracy and the right to free speech.

### **Meaning of the Sedition**

Sedition refers to the writing or uttering of words or doing of acts intended to bring the State into hatred or contempt or to excite disaffection against the established Government. Sedition encompasses all those practices which aim at arising hatred, contempt or disaffection, inducing discontent, stirring up opposition, inciting rebellion, creating public disturbance, promoting disloyalty and public disorder against the Government or sovereign.<sup>2</sup>

Black's law Dictionary defines sedition as "this perhaps is the very vaguest of all offence known to the criminal law, is defined as the speaking or writing words calculated to excite disaffection against the Constitution as by law established, to procure the alteration of it by other than lawful means, or to incite any person to commit a crime to the disturbance of the peace, or to raise

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<sup>1</sup> Anushka Sinha, *Sedition in Liberal Democracies* 3 (2018).

<sup>2</sup> Dr. Hari Singh Gour, *Penal Law of India Vol. II* 1232 (2011).

discontent or disaffection, or to promote ill-feeling between different classes of the community. A charge of sedition is, historically, one of the chief means by which Government, especially at the end of the eighteenth and the beginning of the nineteenth century, strove to put down hostile critics. It is evident that the vagueness of the charge is a danger to the liberty of the subject, especially if the courts of justice can be induced to take a view favourable to the Government.”<sup>3</sup>

## **Origin of Law of Sedition**

The crime of sedition was originally conceptualized in monarchical England to insulate the King, and a largely unelected parliament, from public criticism. The oldest understanding of sedition was that of a libel against the monarch, which was first expressed in the Statute of Westminster 1275, idolizing the divine right of the King. The crimes against the Monarch in those days were tried essentially under the treason laws.<sup>4</sup> Sedition law gradually evolved within the framework of treason laws to deal with lesser crimes that would escape unnecessary legalities.<sup>5</sup>

In India, like most of the criminal laws, the law of sedition is also reflection of the Victorian legacy left behind by the British and indicative of the colonial mind set of the British. In 1833, with the formation of the First Law Commission, Thomas Macaulay wrote a proposal to Governor General recommending the preparation of a penal code which would be reformatory in nature. And with the acceptance of the Government in 1835, the Draft Penal Code was completed after two years in 1837. Chapter V of the Draft Penal Code dealt with the offences which could amount to offence against the State. Section 124A of IPC was present in section 113 in Draft Penal Code. Though, the Law Commission did not mention the word ‘sedition’ in the Clause 113. The provision on sedition was based on the Libel Act of 1792 enacted in England. The Draft Penal Code was not enacted for more than 20 years and in 1860, when it was finally enacted, Clause 113 was omitted due to some unknown reason.

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<sup>3</sup>Barian A. Garner, *Black's Law Dictionary* 1388 (2004).

<sup>4</sup>Treason is one of the oldest defined crimes in England and has been a statutory offence since 1351 which criminalized the imagination of the death of the Monarch or member of royalty, leaving war against it or aiding people who do so.

<sup>5</sup>J.W. Hurst *Encyclopedia of Crime and Justice* 1437 (1983).

It was only in 1870 that section 124A was enacted by way of a Special Act, 1870. It was same in the language as section 113 of Draft Penal Code. Omission of section 113 of Draft Penal Code was remarked by Sir James Stephen and said that it was due to some unaccountable mistake.<sup>6</sup>

The reason for insertion of the section on sedition in 1870 was perhaps prompted by the increasing Wahhabi activities between 1863-1870. The Wahhabi movement aimed at reviving Muslim power in India by overthrowing the British. The British discovered a conspiracy in 1863 to supply manpower and money to the Wahhabis to fight the British. This led to the trial and transportation for life of notable Wahhabi figures.<sup>7</sup> After this trial the British Government decided to amend the IPC to provide for seditious offence not amounting to waging war, or attempt or abetment to wage war against the British Crown. Inquiries were held into activities of the Wahhabis in Bombay and Bengal. Arvind Ganachari quotes Ashley Eden, secretary to the Judicial Department of the British Indian Government, ‘there can be no doubt that where a population is at once ignorant and fanatical, as are the Mohammedans of India, seditious teachings are to be made substantive offence.’<sup>8</sup> Accordingly, the Bill containing the law of sedition (section 124A) was passed. The present section was substituted by Act IV of 1898 through an amendment to the Indian Penal Code, for original section which stood as follow:

“whoever by words, either spoken or intended to be read, or by sign, or by visible representations or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with the transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, which fine may be added, or with fine.

*Explanation-* Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection.

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<sup>6</sup> Walter RusselDonogh, *A Treaties on the Law of Sedition and Cognate Offences in British India* 2(2011).

<sup>7</sup>Qeyamuddin Ahmed, *The Wahhabi Movement in India* 38 (2004).

<sup>8</sup> Arvind Ganachari, *Nationalism and Social Reform in a Colonial Situation* 56 (2004).

## **Four Trials and an Amendment**

From the time section 124A was inserted into the IPC there was no prosecution or trial under the section 124A for the twenty-one year until 1891. The first trial took place in 1891 when the vernacular press had grown assertive and Indian nationalism was on the rise. A vernacular by the name of *Bangobasi* was a weekly newspaper which had a large circulation in Bengal. On 26 March 1891, the newspaper published the first five articles attacking the Age of Consent Act<sup>9</sup> as being opposed to Hindu tradition and morality. As a consequence of publication of the offending articles, the proprietor, editor, manager and printer of newspaper were all charged by the Government for sedition in the famous case *Queen Empress v. Jogendra Chandrer Bose and Others*<sup>10</sup>. In this case the Court held that the words ‘disaffection’ and ‘disapprobation’ in section 124A were not synonymous as contended by the defence. The Court was of opinion that whenever the prefix ‘dis’ is added to a word, the word formed conveys an idea which would be the opposite of whatever would be conveyed by the word without the prefix. Therefore, disaffection means a feeling contrary to affection which would amount to dislike or hatred. And disapprobation means mere disapproval.

The second trial of sedition is probably one of the most famous trials in Indian history and took place six years after the first trial. The case of *Queen Emperor v. Bal Gangadhar Tilak and Keshav Mahadev Bal*,<sup>11</sup> more commonly known as ‘First Tilak Trial’ this trial passed through three stages. First, the trial in the High Court of Bombay, then the application before the High Court praying for leave to appeal before the Privy Council and finally, the application for leave to appeal preferred before the Privy Council itself. Bal Gangadhar Tilak was brought to court in the first of his sedition trials. The accusations turned upon his delivering lectures and singing patriotic songs at the Shivaji Coronation Ceremony. To get around the fact the Tilak’s speech made no mention of overthrowing the Government or the law, Justice Strachey widened the

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<sup>9</sup> It was British enactment which raised the age of consent from ten to twelve years, thus making sexual intercourse with any girl below the age of twelve, whether with or without her consent, an offence amounting to rape.

<sup>10</sup> ILR 19 Cal 35.

<sup>11</sup> ILR 22 Bom 112.

scope of section 124A. if any writing was found to be ‘attributing to every sort of evil and misfortune suffered by the people, or dwelling on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people and the writer had committed the offence of sedition. And a few months after the Pratod case, the Bombay High Court expanded the definition of ‘disaffection’ and held that ‘disaffection’ is a positive political distemper and not a mere absence or negation of love or good-will.

The year 1897 was rounded off by the third sedition case of *Queen Emperor v. Amba Prasad*<sup>12</sup>. In this case Amba Prasad who was the proprietor, editor and publisher of a vernacular newspaper was charged for sedition for publishing an article titled ‘Azadi band hone se kabalnamuna’. Amba Prasad was quick to plead guilty and said that through inexperience I have committed this fault. The Sessions Court accordingly held him guilty of sedition under section 124-A of IPC.

Soon after this case, a Bill to amend section 124A was introduced in the Governor General’s Legislative Council considering the events of 1897. The Council felt to amend the section to bring it explicitly in accordance with the English law. The Bill therefore sought to repeal section 124A and proposed to replace it with a new section 124A which would read as:-

“Whoever by words, either spoken or written, or by sign, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or 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.

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<sup>12</sup>ILR 20 All 55.

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 sedition.<sup>13</sup>

## **The Scope of the offence of sedition under Indian Penal Code, 1860**

The law relating to sedition is given under section 124A of the IPC. The offence of sedition is an offence against the State. It covers all those acts which would bring the Government established by law or lawful authority in India into hatred or contempt or incite disaffection against it. The word 'sedition' is not present in the substantive part of section 124A of the IPC, but it is present as marginal note to the section. Section 124A of the IPC contains two parts. The first part defines the offence of sedition and the second part deals with punishment for the offence. Since its inception, the meaning and scope of the offence has been the subject to judicial interpretation. The main reason for this was that while defining the offence of sedition, the section uses a number of terms and phrases the meanings of which have not been exhaustively explained.

With respect to the term 'disaffection' the section explains the meaning of this term as including 'disloyalty and all feeling of enmity'.<sup>14</sup> *Explanations 2*<sup>15</sup> and *Explanation 3*<sup>16</sup> of section 124A elucidate what does not constitute the offence of sedition. Hence, the law of sedition as formulated, firstly vaguely expresses what is sedition and secondly, states what is not sedition.<sup>17</sup>

The offence of sedition is cognizable, non-bailable, non-compoundable and is triable by the Court of Sessions. The cognisance of the offence of sedition can only be taken with the prior permission of the Central or the State Government.<sup>18</sup> This prior sanction to prosecute constitutes

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<sup>13</sup> Indian Penal Code (Amendment) Act, 1898, s. 124A.

<sup>14</sup> Section 124A, *Explanation 1*- the expression 'disaffection' includes disloyalty and all feelings of enmity.

<sup>15</sup> *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.

<sup>16</sup> *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>17</sup> *Urdu Daily Newspaper 'Partap', New Delhi v. The Crown*, AIR 1949 East Punj. 305.

<sup>18</sup> The Code of Criminal Procedure, 1973, s. 196(1)(a).

a condition precedent to the initiation of the prosecution and failure to obtain such sanction vitiates the proceedings *ab-initio*.

## **Essential Ingredient of the Offence of Sedition**

Section 124-A of the Indian Penal Code, 1860 provides that:

- a. Whoever
- b. By words, either spoken or written, or by signs or by visible representation, or otherwise,
- c. Brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection
- d. Towards the Government established by law in India,

Shall be punished with the 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.

a. The word ‘whoever’ in this section means that not only the writer of seditious material but every other person who uses in any form any matter of a seditious nature which would have the effect of bringing into hatred or contempt or exciting disaffection against the Government would be liable under the section, irrespective of whether he is the author, writer, printer or publisher of the matter. There is always a presumption in relation to the liability of a printer and publisher of book or article or any other document that such printer or publisher was under the knowledge that such book or article or document contains seditious matter. Burden of proof is on printer or publisher to prove his innocence.<sup>19</sup>

b. by words, either spoken or written, or by signs or by visible representation, or otherwise. It means that seditious content may be in the form of acts, it may be verbal or writing. Unpublished material do not make liable to author. There must be some publication regarding the seditious material.<sup>20</sup> Similarly, in case of the verbal seditious content, it would also include the persons

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<sup>19</sup>*Emperor v. Bhaskar BalvantBhopatkar*, (1906) 8 Bom LR 421.

<sup>20</sup>Ratanlal and Dhirajlal, *Law of Crime, Vol. I*, 569 (2007).

responsible for broadcasting or communicating the content. However, since no one can be said to bring another into contempt without intending or knowing it, a person who prints or publishes matter in ignorance of its seditious character cannot be held liable under the section.<sup>21</sup> The word ‘or otherwise’ can be said to encompass all other modes in which seditious content may be published or communicated.

c. Brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection. It means that every word, sign or representation against the Government does not amount to seditious. There must be content of such nature that would bring into hatred or contempt, excite disaffection or at least attempt at bringing or exciting the disaffection against the Government. Hatred and contempt have different meanings, hatred implies an ill-will while contempt implies a low opinion. Disaffection as provided in *Explanation 1* to this section includes ‘disloyalty’ and ‘all feelings of enmity’.

d. Towards the Government established by law in India. It means that ‘hatred’, ‘contempt’ and ‘disaffection’ must be against the Government established by law in India. Section 3(23) of the General Clauses Act, 1897, provides that ‘Government’ or ‘the Government’ shall include both the Central Government and State Government. For purpose of this section, there is distinction between the Government and the form of Government, which refers to the system by which the Government is organized. For example, to demand a change from democracy to dictatorship or communism would not constitute sedition. The term used in such a case would be ‘democracy’ and not ‘the democratic Government’.<sup>22</sup> Each case depends upon its particular facts and circumstances, ‘*It follows therefore that although in popular language, the ministers may be referred to as ‘the Government’ they are not ‘the Government’ within the meaning of section 17 and 124A of IPC. Whatever may happen in practice the ministers are, in law, the Government’s advisers*’.<sup>23</sup>

## Law of Sedition and Freedom of Speech and Expression

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<sup>21</sup>Supra note 2 at 1234.

<sup>22</sup>Arjun Arora v. Emperor, AIR 1937 All 295.

<sup>23</sup>Emperor v. Hemendra Prasad Ghosh, AIR 1939 Cal 529.



Whether or not the law of sedition, as it stands, is violative of the right to freedom of speech and expression enshrined under article 19(1)(a) of the Constitution has been a debatable issue since the Constitution came into force.

Initially, in the Draft Constitution, the framers of the Constitution included 'sedition' and 'public order' as two grounds on which the right to freedom of speech and expression could be curtailed by the State.<sup>24</sup> But these two grounds did not find any place in final draft of the Constitution. Thus, it had been a controversial issue that since Article 19(2) did not include sedition as a restriction to the right guaranteed under Article 19(1)(a) of the Constitution, would the offence of sedition be unconstitutional according to the Article 13(1)<sup>25</sup> of the Constitution.

In 1951, the validity of section 124-A of IPC was challenged in a case of *Tara Singh Gopi Chand v. The State*,<sup>26</sup> on the ground that this provision imposed restriction on the right to freedom of speech and expression set out in Article 19(1)(a). And the Punjab High Court thereafter held that section 124A of the IPC had become unconstitutional as it curtails the right to freedom of speech and expression. However, since the said decision the Constitution has been amended by way of the Constitution (First Amendment) Act, 1951. With the First Constitution Amendment, the expression 'reasonable restriction' was inserted, 'libel' and 'slander' and 'tends to overthrow the State' was deleted. Three new grounds for restrictions were introduced namely, (a) friendly relations with foreign States, (b) public order (c) incitement to an offence.

## **Constitutional Validity of section 124-A of IPC**

The constitutional validity of section 124A of IPC continued to be a controversial issue because the question which now come in front was that sedition as a ground still not mention in Article 19(2) and whether section 124A of IPC fall down under the ground 'public order' which is inserted by First Constitution (Amendment) Act or not.

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<sup>24</sup> Article 13 of the Draft Constitution.

<sup>25</sup> Article 13(1) provides that "all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.

<sup>26</sup> AIR 1951 Punj 27.

The first case relating to constitutional validity of the section 124A of IPC was *Debi Soren v. The State*<sup>27</sup>. The Patna High Court held that the scope of Article 19(2) of the Constitution had been widened by the First Constitution (Amendment) Act and any restriction imposed ‘in the interest of public order’ would now be permissible. Hence, section 124A is constitutional valid.

With regards to the constitutionality of the section 124A of IPC, the High Court of Manipur remarked the words ‘in the interest of the security of State, public order, incitement to an offence in the amended clause are, undoubtedly wider in scope. The Court opined that a restriction on freedom of speech and expression would be ultra vires as being repugnant to article 19(1)(a) of the Constitution if the speech in question merely excites or tends to excite disaffection.<sup>28</sup>

After this case the next case was in front of the Allahabad High Court in which constitutional validity of section 124A was challenged. The court observed that section 124A of IPC is admittedly a law which restricts the fundamental right to freedom of speech and expression and is, therefore, inconsistent with it.<sup>29</sup>

Finally, the Supreme Court dealt with the constitutionality of section 124A of the IPC in the case of *KedarNath Singh v. State of Bihar*,<sup>30</sup>. The Supreme Court strikes a balance between right to freedom of speech and expression and reasonable restriction imposed by the State in the interest of the public order or security of the State. The Supreme Court narrowed down the scope of section 124A of IPC to cover only those activities which intend or tend to create disorder or disturb public peace by resorting to violence. And finally, declare the section 124A as valid section.

## **Recent Cases on Sedition**

Despite the interpretation of Supreme Court in *KedarNath Singh v. State of Bihar*, the law of sedition has been constantly misused by the Central and the State Governments. There were

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<sup>27</sup>1954 Cr.LJ 758.

<sup>28</sup>*SagolsemIndramani Singh v. State of Manipur*, 1955 Cr.LJ 184.

<sup>29</sup>*Ram Nandan v. State*, AIR 1959 All 101.

<sup>30</sup> AIR 1962 SC 955.

various cases and FIRs which were instituted against the people under section 124A of IPC although they were in reality merely exercising their right to freedom of speech and expression. The kind of circumstances under which the law of sedition has been used in the past to stifle criticism, prosecute dissenting voices and curb the freedom of the press can be illustrated by giving a brief analysis of certain landmark cases.

In *KandiBuchi Reddy v. State of Andhra Pradesh*,<sup>31</sup> the High Court of Andhra Pradesh noted that the charge sheet had been filed against the petitioner for the offence of section under section 124A of IPC without prior sanction of the appropriate Government, which was required under the terms of section 196 of the Cr.PC. Accordingly, the court quashed the case pending against the petitioner.

In 2008, the Ahmedabad Police Commissioner filed a complaint under section 124A, 120B and 34 of the IPC against three journalists of the Times of India, Ahmedabad. The allegations were that a series of articles which showed the links between Police Commissioner and mafia don, Latif. The High court quashed the said cases and said that none of these articles can be said to be remotely seditious.<sup>32</sup>

Legitimate protests, which come within the preview of the fundamental right to freedom of speech and expression, have also been prosecuted by the State on the pretext of being seditious. In Rajasthan, Kirori Singh Bainsla, who is considered to be a leader of the Gujjar Community, was charged under section 124A of IPC for leading a protest demanding Schedule Tribe status for Gujjar.<sup>33</sup>

In 2012, a cartoonist named Aseem Trivedi was arrested after a FIR lodged against him for spreading hatred and disrespect against the Government through his cartoons published on a website called 'India against Corruption'. These cartoons were alleged to have defamed Parliament, the Constitution of India and the national emblem. But later, the High court granted

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<sup>31</sup>1999 (1) AP.LJ 405.

<sup>32</sup>ShivaniLohiya, *Law of Sedition* 58 (2011).

<sup>33</sup>*Ibid* at 59.

bail to Aseem Trevedi and emphasized that the state could not have encroached upon Trevedi's freedom of express indignation against the corruption in the political system in strong terms or visual representations, especially when there was absolutely no allegation of incitement to violence, or the tendency or the intention to create public disorder. The High Court also directed to the State Government to issue some guidelines to all police personnel in Maharashtra to be followed in cases of sedition under section 124A of IPC.<sup>34</sup>

The same was happened in JNU sedition case. The complaint was that in University campus some student raised 'anti-national' slogans. Police encountered a group of students led by Kanhaiya Kumar, the president of JNUSU. Next day, T.V. channels broadcast purported video footage of the protests with some students allegedly shouting anti-India and pro-Pakistan slogans. Kanhaiya Kumar, Umar Khalid and Anirban Bhattacharya were arrested soon thereafter on the charge of sedition. The Court released the petitioner on interim bail for a period of six months upon the condition that he would not participate in any activity related to 'anti-national'. And on 19 January 2019 magistrate refused to accept the charge sheet which had been filed without prior approval of the State Government.<sup>35</sup>

In 2018, a journalist was charged for sedition for publishing a cartoon on his Facebook page. He criticized the Judgment of the Supreme Court given in the case of mysterious death of B.H. Loya, a judge hearing the Sohrabuddin encounter trial. He was arrested in April for sedition. But he is currently out on bail with no one coming to his rescue.<sup>36</sup>

The another journalist in Manipur was arrested under the sedition charges for posting a video in which he called Chief Minister of the Manipur as a 'puppet of Modi and Hindutva'. But later on, the judicial magistrate threw out the charges and observed that in giving speech, the accused person transgressed beyond decent human conduct but it cannot be termed seditious.<sup>37</sup>

## **Conclusion**

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<sup>34</sup>*Sanskar Marathe v. State of Maharashtra & Others*, 2015 Cr.LJ 3561.

<sup>35</sup>*Kanhaiya Kumar v. State of NCT of Delhi*, W.P.(Cri.) 558/2016.

<sup>36</sup>Chitranshul Sinha, *The Great Reression- The Story of Sedition in India* 199 (2019)

<sup>37</sup>*Ibid* at 201.

Thus, in this manner, the abuse of the section 124A of the IPC is continuing unabated and the offence of sedition has been the subject of abuse by the political machinery of the Government in power to oppress any discussion including any political opposition or healthy criticism by quelling the same in the guise of prosecution for the offence of sedition and thereby, muzzling freedom of speech and expression. Criticism of the Government is the very basis of a vibrant democracy. There is fine line between freedom of speech and expression and the sedition. This line often crossed and any expression of dissent or any criticism of the Government is perceived as an offence. In *KedarNath Singh v. State of Bihar*<sup>38</sup>, the Supreme Court specifically read down the offence under section 124A of the IPC and held that the offence of sedition would be made out only where there would be an intention or a tendency to create public disorder or disturb public peace. Despite this interpretation, the law of sedition has been misused by the Government to vent political intolerance and highhandedness.

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<sup>38</sup> AIR 1962 SC 955.