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**RIGHT TO DISSENT V. RIGHT TO DISINTEGRATE: THE
DRACONIAN LAW OF SEDITION IN CONTEMPORARY INDIA**- Yash Jain & Ayushi Dubey¹**ABSTRACT**

The recent use of sedition laws in several cases has prompted new concerns about the undemocratic nature and applicability of these statutes in today's constitutional democracy. The implementation of sedition laws by several Indian courts demonstrates how they have become archaic for today's culture, and numerous recommendations for their implementation are made. All citizens in a democratic country like India have the fundamental Right to Freedom of Expression and Speech. Although the law of sedition is permissible under acceptable constraints to such rights, the scope of such a rule is a major concern. In our country, where the rule of law is supreme, charging someone indiscriminately with sedition is an act that runs against constitutionalism. The article is an attempt to put together all of the discussion about repealing and altering these laws. The article explicates the scope of Article 19 of the Constitution and Section 124A of the Indian Penal Code. Further, it expounds on the constitutionality of Section 124A and whether it should be abolished. Lastly, the authors conclude and provide viable suggestions that can be accommodated to lead a harmonious construction of the laws.

INTRODUCTION**Article 19: Right to Freedom of Speech and Reasonable Restrictions**

At the heart of the Indian Constitution lies Article 19 of the Constitution that talks about freedom of speech and expression. Freedom of speech and expression is itself liberty,

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where everyone has a right to speak, to express their thoughts, to communicate their opinion, to share with others what people think. This freedom extends from making any gestures, signalling, making expressions, right to choose one's appearance or dress, right to publish, etc. *"Freedom of expression has four broad social purposes to serve: (i) it helps an individual to attain self-fulfilment, (ii) it assists in the discovery of truth (iii) it strengthens the capacity of an individual in participating in decision making and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change."*²

Freedom of speech and expression is an inevitable right that is present in the constitution. According to Article 19(1) of the Indian Constitution, *"all citizens shall have the right to freedom of speech and expression."*³ The fundamental right of Article 19(1)(a) is inalienable. Article 19(2) talks about some exceptions of Article 19(1)(a) that is, *"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."*⁴

Article 19 of the Indian Constitution provides basic, natural rights that are needed for any person to survive. These are the inherent rights of a person. The Article lays down the fundamental rights of an individual which are required for meeting the necessity of life. *"The word 'freedom' in Article 19 of the Constitution means absence of control by the state. In all matters specified in Article 19(1), the citizen has the liberty to choose, subject only to restrictions in Article 19(2) to 19(6)."*⁵ Article 19 not only provides rights to an individual but also sustains the democratic values & ethics of the country. Article 19 conferred in the constitution not only gives the mentioned rights but also gives some implied rights that are may not be explicitly written in the constitution. *"The phrase 'speech and expression' used in Article 19(1)(a) has a broad connotation. The right to paint or sing or dance or to write poetry*

² Indian Express Newspapers v. Union of India, (1985) 1 SCC 641.

³ INDIA CONST. art. 19(1).

⁴ INDIA CONST. art. 19(2).

⁵ State of Karnataka v. Associated Management of Primary & Secondary Schools, AIR 2014 SC 2094.

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or literature is also covered by Article 19(1)(a) because the common basic characteristic of all these activities is freedom of speech and expression.”⁶The rights are not absolute but can be controlled, restricted and curtailed down by the state with reasonable restrictions. “These rights have been advisedly set out in broad terms leaving scope for their expansion and adaptation, through interpretation, to the changing needs and evolving notions of a free society.”⁷

Article 19(2) puts reasonable restrictions on freedom of speech and expression. In a democratic country where freedom of speech and contempt of court goes hand in hand, the word ‘reasonable’ is an abstract term, where there is no test to adjudicate the definition of reasonable. What is reasonable for one person might not be reasonable for some other person. There is no general pattern or standard on which reasonability depends. It all depends upon the merits of the case and how the judiciary decides on a matter.

Section 124A IPC: The Law of Sedition

The law of sedition for long has always assumed controversy considering political, social, and legal provisions, especially in freedom of speech and expression guaranteed as a fundamental right under Article 19(1)(a) of the Constitution. The law of sedition has gathered the focus of the public because of its historic genesis and various vicissitudes, it has undergone from time to time. Originally, in section 113 of Macaulay’s Draft Penal Code, 1837, the offence of sedition was defined. Later in 1870 the Indian Penal Code (Amendment) Act, 1870 came up with the definition of sedition. Further, the present section 124A of the Indian Penal Code was taken from the Indian Penal Code Amendment Act, of 1898. Chapter VI, section 124A defines the offence of sedition, which ran as follows:

“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.”⁸

When we dig deep into the definition, some essential elements can be observed:

⁶ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

⁷ People’s Union for Civil Liberties v. Union of India, AIR 2004 SC 1442.

⁸ PEN. CODE § 124A.

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1. Calculated expression.
2. Extreme form.
3. Against State (intention to challenge the very existence of a government or institution representing the state).
4. The tendency of violence or disorder.
5. In totality.

By the law of sedition, every state, whatever the form is, is empowered to take stern steps to punish who by conduct threatens to insecure the stability of the state, or may by action or mere words tend to disseminate feelings of disloyalty or lead to disorder in the state. Hence, the continued existence of the government established by law is an indispensable condition for the permanence of the State. The gap between perceived meaning and intended meaning can become sometimes the joy of laughter, happy hours but sometimes can also turn into tragedy. The dualistic points that can be noticed in the offence of sedition are the identity and platform of the speaker. What is the identity of the person, who is speaking? Whether he/she is a student, a layman or an influential political person of the majority? Whether his/her opinion constituents' violence or disorder to the public at large?

The platform, from where the speaker is speaking? Is it a class, in a competition, in a rally, or at a forum which can bring incitement of the offence? Furthermore, when we look at the punishment of sedition under Section 124A, its punishment is very outstretched. From the merciless life imprisonment to only giving just a fine as a punishment, the researcher somewhere sees lacuna in the section.

RELATION BETWEEN ARTICLE 19(1)(A), ARTICLE 19(2) AND SECTION 124A

Freedom of speech and expression is the fundamental right given to every citizen as guaranteed under Article 19(1)(a). Section 124A of the Indian Penal Code puts a certain restriction on the free speech of an individual. Along with section 124A, there is section 153A of IPC which also puts restrictions on the acts causing disharmony or enmity towards different religions, languages, regional groups, castes, communities, etc. In Article 19(2) the words used are 'sovereignty and integrity', 'public order', 'incitement to an offence' which has direct nexus with the offence of sedition. Whosoever disturbs the morality and disharmonies sovereignty and integrity of a nation, causes violence, and hate towards the

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government or incites disaffection towards the government established by law, is liable to be punished under the offence of sedition. The other meaning of sedition is the criticism of those who are in authority.

Discussions, dialogues, disagreements are a part of democracy. In a democratic country, all have the 'right to dissent'. A citizen is free *"to think for oneself, to voice one's concerns, to disagree with views of the majority."*⁹ On one hand, democracy communicates the active participation of citizen but on the other hand, it tells not to speak anything that may incite an offence. The punchline of democracy is 'government of the people, by the people, for the people.' The IPC section on sedition places serious caveats on the people not to say anything undemocratic in the country of democrats. The country which was used to be called a country of scholars has now questioned the very basis of knowledge.

Article 19 is the mother of all liberties,¹⁰ which guarantees freedom of speech and expression as a fundamental right of an individual. With freedom also comes some restrictions and exceptions. The state has the power to put reasonable restrictions on freedom of speech and expression. After the 2015 landmark case of *Shreya Singhal*,¹¹ in which Section 66A of the Information Technology Act was struck down, SC made it clear that only if the speech has direct nexus with incitement to violence, then only it will be called seditious speech.¹² Anything short of that to the extent of 'discussion or advocacy' is protected by the Constitution.

When would be an individual's speech be considered fair speech and when would it be considered hate speech? Freedom of speech and expression is a 'theoretical concept' in India. Since there is no clear-cut distinction of what amounts to fair speech and what amounts to seditious speech, it is very difficult for the judiciary and for the people to understand the difference between the two. The pragmatic complication which stands is, what is to be protected & what is not? From the pre-independence era, sedition has been broadly interpreted and exciting or attempting to incite bad feelings towards the government was held

⁹G.N. Devy, *What 'sedition' means in our time*, THE TELEGRAPH, (Feb 01, 2019), available at https://www.telegraphindia.com/opinion/the-meaning-of-sedition-in-modern-repressivergimes/cid/1683305?ref=comment_home-template.

¹⁰M P JAIN, INDIAN CONSTITUTIONAL LAW 1058, LexisNexis (2018).

¹¹*Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

¹² Gautam Bhatia, *Dealing with the thought police*, THE HINDU, (April 14, 2021), available at <https://www.thehindu.com/opinion/lead/dealing-with-the-thought-police/article26261460.ece?homepage=true>.

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punishable whether or not it resulted in public disorder.¹³ In *Kedar Nath*,¹⁴ the court ruled that mere criticism of government action however strong it is would be consistent with Article 19(1)(a), only the words having ‘the pernicious tendency’, or intended to create a disturbance of law and order would be penal in the interests of public order.¹⁵ Though the judiciary through many case laws has decided the matters of free speech and sedition, there is still no clear demarcation as to what is to be called fair speech and what is to be called hate or seditious speech.

VAGUENESS IN ONE CAUSING VIOLATION IN ANOTHER

Whether the vagueness present in Article 19(2) of the Indian Constitution leads to Arbitrariness and hence, violating Article 14 of the Indian Constitution. The limitation imposed on Article 19(1)(a) by Article 19(2) should be reasonable and should not extend beyond reasonability. The word ‘reasonable restriction’ serves a twofold purpose: firstly, it bars the power of legislative bodies to set restrictions to the extent required. Secondly, it shows that the rights conferred to the citizens are not absolute but restricted to the thought of reasonability. In a series of decision over a decade, the Supreme Court has articulated under various circumstances the definition of ‘reasonableness’? *“The expression ‘reasonable restriction’ signifies that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public.”*¹⁶

It is important to bear in mind that there is no test to check the validity of reasonableness, it is seen from the perspective of prudent rational individual living in society. There must have a direct nexus between the restriction imposed and the object sought to be achieved.¹⁷ In the *Shreya Singhal* case, the Supreme Court held that a penal law restricting freedom of speech and expression is liable to be struck down for vagueness and not providing manageable standards.¹⁸ The reasonableness must be tested given procedural and substantive laws and should not only be based on looking at one side of the aspect. But sometimes reasonability

¹³ *Emperor v. Sadashiv Narayan*, AIR 1947 SC 82.

¹⁴ *Kedar Nath v. State of Bihar*, AIR 1962 SC 955.

¹⁵ Jain, *Supra* note 9 at 1086.

¹⁶ *Bishambhar Dayal Chandra Mohan v. State of UP*, (1982) 1 SCC 39.

¹⁷ *Papnasam Labour Union v. Madura Coats Limited*, AIR 1995 SC 2200.

¹⁸ Jain, *Supra* note 9 at 956.

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leads to arbitrariness. Since there is no prescribed or general pattern of reasonability, what is reasonable for one might not be reasonable for others. When reasonability turns into arbitrariness, it infringes Article 14¹⁹ of the Constitution. Again, the question arises of who will decide whether a restriction is reasonable or not. It is the 'State in power' and anything against the state has high chances of being unreasonable.

The vagueness of the term 'reasonable restrictions' is a risk to democracy which ultimately violates the right to equality of the citizen. "*A restriction imposed on a Fundamental Right guaranteed by Article 19 must not be arbitrary, unbridled, excessive and not unreasonably discriminatory*".²⁰ Therefore, a restriction to be reasonable must be consistent with Article 14 of the Constitution. Hence, while evaluating reasonableness the courts enjoy a lot of discretion in the matter.

CONSTITUTIONALITY OF SECTION 124A OF INDIAN PENAL CODE

The draconic law of sedition has gone through various interpretations and ramifications of the legislative and judiciary. After the enforcement of the constitution in 1950, an important question of the constitutionality of the law of sedition vis-à-vis freedom of speech and expression came into consideration. In the landmark judgement of *Kedar Nath Singh v. State of Bihar*, "*the Supreme Court upheld the constitutionality of the sedition law, but at the same time curtailing its meaning and limiting its application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. The judges observed that if the sedition law was to be given a wider interpretation, it would not survive the test of constitutionality.*"²¹

The law of sedition from its very nature is likely to be misused by the parties in power. It has been seen that many political parties for saving their image and building their reputation in public, file sedition charges against the innocents. Someway or other the law of sedition leads to arbitrariness in society. In *Balwant Singh v. State of Punjab*, the court held that "*two individuals casually raising slogans could not be said to be exciting disaffection towards the*

¹⁹ INDIA CONST. art. 14.

²⁰ Jain, *Supra* note 9 at 1056.

²¹ *Kedar Nath v. State of Bihar*, AIR 1962 SC 955.

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*Government. Section 124A would not apply to the circumstances of this case.*²²Not everything a person says against the government amounts to sedition. Since there is no demarcation between fair speech and hate speech, it is very difficult for the judges to justify the offence of sedition. Some exponents were of the view that Section 124A of IPC is ‘ultra vires’ in nature and punishes those who merely have bad feeling against the government.

*In Ram Nandan v. State, Allahabad High Court declared Section 124A to be unconstitutional because – “If criticism without having any tendency is to bring about the public disorder, can be caught within the mischief of section 124A of the Indian Penal Code, then the Section must be invalidated because it restricts freedom of speech, and is capable of striking at the very root of the Constitution providing the right to speech and expression with certain limitations provided under Article 19(2) of the Constitution of India.”*²³

It embeds unreasonable restriction on freedom of speech and expression guaranteed under Article 19(1)(a) and is not saved under Article 19(2) of the Constitution. In *Tara Singh v. State of Punjab*,²⁴ the court held that “India is now a sovereign democratic State. The government may go and caused to go without the foundation of the State being impaired. A law of sedition though necessary during the period of foreign rule has become inappropriate by the very nature of the change which has come about.”²⁵ So, the judiciary has interpreted section 124A IPC in both ways i.e. constitutional and unconstitutional.

Moreover, in some situations, it has been seen that section 124A of IPC is partially valid and partially void. In *Indramani Singh v. State of Manipur*, it was held that “Section 124A which seeks to impose restrictions on exciting mere disaffection is ultra vires, but the restriction imposed on freedom of speech and expression covered under Article 19(2) can be held intra vires.”²⁶

Another aspect to look at the constitutionality of Section 124A IPC is by juxtaposing Article 13(1) of the Constitution. Article 13(1) reads as follows:

²² Balwant Singh v. State of Punjab, AIR 1985 SC 1785.

²³ Ram Nandan v. State, AIR 1959 All 101.

²⁴ Tara Singh v. State of Punjab, 1951 AIR SC 441.

²⁵ K D GAUR, A TEXTBOOK ON THE INDIAN PENAL CODE 331, Universal Law Publishing (2018).

²⁶ Indramani Singh v. State of Manipur, AIR 1955 Manipur 15.

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“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”²⁷

Here, ‘Doctrine of Eclipse’ plays a decisive role in crucifying Section 124A of IPC. The major elements of the Doctrine of Eclipse are:

- i. It applies to pre-constitutional laws.
- ii. The law should conflict with the fundamental right guaranteed under Part III of the Indian Constitution.

As we know that law of sedition has a historic genesis and came into India well before the birth of the constitution. The dispute between Section 124A of IPC and Article 19(1)(a) of the Constitution is undisputable. It has been a hearty notion of society that the law of sedition violates the right to freedom of speech guaranteed under Article 19(1). Hence, the law of sedition fulfils the condition of Article 13(1). However, due to Article 19(2) which places a reasonable restriction on freedom of speech and expression, the person can take the help of Article 19(2) for proving his innocence under the offence of sedition.

WHETHER SECTION 124A OF THE INDIAN PENAL CODE SHOULD BE ABOLISHED?

It is often regarded that one of the strongest weapon present in the hands of government is laying the charge of sedition.²⁸ Chapter VI: which contains the provision of sedition is placed under such a chapter that includes heinous offences like waging war against the government. Sedition on the prima facie is one section but it is found in many other laws. Section 153A, 153B of IPC and sections 95, section 108, and section 196 of CrPC also supplements the provision of sedition. ‘The law of Sedition contained in Section 124A of IPC should not be abolished’. It is not so easy to abolish a 150-year-old law. The framers inserted such a provision to protect the dignity of the state. A law which is in function for such a long time cannot be abolished in one day. Moreover, we never know what will be the perspective circumstances that will create a need for the law of sedition. Abolishing any law is demise to the legislature. *“The continued existence of the government established by law is an essential*

²⁷ INDIA CONST. art. 13.

²⁸ W. P. M. K., *Sedition*, 6(2) The University of Toronto Law Journal 468 (1946).

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condition of the stability of the State. Any act within the meaning of section 124A which has the effect of subverting the Government by bringing that Government into contempt, or creating disaffection against it, would be within the penal statute."²⁹

The most well-known freedom which is celebrated in any country is the freedom of liberty. Liberty comes with certain restrictions and those restrictions are good till the time they are reasonable. The great leader, Mahatma Gandhi in his speech called Section 124A prince among the political sections of the IPC.³⁰ In today's scenario, the sedition law experts say that people should not bring hatred or excites disaffection towards the government established by law. There are dark areas in every law, but those dark areas can be amended and moulded. The law which deals with the state and especially government established by law should be stringent and disciplined when it comes to the level of national integrity. In India where so many opposing powers are acting together against the government, the law must be tough. It is the need for such a law that those activities which are encouraging disaffection and disloyalty against the government should be stopped.

CONCLUSION & SUGGESTIONS

Is the law of Sedition antithesis to the fundamental right of freedom of speech and expression? Sedition is an offence of such a nature that sometimes even innocent people are charged for the same. From it, a question that comes to my mind is whether laws like sedition reduces the faith of an individual in the government. In a situation where a citizen of a democratic country is not free to criticise its government, it infringes its fundamental right of freedom of speech and expression. Since it is very difficult to identify what amounts to disloyalty or feeling of enmity, sometimes innocent is charged for sedition. The judiciary has through various cases tried to interpret Section 124A of IPC but still, the words used in the section gives it a subjective interpretation.

Does the idea of dissent also include the right to reject the idea of a nation-state? Is protesting in India today is considered sedition. Article 19(1)(a) guarantees all citizens the right to freedom of speech and expression and on the same hand, Article 19(2) lays down certain

²⁹ Gaur, *Supra* note 24 at 329-330.

³⁰ Siddharth Narrain, *Disaffection and the Law: The Chilling Effect of Sedition Laws in India*, 46 Economic and Political Weekly 33, 34 (2011).

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reasonable restrictions on the individual who speaks against the government established by law. Participation and Criticism are the active elements of democracy and sedition is misused to curb freedom of speech and expression. Sedition is the gravest offence restricting freedom of speech. So, there is a need that the words contained in Section 124A should be proved beyond a reasonable doubt. Therefore, every case restricting the right of an individual to speak against the government must be critically analysed to avoid unwarranted restrictions. What place does sedition has in a democracy, especially liberal democracy like India? Section 124A IPC holds a very critical place in a democratic country. Other provisions like section 153A, 153B of IPC and sections 95, 108 and 196 of CrPC are interconnected to Section 124A of IPC.

There are some lacunas in section 124A of IPC, that needs to be amended and corrected. Section 124A of IPC does not contain the word 'intention'. The intention is the basic element that is found in almost all cases of criminal law. It does not take into consideration the motive of an individual. There is no demarcation as to where to draw the line, sedition vis-à-vis freedom of speech and expression. The judiciary, as well as the legislature, has been failed to identify when a person's speech will be considered free speech or hate speech. It has not been recognised what are public spheres and what are political ideas. Through different case laws, there is no prescribed or general pattern of sedition. There is no thumb rule for punishing an offender under the offence of sedition. Full discretion has been given to the judiciary to interpret the case on their own according to the circumstances and nature of the case.

The language of Section 124A is correct but the problem arises in the enforcement of the law. A lot of times it has been seen that the law of sedition has been misused politically and legally. There is a need to narrow down the interpretation of Section 124A of IPC because of its very nature of arbitrariness, violation of Article 14 of the Constitution. Sedition does not include inciting an offence against the constitution, legislature, prime minister, etc. Freedom of speech and expression is the fundamental right of an individual which cannot be curtailed down. It provides an individual to express himself, the right to dissent and disagrees. It is, therefore, suggested that section 124A of IPC needs to be relooked in the present scheme. There is a need to maintain proper balance between the sedition laws and freedom of speech and expression.

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