**How to be free in the 21st century**

The experience of liberal democracies elsewhere shines a light upon the outdatedness of the sedition law that India uses so loosely.

In little more than a month since a partisan and heavy-handed Delhi Police arrested Jawaharlal Nehru University Students Union President Kanhaiya Kumar and slapped him with the [> charge of sedition](https://www.thehindu.com/news/national/govt-admits-sedition-definition-is-wide/article8361994.ece), reams of newsprint have been dedicated to challenging that odious legal provision of the Indian Penal Code, dating back to 1860, principally on the grounds that it is [> draconian](https://www.thehindu.com/opinion/lead/sedition-and-the-government/article8241312.ece) and specifically that its abuse impairs a critical feature of liberal democracy: [>dissent](https://www.thehindu.com/opinion/lead/no-freedom-without-dissent/article8310191.ece)

In the process the troubling history of Section 124-A of the IPC has been clearly traced, especially its remarkable survival from the pre-Independence era, when it served the colonial government as a weapon of mass suppression against all opposition, into modern India, where it has now become an untenable blot on the right to free speech guaranteed by Article 19 of the Constitution.

At the heart of this ongoing battle for India’s liberal soul is the argument that speech that is alleged to be seditious may be considered illegal only if it is an incitement to violence or public disorder, a view that has been clarified by a multitude of legal precedents including Kedar Nath Singh vs State Of Bihar(1962), Indra Das vs State Of Assam (2011), Arup Bhuyan vs State Of Assam (2011), and most recently the well-known case of Shreya Singhal v. Union of India (2013).

Yet by no means is the tension between the right to freedom of speech and the ambitions of a government to quell criticism of its policies a new dilemma for democratic politics worldwide, and indeed the experience of liberal Western democracy shines a light upon what could be considered a reasonable position on this subject.

Consider first the experience of the U.K., where laws on seditious libel and criminal defamation were summarily abolished by Section 73 of the Coroners and Justice Act in 2009 nearly 40 years after the British Law Commission first recommended doing so, albeit after “after a century of disuse,” according to Professor John Spencer of Cambridge University.

Modern Britain’s struggle with the chilling effects of sedition on free speech dates back centuries to the times of the Star Chamber, and was poignantly illustrated in the 1792 trial of political theorist Thomas Paine, whose work was influential in igniting the American Revolution, specifically for his publication of the second part of the Rights of Man.

In that tome Mr. Paine effectively argued that popular political revolution was permissible when a government no longer safeguarded inalienable rights of its people, rights that stemmed from nature and not any government-written document, not even a Constitution.

Unsurprisingly when an estimated 50,000 copies of Mr. Paine’s manuscript started circulating in Britain it led to a massive furore within government, a trial in absentia, and finally conviction for seditious libel against the Crown. Fortunately for Mr. Paine he was at the time a resident of France and hence “unavailable for hanging,” and so he got away with never returning to his homeland.

In the early years sedition came with rather steep punishments, including perpetrators having their ears cut off for a first offense and put to death for recidivism. Later it became punishable up to life imprisonment and/or a fine, and in most cases “Not only was truth no defence, but intention was irrelevant.”

However in line with what Professor Spencer had indicated to The Hindu, on multiple occasions 21-st century debates in the House of Lords agreed that “the common law of sedition had rarely been used in England over the course of the past century,” and the last major case in the country where there was an attempt to try an individual for sedition involved the publication of Salman Rushdie’s book, The Satantic Verses.

Reports in the U.S. Library of Congress quote allegations made that Mr. Rushdie’s book was a “scurrilous attack on the Muslim religion,” and that it resulted in violence in the UK as well as a severance of diplomatic relations between the UK and Iran.

Taking matters further an individual was said to have attempted to obtain a summons against Mr. Rushdie and his publisher, alleging that both parties had committed the offense of seditious libel, a claim that was denied after judges found that there was not a seditious intent by either of the parties against any of the UK’s democratic institutions.

In the U.S., Congress enacted the Sedition Act of 1798 in anticipation of a possible war with France, according to Professor Geoffrey Stone of the University of Chicago, and the Act made it a crime for any person to make any statement that brought the President, Congress, or the government into contempt or disrepute.

Unlike the U.K.’s sedition law, truth was a defence, but still it was bitterly opposed by those who sought to criticise the government, and the government used it to prosecute numerous journalists and politicians who criticised its policies, Professor Stone said to The Hindu.

While the Act expired by its own force in 1801 amidst condemnation as a serious violation of the First Amendment guaranteeing the right to freedom of expression, a series of compulsions relating the wartime politics, from 1798 to the present led to reinstitution of seditious libel laws.

These included, Professor Stone notes, the government putting some presses out of business during the American Civil War; the government enacting the Espionage Act of 1917 and the Sedition Act of 1918 during World War I, which were used to prosecute around 2,000 individuals for criticising the war and the draft; and the federal government and most states enacting laws prohibiting anyone to advocate the violent overthrow of the government During the “Red Scare” of the 1950s.

Notwithstanding this regressive shift during the war years, the U.S. Supreme Court began to address the constitutionality of these laws for the first time during World War I. Although it found them to be constitutional at that time, the Court’s questioning set off a “fierce challenge,” to sedition as a legal concept, Professor Stone said, particularly by Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis.

From that time until 1969 the U.S. Supreme Court struggled with sedition laws and ultimately came to the view in Brandenbug v. Ohio that the government could punish speech because it turned people against the government or might cause them to engage in unlawful conduct only if the speaker expressly incited unlawful conduct and only if the speech is likely to cause such conduct imminently.

Since that time no restrictions on seditious libel have been upheld in the U.S. and Professor Stone argues that this has largely been because the nation and its government have come to encompass the understanding that “It is more important to protect a vital freedom of speech than to suppress views we do not like. The suppression of criticism of the government, we have come to understand, is fundamentally incompatible with the aspirations of a true democracy.”

The Government of India frequently speaks of India becoming a superpower comparable to some democratic Western nations. Yet as this government goes about arrogating to itself the right to victimise those who challenge the legitimacy of its actions, or raise dissenting slogans against widespread inequities in the country, it may have pause for thought if it bothered to glance through the historical evolution of jurisprudential thought on sedition laws in these very same nations.

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**Article can be accessed online** [**here**](https://www.thehindu.com/opinion/op-ed/How-to-be-free-in-the-21st-century/article14160366.ece)**.**

**Praising Pakistan or waving its flag cannot be sedition, but asking for India’s dismemberment should attract the charge**

The sedition law was part of the original IPC, which has, in general, stood the test of time in Indian conditions. Section 124-A was indeed amended for technical reasons after Independence but remains substantially the same — though very rarely used, as is to be expected.

**Revisiting the sedition law**

Mere criticism of the government, or of governance, indeed of the institutions of governance, however harsh, will not qualify as sedition. From a layman’s perspective, the issue of sedition would come into play only if the territorial integrity of India as well as the sovereignty of the country are questioned by an individual or a group. In other words, sedition is relevant only in the context of a demand for secession. ‘Waging war’ with India or other inimical acts against the country will be met by other legal provisions but cannot replace 124-A if a situation arises.

Advocating or raising slogans about breaking up India, to my mind, constitutes sedition. Using Afzal Guru, who carried out an attack on the high seat of democracy, the Indian Parliament, as one’s poster boy to advocate*Bharat Ki Barbadi*(with implication of separation of Kashmir) is sedition. The most recent Eid procession in Srinagar led by a group flaunting slain Hizbul Mujahideen commander Burhan Wani’s picture along with that of Lashkar-e-Taiba chief Hafiz Saeed, asking for a separate Kashmir, also smacks of sedition.

It would be recalled that in *Kedar Nath Singh v. State of Bihar*, a Division Bench had laid down the criterion stressing that a necessary component of sedition involves rebellion or use of arms, in conjunction with demand for separation from or dismemberment of India. This is too high a bar — subsequent events in India, including the significant spread of Naxalism, the movement in Punjab, the earlier demand for a Tamil Eelam, surely have sedition somewhere in their composition; perhaps the very stringent Supreme Court conditions need to be revisited.

I say this in the backdrop of the Gorkhaland agitation, and similar problems elsewhere. So long as the demand is for a separate State, it surely is constitutional, subject to other laws in the method of expression; the issue of sedition needs to be considered only in the unlikely context of a demand of separation. Waving Pakistan’s flag in the course of a match, or praising Pakistan, cannot be sedition — the recent acts of some State governments to slap the charge of sedition on people are excessive. That’s not the same as seeking *azaadi*(freedom) from India, or asking that the territory of India be dismembered. Zakir Naik, whom India is trying to extradite, claims he is a religious preacher and has neither advocated the break-up of India nor exhorted young men to join the Islamic State. But his words are insidious and possibly attract the sedition charge.

**The need for nuance**

Very recently, there was a protest in Bengaluru trains on the imposition of Hindi in Karnataka — is that dissenting note a seditious act? Surely not. Again, in another context, the Naga agitation essentially did not even recognise the sovereignty of India. Even though it qualified as sedition, the government did not invoke this clause due to sensible political reasons.

The word ‘sedition’ is thus extremely nuanced, and needs to be applied with caution. It is like a cannon that ought not be used to shoot a mouse; but the arsenal also demands possession of cannons, mostly as a deterrent, and on occasion for shooting.

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**Article can be accessed online** [**here**](https://www.thehindu.com/opinion/op-ed/left-right-centre-should-the-sedition-law-be-scrapped/article19181085.ece)**.**

**Denunciating the sedition law for ‘rampant misuse’ concedes ground that there exist instances where its ‘use’ may be necessary**

India is facing an unprecedented level of threat from a countless variety of adversaries many of whom act under the veil of being social activists, NGO conveners or just student leaders.

The law of sedition emanating from Section 124-A of the IPC, rests in Chapter VI which also codifies other ‘Offences Against the State’. The need for this chapter is underscored by the fact that actions which threaten the security of a government, tasked to represent the people who elected it, are repelled and its perpetrators punished.

**Why we need it**

A denunciation against the law of sedition is that its misuse is rampant and thus must be done away with. This argument has two fallacies. First, it concedes ground that there exist instances where its ‘use’ may be warranted and necessary. The effect of any individual seditious activity is far-reaching, which is why the offence is categorised in ‘Offences Against the State’ and not in Chapter XIII of the IPC pertaining to ‘Offences Against Public Tranquility’.

The impact on public tranquility is but one of the consequences of any seditious activity. However, far more alarming potentialities include calls for violent revolutions seeking to overthrow the government, appeals for a separate Khalistan or Kashmir and other atrocity propaganda, which does not qualify as protected speech and has the ability to denude the legitimacy of a democratically elected government. Second, the Supreme Court has repeatedly observed that the mere possibility of misuse of a provision does not per se invalidate the legislation. In such cases, the vulnerability extends only to the ‘action’ and not the ‘section’.

**Supreme Court’s rationale**

Section 124-A is circumscribed by Explanation 2 and Explanation 3, which protect constructive criticism of government measures made without any attempt to excite hatred, contempt or disaffection towards the government. Therefore the sedition law is not antithetical to free speech and the importance of free speech is highlighted in the Section itself. Even in the case of Kedar *Nath Singh v. State of Bihar* (1962), which happens to be the locus classicus on the law of sedition in India, a Bench of five judges of the Supreme Court held that a person using strong speech or vigorous words in writing, against the government, is outside the purview of the concerned Section. However, in the same breath, the court also edified that while it had a duty to protect its citizens from an oppressive law affecting free speech, this speech cannot become a licence for vilification of the government, which incites violence or has the tendency to create public disorder. Following this position, the High Courts of Andhra Pradesh and Punjab have rightly held poems and articles commending the principles of Naxalism and cries for secession of Khalistan to be seditious, respectively.

**The Pakistan test**

When Indians shout “Pakistan Zindabad” after a Pakistan win over India in a cricket match, are they celebrating the bowling of a young Mohammad Amir? Or the blitzkrieg of a four matches old Fakhar Zaman? Or the fielding prowess of an ageing Shoaib Malik? Or are they tacitly identifying themselves with a Pakistan that is killing Indian soldiers everyday, a Pakistan that is attempting to sever an entire Indian State? Will such words or representations that expose the Indian state to such ‘contempt’, ‘hatred’ or ‘disaffection’ qualify as sedition? As per *Kedar Nath Singh*, these actions certainly possess a “tendency to create public disorder”. These questions need no answer. Surprisingly, all those self-proclaimed liberals who spare no stone unturned to speak against India, remain impressively disciplined when they visit the U.S. and rarely speak against its territorial integrity because they know the consequences.

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