

## EVALUATION OF THE LAW OF SEDITION IN INDIA

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### INTRODUCTION

'Sedition' means words or action that make people rebel against authority of the state. As per Coleridge, the word 'sedition' in its ordinary natural significance denotes a tumult, an insurrection, popular commotion or uproar; it implies violence or lawlessness in some form. Section 124-A in the Indian Penal Code, named 'Sedition', explains sedition in wide and magnanimous terms. It says '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 life imprisonment. The explanations which the Indian Penal Code gives are that 'the expression 'disaffection' includes disloyalty and all feelings of hate. It also says that comments that express strong disapproval of 'the measures of the Government, with a view to obtain their desired modifications by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offense under this section. 'According to section 124-A, comments expressing strong disapproval of the 'administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offense under this section. 'The law was originally drafted by Thomas Macaulay. It was not a part of IPC in the 1860s and was even dropped from the law. It was introduced in the IPC in the year 1870. Many Indian freedom fighters, including Mahatma Gandhi and Bal Gangadhar Tilak, were charged with sedition during freedom struggle. When the first amendment was introduced, which also included detailed limitations on free speech, the then Prime Minister Jawaharlal Nehru was categorical in his belief that the offence of sedition was fundamentally unconstitutional. He had said 'now so far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons. The sooner we get rid of it the better.' Besides Kanhaiya Kumar, Patidar leader Hardik Patel was slapped with sedition charges. In the year 2014, some of the Kashmiri students were charged with sedition for supporting Pakistan in a cricket match between India and Pakistan.<sup>1</sup>

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<sup>1</sup>India Today, Indian sedition law: what is it and what does it say, <https://www.indiatoday.in/education-today/gk-current-affairs/story/indian-sedition-law-309015-2016-02-16> (Jan. 01 , 2018, 08:17 PM)

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## MEANING OF SEDITION

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According to oxford dictionary conduct of speech inciting people to rebel against the authority of a state or monarch.<sup>2</sup> According to Merriam –Webster legal dictionary the crime of creating a revolt, disturbance, or violence against lawful civil authority with the intent to cause its overthrow or destruction.<sup>3</sup> The full meaning of sedition was explained by lord Fitzgerald thus; “sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by a short interval. Seditious is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing which are calculated to disturb the tranquilities of the state, and lead ignorant persons to Endeavour to subvert the government and laws of the Empire. According to Tamblin’s Law Dictionary, in the scotch Law, “sedition’ is defined to consist in attempts made by meetings, or by speeches or publication, to disturb the tranquility of the state.

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## OBJECTS OF SEDITION

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The objects of sedition generally are to induce discontent and insurrection, and to stir up opposition to the government and bring the administration of justice into contempt, and the very tendency of sedition is to incite the people into insurrection and rebellion. Seditious has been described as disloyalty in action, and the considered as seditious all those practices which have for their object to excite discontent or disaffection, to create public disturbance or to lead to civil war, or to bring into hatred or contempt the sovereign or the government, the law or constitution of realm and generally all Endeavour’s to promote public disorder.”

Under English Law, according to Stephen’s Observations:

“Seditious may be defined as conduct which has, either as its object or as its natural consequences, the unlawful display of dissatisfaction with the government or with the existing order of society. the seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of accused. This may be either.

- To exercise disaffection against the king, government or constitution, or against parliament or the administration of justice;
- To promote, by unlawful means any alteration in church or state;
- To incite a disturbance of the peace;
- To raise discontent among the king’s subjects;

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<sup>2</sup> <https://en.oxforddictionaries.com/definition/sedition> (Jan. 01, 2018, 08:20 PM)

<sup>3</sup> [https://www. Merriam-webster.com/dictionary/sedition](https://www.Merriam-webster.com/dictionary/sedition) (Jan. 01, 2018, 08:40 PM)

- To excite class hatred;<sup>4</sup>

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## SEDITION LAWS IN INDIA

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### Pre-independence position

It was a matter of privilege for Indian freedom fighters to be behind bars under the charges of 124A, as said by the Father of the Nation,

“Section 124A, under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence.”

– Mahatma Gandhi, March 1922

The year 1892 saw the “first recorded state trial for sedition” in *Queen Empress v. Jogendra Chunder Bose*<sup>5</sup>. The judgment “laid down a distinction between ‘disaffection’ and ‘disapprobation’, and observed”: “It is sufficient for the purposes of the section that the words used were calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people, and that they were used with an intention to create such feeling.”

In 1898, in the case of *Queen Empress v. Bal Gangadhar Tilak*<sup>6</sup>, the scope of the offense was expanded by the colonial courts and mere attempts to incite feelings of disaffection could be seen as sedition. The Tilak case defined sedition law under Section 124A for the first time as follows: “The offense consists in exciting or attempting to excite in others certain bad feelings towards the government. It is not the exciting or attempting to excite mutiny or rebellion or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial.”

The sedition law got more famous after the father of our nation, Mohandas Karamchand Gandhi, was jailed under the charges of sedition. Mahatma Gandhi was arrested by the British police on March 10 in 1922 for writing three ‘politically sensitive’ articles in his weekly journal *Young India*, which was published from 1919 to 1932. Gandhi was sentenced to a six-year jail term. Three charges were imposed on Gandhi; they were –

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<sup>4</sup>Legal provision regarding the sedition under section- 124A,  
<http://www.shareyouressays.com/knowledge/legal-provisions-regarding-sedition-under-section-124a-of-indian-penal-code-1860/119103> (Jan. 01, 2018, 08:50 PM)

<sup>5</sup> (1892) ILR 19 Cal 35.

<sup>6</sup> (1867) 22 Bom. 112.(India)

‘tampering with loyalty’, ‘shaking the manes’ and ‘attempt to excite disaffection towards the British government’.<sup>7</sup>

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## AFTER INDEPENDENCE

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Post-Independence, erstwhile Indian leaders realized the dangers posed by this law to freedom of speech and expression, contained in Article 19(1)(a) of the Constitution, in an independent India. The Constituent Assembly moved an amendment to drop sedition from the list of restrictions on this fundamental right. On this occasion, highlighting the change needed in interpretation of sedition law brought about by India’s independence, KM Munshi said “a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State.” In 1951, India’s PM Jawaharlal Nehru publicly voiced his dislike of Section 124A, saying, “that particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons.” However, this was ironic given these words were spoken on the First Amendment to the Constitution, which imposed greater restrictions on the right to free speech. The sedition law died a judicial death in 1958 when the Allahabad High Court declared it ultra vires Article 19(1)(a), only to be resuscitated in 1962 by the Supreme Court, in Kedar Nath Singh vs State Of Bihar. However, the SC greatly reduced the scope of offences under which this law could be SC applied. To make sure section 124A did not impinge on the fundamental right to free speech, the added, “strong words used to express disapprobation of the measures of government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the government, without exciting those feelings, which generate the inclination to cause public disorder by acts of violence, would not be penal.” Thus, the court sided with an effects-based test (based on the implication of words) rather than content-based test (which examines the text closely) in deciding sedition cases, much like in American law. Further, the court went as far as to say that section 124A would be ultra vires Article 19(1)(a) if it were applied in case of “words written or spoken which merely create disaffection or feelings of enmity against the Government.” The apex court’s insistence on provocation of “imminent violence” being an acid test for sedition, or for curbing speech of any kind, has been reiterated in several subsequent judgements, such as in S. Rangarajan Etc. vs P. Jagjivan Ram, Indra Das vs State of Assam, and Arup Bhuyan vs State of Assam.<sup>8</sup>

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<sup>7</sup>Trivedi Case sets of sedition debate, <https://blogs.wsj.com/indiarealtime/2012/09/14/trivedi-case-sets-off-sedition-debate> (Jan. 01, 2018, 08: 57)

<sup>8</sup> <https://Indiakanoon/Org/doc/792920> (Jan. 01, 2018, 08:33 PM)

One of the most important judgements in this regard is *Balwant Singh vs State of Punjab*<sup>9</sup>. In this case, the two Sikh accused raised three slogans - “Khalistan Zindabad”, “Raj Karega Khalsa” (Khalsa will rule), and “Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da” (Hindus will leave Punjab, we will rule). Despite the slogans clearly undermining Indian sovereignty and government, the SC acquitted the accused because the slogans did not imminently incite violence. Removing any doubts whatsoever over the doctrine of imminent violence, the SC said, “the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded.” Elaborating further, the SC said, “The casual raising of the slogans...alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India, Section 124A IPC.” Thus, even advocating secession of the country or violent overthrow of the government, does not attract sedition unless there is imminent incitement to violence.<sup>10</sup>

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## PRESENT SITUATION IN INDIA

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On 12 February 2016, two policemen in plain clothes arrested the president of the student union of the Jawaharlal Nehru University (JNU), Kanhaiya Kumar. On 9 February, students from JNU had allegedly shouted slogans at an event marking the death anniversary of Mohammad Afzal, who was convicted in the 2001 terror attack on the parliament. On Tuesday, 23 February, Umar Khalid and Anirban Bhattacharya, two of the alleged organizers of the event, surrendered themselves to police custody following an eleven-day-long manhunt. Kumar, Khalid and Bhattacharya have been charged under the Indian Penal Code (IPC) Section 120B, which deals with criminal conspiracy against the state, and 124A, which contentiously attends to sedition.<sup>11</sup>

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## THE INDIAN PENAL CODE, 1860 (SECTION 124(A))

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**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, 1

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<sup>9</sup> AIR 1995 SC 1785. (India)

<sup>10</sup> <https://www.newsland.com/2016/02/16/a-quick-history-of-sedition-law-and-why-it-cant-apply-to-jnus-kanhaiya-kumar> (Jan. 02, 2018, 09:15 PM)

<sup>11</sup> A History Of The Infamous Section 124A

<http://www.caravanmagazine.in/vantage/section-124a-sedition-jnu-protests> (Jan. 02, 2018, 09:17)

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.<sup>12</sup>

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### CLASSIFICATION OF OFFENCE

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Punishment—Imprisonment for life and fine, or imprisonment for 3 years and fine, or fine—Cognizable—Non-bail able—Triable by Court of Session—Non-compoundable.

#### Section 95 in The Code of Criminal Procedure, 1973

95. Power to declare certain publications forfeited and to issue search warrants for the same. Where-

(a) any newspaper, or book, or

(b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code 1860, the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorize any police officer not below the rank of sub- inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.<sup>13</sup>

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### LAW OF SEDITION VS FREEDOM OF SPEECH

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<sup>12</sup> S.N. Misra, Indian Penal Code, 317(Central Law Publication, 19<sup>th</sup> edn.2013)

<sup>13</sup> The Criminal Manual, 72(central law publication 13<sup>th</sup> edn.2015)

Article 19(1)(a) & 19(2)<sup>14</sup> guarantees to all citizens “the right to freedom of speech and expression”. Clause (2) of Article 19, at the same time provide: 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 state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence”<sup>15</sup>

Every case of sedition has a common defense that the action was done in pursuance of Article 19(1)(a). i.e. It was his freedom of speech under which he said those statements. But what people are not aware of is Article 19(2) which states that a speech or an act should not be something which can invoke or incite others against the state. If something can cause unrest in the nation, it can't be defended by using Article 19(1)(a). Such an act which incites others to destroy the unity and integrity of the nation will be termed as sedition and not free speech. *State of Bihar v. Shailabala Devi* <sup>16</sup>in this case court said that the security of the state may be endangered by crimes of violence intended to overthrow the Government, waging of war and rebellion against the government external aggression or war etc. *Ram Nandan v. state*<sup>17</sup> The expression ‘ security of the State’ in Article 19(2) does not merely mean as danger to the security of the entire country nor can it be restriction to an upheaval or a rebellion endangering the security of the security of the entire country.

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## JUDICIAL RESPONSE

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The exact number of cases filed with sedition charges in India are not known, however there have been more than 300 cases in High Court and close to 20 that reached the Supreme Court. The cases date back from pre-independence till date, and include the arrest and trial of cartoonist Aseem Trivedi, and a case against the current finance Minister Arun Jaitley. Here is a snapshot of what courts ruled:

*Kamal Krishna Sircar v. Emperor Mr. Kamal Krishna Sircar* in Bengal was convicted on charges of sedition for making a speech and tabling a resolution. He condemned the ban of the Communist Party and several other groups by the British Government and supported the government in Russia over the capitalistic form of government in British India. In one of the first documented cases of sedition, a two-Judge Bench of the Calcutta High Court scrapped the conviction, saying:

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<sup>14</sup> INDIA CONST. art 19, cl 1(a) cl 2

<sup>15</sup> Narender Kumar, *Constitutional Law of India*, 185 (Pioneer Publications 3rd edn.2002)

<sup>16</sup> AIR 1952 SC 329 (India)

<sup>17</sup> AIR 1959 All 101 (India)

It is absurd to say that speeches of this kind amount to sedition. If such were the case, then every argument against the present form of government and in favor of some other form of government might be alleged to lead to hatred. To suggest some other form of government, is not necessarily to bring the present Government into hatred or contempt. Although in scores of other cases, courts under the British regime convicted several freedom fighters for various things they said, this is an interesting case where the limits of the sedition law were recognized by a British High Court. *Niharendu Dutt Majumdar v. The king emperor*<sup>18</sup> in a similar case pertaining to an Indian vs the foreign government, prior to India's independence the Federal Court noted: Public disorder, or the reasonable anticipation or likelihood of public disorder, is the gist of the offence called 'sedition'. The acts or words complained of, must either incite to disorder or must be such as to satisfy reasonable men, that it is their intention or tendency. The Court in this matter highlighted that we need to understand the differences between the 'ingredients' of the offence before passing the judgment. *A.F Rama Kurup editor Malayali v. United States of Travancore*<sup>19</sup>, Cochin After independence but prior to the enactment of the Constitution, the Kerala High Court examined the cancellation of the license of a newspaper on charges of sedition. The newspaper had published a series of articles accusing a government Ministry of communal bias and corruption. Finding some of the published content seditious, the court said: "In Item 11 the Ministry is charged with high treason and accuses it of bringing shame to democracy. The paper asks why the Ministry will not resign. Whatever be the anxiety of the paper to precipitate the collapse of the Ministry, it cannot claim to be offering honest and legitimate criticism of Government. It excites the people to white heat and exhorts them not to allow the Cabinet to continue any longer."

*Brij Bhushan & Anr v. the State of Delhi*<sup>20</sup> The Supreme Court in this case, struck down an order issued by the Punjab Government under the Safety Act, which required the petitioner to submit all materials relating to Pakistan including cartoons which he intended to publish for vetting. Court ruled that such pre-publication censorship was not permitted. In response to the judgment the Central Government proceeded to amend Article 19(2) to insert "public order, decency and morality" as grounds for restricting free speech. Interestingly this was the first amendment to the Constitution. Although Parliamentary records show that Pt. Jawaharlal Nehru spoke against the retention of 'sedition' as an offence on the penal code, his government enhanced the punishment stipulated for this offence. *Kedernath Singh v. State of Bihar*<sup>21</sup> Hearing the appeals of conviction under sedition charges the Constitution Bench of the Supreme Court of India said: "What has been contended is that a person who makes a very strong speech or uses very vigorous words

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<sup>18</sup> (1942) F.C.R. 38 (India)

<sup>19</sup> A.I.R. 1950 Ker. 83 (India)

<sup>20</sup> A.I.R. 1950 S.C. 129 (India)

<sup>21</sup> A.I.R. 1962 S.C. 955 (India)



in a writing directed to a very strong criticism of measures of Government, might also come within the ambit of 'sedition'. But, in our opinion, such words written or spoken would be outside the scope of the section. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence." *P Hamalatha v. The Govt. of Andhra Pradesh*<sup>22</sup> Hearing a case of sedition through published material, the High Court of Andhra Pradesh ruled against the petitioner and said: The call of the content was to break open all the god owns and distribute the grains contained therein, cutting into pieces the bastards who obstruct them and run away. The utterances have a tendency to create disorder or disturbance of public peace by resort to violence. The people were called upon to sharpen their axes and sickles to cut down the pests and the leeches on the lines of Naxalite leaders. The court said that such writings incite and advocate the overthrow of the Government with arms and violence. *P Alavi v. State of Kerala*<sup>23</sup> In a case pertaining to sloganeering, the court held that slogans criticizing Parliament or the judicial setup would not amount to 'sedition'. The Court said: Criticizing the present judicial set up or functioning of the Parliament or Legislative Assemblies. The court ruled that to scrutinize the sedition through speech or writing its probable or natural effect should be 'seen'. *Gur Jatinder Pal v. State of Punjab*<sup>24</sup> In this case the Punjab and Haryana High Court quashed an FIR charging the petitioners with 'sedition' and acts of terrorism simply because they responded to some anti-India and Pro-Khalistan slogans raised at a public meeting. The Court observed: "Taking into consideration the allegation against the petitioner, to have responded to the slogans raised by Simranjit Singh Mann and Dr. Jagjit Singh Chauhan, is not an act of sedition. The same court in the case of *Simranjit Singh Mann v. State of Punjab* quashed the FIR against him which was registered on the allegations that he had raised slogans of "Khalistan Zindabad" instigating common people and Dilwan Singh, the human bomb who assassinated the Chief Minister Beant Singh."

*State of Chhattisgarh v. Dr. Binayak Sen.*<sup>25</sup> Sedition charges against Dr. Binayak Sen. grabbed international headlines. A doctor and human rights activist Binayak Sen was convicted and sentenced to life imprisonment for being a Maoist sympathizer and possessing Nasal literature. Granting him bail the Supreme Court observed: "We are a democratic country. He may be a sympathizer. That does not make him guilty of sedition." Drawing an analogy, the court asked: "If Mahatma Gandhi's autobiography is found in somebody's place, is he a Gandhian? No case of sedition is made out based on materials in possession unless you show that he was actively helping or harboring Maoists."

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<sup>22</sup> AIR 1976 AP 375 (India)

<sup>23</sup> <https://www.legalcystal.com/case/1010487/k-p-alavi-vs-state-kerala>

<sup>24</sup> 2009(3) RCR (Criminal) 224. (Jan. 03, 2018, 08:34)

<sup>25</sup>

Sanskar Marathe v. State of Maharashtra & Others<sup>26</sup> In the notorious case of the victimization of cartoonist Aseem Trivedi, a Division Bench of the Bombay High Court laid down the guidelines for the police while invoking the sedition law against any person: The words, signs or representations must bring the Government (Central or State) into hatred or contempt or must be an incitement to violence. Comments expressing disapproval or criticism of the Government with a view to obtaining a change of government by lawful means without any of the above are not seditious under Section 124A. Arun Jaitley v. State of U.P In the case<sup>27</sup>, decided less than four months ago, a single Judge Bench of the Allahabad High Court threw out a charge of sedition against the Finance Minister Mr. Arun Jaitely. The case was filed taking a Suo motu cognizance of an article by Arun Jaitley on National Judicial Commission Act case. Quashing the complaint, the Court said: “A citizen had a right to say or write whatever he likes about the Government, by way of criticism or comments so long as he did not incite people to resort to violence. The article merely seeks to voice the opinion and the view of the author of the need to strike a balance between the functioning of two important pillars of the country. It is surely not a call to arms.”

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## CONCLUSION

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The law of sedition was given to us by the colonial government in terms of Section 124A on which we are still relying. The law still has the same relevance as it had during the colonial rule, the only change is that the evil before independence were the freedom fighters and the evils now are the anti-national elements. Before independence sedition was a negative law for us as the people who were fighting for us were put behind the bars but after independence it has proved to be a positive law as the people going against and invoking others to go against the nation can be punished, which is required for the unity and integrity of the nation.

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<sup>26</sup> Sanskar Marathe vs. State of Maharashtra ((2015 SCC OnLine Bom 587) (India)

<sup>27</sup> A.I.R. 2015 S.C. 273. (India)