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## **RELEVANCE OF SEDITION LAW IN PRESENT INDIA**

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### **ABSTRACT**

In this article, the author has discussed the importance of the right to speech and expression which is given to every citizen under Article 19(1)(a) in the constitution of India. The sedition under section 124A hampers the right to speech and expression and government and political leaders are using section 124A against the people who criticize anything or say anything against the government. The presence of this section and its criminalization is unjustified in a democratic country. People are being charged under section 124A for expressing their views, ideas and opinions. Even before the independence, it has been charged against national leaders as well such as, Bal Gangadhar Tilak and Mahatma Gandhi. Authors, artists, activists are getting charged under section 124A for giving their views and for criticizing the government or its policies.

People have the right to express their dissent; this is a part of a democracy. If people do not criticize anything then how can the country change or how can we call our country as a democratic country if the government cannot accept the criticism of its citizen. The offence of sedition is a non-bailable and non-compoundable offence and the punishment for the same is minimum three years of imprisonment which may extend to life imprisonment and also fine. There have been many instances where the law of sedition is misused and some cases are discussed in this paper. Section 124A says that any person 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 shall be punishable. In this paper, the author attempts to analyze the present situation of the offence of sedition and how it has been misused against so many people and whether there is a need of this section or not.

## Introduction

Freedom of Speech and Expression is a big part of our constitution, it's an essence of a democratic country and it's something which is considered as a root of democracy in a democratic country.

The people of India have a right to express their feelings, ideas, opinions towards the government and they can also express their dissent towards anything they think is not appropriate or should be change. Media is the voice of a common people and also if there is healthy and liberal democracy then it reflects strong media presence in a country. Criticisms and disagreements of the citizens of the country must be taken in a positive way to change the issues and to understand the problems of the common people.

Therefore, freedom of press and freedom of discussion must be taken as a necessary element to make the society open and therefore any liberal democracy.

Every person or citizen has right to speech and express his emotions against the government and its policies. It is the first and foremost right of an individual's self-development. Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression to all citizens.

The court also gave some judgments relating to the same, In *Tata Press Limited vs Mahanagar Telephone-Nigam*<sup>1</sup>, The court emphasize the importance of freedom of speech and expression and also held that the sale of prohibited drugs was not in the interest of the general public and as such "could not be a speech" within the meaning of freedom of speech and expression under Article 19(1) (a) of the Constitution.

In *S. Rangarajan v. P. Jagjivan Ram*<sup>2</sup> case it was held by the Supreme Court that “*The democracy is a Government by the people via open discussion. The democratic form of government itself demands of its citizens active and intelligent participation in the affairs of the community. ...the democracy can neither work nor prosper unless people go out to share their views.*”

In *Bennett Coleman & Co v. Union of India*<sup>3</sup>, the Hon'ble Supreme Court held that the

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<sup>1</sup>*Tata Press Limited vs Mahanagar Telephone-Nigam*, 1995 AIR 2438, 1995 SCC (5) 139

<sup>2</sup>*S. Rangarajan v. P. Jagjivan Ram*, 1989 SCR (2) 204, 1989 SCC (2) 574

<sup>3</sup>*Bennett Coleman & Co v. Union of India*, 1973 AIR 106, 1973 SCR (2) 757

freedom of the press embodies the right of the people to free speech and expression. It was held that “Freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in content.”

In *Meneka Gandhi v. Union of India*<sup>4</sup>, Justice Bhagwati has emphasized on the significance of the freedom of speech & expression in these words:

*“Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.”*

However, these freedoms are not absolute because Article 19 (2) of the constitution provides a safeguard to this freedom under which reasonable restrictions can be imposed on the exercise of this right for certain purposes. Under Article 19(2), reasonable restriction can be imposed in the interest of 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 offense.

In *Romesh Thapar V. State of Madras*<sup>5</sup>, The court said that unless the freedom of speech and expression threaten the security of the State, any law imposing restrictions would not fall within the purview of Article 19(2) of the constitution.

But then there is this word “Sedition” a threat to the freedom of speech and expression which is provided to every citizen by the constitution. Section 124A of Indian Penal Code, 1860 covers the offence of Sedition. Other countries have started repealing this law.

If people do not have the right to criticize its own government then there will be no difference left between a democracy and monarchy.

The recent boost in the cases of sedition in India is a result that people are being charged of sedition and even students, filmmakers, journalists, actors etc. are being charged by sedition.

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<sup>4</sup>*Meneka Gandhi v. Union of India*, AIR 1978 SC 597

<sup>5</sup> *Romesh Thapar V. State of Madras*, 1950 AIR 124, 1950 SCR 594

The recent change in the number of cases has raised concerns about the validity of the law as a reasonable ground for restricting the freedom of speech and expression.

## Background

The law is originally drafted by British in 1837 & then was inserted in Indian Penal Code under Section 124A in 1870. The word “Sedition” was introduced by British politician and lawyer **James Fitzjames Stephen** through an amendment in 1870.

It was first used against **Bal Gangadhar Tilak**<sup>6</sup> and he was convicted of sedition twice, In 1897 he was convicted under section 124A by the Bombay High Court for giving speech at a Shivaji festival which violated the said section. The first amendment was made in the section by broadening the scope of the word “disaffection” to include “disloyalty towards the government under section 124A and later he was against convicted under section 124A by the same court for his writings in the newspaper called “kesari”, the court held the Tilak guilty under section 124A but still Tilak mentioned that in spite of the verdict he maintains himself as an innocent.

And later, the charges of sedition were made against **Mahatma Gandhi**. He was sentenced to six years in prison for his involvement in protesting the British colonial government in India.<sup>7</sup>

The Assembly protested vehemently but they were quickly withdrawn. In the end, lawmakers agreed to keep sedition in our constitution.<sup>8</sup>

After that, **Jawaharlal Nehru** called this law “objectionable and obnoxious” in 1951 but didn’t do anything about it. Even **Mahatma Gandhi**<sup>9</sup> dubbed Section 124 A the “prince among the political sections of the IPC designed to suppress citizens’ freedom.

The Sedition law has been revoked from the British constitution in 2010 but in India it is being used rather being misused so that people will not say a word against government policies or rules.

**Queen Empress v. Jogender Chunder Bose**<sup>10</sup>, this case was the first case which was registered

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<sup>6</sup> Bal Gangadhar Tilak, (1897) 22 Bom 112

<sup>7</sup> Mitshu Patel, *Analyzing the law of sedition in India*, <https://www.ijlmh.com/paper/analyzing-the-law-of-sedition-in-india/>, 2021

<sup>8</sup> Utkarsh Anand, Hindustan Times, Updated on Jul 19, 2021, <https://www.hindustantimes.com/india-news/the-sedition-story-complicated-history-of-sec-124a-101626370928612.html>

<sup>9</sup> Mohandas Karamchand Gandhi vs Unknown on 12 March, 1920 (1920) 22 BOMLR 368, 58 Ind Cas 915

<sup>10</sup> *Queen Empress v. Jogender Chunder Bose*, (1892) ILR 19 Cal 35

under section 124A after 20 years of introducing the section.

Seventy-six cases for sedition were registered in 2021 in the country under IPC Section 124A, of which the maximum 29 were in Andhra Pradesh, according to the latest NCRB report.

In 2020, 73 sedition cases were recorded across India, the report, Crime in India, says.

According to the report, 86 people were arrested in sedition crimes across the country in 2021, while no one was convicted of sedition crimes in 2021.<sup>11</sup>

### **What is Sedition?**

Sedition is overt conduct, such as speech and organization that tends toward rebellion against the established order. Sedition often includes subversion of a constitution and incitement of discontent toward, or insurrection against, established authority. Sedition may include any commotion, though not aimed at direct and open violence against the laws.

**According to the Indian Penal Code**, Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—the expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.<sup>12</sup>

It was the Indira Gandhi government that made Section 124A a cognizable offence for the first time in India’s history. Sedition was made a cognizable offence authorizing the police to make

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<sup>11</sup>Basu Chandola, *The sedition law: the past, present and future*, <https://www.orfonline.org/expert-speak/the-sedition-law-the-past-present-and-future/?amp>, 2022

<sup>12</sup><https://indiankanoon.org/doc/1641007/>

arrests without a warrant.

In 1948, The term “sedition” was removed from the constitution when it was adopted on 26<sup>th</sup> November, 1949 after some debate in the constituent assembly and therefore Article 19(1)(a) was given absolute freedom of speech and expression and in 1951 Jawaharlal Nehru introduced the first amendment which imposes “reasonable restriction” on the right of free speech and expression but section 124A continued to have a place in the Indian Penal Code.

### **Whether Sedition shall be declared as unconstitutional?**

Recently in May 2022, the Supreme Court put the sedition law on hold and direct the government to not lodge any new case of the same under the British-era legislation till its provisions had been fully re-examined.

The order, putting a hold on registration of FIRs is a step in the right direction for protection and promotion of the right to freedom of expression. As long as the sedition law remains in place, human rights defenders and others who speak out against repression will continue to be punished.

A bench headed by Chief Justice NV Ramana said 'it would be appropriate to put the provision in abeyance' until the government reviews the sedition law.

The court also added that those being prosecuted and jailed under the same can approach the trial courts which will adjudicate their grievances expeditiously.<sup>13</sup>

There has been many cases where the question of its constitutionality is being raised. The first case where the constitutionality of the section 124A was challenged, *Kedarnath Singh V. State of Bihar*<sup>14</sup>, The facts of the case were that, Kedarnath used a word “dog” for the CID officers and used the word “goondas” for the Indian National Congress Party. He also targeted Vinobha Bhave's attempts to redistribute land. The judgment delivered by the Supreme Court states, there is a need to provide some parameters on the unrestricted use of sedition as it violates the freedom of speech and expression. The court while quashing the sedition case states that this section 124A cannot be interpreted literally it needs to be interpreted by the judges; hence

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<sup>13</sup><https://www.livelaw.in/top-stories/something-may-happen-in-next-parliament-session-attorney-general-tells-supreme-court-on-scrapping-sedition-law-212847#:~:text=On%20May%2011%2C%202022%2C%20a,it%20was%20under%20re%2Dconsideration.>

<sup>14</sup>*Kedar Nath Singh v. State of Bihar*, 1962AIR 955

the two essential elements necessary to establish the crime of sedition were given by the Supreme Court. Therefore, the Court concluded that Section 124A must be construed to only penalize statements that incite public disorder. After this judgment public disorder is considered as a very important ingredient in the section 124A.

Then in *Alavi V. State of Kerala*<sup>15</sup>, The Supreme Court held that sloganeering, criticizing of parliament or judicial setup does not amount to sedition.

In the case *Pankaj Butalia v. Central Board of Film Certification*<sup>16</sup>, the Delhi high court held that intention is an extremely important part to commit an offence of sedition.

Then, again in *Balwant Singh V. State of Punjab*<sup>17</sup>, Balwant Singh and his friend were arrested for shouting slogans like “Khalistan Zindabaad” in public and they were arrested under the offence of sedition. It was held that casual raising some slogans do not come under section 124A and police should have avoided the incidence. The court said that it can be applied only when accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India and therefore in this case, no offence has been committed. The prosecution witnesses were guilty of giving False statements. Learned counsel then, in the alternative, went on to submit that even if the prosecution case to the effect that the appellants had raised the three slogans was accepted, no offence under Section 124A of IPC or 153A IPC could be said to have been made out.

In *Shreya Singhal V. Union of India*<sup>18</sup>, Shreya Singhal filed a petition to strike down the section 66A of the IT Act. The Supreme Court struck down the section 66A of Information technology act 2000 stating that it violates the Article 19(1) of the constitution that guarantees the freedom of speech and expression to all citizens. The court emphasize the right to freedom of speech and expression in this case by saying that section 66A of IT Act is not vague but also “disproportionately invades the right of free speech.”

In *Manubhai Patel case*<sup>19</sup>, the book was seized on the ground that it had the likelihood of inciting violence in the country and attracted the penal provision of Section 124A of the IPC. The Gujarat High Court in this very case came to rescue and declared that this particular book

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<sup>15</sup>*Alavi V. State of Kerala* CrI.M.C.No 689 of 1981

<sup>16</sup>*Pankaj Butalia v. Central Board of Film Certification*, WP (c) 675 of 2015

<sup>17</sup>*Balwant Singh v. State of Punjab*, (1995) 3 SCC 214.

<sup>18</sup>WRIT PETITION (CRIMINAL) NO.167 OF 2012

<sup>19</sup>*Manubhai Patel v. State of Gujarat*, 1972 Cr LJ 388.

did not in any way tend to cause disruption of public order and furthermore, did not in any manner tries to undermine the government in power. Hence, such book did not in any manner have the propensity to subvert the government in power and in finality quashed the orders of the Gujarat government against the accused person.<sup>20</sup>

### **Misuse of Sedition in India**

The sedition is often being used against people or to suppress the voice of the people who criticize any policy or rules of the government law. The police are using the sedition as a tool to put a finger on the citizen of India who talks anything against the government.

The misuse of sedition law continued and not even the kids were left, in Karnataka mother and principal of the students were charged of sedition for performing an anti-CAA play, the police were also found questing the kids for the same.

In Jharkhand, around 10,000 adivasis were charged of sedition for demanding their land rights which are provided in the Constitution.

In *Raghubir Singh v. State of Bihar*<sup>21</sup>, it was held by the Supreme Court that it is not necessary that the accused should be the author of the content of the seditious matter or should have actually attempted to create hatred, contempt or disaffection towards the government, the circulation of the same is also an offence under section 124A even if the circulator do not had any idea of the same. And in *Binayak Sen v. State of Chhattisgarh*<sup>22</sup>, the Chhattisgarh High Court said the same judgment as Raghubir Singh case.

In 2015, *Sanskar Marathe vs The State of Maharashtra*<sup>23</sup>, In 2012, Aseem Trivedi created and published several cartoons online that allegedly defamed India's Parliament, and the Constitution and National Emblem and spread hatred towards the government. He was charged with the offense of sedition under Section 124A of the Indian Penal Code. The PIL was disposed off by the court stating that only those expressions that excite hatred or contempt against the government, having the tendency of creating public disorder through actual violence or incitement to violence are punishable under Section 124A. The Court noted that cartoons and caricatures are a form of expression with an element of humor or sarcasm. But for the

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<sup>20</sup><https://thelawbrigade.com/wp-content/uploads/2021/05/PRITHIVI-RAJ-SALRJ.pdf>

<sup>21</sup>*Raghubir Singh v. State of Bihar*, 1987 AIR 149, 1986 SCR (3) 802

<sup>22</sup>*Binayak Sen v. State of Chhattisgarh* 2011, Criminal appeal No. 54 of 2011

<sup>23</sup>*Sanskar Marathe vs The State of Maharashtra* 2015, Cri PIL 3-2015



reason, freedom of speech and expression available to express his indignation against corruption in the political system could not have been encroached upon when there is no allegation of incitement or the intention to create public disorder. At the end, the High Court also issued some guidelines to be followed by police personnel while applying Section 124A.

In 2016, *Divya Spandana*<sup>24</sup> was being charged of sedition for praising the people of Pakistan and their hospitality. A court in Madikeri district of Karnataka has quashed a case of sedition filed against actress Divya Spandana.

There are some cases in which people are being charged for sedition for making some statements that do not incite or harm the security of the government.

Therefore, we can say that even after the guidelines which were given in Kedarnath case, the cases of sedition are getting filed like a bullet train. The people and the government are misusing the section by putting a finger on the citizen's mouth of the country. The Centre and State has to understand that the dissent is a part of a democratic country.

Recently, The Law Commission in its consultation paper on sedition requesting that the laws under section 124A be reconsidered. It also laid down some issues which should be kept in mind in order to study revision of section 124A.<sup>25</sup>

The 267th Report of the Commission on Hate Speech, (2017), distinguished between sedition and hate speech, providing that the offence of hate speech affects the State indirectly by disturbing public tranquility, while the sedition is directly an offence against the State. Hate speech has been seen to be used post-elections to cause anti-minority incitement and is often related to the politics of violence and hatred.<sup>26</sup>

### **Sedition found in other Laws**

- Indian Penal Code, 1860 (Section 124A)
- The Code of Criminal Procedure, 1973 (Section 95)
- The Seditious Meetings Act, 1911 – Section 5 of the Act empowers a District Magistrate or Commissioner of Police to prohibit a public meeting in a proclaimed area if, in his

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<sup>24</sup>*Divya Spandana v. asianet news network private ltd*, 2019 Original suit- 7217/2013

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Commission

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/09/2022092610.pdf>

<sup>26</sup> LAW COMMISSION OF INDIA, 267th Report on: "Hate Speech", 2017

opinion, such meeting is likely to promote sedition or disaffection towards the government or to cause a disturbance of the public tranquility.

- The Unlawful Activities (Prevention) Act (Section 2(o) (iii)).
- Insult to Indian National Flag and Constitution of India, 1971 (Section 2)

### **Some recent judgments on Sedition**

⇒ **Vinod Dua V. Union Of India, 3 June, 2021.**<sup>27</sup>

**Facts** -The petitioner Mr.Dua, in his YouTube video spoke about the health issues caused by Covid-19 and government did not have facilities and there is not sufficient information on the necessary requirements which were needed at the time of Covid. The FIR was registered against Mr. Dua for the offence of sedition for inciting violence amongst the citizens.

#### **Judgment–**

The court quashed FIR and stated that a citizen has right to criticize the government policies as long as it does not incite people to violence against the government established by law.

Thus, the court commented that it was within the right of the petitioner as a journalist that he exercised his concern, and he held all the rights to criticize the actions of the government.

⇒ **Zakir Hussain v. UT of Ladakh, 2021**<sup>28</sup>

**Facts** - On the 18th June 2020, the J&K police filed an FIR against Zakir Hussain and his co-accused Nissar Ahman Khan in connection with a viral audio clip containing objectionable conversation demeaning the country's armed forces, which occurred against the backdrop of clashes between the Indian Army and Chinese armed forces in the Galwan Valley of Ladakh.

#### **Judgment–**

The court stated,

*“Undoubtedly, in the conversation the petitioner has demeaned the Indian Forces and eulogized the armed forces of China in the context of recent Galwan valley conflict between the two nations. It is equally true that the conversation contained in the audio*

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<sup>27</sup>Vinod Dua V. Union of India, 2021WRIT PETITION (CRL.) NO.154 OF 2020

<sup>28</sup>Zakir Hussain v. UT of Ladakh, 2021 Bail App No.67/2020

*clip, which was circulated on the social media by the co-accused Nissar Ahmed Khan, does bring into contempt the Government established by law in India, but unless the conversation has the tendency or intention of creating public disorder or disturbance of public peace by incitement to an offence, the same would not be sedition to attract the applicability of Section 124A or for that matter Section 153A or 153B IPC,” the Court said.*

Further, there is even no material to demonstrate any criminal conspiracy between the petitioner and Nissar Ahmed Khan to commit sedition or other offences or prior meeting of minds to commit the offences with which both have been charged by the police, the Court added.

➤ **KishorechandraWangkhemcha V. Union of India, 2022<sup>29</sup>**

**Facts** -On February 17th 2021, two journalists, Kishore Wangkhemcha and Kanhaiya Lal Shukla, filed a petition in the Supreme Court challenging the constitutionality of sedition law. Mr. Kishore was arrested for his criticism of the Manipur Government and its relationship with the ruling NDA government calling the Chief Minister a ‘puppet of Hindutva’ in a video uploaded to social media in a video. Mr Shukla participated in a different brand of political commentary by posting cartoons on social media which satirized the fake encounters allegedly conducted by the Gujarat police between 2002 and 2006. Both were charged with sedition and therefore they filed a petition in 2021.

However, the Union Government stated its intention to reconsider the law on sedition on May 9th, 2022. In the meantime, the Supreme Court chose to exercise an additional layer of caution on May 11th, 2022, ordering that ‘no coercive action’ be taken in sedition cases that remain pending while the Union re-examines the law.

The Supreme Court will decide if Section 124A of the Indian Penal Code, 1860, that criminalizes sedition, is unconstitutional or not?

The judgment of Supreme Court on this case is still pending.

➤ **Rajina Parbin Sultana v. State of Assam, 2021<sup>30</sup>**

**Facts** - On May 14, 2021, Rajina Parbin Sultana along with her some friends had a lunch party

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<sup>29</sup>Kishorechandra Wangkhemcha V. Union of India, 2022 W.P.(CrI) No.-000106/2021

<sup>30</sup> Rajina Parbin Sultana v. State of Assam, 2021 Bail Appln./1123/2021

on the occasion of Eid in Assam. Next day, a picture showing them dining went viral because the table cloth resembled the Indian National Flag.

An FIR was registered under sections 120B/124A of the IPC. After eight days, five of the accused were released on bail, however, Rajina continued to be in custody for 23 days till she finally secured her bail.

**Judgment** -The High Court Bench of Justice Manish Choudhury noted: “It does not prima facie suggest to be an act to have the affect (sic) of subverting the Government by bringing that Government into contempt or hatred or creating disaffection against it.” The High Court released the accused on bail without expressing any final opinion with regard to the fulfilment of the ingredients of the offences, noting that custodial detention would not be necessary for the purpose of carrying out investigation of the case and the release will not likely cause any prejudicial effect in further investigation. She was directed to be released on furnishing a bail bond of Rs.20,000 and a local surety of the same amount.<sup>31</sup>

## Conclusion

Though the court also gave proper guidelines to be followed under *Kedarnath v. State of Bihar*, but the magistrate and police officers are using the law like a bullet on the people therefore there is a need to draw a proper line between what comes under sedition and what not. If we do not repeal or reconstruct sedition in our country then every day someone will be charged of sedition. There is a possibility that the Supreme Court will repeal this law which is having its place because of Britishers or it can also reconstruct the said law. Either way, the misuse of sedition will be less than before. There is a need of evolving the section 124A to keep up with the changing needs of the society. Not having the right to speak about anything in the country will not amount the country to be democratic. The court in *Shreya Singhal v. UOI* gave guidelines regarding Section 66A of IT Act 2000, the court directed the police officers, home secretaries and other competent officers to not register any complaint under section 66A. The court held, “that it needs no reiteration that section 66A has been found by this court in the *Shreya Singhal* case to be violative of the constitution and as such, no citizen shall be

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<sup>31</sup>Abhishek Hari, *How the Sedition Law Has Been Used in the Modi Era* <https://www.casemine.com/judgement/in/60b4c1319fca192dfd5804f9>, 2022

prosecuted under the said section.”<sup>32</sup>

The offence of sedition is something which can be charged on anyone who says anything against the government therefore it is a big threat to the freedom of speech and expression. There has been a lot of discussion on this topic by the courts but it has not been declared as unconstitutional or has been repealed till now.

A democratic country is incomplete if its people are not free to criticize or to give their opinions on something they do not like. Though the suspension of filing the cases related to sedition is an example that the court understands the misuse of the section and it's considering the importance of the freedom of speech and expression.

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<sup>32</sup><https://timesofindia.indiatimes.com/india/no-citizen-can-be-prosecuted-under-scrapped-section-66a-of-it-act-says-sc/articleshow/94813077.cms>