

Loyalty, Liberty, and the Law: Analysing the Juxtaposition of Nation and Citizen in the Indian Seditious Law

Ayesha Pattnaik

**Abstract:** This article examines the Indian seditious law laid out in Section 124(A) of the Indian Penal Code which criminalises expression of disaffection towards the government. It analyses the functions of the seditious law in colonial and constitutional India. Rather than taking a legal approach to examine whether the seditious law is inimical to democracy, this socio-legal analysis studies the media and political discourse around seditious cases to evoke an underlying pattern of the use of the law across time and political regimes. It reveals how the law has been used in contemporary India to weave a narrative of the nation-state and national interests, often pitted against human rights and individual liberties. It goes on to argue that in post-colonial India, the law has simultaneously been critical in building a binding national identity while also enabling nationalism to be used as a political instrument that can subversively monitor and discipline citizens.

**Keywords:** seditious, citizenship, India, dissent, nationalism, democracy

## 1. Introduction

Post-independence, India was confronted with a crisis of nationalism, as the withdrawal of colonial rule led to the unravelling of a binding identity holding Indian states and communities together. The socio-legal analysis to follow shows how the continual use of Indian seditious law can be understood largely as a response to the perceived danger of not having a unifying image of the nation in post-colonial India.

India's seditious law, enshrined in Section 124(A) of the Indian Penal Code and first introduced in colonial India, has repeatedly been called into question as an infringement on rights of free speech and expression. Data from the National Crime Records Bureau revealed a 160% increase in seditious cases filed in 2019, while the rate of conviction dropped to 3.3%. (Crime in India,

---

<sup>1</sup> This is a copy of the accepted manuscript which the author is authorised to post or distribute on any website, repository, network, social media channel, etc. To view the final published PDF or cite this research, please refer to the DOI listed. Researchers without institutional access may contact the author to view the final published PDF.

2019) Used in colonial India particularly to thwart the dissent of nationalist leaders against colonial rule, in independent India its use is justified on legal grounds of compromising national security. However, charges under this law have rarely entailed serious national security threats, for instance when a case was filed against supporters of non-Indian cricket teams (Dwyer, 2017).

The use of the sedition law has led to polarising debates as sedition charges are increasingly filed against journalists, activists, and students. Challenges to the validity of the sedition law typically draw on arguments of individual rights, particularly highlighting how the law impedes rights of ‘freedom of speech and expression to all citizens’ outlined in Article 19(1)(a) of the Indian Constitution. In contrast to this language of the citizen and their individual rights, defences of the sedition law rely on arguments of protecting the nation.

In light of the upsurge of debate and rhetoric around the misuse of sedition and other anti-terror laws in India, a sociological analysis of the sedition law is particularly important to understand the functions it serves in democratic India. Using three case studies of sedition cases in India, this study compares the colonial and contemporary implementation of the law. It goes on to challenge assertions that the use of the sedition law is a perpetuation of colonial forms of governance. Instead, this study finds that the law has been repeatedly used by the post-colonial Indian state as a tactical instrument to build a discourse of nationalism and strengthen state power. The central thesis of this research is that the sedition law is not just used for stifling moments of dissent, but is critical in manufacturing narratives of nationalism that in post-colonial India have been vital to maintain support for the Indian state.

## 2. Defining Sedition: A Review of the Legal Discourse

### **The Colonial Sedition Law**

The sedition law was introduced in colonial India by the British government to curb nationalist dissent against colonial rule. Laid out in Section 124A of the Indian Penal Code (IPC), it was introduced in 1870 (Centre for the Study of Social Exclusion and Inclusive Policy, 2011: 9) after the British parliament passed a bill enabling the British Crown to take over administration of India from the East India Company. The law was specifically inserted in the IPC as the British government recognised the need for a specific provision to deal with revolution and dissent in light of the increasing ‘Wahabi’ revolts (Stephens, 2013) that were considered threats to imperial security. The law stated that ‘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, Her Majesty or the Government established by law in

British India' (Banerjee, 1939: 98) would be found guilty of sedition. Sedition was therefore defined in pre-constitutional India as any direct criticism of the government and British rule, and did not invoke any idea of the nation.

The idea of nationalism in colonial India was claimed by movements opposing the colonial state, with nationalists identifying themselves as intent on reclaiming India from the British. Bakhle describes sedition as 'patriotic anti-colonial nationalism' (2010: 70), given that the law was initially used by the British government to counter revolutionary nationalists who used violent methods to oppose the government, only later targeting non-violent nationalist leaders like Gandhi.

Charges of sedition were openly accepted by nationalist leaders charged under the law. In his trial, Gandhi stated 'I know that some of the most loved of India's patriots have been convicted under it (Section 124A)... I consider it a privilege, therefore to be charged under that section' (Bakhle, 2010: 74). Prominent nationalist leader Tilak was charged thrice with sedition, and all trials 'were closely followed by his admirers nationally and internationally' (Centre for the Study of Social Exclusion and Inclusive Policy, 2011: 10). In this manner, sedition trials gave India's nationalist leaders a platform to mobilise support for the nationalist movement that sought to overthrow British rule. The sedition law played a crucial role in the development of a discourse of nationalism that was pitted against colonialism.

While sedition was an instrument used by both the British government and Indian nationalist leaders to oppose each other, nationalist leaders clearly expressed disapproval of the law and the idea of sedition. In her evaluation of Tilak's trial for sedition, Bakhle explains how he used the very existence of the law to question the legitimacy of British rule. For Tilak, sedition 'became the colonial flashpoint that it did precisely because it posed a fundamental challenge to colonial legitimacy by holding it to its own standards of certainty' (Bakhle, 2010: 70). During his introductory remarks before facing trial for sedition, Gandhi stated that 'the 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' (Narain, 2011: 34). The open acceptance of sedition charges by nationalist leaders was used to simultaneously denounce the sedition law and the government that imposed it.

### **Sedition in Constitutional India**

Given the widespread opposition to the sedition law in colonial India, the retention of the sedition law in constitutional India is a matter of intrigue. Most other countries have repealed

such anti-terror laws, with countries like the United Kingdom, Australia, New Zealand having removed their sedition laws in the late 1990s or 2000s. The United Kingdom in particular repealed the law stating that the ‘country did not want to be quoted as an example of using such draconian laws’ (Law Commission of India, 2018).

During the constituent assembly debates held to draft the Indian constitution, the irony of retaining the sedition law used against Indian nationalist leaders was acknowledged. Sedition was eliminated from clauses regarding exceptions to the right to freedom of speech and expression under Article 19 of the Indian Constitution (Centre for the Study of Social Exclusion and Inclusive Policy, 2011: 15). It was also excluded from the final draft of the Indian constitution, however remained a part of the IPC. Section 124A of the IPC was altered to remove mention of British rule, and defined sedition as: ‘an act that brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India by words, either spoken or written, or by signs, or by visible representation, or otherwise’ (Law Commission of India, 2018).

Concerns were raised about how the sedition law would impinge on freedom of expression in the country during the subsequent debate to make the first amendment to the Constitution. While repealing the law was not discussed, the government decided to amend the Constitution by inserting "public order" and "relations with friendly states" into Article 19(2) and the word "reasonable" before “restrictions”, which were seen as safeguards against misuse of the sedition law by the government (Narain, 2011). Nehru, one of India’s key nationalist leaders and the prime minister at the time, clearly stated that these amendments were not the validation of laws like sedition, and went on to describe Section 124A as ‘highly objectionable and obnoxious and... should have no place both for practical and historical reasons’ (Ibid: 35).

These reforms of Article 19 enabled a greater restriction of speech ‘in the interests of public order’ (Ibid: 35), and subsequently in parliamentary debates of 2008, a distinction was drawn between public order and national security. It was deemed that ‘public order is synonymous with public safety and tranquillity and has only local significance... security of the state, on the other hand, would involve a national upheaval such as revolution, civil strife or war’ (Saksena and Srivastava, 2014: 135). This aimed to highlight different standards of proof and punishment would be established, with threats to national security having severe consequences.

Opposition to the law was also expressed in sedition trials of early independent India, where the constitutional validity of the law became a subject of debate in courts. Challenges to the law were posed in the 1950s ‘when the sedition law was struck down as being violative of the

fundamental right to the freedom of speech and expression in a trilogy of cases- Tara Singh Gopi (1950), Sabir Raza, and finally Ram Nandan in 1958' (Centre for the Study of Social Exclusion and Inclusive Policy, 2011: 23). In each of these cases which ended in acquittals, the sedition law was found unconstitutional as it came into conflict with the principles enshrined under Article 19 of the Constitution. These cases challenged assumptions that criticisms of the state were security threats, and instead argued how the law restricted democratic spaces for individual citizens to express their views.

### **The Landmark Ruling**

The decisive ruling that upheld the constitutional validity of the sedition law was that of Kedar Nath Singh v. State of Bihar (1962) AIR SC 955 brought to the Supreme Court of India. In this case, the appellant who criticised the existing government and called for a violent revolution was convicted of sedition. The ruling emphasised the importance of protecting the 'government established by law' in order to safeguard the State. The fundamental point made in the judgement was that 'disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means'. Criticisms of state actions are distinguished from the subversion of the government itself, wherein the latter refers to speech that seeks to incite violence against the government.

Apart from inciting violence, another important point made under this judgement is that speech that has the 'intention of creating public disorder' can also be considered seditious. 'Incitement of violence' and 'intention of creating public disorder' are declared as limitations to the freedom for citizens to express dissent. However, the judgement largely retained the colonial definition of sedition. For instance, Tilak's multiple arrests under the sedition law were all made on account of him defending views that explicitly espoused the removal of the colonial government (Bakhle, 2010: 69). Similarly, the judgement indicates that the law should be used only in situations where clear intent to overthrow the existing Indian state is expressed by those creating public disorder.

The emphasis on 'government established by law' in the Kedar Nath Singh v. The State of Bihar judgement draws attention to how rights to free speech and expression are constructed as threats to the state. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1996) states restrictions on freedom of expression can only be made on account of threats to national security. Principle 2 asserts that limiting speech and expression on the grounds of threatening national security is not legitimate if it seeks to 'protect a government

from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology' (Ibid). While these principles endorsed by the United Nations specify that national security threats do not include criticisms of particular ideologies, the additional clause of 'intention to create public disorder' in the Kedar Nath Singh vs. Bihar judgement extends the ambit of sedition, thereby enabling a wider scope for its use.

## 2. The Case Studies

What follows are three separate case studies of sedition charges in constitutional India in which the methodological emphasis will be on understanding the function of the law of sedition in India today. It seeks to understand the circumstances in which different individuals were charged with sedition by studying the media discourse and political narratives around the charges filed. This enables an interdisciplinary approach to combining legal, historical, and sociological perspectives to study India's sedition law. It interrogates who is charged under the law, what their backgrounds and the circumstances of their arrests reveal, and how further research can be developed based on this preliminary examination to understand the implications of the sedition law for defining the citizen and nation in contemporary India. Analysed in each case is information including: the filing of the complaint and the motives behind its filing; the social background of the charged individual; the larger social-political context of the arrest including social movements at the time; the similarity between other sedition cases of colonial and constitutional India; and positions on the sedition law taken by different political figures and organisations in the context of each case (analysed through media articles, press releases and speeches).

In no particular order of importance, the first case analysed is that of Jawaharlal Nehru University (JNU) student Kanhaiya Kumar who was arrested in 2016 and charged with sedition in 2019 by the Delhi Police under Section 124-A of the Indian Penal Code (Express Web Desk, 2019) This was based on a complaint filed by the right-wing student union Akhil Bharatiya Vidyarthi Parishad (ABVP) regarding an event held in the university in February 2016. Kumar was charged for raising anti-national slogans at an event raising issues on capital punishment on the third anniversary of the execution of Muhammad Afzal, who was found guilty of involvement in an attack on the Indian Parliament in 2001 (Gupta and Najjar, 2016). When first charged with sedition in 2016, Kumar was president of the JNU Students' Union, and the Bharatiya Janata Party was in power in the central government. In 2019, the charge sheet was filed during the run-up to the Indian general elections after which Kumar was nominated by the Communist Party of India to stand for election in the Begusarai constituency (Nair, 2019).

The second case analysed is of Aseem Trivedi, an Indian cartoonist who was charged with sedition in 2012. His satirist cartoons focused on themes such as ‘corruption amongst India’s political elite’ (Burke, 2012), and did not target a specific political party. These cartoons were published at the time of the Indian anti-corruption movement taking place in New Delhi, the national capital and seat of the central government. Trivedi was arrested by the Mumbai police based on a complaint filed in a Mumbai court by a lawyer, who claimed the cartoons mocked national symbols (Ibid). While both the ruling and opposition parties of the central government condemned the charges, the case was fundamental in reigniting the debate on the role of sedition and freedom of expression in India. This was also considered a politically motivated arrest given the rise of widespread protests against the state at the time, which Trivedi had also participated in (Ibid).

The third case discussed is Upendra Nayak, a human rights activist and lawyer arrested by the Odisha police in 2018. Nayak fought for the rights of Adivasis, who are indigenous peoples of the country, particularly to challenge their arrests based on fabricated charges. These charges largely cited links or direct involvement with the revolutionary activities of Naxalite Maoist insurgent groups. After Nayak’s arrest, several human rights organisations claimed that his arrest was based on similar false accusations of aiding Maoist activities (Amnesty International, 2018). Neither has the Odisha state government, led by the political party Biju Janata Dal, nor have any national parties made any comment on this case. While Nayak was released on bail a month after being arrested, the sedition charges against him have not been dropped.

These cases were chosen to examine the varied use of the sedition law and evoke an underlying pattern to explain what constitutes seditious activity. All three arrests were made by police forces serving under different governments and were concerning delinked events. Furthermore, none of these events directly criticise the government in power or are linked to any form of physical violence, indicating how even the symbolic value of certain actions can be construed as seditious behaviour. These three cases were also selected as they were filed against particular individuals and not organisations. This makes the individual themselves, not just their actions, an important factor in contextualising their arrest. This also enables a better comparison with sedition cases in colonial India that were made against individual nationalist leaders, to understand how a single citizen’s actions are considered seditious in a particular social and political context.

Data availability was an issue across these three different cases. None of the cases went to trial, and in some cases chargesheets were not filed. Given limited legal documents on each case which were largely not publicly available, this study focused on reportage, rhetoric, and

publications discussing each case. This has led to a variation in the material available for each case, as all of them received different kinds of public attention. Kumar's case captured widespread national and to some extent global media attention. As a political leader, Kumar has also personally discussed these charges, making his speeches an important source of information. Trivedi's case also received media coverage within the nation and remains a key case in discussions on freedom of expression in the country. Both have also used social media to their advantage to share information with the public. In contrast, Nayak's case has received little media attention and instead his case is documented by human rights groups that view his arrest as a threat to human rights work in the nation.

The varying sources of information on each case have been fundamental in understanding which sections of society are particularly affected by the sedition law. The difference in sources and actors involved in each case could seem to have the effect of creating a one-sided narrative around why these charges were filed. However, this study considers the sources of information themselves as forms of data. By acknowledging the fact that 'subjectivity is multidimensional; so, therefore is vision' (Haraway, 1988), this study adopts a reflexive approach that involves questioning the sources of data and analyses how the varying perspectives on each case are born out of multidimensional subjectivities. Understanding which sections of society respond to particular cases and how they do so in different or similar ways enables the identification of debates that have been crucial in shaping ideas of the citizen and nation.

### 3. Contemporary Functions of the Sedition Law

While the Supreme Court judgement on *Kedar Nath Singh v. The State of Bihar* lays out a narrower definition of sedition, the large volume of cases filed under Section 124-A indicates this has not been strictly enforced, particularly given the primary targets of the law are students, journalists, and activists. The cases of Kanhaiya Kumar, Aseem Trivedi, and Upendra Nayak reveal an interesting pattern where individuals from entirely disparate contexts have been accused of seditious behaviour, while their arrests led to a backlash from different groups. The study of these various narratives that have emerged through the arrest of each individual provides a more nuanced understanding of how the sedition law is used in a particular political context to communicate ideas of the citizen and the nation.

The *Kedar Nath Singh v. The State of Bihar* judgement states that the 'government established by law' is the primary concern of the sedition law, however, in the three cases analysed criticism is not directed at the overall political system but against particular incidents or state actions. Kumar and other students were found guilty of raising anti-national slogans at an event



criticising capital punishment; Trivedi's cartoon used satire to highlight government corruption; and Nayak was engaged in human rights work defending Adivasi populations. Advocates of their arrests suggest that criticising particular actions of the state is equivalent to criticising the state system itself, while those opposed argue that criticising state actions is not necessarily a call to overthrow the state. Legally 'this distinction is murky and is difficult to practically implement' (Saksena and Srivastava, 2014: 135), which makes the *Kedar Nath Singh v. the State of Bihar* judgement limited in its ability to prevent misuse of the law. It is in this context that all three sedition cases can be understood as raising similar questions around the nature of sedition and its functions in India.

While incitement to violence is meant to be a justification of sedition charges, it remains a vague concept and is rarely cited in contemporary sedition charges. In the three cases analysed in this study, incitement to violence was unclear and not mentioned in the charges filed. In the cases of Kumar and Trivedi, charges were filed in the backdrop of non-violent protests. Kumar was directly involved in protests on the JNU campus where he was accused of chanting anti-national slogans. Trivedi had previously participated in the anti-corruption protests of 2011 in Delhi and used his cartoons to further the same cause. When Nayak was arrested for being linked to activities threatening national security, incitement to violence was not specified. This is particularly where the 'intention of creating public disorder' clause introduced by the *Kedar Nath Singh v. State of Bihar* ruling gives police forces and lower courts more flexibility to file sedition cases. In all three cases, understanding how each individual's actions were construed as threats to national security is critical to unravelling the functions of the sedition law.

A line of argument presented in defence of sedition arrests is that certain activities mock symbols of the nation. This is particularly salient in Trivedi's case where the sedition charges against him specifically claimed that his cartoons mocked national symbols. His cartoons focused on highlighting corruption in the government, with one 'portraying the national emblem with blood-thirsty wolves instead of lions, and with the words "Corruption Triumphs" instead of "Truth Alone Triumphs"' (Human Rights Watch, 2012). Trivedi's chargesheet accuses him of 'insulting national honour' (Committee to Protect Journalists, 2012) through his cartoons, with no mention of threatening national security. Commenting on the use of the sedition law against Trivedi, former Attorney General of India Soli J. Sorabjee argued that 'raising slogans against the government or mere use of abusive words at a meeting, dubbing the government as corrupt or inefficient and seeking its removal and replacement by a different system of government is not punishable, so long as there is no advocacy of overthrow of government by force or violence' (2012). However, in all three cases the threat of violence is not as important as a threat to the nation represented through particular values and symbols.

The link to a larger movement is an important factor to consider in each of these cases of sedition. This is particularly apparent in the cases of Trivedi's link to the anti-corruption movement and the accusation of Nayak allegedly being involved in the Naxalite movement. Kumar's sedition charges were particularly based on the chanting of anti-national slogans as part of a protest against Afzal Guru's hanging on the JNU campus. Protests around the rights of Kashmiris in India particularly gained momentum after the hanging of the Kashmiri 'terrorist' in 2013, after his swift conviction and execution raised questions as to whether the due legal process was followed (Roy, 2013). It was in this context that Kumar's call for *Azaadi* .i.e. freedom, was interpreted as support for Kashmiri separatist movements. The police complaint filed against Kumar specifically referred to such chants as anti-national with no elaboration. In this manner, another pattern that emerged in the arrest of all three individuals was their link to such larger social movements that challenged the state.

While sedition cases rarely go to trial, the public discourse generated around each case is particularly revealing of how the law influences popular opinion. Umar Khalid, another JNU student charged with sedition alongside Kumar, explains how after being charged he 'faced a trial by media' (Daniyal, 2016). Unlike other crimes that involve harming individuals, he explains how they were 'viewed as having committed a crime against the nation, so there was a lot of moral outrage' (Ibid). Digital media was especially significant as police used video footage to claim that Kumar was 'seen leading the students, who were raising anti-national slogans (sic.)' (Dey, 2019). This electronic evidence particularly led to debates around evidence in sedition cases, with media houses being accused of creating doctored videos to make Kumar appear guilty (Ibid). Media played a large role in the coverage of Trivedi's case as well, which never went to trial in spite of the case being filed in 2013. This idea of committing a crime not against fellow citizens but the nation is particularly interesting, as it suggests a greater moral significance attributed to the nation as an entity separate from citizens.

In contrast to the large-scale media engagement with the sedition cases of Trivedi and Kumar, Nayak's case received little media coverage. Information about the case was only circulated within activist networks. This is particularly interesting given that in 2010, human rights activist Binayak Sen was charged with sedition under very similar circumstances and received a lot of media attention. Sen's request for bail was rejected in 2011, where his close association with 'people who were members of a Maoist group and involved in activities creating disloyalty and inciting people to act against the state' (Columbia Global Freedom of Expression, 2011) was used as evidence against him. Sen's possession of Naxal literature containing information on police atrocities and human rights was used to reject his bail plea. The High Court judgement did

not explain ‘how the mere possession and distribution of literature could constitute a seditious act’ (Columbia Global Freedom of Expression, 2011), leading to widespread criticism of the judgement. Nayak’s case however did not even cite such evidence during his arrest, while his chargesheet claimed he was involved in ‘waging war against the government of India’ and ‘committing a “terrorist act’ (Amnesty International, 2018). Nayak was eventually released on bail. However, while Sen’s charges were dropped in 2010 without any explanation, Nayak remains charged with sedition.

Involvement with the Naxalite movement has been repeatedly invoked in arrests of human rights activists in India. Given the importance of national security in justifying claims to sedition, links to the revolutionary Naxalite movement which openly seeks to capture state power through armed opposition offer a strong means for justifying sedition charges. Therefore in cases to do with human rights activists being charged with supporting Naxalite activities, public debates shift from questioning whether the act itself is seditious, to the political intent behind the arrest of these activists. A press release by a human rights organisation in Odisha stated that Nayak’s arrest was a ‘case of fabrication by the Odisha police and an attempt to encroach upon the rights of a lawyer to practice his legal profession’ (Ganatantrik Adhikar Suraksha Sangathan, 2018). The human rights discourse has in this manner been directly pitted against the sedition law and become the primary language of opposing the law, with human rights organisations describing the law as ‘draconian’ and a means to ‘crack down on dissent’ (Human Rights Watch, 2019).

The analysis of these three cases begins to evoke an image of the Indian nation that the sedition law seeks to protect. While this law is seen as undermining the country’s human rights discourse, it does so with a popular legitimacy that is built upon this image of the Indian nation with moral and patriotic connotations. It is the legitimacy of this image that enables the use of the law to be ambiguous and malleable, based on political interests. Therefore, it is this very invocation that needs to be critically analysed, in order to analyse the broader functions the law has played across cases.

#### 4. Beyond the Colonial Framework

##### **Sedition as a Colonial Legacy**

While some scholars argue that the contemporary use of the sedition law can be understood as a perpetuation of colonial systems of power, this argument is limited in its ability to capture the new functions of the law in post-colonial India.

At a first glance, a judicial interpretation of the law in constitutional India largely resembles that of colonial India. The decision to retain the sedition law during Constituent Assembly debates suggests ‘a reluctance to recognise an absolute right of free speech since the Indian polity is not ready for it, thereby recycling some assumptions that had informed the logic of colonial governmentality’ (Narain and Liang, 2017: 40). This reticence questions the Indian state’s commitment to the idea of the democratic citizen. The decision to retain the sedition law seems to be based upon the colonial differentiation between the ‘universal rational subject (the enlightened European as a bearer of rights) and the native subject (marked by a hyper sensitive excess)’ (Ibid: 41), wherein the post-colonial Indian is still viewed as a native subject that is not equipped to deal with the full range of democratic rights such as freedom of expression. This division reflected in the laws of colonial India seems to be carried forward in postcolonial debates wherein the split ‘gets recycled in the postcolonial context in terms of class, gender and literacy’ (Ibid). Post-colonial debates led by elite groups of Indian citizens, chose to focus not on the decolonisation of the state system, but rather inculcation of values of liberal democracy among Indian subjects.

However, in colonial India, it becomes apparent that the sedition law was essentially an instrument of surveillance for the state. Bakhle argues that the sedition law did not just enable the colonial state to arrest violent revolutionaries, but also monitor the threat posed by the revolutionary rhetoric. ‘Seditious words were, in effect, a propaganda apparatus that ensured a constant supply of fresh recruits to the cause’ (Bakhle, 2010: 53), therefore considered more dangerous than acts of violence against the state. This position has been justified by political philosophers ‘such as Rawls and Popper, who argue that in order to survive, a liberal society must set limits on what it is willing to tolerate’ (Bhatia, 2016: 101). This use of the law for purposes of surveillance continues in constitutional India too, but without a clear understanding of what constitutes revolutionary rhetoric. In all three cases analysed, how the individuals crossed the limits on acceptable state criticism is unclear.

This pattern of the sedition law targeting thoughts of disaffection towards the state does persist in contemporary India, however speaks more to the wider nature of the sedition law as being a ‘law of thought-crimes’ (Bhatia, 2016: 86) that aims to monitor thoughts and feelings of citizens. In both colonial and constitutional India, sedition is committed in the presence of fellow citizens who could be influenced and possibly incited against the state. In the sedition case filed against Tilak for his writings against the colonial state, incitement to violence or revolution was not the primary concern as ‘what was effectively criminalised was any attempt to persuade Indians not to love their British rulers.’ (Ibid) Similarly, sedition charges against Kumar were not merely based on the slogans - the fact that it was chanted in a public space and had the power to

influence other students against the state particularly made it seditious. Similarly, Nayak's audience was the Adivasi groups he worked with. In Trivedi's case, while he did not have a physically present audience, the cartoons spoke to a wide range of readers whose opinions could similarly be influenced.

Another point to consider is what constitutes proof of sedition has become more ambiguous post-independence. The writings of Tilak and Gandhi were cited in colonial India to indicate their direct opposition to the colonial state (Bakhle, 2010). In the three post-independence cases analysed in this article, evidence is unclear and often undisclosed. None of the three individuals had produced material that clearly criticised the state, let alone sought to incite violence against the state. In Kumar's case, the evidence used was cast under suspicion under accusations of being digitally manipulated (Dey, 2019). In Nayak's, there was no clear indication of what served as evidence in his arrest. This suggests the limited capacity to analyse sedition laws merely through legal processes.

### **The New Sedition of Post-Colonial India**

This article argues that the contemporary use of the sedition law is particularly unique because it is leveraged to shape political and media discourses that build an overarching ideology of nationalism. It is this ideology of nationalism that is further used to reinforce the state's strength and autonomous interests, which is what makes the sedition law particularly instrumental for state actors.

In constitutional India, the distinction made between the government, that is the people holding positions of power, and the State as a set of institutions is crucial. Bhatia argues that 'prior to 1947, there was no meaningful difference between government and State... the (British) ruling class embodied both, with no prospect of replacement' (2016: 98). With the establishment of a democracy in post-colonial India, the link between a particular class and political power is made less apparent and new extensive liberties were granted to Indian citizens. Citizens of post-colonial India had a wider range of rights which allowed them to criticise government action, as long as they did not seek the overall removal of the state.

Therefore while nationalist leaders in colonial India openly admitted to sedition charges, in the post-colonial state individuals charged with sedition contested the charges on the basis of being citizens with rights to express dissent which their colonial counterparts did not have. This explains why in Trivedi's sedition case, for instance, official charges were filed not on the

grounds of criticising government corruption, but for caricaturing national symbols like the Parliament.

The meaning of sedition changed not just for the state but for citizens as well, as it is seen as a violation of individual liberties. In all three arrests analysed in this study, not only did the accused deny charges, but their arrests also caused a backlash amongst several citizens who viewed the use of the law as arbitrary or unjustified. This crucial shift from using nationalism as a defence against sedition charges to it being a subject of contestation is particularly interesting. In each sedition case analysed in this paper, the accused individuals not only seem to assert a competing idea of the nation, but view their individual liberties as threatened by the image of the nation and national security asserted through the sedition law.

The introduction of various new anti-terror legislation post-independence which expands the legal apparatus to address national security threats only further assert the post-colonial state's intention to monitor speech and expression. The argument that 'laws which curtail free speech have their origins in colonial experience and their continued existence and use testifies to the fact that in the domain of speech we face a problem of colonial continuity' (Narain and Liang, 2017: 40) does not account for new anti-terror laws introduced in India by multiple major national parties. These laws included the Prevention of Terrorism Act (POTA) that was introduced in 2002 by the National Democratic Alliance led by the Bharatiya Janata Party (BJP) (Singh, 2007). The POTA was repealed in 2004 by the Indian National Congress (INC) led United Progressive Alliance, and was accompanied by an amendment to the Unlawful Activities Prevention Act (UAPA) first enacted in 1967. This amendment enables the use of the law in a similar manner as the POTA and sedition law, raising concerns among UN Special Rapporteurs who argued the law was specifically used to target human rights activists (UN Human Rights: Office of the High Commissioner, 2018). Both laws were considered as necessary to deal with 'extraordinary situations... emerging due to the openness and freedom which democracy allows' (Singh, 2007: 16).

The fact that both of India's major national parties, backed by different regional parties, identified the need for anti-terror legislation indicates how the Indian sedition law serves a function that cuts across party ideologies. Instead of only being used on rare occasions when the state is endangered, the continuous use of the sedition law has implications for understanding modern statecraft and everyday citizenship in India.

## 5. Decoding the Nationalist Project

## **The Post-Colonial Democracy**

The nation-building process in India after colonial rule ended presented a challenge, as the only binding factor between the various regions and princely states in India was British rule. This prior lack of a binding idea of nationalism is precisely what enabled colonial rule to be established in India, as it 'rested, amongst other things on two propositions: that India was not a nation with any sense of corporate identity; it was not capable of self-government because it was not a people' (Mehta, 2012: 206). The contestation of India as a nation is particularly brought out in the Partition of British India into the separate nations Pakistan and India in 1947. The acknowledgement of the unifying framework of the British colonial administration that bound the Indian nation together can be understood as one reason why the post-colonial state chose to refrain from the decolonisation of state institutions. The image of the nation in post-colonial India was therefore a matter of contestation.

While democracy was seen as a remedy to the lack of a unifying national identity, it did not accord a sense of stability to the state. Unlike the colonial state that is built upon the lack of a national identity, the post-colonial nation-state adopted an image of the nation which presumed that 'the idea of an Indian people can be constituted only through shared institutions of participatory access' (Mehta, 2012: 206). The state was therefore built upon what was seen as a mutually reinforcing relationship between the ideas of democracy and nationalism, making the Indian nation inconceivable without its democratic values and institutions. This democratic structure was built upon the diffusion of power within the state apparatus through federalism. In spite of the state operating 'under the most homogeneous of ideological constellations, these institutions often compete with each other, set bounds on what other institutions can do, interpret directives in their own peculiar way and provide the structures of accountability' (Mehta, 2012: 213). State institutions therefore not only have interests independent from society, but also competing interests within the federal framework. These interests lay primarily in the strengthening of its own power and are based on the consolidation of autonomous interests.

This suggests a paradox within Indian democracy: while the state has various autonomous interests of its own, it is bound by a democratic framework that casts them aside in the interest of serving the multiple divided interests of citizens. India's constitution enshrines multiculturalism as a key principle, with the legal framework oriented towards providing 'citizens (with) the institutional and political space to identify with both their country and their other cultural identities' (Maharana, 2010: 75). The post-independent state is no longer driven by unified collective interests, instead 'exists primarily to satisfy the private interests of collusive interest groups' (Mehta, 2012: 212).

Laws like sedition are therefore crucial to statecraft, as they are used to indirectly assert the interests of the state. In principle, the power of the state and its office bearers is negligible as ‘ideas of democracy, individual rights, legitimacy and the rule of law suggest that even in times of acute danger, government is limited, both formally and substantively, in the range of activities that it may pursue to “protect the state”’ (Singh, 2007: 17). The prioritisation of multiple individual interests in a state with neither a unifying ideology of nationalism nor a strong centralised state power suggests a unique function played by the sedition law to fulfil state interests.

### **The Nation as an Instrument**

The invocation of protecting the nation and national security through the sedition law indicates the emergence of a new national identity in the post-colonial state. The law has played a key role in building a national discourse since colonial India, where nationalism was instead used as a defence against the sedition law and the colonial government it stood for. In post-colonial India, nationalism is instead pitted against democratic citizenship.

The sedition cases against Kumar, Trivedi, and Nayak raised the following similarities: mentions of symbols or structures of the nation; a larger socio-political context of each individual being part of a larger movement opposing the state; the moral connotations of committing a crime against the nation and not just fellow citizens; the creation of popular discourse around the nature of sedition and the nation; and the challenging of sedition with a language of individual and human rights. Through these allegations, an idea of a unified nation with particular values and interests that are above those of citizens is reinforced.

The sedition law is used as a political instrument particularly during times of widespread opposition to the government, in order to project an image of the state as autonomous and powerful. The purpose of charging the three individuals analysed in this study lies in the larger political context of them representing causes that seek to oppose the state. The objective of seditious activity need not be to overthrow the state, as the purpose of the law is used to routinely assert that the state is aware and vigilant of the activities of its citizens. This approach resembles Mitchell’s hypothesis of studying the state as a structural effect, wherein ‘mundane details of the legal process, all of which are particular social practises, are so arranged as to produce the effect that "law" exists as a sort of abstract, formal framework, superimposed above social practice’ (Mitchell, 1991: 94). The sedition law enables the state to surveil and discipline citizens such that they recognise the power of the state even in their everyday social practices. Therefore



while the actions of Kumar, Trivedi, and Nayak all seem ordinary and sanctioned by the liberties granted in the constitution, the law targets these particular individuals to create an awareness of the omnipresence of state power and coerce citizens into limiting their own democratic freedoms.

Therefore the real function of sedition law lies not in the execution of formal court trials, but the creation of a public discourse around ideas of national interest and state power. On several occasions, Indian courts have been praised for their judicial activism which ‘helps to preserve democratic institutions and values’ (Mehta, 2007: 80), and in sedition cases the courts have rarely convicted individuals. However, this argument does not take into account how the public discourse generated by each case is of more importance than the legal process. The use of the term ‘trial by media’ (Danial, 2016) to explain the controversy around Kumar’s arrest is particularly interesting as it brings out the role of ‘the all-powerful force of public opinion’ (Tocqueville, 2000: 614) in a democracy to regulate everyday citizenship. The fact that Trivedi’s case is yet to go to trial despite being filed in 2013 further brings out how the purpose of the sedition law is not judicial resolution but the demonstration of the state power to the rest of the nation. Nayak’s case is one among many human rights activists charged under the sedition law and other extraordinary laws in India, all meant to destabilise understandings of human rights in the country. This links to a crucial similarity between all three cases, which is that they all stand for the expression of individual rights and interests.

This disciplinary power of sedition laws is operationalised through the construction of an image of the nation, which is frequently juxtaposed with the individual enshrined in democratic freedoms. ‘People’s struggles for rights are frequently imputed with extraordinariness, and pitted against notions of *national-sovereignty*, *national-security*, *national-integrity* and *national-interest*’ (Singh, 2007: 29), such that individual rights are seen as threatening the nation. This distinction frequently appears in the press coverage of each case analysed in this paper, where the language of human rights is continuously used to defend each individual from the authoritarian power of the state exercised through the idea of the nation. In this manner the sedition law has a particularly important structural effect, in that it invokes a fear not of the law itself, but of the larger moral power legitimising the law, that is the nation.

Rather than understanding the sedition law as an instrument of a hypersensitive state that cannot tolerate dissent, this article suggests a more important function of the law as a tool for constructing a sense of obedience to the state through an ideology of nationalism. While the sedition law claims to be used only in extraordinary cases of a threat to national security, its continuous use suggests that it is more preoccupied with controlling ordinary speech and expression. Dichotomies such as the nation/individual, extraordinary/ordinary, state/citizen are

crucial in creating a building a sense of awareness and fear around state power. In a post-colonial state like India, this has been especially valuable in building allegiance to an idea of the nation that has been constructed in alignment with state interests. In the case of widespread student protests on the JNU campus, the state was careful in not pitting itself against all the students, but only a select few who could be used to instil a sense of discipline in the others. Likewise in the case of Nayak and Trivedi, who were specifically selected among others from the movements they were linked to. The sedition law is less concerned with the particular individuals charged, but rather uses them and the law itself as a tool to weave cautionary tales that discipline other citizens and develop a moral ideology around nationalism.

## 6. Conclusion: The Good Citizen

Rather than taking a legal approach examining whether the sedition law is inimical to democracy, this study calls for a sociological analysis of how the law shapes popular understandings of nationalism and sedition. This enables a unique understanding of the law's functions in a nation with extensive democratic freedoms and heterogeneous interests. Each sedition case analysed evokes references to a symbolic and moral idea of the nation that is compromised by these individuals in the exercise of their democratic liberties. By studying the significance these cases have had beyond the courtroom, the sedition law can be understood as being a political instrument of the post-colonial state to shape understandings of nationalism and thereby monitor the democratic citizen.

While this article has focused on examining wider patterns of the sedition law's use across parties and governments, it would be incomplete without a discussion of the law's proclivity to be manipulated to fulfil political agendas. The agenda laid out by India's current national populist party to strengthen the sedition law, among other anti-terror laws, has already been acted upon with an amendment to the UAPA that has expanded the definition of terror acts to include 'any act that is 'likely to threaten' or 'likely to strike terror in people'' (Amnesty International India, 2019). The nation has been repeatedly invoked by the ruling party to strengthen its political power, as the BJP 'has exploited nationalism to bolster its standing, painting government critics as "anti-national"' (Vaishnav, 2019).

The sharp rise of cases over the second term of the party's rule since 2019 reveals how the law is particularly instrumental to states with authoritarian and sectarian tendencies. The run-up to the country's general elections in May 2019 revealed diverging views on the sedition law within the state, as the manifesto of the INC assured the revocation of the law if they were voted to power. While the party has used the law repeatedly in the past, it claimed in its manifesto that 'sedition

has been misused and, in any event, has become redundant' (Congress Will Deliver, 2019). This point was strongly criticised by the ruling BJP, which strongly advocated for the importance of the sedition law. The Home Minister at the time highlighted the need for the law by arguing that 'if someone tries to break India' (Press Trust of India, 2019) they must not be forgiven. As the idea of the anti-national citizen gains prominence in India, sedition cases particularly reveal how the conflation of nationalism with the ideology of populist parties can hinder access to citizenship for various groups.

#### Acknowledgements

This paper was originally written as part of my MSc. in Sociology dissertation at the London School of Economics in 2019. I am grateful to Dr. Bronwen Manby, Professor Simon J. D. Green, and Dr. Hilal Ahmed for their guidance during the early stages of the research process. I also thank the two anonymous reviewers for their constructive comments.

#### Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

#### ORCID iD

Ayesha Pattnaik <https://orcid.org/0000-0003-1172-8817>

## References

Amnesty International (2018) “Urgent Action: Indigenous Peoples Advocate Released on Bail”. [Press Release]. [Accessed 7th August 2019]. Available at: [https://www.amnesty.org.uk/files/2018-04/FI04918\\_1\\_0.pdf?VHEcplWIKnNcR5jtQiKbpsfx4ORidn5](https://www.amnesty.org.uk/files/2018-04/FI04918_1_0.pdf?VHEcplWIKnNcR5jtQiKbpsfx4ORidn5)

Amnesty International India (2019) “Central Government Claims On New UAPA Bill Misleading”. [Press Release]. [Accessed 7th August 2019]. Available at: <https://amnesty.org.in/news-update/central-government-claims-on-new-uapa-bill-misleading/>

Bakhle, J (2010) “Savarkar (1883–1966), Sedition and Surveillance: The rule of law in a colonial situation”. *Social History*, 35(1): 51-75

Banerjee, D.N. (1989) “MINISTERS AND THE LAW OF SEDITION IN INDIA” *The Indian Journal of Political Science*, 1(1): 98-100

Bhatia, G (2016) *Offend, Shock, or Disturb*. Oxford: Oxford University Press

Burke, J (2012) “Indian cartoonist Aseem Trivedi Jailed after arrest on sedition charges” *The Guardian*. 10 September. Available at: <https://www.theguardian.com/world/2012/sep/10/indian-cartoonist-jailed-sedition>

Centre for the Study of Social Exclusion and Inclusive Policy. (2011) “Sedition Laws & the Death of Free Speech in India” *National Law School of India University, Bangalore & Alternative Law Forum, Bangalore*. Available at: [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf)

Columbia Global Freedom of Expression (2011) “Binayak Sen v. Chhattisgarh”. Available at: <https://globalfreedomofexpression.columbia.edu/cases/binayak-sen-v-chhattisgarh/>

Committee to Protect Journalists (2012) “Indian cartoonist jailed for images criticizing government”. 10 September. Available at: <https://cpj.org/2012/09/indian-cartoonist-jailed-for-images-criticizing-go.php>

Congress Will Deliver (2019) *The All India Congress Committee*. Available at: <https://manifesto.inc.in/pdf/english.pdf>

Crime in India (2019) *National Crime Records Bureau*. Available at: <https://ncrb.gov.in/en/crime-india-2019-0>

Daniyal, S (2016) “We faced a trial by media’: The Umar Khalid and Anirban Bhattacharya interview”. *Scroll*. 19 March. Available at: <https://scroll.in/article/805353/we-faced-a-trial-by-media-the-umar-khalid-and-anirban-bhattacharya-interview>

Dey, A (2019) “JNU ‘sedition’ case: Unanswered questions in the chargesheet against Kanhaiya Kumar and others”. *Scroll*. 15 January. Available at: <https://scroll.in/article/909518/jnu-sedition-case-unanswered-questions-in-the-chargesheet-against-kanhaiya-kumar-and-others>

Dwyer, C (2017) “Fans Of Pakistan's Cricket Team Arrested For Sedition In India”. *NPR*. 21 June. Available at: <https://www.npr.org/sections/thetwo-way/2017/06/21/533827013/fans-of-pakistans-cricket-team-arrested-for-sedition-in-india?t=1564698434905&t=1565175673815>

Ganatantrik Adhikar Suraksha Sangathan (2018) [Press Release]. [Accessed 7th August 2019] Available at: <http://gass-odisha.blogspot.com/2018/02/ganatantrik-adhikar-suraksha-sangathan.html>

Gupta, S and Najar N (2016) “University Student in New Delhi Arrested on Sedition Complaint” *The New York Times*. 13 February. Available at: <https://www.nytimes.com/2016/02/14/world/asia/university-student-in-new-delhi-arrested-on-sedition-complaint.html?auth=login-email&login=email>

Human Rights Watch (2012) “India: Drop Sedition Charges Against Cartoonist” [Press Release]. [Accessed 7th August 2019]. Available at: <https://www.hrw.org/news/2012/10/12/india-drop-sedition-charges-against-cartoonist>

Human Rights Watch (2019) “India: Events of 2019”. Available at: <https://www.hrw.org/world-report/2019/country-chapters/india>

Haraway, D (1988) ‘Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective.’ *Feminist Studies* 14(3): 575-599

UN Human Rights: Office of the High Commissioner. (2018) “India: Terrorism charges are pretext to silence human rights defenders, say UN experts”. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23686&LangID=E>

Express Web Desk. (2019) “JNU sedition case: Kanhaiya Kumar, Umar Khalid named in chargesheet” (2019) *The Indian Express*. 14 January. Available at: <https://indianexpress.com/article/cities/delhi/jnu-sedition-case-chargesheet-kanhaiya-kumar-umar-khalid-5537648/>

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1996) *Article 19*, London. Available at: <https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf>

Kanhaiya Kumar v. State of NCT Delhi (2016) W.P. CRL 558. Available at: <http://delhihighcourt.nic.in/casehistory.asp>.

Kedar Nath Singh v. State of Bihar (1962) AIR SC 955. Available at: <https://globalfreedomofexpression.columbia.edu/cases/nath-singh-v-bihar/>

Law Commission of India (2018) *Consultation Paper on “SEDITION”*. 30 August. Available at: <http://www.lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf>

Maharana, D (2010) “In Defence of Indian Perspective of Multiculturalism”. *The Indian Journal of Political Science*, 71(1): 69-83.

Mehta, P.B. (2012) “State and Democracy in India”. *Polish Sociological Review*. 178: 203 -225.

Mehta, P.B. (2007) “India’s Unlikely Democracy: The Rise of Judicial Sovereignty” *Journal of Democracy*. 18(2): 70-83.

Mitchell, T. (1991) “The Limits of the State: Beyond Statist Approaches and Their Critics” *The American Political Science Review*. 85(1): 77-96.

Nair, S.K (2019) “CPI fields Kanhaiya Kumar from Begusarai” *The Hindu*. 24 March. Available at: <https://www.thehindu.com/elections/lok-sabha-2019/cpi-fields-kanhaiya-kumar-from-begusarai/article26624826.ece>

Narrain, S (2011) “Disaffection' and the Law: The Chilling Effect of Sedition Laws in India” *Economics and Political Weekly*. 46(8) : 33-37.

Narrain, S. and Liang, L. (2017) "Protest and the Right to Freedom of Speech and Expression". *Journal of Public Affairs and Change*. 1(1): 39-46.

Press Trust of India (2019) "Will make sedition law more stringent, says Rajnath Singh". 16 May. *The Hindu*. Available at: <https://www.thehindu.com/news/national/other-states/will-make-sedition-law-more-stringent-says-rajnath-singh/article27153515.ece>

Roy, A (2013) "The hanging of Afzal Guru is a stain on India's democracy". *The Guardian*. 10 February. Available at: <https://www.theguardian.com/commentisfree/2013/feb/10/hanging-afzal-guru-india-democracy>

Saksena N and Srivastava S (2014) "An Analysis of the Modern Offence of Sedition". *NUJS Law Review*. 7(121): 121- 147.

Singh, U.K. (2007) *The State, Democracy and Anti-Terror Laws in India*. New Delhi: Sage Publications India.

Stephens, J (2013) "The Phantom Wahhabi: Liberalism and the Muslim fanatic in mid-Victorian India," *Modern Asian Studies* 47(1): 22–52.

Sorabjee, S.J. (2012) "Confusion About Sedition". *The Indian Express*. 12 August. Available at: <https://indianexpress.com/article/opinion/columns/confusion-about-sedition/>

Tocqueville, A (2000) *Democracy in America*, trans. Mansfield H. C. and Winthrop D. Chicago: University of Chicago Press.

Vaishnav, M (2019) "Indian Voters Are Looking For An Excuse To Back Modi. They May Have Found One." *Carnegie Endowment for International Peace*. 1 April. Available at: <https://carnegieendowment.org/2019/04/01/indian-voters-are-looking-for-excuse-to-back-modi.-they-may-have-found-one-pub-78752>