



NMMUN



NMMUN 2021

BACKGROUND GUIDE

Analyzing the significance of the sedition law in the Indian democracy

INTRODUCTION

Greetings delegates!

It is an absolute pleasure to welcome you to Lok Sabha at the New Millennium Model United Nations Conference 2021. My name is Padma Ramesh, and I will serve as your Chairperson. I will be there to bring forth discussions and help you as and when you require it and expect you to thoroughly go through this guide prior to commencing your research on the issue. The agenda of the committee is open-ended but requires focused research in certain key aspects that have been listed in this guide.

The following pages intend to guide you in the research of the topics that will be debated in committee sessions. Please note this guide only provides the basis for your investigation. It is your responsibility to find as much information necessary on the topic and how they relate to the political party you represent. To give you a helping hand on how to prepare yourselves for this committee, we suggest starting your research as early as possible and to think logically and analytically.

Please remember, a Council is only as strong as its individual members, and that we are here merely to guide debate, not to take part in it. The Rules of Procedure are to be followed with utmost diligence; I expect you to adhere to the spirit of the United Nations, and hope you learn and strengthen the art of diplomacy.

I hope you will find this Background Guide useful as an introduction to the topic for this committee. However, it is not intended to replace individual research. We highly encourage you to explore your designated member's policies in-depth, to further your knowledge on these topics.

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Please keep in mind that members need to be well versed and ready to debate the topic. This being clear, kindly do not limit your research to the areas highlighted, further but ensure that you logically deduce and push your research to areas associated with the issues mentioned.

I look forward to making our sessions productive and enjoyable, although, this year the conference is being held online i assure you of a great learning experience backed with quality debate and simulation.

Best of Luck!
Regards
Padma Ramesh
Chairperson
Lok Sabha

COUNCIL OVERVIEW

“No law is permanent or steady. The law is not made of steel. The law is made by Parliament. It goes to the people, to the ground. A lot many suggestions come once it is implemented. So many laws have been amended after receiving people's suggestions.” - Amit Shah

The Lok Sabha or House of the People is the lower house of the Parliament of India. The Lok Sabha meets in the Lok Sabha Chambers, Sansad Bhavan, Sansad Marg, New Delhi. Lok Sabha is composed of representatives of the people chosen by direct election on the basis of adult suffrage. The maximum strength of the House envisaged by the Constitution of India is 552. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States. Lok Sabha, unless sooner

dissolved, continues for five years from the date appointed for its first meeting and the expiration of the period of five years operates as dissolution of the House. However, while a proclamation of emergency is in operation, this period may be extended. The Lok Sabha performs a number of useful functions.

Some of these functions are described below:

1. Legislative:

Law-making is the main function of the Parliament and in this field the Lok Sabha plays an important role. All types of bills can originate in the Lok Sabha and if a bill is moved in and passed by the Rajya Sabha, it has to come to the Lok Sabha for its approval.

2. Financial:

Control over purse makes one powerful. In financial matters, the Lok Sabha has a distinct superiority over the Rajya Sabha. The Money Bill can be introduced only in the Lok Sabha. It is up to the Lok Sabha to accept or reject the suggestions for change in the Money Bill made by the Rajya Sabha.

3. Control over Executive:

The Council of Ministers is collectively responsible to the Lower House of the Parliament. Thus, the government is accountable to the Lok Sabha for its acts of omission and commission. It is only the Lok Sabha which can force the Council of Ministers to resign by passing a vote of non-confidence against it. There are also other methods by which the Lok Sabha can exercise control over the central executive. These methods are putting questions, moving adjournment motions and call-attention motions, budget discussions, cut-motions and debates etc. By employing any of these methods the Lok Sabha can expose the misdeeds and inefficiency of the government and warn it against repeating such mistakes.

4. Constitutional:

The Lok Sabha shares with the Rajya Sabha the power to amend the constitution.

5. Electoral:

(a) The Lok Sabha takes part in the election of the President and the Vice-President.

(b) It elects the Speaker and the Deputy Speaker.

(c) Its members are elected to different committees of the Parliament.

6. Judicial:

(a) The Lok Sabha has power to punish a person on the ground of breach of privilege

(b) It takes part in the impeachment proceedings against the President of India

(c) It shares power with the Rajya Sabha to remove the Judges of the Supreme Court and the Judges of High Courts.

KEY TERMS

- **Freedom of speech:** Freedom of speech is the right to seek, receive and impart information and ideas of all kinds, by any means. Freedom of speech and the right to freedom of expression applies to ideas of all kinds including those that may be deeply offensive.
- **Sedition:** It is defined as incitement of resistance to or insurrection against lawful authority.
- **Lok Sabha:** The Lok Sabha is composed of representatives of people chosen by direct election on the basis of Universal Adult Suffrage. The term of the Lok Sabha, unless dissolved, is five years from the date appointed for its first meeting.
- **Rajya Sabha: The** Rajya Sabha or Council of States is the upper house of the bicameral Parliament of India. The Rajya Sabha meets in continuous

sessions, and unlike the Lok Sabha, being the lower house of the Parliament, the Rajya Sabha, which is the upper house of Parliament, is not subjected to dissolution.

- **MLA:** A Member of the Legislative Assembly (MLA), or a Member of the Legislature (ML), is a representative elected by the voters of a constituency to the legislature or legislative assembly of a sub-national jurisdiction.

FREEDOM OF SPEECH vs SEDITION

Freedom of speech

Article 19(a) of the Indian Constitution provides for freedom of speech and expression. It is a fundamental right and cannot be taken away. However, it is not absolute and is subject to reasonable restrictions under Article 19(2) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. One of the most important characteristics of a democracy is freedom of speech. A democratic country is one where the citizens have a choice, and the right to voice their choices. Denying them their right to express would take away the essence of democracy. However, while all citizens have the right to speak freely and express their views and opinions, it must be kept in mind that with those rights, they also have certain duties to perform as citizens of India. A democracy can function in its best possible way only when the State and the citizens perform their own duties, and think first on national level, and then on individual. The leaders of this nation are elected

by the people. The same people who elect those leaders and put their confidence in them, when they ask questions, give suggestions, or have conflicting opinions, must be heard.

Sedition

Section 124A of the Indian Penal Code defines sedition as 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 and provides for punishment to the offender with an 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. The history of Sedition laws in India can be traced back to the Indian Penal Code enacted in 1860 under the British Raj. It was added as an amendment to the Act in 1870. The British used this law to suppress the Wahhabi Movement and imprison activists like Lokmanya Tilak and Mahatma Gandhi. In 1961, the Punjab High Court held that sedition violated the freedom of speech guaranteed in Article 19 and declared it unconstitutional. Allahabad High Court proceeded to do the same, and the matter moved to the Supreme Court. Ultimately, in the case of Kedar Nath v. State of Bihar, the apex court upheld the constitutional validity of Section 124A. Merely being critical of the government or expressing contempt on the functioning of the government does not amount to sedition. For an act to constitute sedition, it must be done with an intention

to cause disorder/disturbance of the public peace or law by resort to violence and must incite violence.

BACKGROUND

What is the sedition act?

Sedition, which falls under Section 124A of the Indian Penal Code, is defined as any action that brings or attempts to bring hatred or contempt towards the government of India and has been illegal in India since 1870.

Section 124A IPC states: “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 a fine may be added; or, with imprisonment which may extend to three years, to which a fine may be added; or, with fine.”

Punishment for the offence of sedition

- Sedition is a non-bailable offence. Punishment under the Section 124A ranges from imprisonment up to three years to a life term, to which fine may be added.
- A person charged under this law is barred from a government job. They have to live without their passport and must produce themselves in the court at all times as and when required.

Origin of sedition law in modern India

- The law was originally drafted in 1837 by Thomas Macaulay, the British historian-politician, but was inexplicably omitted when the IPC was enacted in 1860.
- Section 124A was inserted in 1870 by an amendment introduced by Sir James Stephen when it felt the need for a specific section to deal with the offence. It was one of the many draconian laws enacted to stifle any voices of dissent at that time.

Arguments in support of Section 124A:

- Section 124A of the IPC has its utility in combating anti-national, secessionist and terrorist elements
- It protects the elected government from attempts to overthrow the government with violence and illegal means. The continued existence of the government established by law is an essential condition of the stability of the State
- If contempt of court invites penal action, contempt of government should also attract punishment
- Many districts in different states face a Maoist insurgency and rebel groups virtually run a parallel administration. These groups openly advocate the overthrow of the state government by revolution
- Against this backdrop, the abolition of Section 124A would be ill-advised merely because it has been wrongly invoked in some highly publicized cases

Arguments against Section 124A:

- Section 124A is a relic of colonial legacy and unsuited in a democracy. It is a constraint on the legitimate exercise of constitutionally guaranteed freedom of speech and expression.

- Dissent and criticism of the government are essential ingredients of robust public debate in a vibrant democracy. They should not be constructed as sedition. Right to question, criticize and change rulers is very fundamental to the idea of democracy.
- The British, who introduced sedition to oppress Indians, have themselves abolished the law in their country. There is no reason why India should not abolish this section.
- The terms used under Section 124A like 'disaffection' are vague and subject to different interpretations to the whims and fancies of the investigating officers.

IPC and Unlawful Activities Prevention Act have provisions that penalize "disrupting the public order" or "overthrowing the government with violence and illegal means". These are sufficient for protecting national integrity. There is no need for Section 124A.

The sedition law is being misused as a tool to persecute political dissent. A wide and concentrated executive discretion is inbuilt into it which permits the blatant abuse.

In 1979, India ratified the International Covenant on Civil and Political Rights (ICCPR), which sets forth internationally recognized standards for the protection of freedom of expression. However, misuse of sedition and arbitrary slapping of charges are inconsistent with India's international commitments.

The disutility of the sedition law:

- The data released by the National Crime Records Bureau for the year between 2014 and 2016 reflect the disutility of the law for the criminal justice system.

- Under the title 'offences against the State' the report shows a total of 179 arrests for sedition. However, no charge sheets were filed by the police in over 70% of the cases, and only two convictions during this time period. This data belies the claim for retaining the Section 124A of IPC.

What is the viewpoint of the Law Commission of India?

- In August 2018, the Law Commission of India published a consultation paper recommending that it is time to re-think or repeal the Section 124A of the Indian Penal Code that deals with sedition.
- In its 39th Report (1968), the Law Commission had rejected the idea of repealing the section.
- In its 42nd Report (1971), the panel wanted the scope of the section to be expanded to cover the Constitution, the legislature and the judiciary, in addition to the government to be established by law, as institutions against which 'disaffection' should not be tolerated.
- In the recent consultation paper on the sedition, the Law Commission has suggested invoking 124A to only criminalize acts committed with the intention to disrupt public order or to overthrow the Government with violence and illegal means.

Sedition law and the stand of Supreme Court of India

The constitutionality of sedition was challenged in the Supreme Court in Kedar Nath Vs State of Bihar (1962). The Court upheld the law on the basis that this power was required by the state to protect itself. However, it had added a vital caveat that "a person could be prosecuted for sedition only if his acts caused

incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace".

The court held that "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 against the Government established by law or with the intention of creating public disorder".

In September 2016, the Supreme Court had reiterated these necessary safeguards and held that they should be followed by all authorities.

Sedition laws in international jurisdiction

- The United Kingdom deleted the seditious libel through the Coroners and Justice Act, 2009.
- In Australia, following the recommendations of the Australian Law Reform Commission (ALRC) the term sedition was removed and replaced with references to 'urging violence offenses'.

CASE STUDIES

I. Kedar Nath Singh VS the State of Bihar (1962)

This was a landmark case, the ***first case of sedition*** tried in the court of Independent India, where the constitutionality of the very provision was challenged and the Supreme court clearly differentiated between disloyalty to the country's government and commenting on the measures of the government without inciting public disorder by acts of violence. Similar to the alleged anti-national speech of Kanhaiya Kumar, in a way, Kedar Nath Singh, a member of the Forward

Communist Party in Bihar, was charged for quite an extreme speech condemning the ruling government of the time and calling for a revolution.

“Today the dogs of the CID are loitering around Barauni. Many official dogs are sitting even in this meeting,” he said as he began his speech. “The people of India drove out the Britishers from this country and elected these Congress goondas to the gaddi and seated them on it. Today these Congress goondas are sitting on the gaddi due to the mistake of the people. When we drive out the Britishers, we shall strike and turn out these Congress goondas as well...” The Supreme Court imposed a narrower scope of interpretation, holding only those matters that had the intention or tendency to incite public disorder or violence as legally seditious.

II Dr. Binayak Sen VS State of Chhattisgarh:

Dr. Binayak Sen was charged for sedition, amongst other things, for allegedly aiding Naxalites, and sentenced to life imprisonment at the Session Court in Raipur. He was accused of helping insurgents, who were very active in the region at the time, by passing notes from a Maoist prisoner that was his patient to someone outside the jail. Denying all charges against him, Dr. Sen stated he was under the constant supervision of prison officials during his treatments so such an action would not be possible. It was his criticism of the killings committed by a vigilante group that prompted his arrest and subsequent accusations, Dr. Sen stated to The Wall street journal. Salwa Judum, is the group he’s referring to, designed and supported by the state government of Chhattisgarh to curb the insurgency in the villages of indigenous tribes where it thrived, according to them. But Dr. Sen, who’s a human-rights activist apart from being a pediatrician, claims that the group's real jobs to clear village land that’s rich in iron ore, bauxite and diamonds for it to be quarried.

His arrest gained a lot of international attention, and the U.S.-based Global Health Council awarded Dr. Sen its 2008 Jonathan Mann Award for global health and human rights in recognition of his services to poor and indigenous communities in India. In May later that year, 22 Nobel laureates sent a letter to the Indian government criticizing the incarceration and asking that he be released to receive the award in person. "We also wish to express grave concern that Dr. Sen appears to be incarcerated solely for peacefully exercising his fundamental human rights...and that he is charged under two internal security laws that do not comport with international human rights standards," they said in the letter.

III Aseem Trivedi VS the state of Maharashtra: (2012)

Controversial political cartoonist and activist, Aseem Trivedi, best known for his anti-corruption campaign, Cartoon and Corruption, was arrested on charges of sedition, in 2010. The complaint, filed by Amit Katarnayea who is a legal advisor for a Mumbai-based NGO, condemns Trivedi's display of 'insulting and derogatory' sketches, that depicted the Parliament as a commode and the National Emblem in a negative manner having replaced the lions with rabid wolves, during an Anna Hazare protest against corruption, as well as posting them on social networking sites.

Members of India Against Corruption (IAC) claimed that the cases were foisted on Trivedi by the government, as the government was angry with their anti-corruption crusade. Mayank Gandhi of the IAC said, "The case has been registered simply because Aseem had participated in the BKC protest organized by Anna Hazare and had raised his voice against corruption. So, the government is trying to scuttle his protest in this manner." Trivedi's case seriously questioned freedom of speech and expression in the country when a young man got arrested for lampooning evident corruption in the country. It's acceptable that some may find his cartoon

offensive and in bad taste but sentencing a person to life in prison for such an act is too extreme.

IV. Shreya Singhal VS Union of India (2012-2015):

This case is monumental in India's jurisprudence as its judgement took down Section 66A of the IT Act, sought to be in violation of Article 19 (1) of the Constitution of India that guarantees the right to freedom of speech and expression to all citizens. A student of law at the time, Shreya Singhal filed a petition in 2012 seeking an amendment in the section 66A, triggered by the arrest of two young girls in Mumbai, for a post on Facebook that was critical of the shutdown of the city after the death of Shiv Sena leader, Bal Thackeray; one of them posted the comment, the other merely 'liked' it.

What's critical about this judgement is the court's ruling that a person could not be tried for sedition unless their speech, however "unpopular," offensive or inappropriate, had an established connection with any provocation to violence or disruption in public order. The Supreme Court distinguished between "advocacy" and "incitement", stating that only the latter is punishable by law. The Supreme Court judgement came after three years of the petition's filing in 2015, but Shreya did not deter. "I did feel saddened in between but never lost hope. I was also hurt to see that despite the matter pending before the SC, police continued to arrest people under section 66A of the IT act. What was heartening was that the arrests did not deter people from posting comments," Shreya told Hindustan Times.

V The Queen Empress VS Bal Gangadhar Tilak:

Perhaps the most famous cases of sedition in history have been of our country's freedom fighters against colonial rule. Bal Gangadhar Tilak, staunch advocate of

India's freedom was charged with sedition on two occasions. The first in 1897 for speeches that allegedly incited the violent behaviour of others, which resulted in the death of two British officers. He was 1897 was the first instance where Section 124 (a) from the IPC was identified and applied. Incitement to violence and insurrection was immaterial in the eyes of the presiding Privy Council in regard to the culpability of a person that's been charged with sedition.

convicted and released on bail in 1898, and in 1909 prosecuted again for seditious writing in his newspaper Kesari.

VI Amulya Leona

The latest victim of Sec 124A is 19-year-old Amulya Leona. Bengaluru police arrested her for saying "Pakistan" among the countries which she hailed as "zindabad" in a public forum. All Amulya did was indulge in slogan shouting and the Supreme Court held in a 1995 case that mere sloganeering does not amount to sedition. There seems to be no application of mind by either the police or the magistrate in this case. Nor does the arrest pass the test of the Supreme Court's guidelines for a prima facie case.

Even before Amulya's arrest, more than a score of people in Uttar Pradesh, Assam, Karnataka (where the police interrogated school children over a play), and Manipur have been taken into custody for sedition. In these cases, too, there seems to be a flagrant disregard of the Supreme Court's guidelines.

Clearly, dissent, criticism of the government, questioning politicians – all of which are fundamental to a democracy – have come to be treated as sedition by the police and a section of the magistracy in the prevalent political order. Such terrorizing of critics and protesters endangers the very idea of democracy.

Conclusion

India is the largest democracy of the world and the right to free speech and expression is an essential ingredient of democracy. The expression or thought that is not in consonance with the policy of the government of the day should not be considered as sedition. The Law Commission has rightly said, "an expression of frustration over the state of affairs cannot be treated as sedition". If the country is not open to positive criticism, there would be no difference between the pre- and post-Independence eras.

Of course, it is essential to protect national integrity. Given the legal opinion and the views of the government in favor of the law, it is unlikely that Section 124A will be scrapped soon. However, the section should not be misused as a tool to curb free speech. The SC caveat, given in Kedar Nath case, on prosecution under the law can check its misuse.

Suggested Solutions

The sedition law, which has come under focus after the JNU row, needs "reconsideration," newly appointed law commission chairman Justice Balbir Singh Chauhan said on Tuesday but asserted that the panel will not jump to any conclusion before hearing out stakeholders.

“Actually it (sedition law) requires reconsideration. We do not know what the problem is, what are the difficulties. We will hear all the stakeholders, consult criminal lawyers,” the former Supreme Court judge told *Press Trust of India*.

He said the recently reconstituted 21st Law Commission “cannot jump to any conclusion” before understanding the difficulties relating to section 124 A of the IPC dealing with sedition.

In penal law, vague and ‘over-broad’ definitions of offences often result in mindless prosecutions based merely on the wording of the act that seems to allow both provocative and innocuous speeches to be treated as equally criminal. While upholding sedition as an offence that fell under the ‘public order’ restriction on free speech, the Supreme Court ruled that it ought to be invoked only if a particular speech or action had a “pernicious tendency to create public disorder”. Words such as “excites or attempts to excite disaffection” or “brings into or attempts to bring into hatred or contempt” are unacceptably vague, and the further explanation that ‘disaffection’ includes “disloyalty and all feelings of enmity” compounds the problem. The Law Commission, while revisiting the issue, should take into account recent developments, especially the flagrant instances of misuse of the sedition law and the tendency to invoke it against those involved in strident forms of political dissent and scathing criticism of governments. One way to limit its mischief is to narrow the definition; but a more rational and constitutional option would be to scrap the provision altogether.

News reports are indicating that a FIR has been registered with respect to a public meeting organized on the Jawaharlal Nehru University (JNU) campus on the evening of 9th February. These reports claim that the meeting was about the

hanging of Afzal Guru, and it is alleged that during its course, some people raised incendiary slogans. According to reports, the FIR has been registered under Section 124A of the Indian Penal Code (sedition), and the Police have already arrested one person.

- **Suggested Moderated caucus topics**

1. India uses colonial-era sedition law against CAA protesters
2. Sedition law as a tool to persecute political dissent
3. Weaponizing' Sedition Laws to Curb Freedom
4. Repealing the sedition law

- **Guiding Questions**

1. Who introduced sedition law in India?
2. How many sedition cases are there in India?
3. Why is the Sedition Act important?
4. What is a charge of sedition?
5. Who can file sedition charges?
6. Why was the Sedition Act passed?
7. Is the Sedition Act necessary?
8. What is the Sedition Act of 1870?

9. What does the Sedition Act prevent?
10. Does the Sedition Act violate any constitutional rights?

USEFUL LINKS

<https://www.outlookindia.com/website/story/opinion-section-124a-the-case-against-the-much-misused-sedition-law/347936>

<https://www.youtube.com/watch?v=5PSlme4ORY0>

<https://www.youtube.com/watch?v=NQpOfKLsD6Y>

https://www.youtube.com/watch?v=_aufu_kQ-WU

<https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html>

<https://indianexpress.com/article/explained/simply-put-sedition-law-what-courts-said-6254972/>

https://en.wikipedia.org/wiki/Section_124A_of_the_Indian_Penal_Code

<https://www.thehindu.com/opinion/op-ed/should-the-sedition-law-be-scrapped/article30993146.ece>

<https://www.newindianexpress.com/opinions/2020/mar/12/india-does-not-need-a-sedition-law-2115553.html>

<https://indianexpress.com/elections/bjp-sedition-law-strong-gujarat-rajnath-lok-sabha-elections-5673386/>

<https://economictimes.indiatimes.com/news/elections/lok-sabha/india/modi-targets-congress-for-sedition-law-repeal-promise/articleshow/68811794.cms?from=mdr>

<https://www.outlookindia.com/website/story/india-news-sedition-case-filed-against-jkhand-bjp-chief-for-trying-to-destabilise-the-state-govt/363335>

<https://www.nationalheraldindia.com/opinion/pakistan-and-sedition-remain-bjps-bramhastra-the-law-on-sedition-a-hand-tool>

<https://www.firstpost.com/politics/cpm-questions-narendra-modis-silence-on-hate-speeches-slams-bjp-on-sedition-charges-against-school-headmistress-for-staging-anti-kaa-play-7999991.html>

