

**Bill No. 64 of 2021**

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2021

By

DR. MOHAMMAD JAWED, M.P.

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*further to amend the Indian Penal Code, 1860.*

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

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| 5           | <p>1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2021.<br/>(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.</p> | <p>Short title and<br/>commence-<br/>ment.</p> |
| 45 of 1860. | <p>2. Section 124A of the Indian Penal Code, 1860 shall be omitted.</p>   | <p>Omission of<br/>section 124A.</p>           |

## STATEMENT OF OBJECTS AND REASONS

Section 124A of the Indian Penal Code, 1860, which defines and provides punishment for sedition, has been under constant criticism for a long time by the society which includes, but not limited to, advocates, former judges, elected representatives, bureaucrats and others, because of its constant misuse. The authorities, to suppress the voice of dissent, used this provision to sometimes silence the legitimate and meaningful voices and concerns of the society which may not lead to disaffection or war against the nation.

Freedom of speech and expression as mentioned in article 19 of the Constitution is an intrinsic and the most important right of all. The exceptions to freedom of speech and expression should be used in a reasonable, fair, and just manner in order to protect the rule of law and principles of freedom of speech and expression and not to curb the concerns of the society raised through legitimate ways.

Sedition, as we know, was an amendment introduced to the Indian Penal Code imported from the English legal system in 1870. It was brought to curb the voices of dissent and to control the freedom of speech and expression of the individuals. This provision was brought to suppress the voices of criticism of East India Company and became the tool to terrorize and illegitimate harassment of the Indian people. Bal Gangadhar Tilak, Annie Besant, Jogendra Chandra Bose and Mahatma Gandhi were amongst the first prominent figures to be charged with sedition. The provision of sedition was first misused against Shri Bal Gangadhar Tilak. Shri Tilak was charged under sedition before the Bombay High Court, in *Queen Empress vs. Bal Gangadhar Tilak* (1897).

In United Kingdom, with the enactment of the Human Rights Act, 1998, the existence of sedition was started to be considered in contravention of the tenets of the law. While abolishing sedition as offence in 2009, the then, Minister of Justice of the United Kingdom, said “the existence of these obsolete offences in the country had been used as justification by other countries for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom”. Finally, the sedition law was deleted by section 73 of the Coroners and Justice Act, 2009.

With the vehement opposition in the Constituent Assembly, the word “sedition” does not find a place in our Constitution.

Punjab High Court in *Tara Singh Gopi Chand vs. The State* declared section 124A of the Indian Penal Code unconstitutional as it contravenes the right of freedom of speech and expression guaranteed under article 19(1)(a) of the Constitution observing that – “a law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about”.

The basic tenet which attracts section 124A is the use of violence in continuation of the use of words, spoken or written, against the Government, but any other legitimate criticism or concerns raised cannot be the ground to attract sedition as it would be improper to interpret it in such a way.

But, in the case of *Ram Nandan vs. State of Uttar Pradesh*, the Court quoted Pt. Jawaharlal Nehru, who while introducing the first Constitution (Amendment) Bill, 1951, referred to sedition and stated, “Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it”.

In the case of *Union of India & Ors. vs. The Motion Picture Association & Ors.*, etc., the Supreme Court observed: “free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of differing view points, debating and forming one shown views and expressing them, are the basic indicia of a free society”.

In *Kedar Nath Singh vs. State of Bihar* it is been held while upholding section 124A that “Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the *sine qua non* of a democratic form of Government that our Constitution has established.”.

Though section 124A was upheld in *Kedar Nath Singh* case but with the development and change of times, it is been experienced that this section has rather been abused than being used for the protection of the State from violence.

Such a section should not be in the statute books of Indian democracy, this provision rather being the protector, has been used as the means to curtail and curb the freedom of speech and expression. Therefore, section 124A has no place in the law books of the nation where speech and expression is the soul of the democracy.

The Bill, therefore, seeks to omit section 124A of the Indian Penal Code, 1860.

Hence this Bill.

NEW DELHI;  
February 24, 2021.

MOHAMMAD JAWED

ANNEXURE

EXTRACT FROM THE INDIAN PENAL CODE, 1860

(45 OF 1860)

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Sedition. **124A.** 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.

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*(Dr. Mohammad Jawed, M.P.)*