



# Free Speech and Sedition: A Historical and Comparative Analysis in Liberal Democracies

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**Abstract**— This paper provides a historical and comparative analysis of sedition laws in liberal democracies, focusing on England, the United States, and India. While freedom of speech is a cornerstone of democratic governance, its limits—particularly concerning speech deemed seditious—reveal tensions between state security and civil liberties. The study traces the evolution of sedition from its origins in English common law, where it was used to suppress dissent before its eventual abolition in 2009, to its contested application in the U.S. under the Alien and Sedition Acts and later judicial refinements like the "imminent lawless action" test in *Brandenburg v. Ohio* (1969). In contrast, India's retention of its colonial-era sedition law (Section 124A of the Indian Penal Code) demonstrates its continued use as a tool to criminalize political dissent, despite judicial attempts to narrow its scope. Through case studies and legal analysis, the paper highlights the politicization of sedition in contemporary India, where accusations often target activists, journalists, and protesters with little evidentiary basis. A comparative assessment reveals that while England and the U.S. have moved toward greater free speech protections, India's legal framework remains restrictive, reflecting unresolved anxieties about national unity and democratic dissent. The paper concludes by questioning the necessity of sedition laws in liberal democracies and calls for legislative and judicial reforms to align India's approach with global standards of free expression.



**Keywords**— Sedition, free speech, liberal democracy, comparative law, India, United States, England, Section 124A, Brandenburg test, dissent.

## I. INTRODUCTION

Liberal democracies, by their very nature, are structured around the constitutional protection of civil liberties. Among these liberties, freedom of speech is held in especially high regard. This right is not only foundational for individual autonomy but also essential for democratic deliberation, dissent, and accountability. However, even in liberal systems, freedom of speech is not absolute. States often invoke national security, public order, or communal harmony to justify certain restrictions. One of the most controversial limitations in this domain is the offence of sedition.

Though many liberal democracies acknowledge free speech as a constitutional right, they have simultaneously retained or enacted sedition laws to criminalize speech perceived as inciting rebellion or violence against the state. These legal

provisions are often defended on the grounds that speech which directly threatens the structural integrity or sovereignty of a democratic state cannot be protected under the rubric of free expression.

This paper provides a comprehensive examination of the legal, political, and historical trajectories of sedition laws in three liberal democratic contexts: England, the United States, and India. While the origins of sedition lie in English common law, its transplantation into American and Indian legal systems produced varied interpretations and outcomes, reflecting the differing political cultures and judicial philosophies of these nations.

### England: From Monarchy to Modern Constitutionalism

The crime of sedition, as it came to be known in English law, was not part of fifteenth-century common law but developed during the sixteenth and seventeenth centuries. It

initially emerged as a tool to manage internal unrest and factional conflict, especially during periods of religious upheaval and monarchical instability. Manning (1980) notes that sedition began to acquire its modern connotation—as inciting disaffection towards the government—only after the Protestant Reformation. The Glorious Revolution of 1688 marked a pivotal point, as sedition laws were increasingly invoked to protect both the monarchy and Parliament from internal challenges.

For nearly two centuries, these laws served to suppress calls for representation, particularly those advanced by reformists and dissenters. Their use was often accompanied by judicial complicity, ensuring the insulation of the ruling establishment from vocal opposition. Gradually, however, the British judiciary began to place limitations on the application of sedition, particularly in the twentieth century. As democratic norms took deeper root, the notion that dissent equated disloyalty lost legal and moral legitimacy. Sedition, as a legal category, eventually fell into disuse and was formally abolished in England in 2009 (UK Parliament, 2009).

#### **United States: Constitutional Contradictions**

The American experience with sedition is shaped significantly by the tensions between democratic ideals and concerns over national security. The First Amendment of the U.S. Constitution enshrines the freedom of speech, yet the early republic saw the introduction of the Alien and Sedition Acts of 1798. Enacted under the Federalist administration, these laws sought to punish criticism of the government at a time of international conflict and domestic ideological polarization. Farber (1976) argues that these acts reflected the Federalist belief in governance by an elite, juxtaposed against the Republican preference for mass-based popular government.

Although the Sedition Act lapsed after a few years, its spirit was revived during World War I with the passage of the Espionage Act (1917) and the Sedition Act (1918). These laws curtailed speech that was considered anti-war or subversive, especially targeting socialist and pacifist groups. Judicial responses evolved during this period, with the U.S. Supreme Court first endorsing speech restrictions under the “bad tendency” test. This doctrine allowed the state to suppress speech that merely had the potential to lead to illegal activity, regardless of the speaker's intent (Stone, 2004).

This approach was revised in *Schenck v. United States* (1919), where Justice Oliver Wendell Holmes introduced the “clear and present danger” test. The test signaled a more stringent requirement for the state to justify curbs on speech. It was later refined in *Brandenburg v. Ohio* (1969), which held that only speech that incites “imminent lawless action”

could be penalized. This decision significantly curtailed the use of sedition charges and underscored a robust commitment to free expression, although the sedition law itself was never repealed (Tushnet, 2008).

#### **India: Colonial Transplant and Democratic Dilemma**

The sedition law in India, codified under Section 124A of the Indian Penal Code, was introduced by the British colonial government in 1870. It was a direct response to growing nationalist sentiment and was intended to suppress political agitation. Prominent freedom fighters like Bal Gangadhar Tilak and Mahatma Gandhi were famously prosecuted under this provision (Gupta, 2016).

Despite its colonial origins, the sedition law was retained by independent India. Constituent Assembly debates reveal the underlying tensions: while some members emphasized the need to preserve state integrity during a volatile post-Partition period, others expressed concern about the law's potential misuse against political dissent. Ultimately, the provision survived, justified by appeals to national security and unity (Singh, 2018).

Post-independence, Indian courts have tried to narrow the law's scope. In *Kedarnath Singh v. State of Bihar* (1962), the Supreme Court upheld the constitutionality of Section 124A but restricted its application to instances where the speech incites violence or public disorder. Nonetheless, as Singh (2018) shows, the law continues to be used against political activists, journalists, and ordinary citizens, often with weak or fabricated evidence.

#### **Judicial Trends and Constitutional Challenges**

Indian courts have consistently walked a tightrope between protecting constitutional freedoms and upholding laws seen as crucial for maintaining public order. *Kedarnath Singh* remains the cornerstone judgment on sedition, reaffirming that incitement to violence is a necessary condition for a conviction. In *Balwant Singh v. State of Punjab* (1995), the Supreme Court acquitted individuals who had shouted pro-Khalistan slogans, stating that mere slogan-shouting, without an actual threat to public order, did not constitute sedition (Rao, 2000).

Despite these judicial guardrails, law enforcement agencies continue to file sedition charges for speech acts that clearly fall within the bounds of permissible dissent. For instance, in 2016, student leader Kanhaiya Kumar and others were charged with sedition for allegedly shouting anti-national slogans during a protest at Jawaharlal Nehru University. The authenticity of the video evidence was questioned, and the case exposed the ways in which sedition can be wielded to silence political opposition (Burra, 2018).

### The Politicization of Sedition

The repeated use of sedition charges in India raises questions not only about legal interpretation but also about the political utility of such laws. Sedition cases are rarely followed through to conviction; rather, the process itself serves as a punishment. The stigma of being labeled “anti-national” is amplified by media coverage and state rhetoric. As Burra (2018) argues, the greatest barrier to free speech in India may not be the state per se, but a public conditioned to equate dissent with betrayal.

This pattern is evident in other recent examples. Celebrations of Pakistan’s victory in cricket matches, criticism of government policies, and protests against legislation like the Citizenship Amendment Act have all been met with sedition charges. These instances illustrate how a colonial-era law continues to shape and constrain democratic expression in contemporary India.

### The Constituent Assembly and the Democratic Imagination

Anushka Singh’s (2018) interdisciplinary approach to sedition reveals how foundational debates in the Constituent Assembly shaped the trajectory of free speech in India. She argues that two competing discourses emerged: one prioritizing democratic freedoms and the other emphasizing state security. While both were prominent during independence, it was the latter that found institutional expression in postcolonial lawmaking.

Singh critiques earlier legalist scholarship for ignoring the sociopolitical dimensions of sedition. She instead foregrounds “everyday tales of law,” showing how sedition operates in practice rather than merely in theory. Nevertheless, her analysis stops short of fully integrating the evolving definitions of nationalism into her critique. The Constituent Assembly’s failure to reconcile differing visions of the nation continues to influence the state’s relationship with dissent.

### Case Studies: Sedition in Contemporary India

A series of high-profile cases in recent years underscores the continued relevance and danger of sedition laws. Author Arundhati Roy faced sedition charges for her statements on Kashmir. Cartoonist Aseem Trivedi was arrested for satirical work critical of corruption. Thousands of villagers protesting against the Kudankulam nuclear project were also booked under Section 124A. These prosecutions reveal a disturbing trend where sedition is used not to protect the state, but to delegitimize dissenting voices (Gupta, 2016).

Further, while courts have occasionally pushed back, there is little systemic deterrent to misuse. In 2017, 20 individuals were charged with sedition in Madhya Pradesh for allegedly cheering for Pakistan in a cricket match. Though charges

were later dropped, the ordeal reflects a climate in which free expression is constantly under threat (Burra, 2018).

### Amendments and Legislative Shifts

India’s approach to speech-related offences has also been shaped by constitutional amendments. The First Amendment to the Indian Constitution in 1951 significantly curtailed free speech by adding new grounds for restriction, such as “public order” and “friendly relations with foreign states.” This amendment was partly a reaction to Supreme Court judgments that had earlier struck down speech restrictions, such as in *Romesh Thapar v. State of Madras* (1950) and *\*Brij Bhushan v. State of Delhi* (1950) (Jain, 2005).

The 1963 amendment to Article 19(2) further strengthened the state’s power to restrict speech on grounds including sedition. These legislative changes reveal a post-independence trajectory that prioritizes stability and unity over absolute free speech, shaped by the political realities of a newly partitioned and diverse nation.

### Comparative Reflections

When contrasted with England and the United States, India’s sedition laws remain markedly more punitive and broadly applied. England’s abolition of sedition as a criminal offence and the U.S. Supreme Court’s stringent standards for permissible speech illustrate a trajectory toward greater protection of dissent within liberal democracies.

In the U.S., sedition laws have been subjected to robust judicial scrutiny and are rarely invoked today. The *Brandenburg* standard has become a global benchmark for free speech, limiting criminal liability to speech inciting imminent violence. By contrast, India’s colonial-era law persists, often wielded with political motives and lacking modern judicial restraint.

## II. CONCLUSION

Sedition laws occupy a complex space within liberal democracies, revealing the ongoing tensions between security and liberty, order and dissent. England’s historical abandonment of sedition, the U.S.’s judicial refinement of speech protections, and India’s persistent colonial legacy provide instructive contrasts.

India’s continuing reliance on Section 124A reflects unresolved political anxieties about nationalism, unity, and democratic participation. Judicial efforts to restrict the law’s misuse have been partial at best. Until India undertakes comprehensive legislative reform, accompanied by a cultural shift toward embracing dissent as democratic

vitality rather than betrayal, sedition will remain a powerful instrument of repression.

This paper's detailed historical and comparative analysis underscores the need to rethink sedition laws within liberal democracies. Protecting free speech, especially speech critical of the state, is essential for a vibrant democracy. The challenge lies in balancing this protection with legitimate concerns about public order and national security, without sacrificing one at the expense of the other.

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