

# AIPPM

(All India Political  
Parties Meet)

## BACKGROUND GUIDE



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# INTRODUCTION



When we talk about the agenda in hand, the first thing we notice is that Free Speech is specially focused upon. Our constitution when drafted after independence has protected free speech guaranteed to every citizen of this country in Article 19.

# ● Article 19 of the Constitution of India

States that: 'Subject to the other provisions of this article, all citizens shall have the right – (a) to freedom of speech and expression; ... Provison: Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the security of, or tends to overthrow, the State.'

## Restrictions:

- 1) Security of the State
- 2) Friendly relations with foreign states
- 3) Public order
- 4) Decency or Morality
- 5) Contempt of court
- 6) Defamation
- 7) Incitement to an offence
- 8) Sovereignty and Integrity of India

# Ambiguities found

- But mere criticism of the government does not necessarily disturb public order.

(Raj bahadur, Gond vs state of Hyderabad (1953).

- The standard of morality varies from time to time and from place to place, Ranjit D udeshi v State of Maharashtra (1965)

- Even if a person has spoken the truth, he can be prosecuted for defamation. Under the first exception to Section 499, truth will only be a defence if the statement was made 'for the public good.' And that, is a question of fact to be assessed by the judiciary Read – Sections 499 and 500 contradict Article 19 and make Defamation extremely ambiguous.

Hate speech laws in India are regularly abused by political organisations and other influential people. Although these cases rarely result in a conviction, it is used as a form of intimidation which leads to widespread self-censorship by the people.

Apart from hate speech laws there are many other sections in the Indian Penal Code that curtails free speech. Books about history and religion are often targeted due to their very nature of promoting historical criticism.

The vague phrase "decency or morality" used in article 19 of the constitution has long enabled the state to engage in wide spread moral policing of mass media and the film and entertainment industry as religious groups often object to liberal ideas and deem all progressive values as indecent.

# The Question of Sedition and the effect of freedom of speech

According to the English Law, sedition embraces all the practices whether by word or writing which are calculated to disturb the tranquillity of the State and lead an ignorant person to subvert the Government.

Basic criticism of the government is not seen as sedition unless the Government believes that it was calculated to undermine the respect for the government in such a way so as to make people cease to obey it.

Section 124A of the Indian Penal Code defines the offence of sedition as follows: "Sedition. 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"

This still remains an ambiguous topic ripe for debate and will be explored further on in this guide.

# HK National Security Law



What does the Hong Kong national security law 2020 (Article 23 of HK basic law) “The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities in the Region, and to prohibit political organisations or bodies of the Region from establishing ties with foreign political organisations or bodies” The Hong Kong Bill of Rights ensures freedom of speech, but Hong Kong barrister Wilson Leung has said that China may find a way to override this in legislation they introduce.

Leung cites the fact a law imposed by China would be considered national law – while the Hong Kong Bill of Rights is "local" and so would be deemed subordinate by Beijing – and that the Standing Committee of the National People's Congress (NPCSC) is the highest authority on interpreting the Basic Law, and so could "say that the new security law cannot be restrained by the Bill of Rights" if they want.

## Similarities to Article 19(1).

While article 19 ensures freedom of speech under the constitution of India, this freedom can be curtailed under the provisions that are very similar to that of Article 23 of Hong Kong basic law.

# The New IT act of 2021



The amendments were seen by many to "overstep the aforesaid intention sparking concerns of violating free speech and privacy rights of individuals." It is seen that "the guidelines suffer with excessive delegation of powers and shift the burden of responsibility of identification of unlawful content from a government/ judiciary to intermediaries. This Act raised many questions and caused an upheaval among IT firms, and social media giants like Twitter, WhatsApp and Facebook all suing the Government of India in the Delhi high court.

The government informed twitter that they would lose their status as an intermediary if they failed to comply, which in essence makes them liable to prosecution!

## Notable Cases

- Maneka Gandhi v. Union of India, AIR 1978 SC 597
- Romesh Thapar v. State of Madras
- Prabha Dutt v. Union of India
- Brij Bhushan v. State of Delhi
- M.R. Parashar v. Farooq Abdullah

**FUN FACT :** after the declaration of emergency in 1975 by then President Fakhruddin Ali Ahmed under the advice of Prime Minister Indira Gandhi Indians lost their fundamental rights and freedoms, along with it a mass censorship of the press.

The Bombay edition of the times of India on the 26th of June 1975 had this printed in the obituary section “ D.E.M O'Cracy beloved husband of T.Ruth, father of L.I.Bertie, brother of Faith, Hope and Justica expired on 26 June ”

# Section 124(A)



Section 124-A of the Indian Penal Code, named 'Sedition', explains sedition in broad and magnanimous terms. It reads —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 aims to excite disaffection towards the Government established by Indian law shall be punished with life imprisonment.

The descriptions which the Indian Penal Code gives are that the term —disaffection|| includes disloyalty and all feelings of hate. It also reads as, that the comments that express firm disapproval of the measures of the Government, with an opinion to obtain their desired modifications by legal means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offense as per this section.

In accordance with section 124-A, comments expressing strong disapproval of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, does not constitute an offense as per this section. The law was originally drafted by Thomas Macaulay.

It was not a part of the Penal Code in the 1860s and was even dropped from the law. It was introduced in the IPC in the year 1870. Many Indian freedom fighters, including Mahatma Gandhi and Bal Gangadhar Tilak, were charged with sedition during the freedom struggle.

When the first amendment was introduced, which also included detailed limitations on free speech, the then Prime Minister Jawaharlal Nehru was categorical in his belief that the offence of sedition was fundamentally unconstitutional. He had said —“now so far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons. The sooner we get rid of it the better it is.”

The judicial controversy on the purview of Section 124-A initiates with the decision of the Calcutta High Court where it held that it is sufficient for the purpose of the section that the words used are evaluated to excite feelings of ill will against the Government and hold it up to the hatred and contempt of the people and that they were used with the intention to create such a feeling.

The contention that there can be no offence under the section unless rebellion or armed resistance is incited or sought to be incited was rejected vehemently. Public disorder, or the justifiable anticipation, or likelihood of public disorder, is therefore the gist of the offence. The act or words complained of must either incite to disorder, or must be such as to satisfy reasonable men that that is their intention or tendency.

Later on this interpretation given by the Federal Court was expressly overruled by the Privy Council. The relationship of Sec 124-A of the IPC and Art 19 of the Constitution of India is a strained relationship. The Indian Constitution guarantees freedom of speech and expression, which implies the right to express their own convictions and opinions without restrictions by words of mouth, writing, printing, pictures or any other means.

The fundamental rights contained in Article 19(1) are those great and basic rights which are recognized as the natural rights inherent in every citizen. The basic requisite of validity of law with reference to Article 19 is that it should not be arbitrary and the restrictions or limitations imposed on the rights under Article 19(1)(a) must comply with the reasonable restrictions mentioned in Article 19(2).

The Legislation can be declared to be illegal and unconstitutional only when it fails to clear the test of arbitrariness and discrimination which would render it violative of Article 14 of the Constitution.

Sedition is a serious crime against the State — threat to the stability and challenge to the authority of the State — not merely opposition, however strong or resistance to the policy of the Government.

It is correct that it is difficult to decide where to draw a line, but it is also correct that the line needs to be drawn, as far as possible. Since its origin in the court of Star Chamber in England, the law of sedition has been defined by uncertainty and non-uniformity in its application. By keeping its scope deliberately vague, generations of members of the ruling political class have ensured that they have a tool to censor any speech that goes against their interests. The courts have also been unable to give a clear direction to the law.

While the final position on the law in India was laid down as early as 1960, the law of sedition is characterized by its incorrect application and use as a tool for harassment. Thus, some of the reasons for which people have been booked under the provision (and often incarcerated) include liking a Facebook page, criticizing a popular yoga expert, cheering for the Pakistani team during a cricket match versus India, asking a question about whether the stone peddlers in Jammu and Kashmir were the real heroes in a university exam, making cartoons that allegedly incite violence and making a speech at a conference highlighting the various atrocities committed by the armed forces.

An analysis of the judgment of the Supreme Court in Kedar Nath itself demonstrates certain deficiencies in how the law is currently understood. There has been a shift in how we understand 'security of the state' as a ground for limiting the freedom of speech and expression. The Law Commission in its 42nd report had favored amendments to Section 124A. While it wanted the scope of actions that would be punishable under the clause to be widened, it wanted the punishment to be fixed at a maximum seven years and/or a fine. At present, a person convicted under the section can be sentenced to a prison term, either up to three years or for life — nothing in between. However, nothing was done to implement those recommendations.

Even England from where we got the law in the first place has also repealed it in early 2010. One of the reasons cited for scrapping these offences — obsolete though they had become — was that their formal existence in Britain was used by other countries to justify their retention and use them to suppress political dissent. There is no place in a democracy for a law that conflates disaffection with disloyalty and regards trenchant criticism as a form of treason.

Amnesty international has voiced its concerns against the misuse of the law stating that... "However the law continues to be used to suppress critics.

Successive governments in India have deployed it against journalists, activists and human rights defenders. In 2015, the law was used to arrest a Dalit folk singer in Tamil Nadu for songs criticizing the state government, and a community leader in Gujarat protesting for quotas in education and employment." Now that we know what Free Speech is, in what cases there are exceptions to your right to speak your mind, we delve into the second half of the agenda which involves freedom of speech on social media.

To understand this part, we will introduce the Information Technology Act, 2000. This Act was amended in 2008 and there are new set rules currently in the planning stage by the government of India. The specific section that deals with curbing your freedom of speech under special circumstances is Section 66(A). Section 66(A) of the Act criminalises the sending of offensive messages through a computer or other communication devices.

Under this provision, any person who by means of a computer or communication device sends any information that is:

1. grossly offensive;
2. false and meant for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will;
3. meant to deceive or mislead the recipient about the origin of such messages, etc, shall be punishable with imprisonment up to three years and with fine.

Over the past few years, incidents related to comments, sharing of information, or thoughts expressed by an individual to a wider audience on the internet have attracted criminal penalties under Section 66(A). This has led to discussion and debate on the ambit of the Section and its applicability to such actions.

While Section 66(A) has been invalidated by the Supreme Court of India and declared unconstitutional, multiple states still continue arresting people over their posts and remarks on social media under Section 66(A) in spite of the Supreme Court of India issuing notices.

Social Media is a double edged sword and the distance between you getting arrested for something you post or comment upon is just a few words and the amount of attention it gets. The IT Act of 2000 isn't the only law that people are arrested under. There are many more ways people are and have been arrested.

As the Executive Board of AIPPM, it is our duty to provide a foundation and brief introduction to some of the topics of the agenda to be discussed and not every topic to be discussed on a silver spoon. We hope you research well and find topics of your own which aren't mentioned in the Background Guide and have a fruitful debate during the conference.

# EXECUTIVE BOARD MEMBERS



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**ALL THE BEST !**