CRITICAL ANALYSIS OF SEDITION LAW IN INDIA

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

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This is to certify that the dissertation titled, **"Critical Analysis of Sedition Law in India"** is the work done by Aayushi Tripathi under my guidance and supervision for the partial fulfillment of the requirement for the Degree of **Master of Laws** in School of Legal Studies, Babu Banarasi Das University Lucknow, Uttar Pradesh.

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TABLE OF CONTENT

LIST OF CASES

27. Maneka Gandhi v. Union of India A.I.R 1978 SC 597.
28. Mohd Yaqub v. State of W.B. (2004) 4 CHN 406
29. Nazir Khan v. State of Delhi 8 SCC 461 (2003).
30. New York Times v Sullivan 376 U.S. 254 (1964).
31. Niharendu Dutt Majumdar v. King Emperor, AIR FC 22 (1942).
32. P. Hemalatha v. The Govt of Andhra Pradesh, AIR 1976 AP 375
33. P.J. Manuel v. State of Kerala, ILR (2013) 1 Ker 793.
34. Queen Empress v. Amba Prasad, ILR 20 All 55(1898).
35. Queen Empress v. Bal Gangadhar Tilak, ILR 22 Bom 112 (1898).
36. Queen Empress v. Jogendra Chunder Bose 1891, (1892) ILR 19 Cal 35.
37. Queen Empress v. Jogendra Chunder Bose ILR (1892) 19 Cal 35.
38. Queen Empress v. Ramchandra Narayan, ILR 22 Bom 152 (1898).
39. R. v. Burns and Others 16 Cox. C.C. 355, 361.
40. R. vs Sullivan, (1868) 11 Cox C.C. 44.
41. Ram Nandan v. State, AIR All 101 (1959).
42. Ram Nandan v. State, AIR All 101 (1959).
43. Ramesh Yashwant Prabhoo v. Prabhakar Kashinath Kunte & Ors. AIR 1996 SC 1113.
44. Romesh Thapar v. State of Madras AIR SC 124 (1950).
45. S. Khusboo v. Kanniamal & Anr. AIR 2010 SC 3196.
46. S. Rangarajan Etc. v. P. Jagjivan Ram, 1989 SCR.
47. Sanskar Marathe v. State of Maharashtra Cri. PIL 3-2015.
48. Schnek v. United States 249 U.S. 47 (1919).
49. Shreya Singhal v. Union of India AIR 2015 SC 1532.
50. Tara Singh v. State of Punjab 1951 CriLJ 449.
51. Tata Press Ltd. V. Mahanagar Telephone Nigam Ltd. & Ors. AIR 1995 SC 2438
52. The Superintendent vs Ram Manohar Lohia 1960) S.CJ. 567.
53. Virendra v. State of Punjab AIR 1958 SC 986.
54. Yates vs USA. 354 U.S. 298 (1957).

ABBREVIATION

A.I.R	All India Reporter
All.	India Law Report, Allahabad
ACHR	African Charter on Human and Peoples' Rights, 1979
Art.	Article
Bom	Indian Law Reports, Bombay series
CJ	Chief Justice of India
CJI	Chief Justice of India
Cr. LJ.	Criminal Law Journal
CR. Lr.	Criminal Law reporter
Cox	Cox's Criminal cases
ECHR	European Convention on Human Rights
e.g.	for example
H.C	High Court
ILR	India law reports
UDHR	Universal Declaration of Human Rights
IPC	Indian Penal Code
ICCPR	International Covenant on Civil and Political Rights

Ibid.	repetition of footnote on the same page
Id	repetition of footnote on different page
i.e.	that is
Infra	Quoted in later pages
J.	Hon'ble Justice
Sec.	Section
SC	Supreme Court of India
SCC	Supreme Court Cases
Supra	Quoted in earlier pages
UOI	Union of India
Q.E	Queen Empress
V.	Versus
Vol.	Volume

CHAPTER 1

INTRODUCTION

The society is continuously growing between two conflicting values liberty and security. The entire history of the human civilization presents ample testimony of the perpetual conflicts between them. The competing claims of liberty and security have created and presented many new problems in the society, the resolution of which appear to be difficult, if not impossible. The conflict between them becomes shaper and complicated in a developing, plural and multilingual society like India. Although many formulas have been adopted in the administration of the criminal justice in order to strike just balance between them, the search of the satisfactory mechanism so far, has eluded the society. The security of the society is ensured by the criminal law of the country and the liberty of the individual appears to be the prime concern of the Constitution of India. The citizens of India have the freedom of speech and expression, freedom to move freely, right to life and liberty and right to protection against arrest and detention, guaranteed by the Constitution of India, which is, however, restricted by the laws of Sedition contained in the Indian Penal Code, 1860.[1] Sedition is the act of inciting hatred or contempt against the institutions of the State including acts tending to excite disaffection against the Sovereign or institutions of Government.[2]

Democracy is the only form of government that entail openness for dissent and opinions differ in substance, by equipping the subjects with rights of diverse nature, be it "Freedom of Speech and Expression, that may differ in substance and form, right to criticize government, right to change government by way of constitutional means, or right against arbitrariness on the part of government or its functionaries".

[1] http://legal-articles.deysot.com/profile/madhvender-chauhan-2859.html
[2] http://www.pressgazette.co.uk/node/43966

The term democracy has been derived from two Greek words, demokratia means 'rule of people' and kratos means, 'people'. Significantly, in democracy, reign is of people, since they are the one who forms a government by way of representation, through a process called 'Election', adjectivized as 'free and fair election', conducted periodically. The great emphasis has been laid on 'Freedom of speech and expression' which also obscures 'right to dissent' within itself. Freedom of speech and expression is the essence of a democratic form of government. True, the State is authorised to impose reasonable restrictions in the national interest, but the Judiciary will examine whether those restrictions are legitimate or not. Over the years, Section 124A of the Indian Penal Code that deals with sedition has been misused so much that this has become a big threat to the freedom of speech and expression. The Supreme Court of India has ruled time and again that a person can be booked for sedition only when there is disaffection, hatred, contempt being made against the government established by law" provided which is being preceded by violence. However, the law has been misused to throttle and to curb dissent as some recent cases seem to prove.

This dissertation mainly deals with the mishandling of the section 124-A of the Indian Penal Code. Where the citizens are facing hardship for their dissents made against Governments or their agencies (even though living in a Democratic society like ours), the misuse of this colonial rule has brought us that we are still not free neither by act nor by will. It also caters with various cases which proves how the Governments are misusing it to zip the dissent out.

The question itself is "WHY" as to we are dealing with such section which itself is creating more commotion then removing it.

As to "WHY" we still have this section, when we are a democratic country.

As to "WHY" we are adhering the same colonial aspect with us when we got the freedom in 1947 itself.

"WHY"?

How can a dissent itself throw a government (only if it is true)?

The Section itself is uncertain and ambiguous, as the “Disaffection” word can be more widely used and curb any kind of dissent even when they are not creating or spreading any hatred, that is also one of the reasons to repeal off the section. Through this dissertation it is being conveyed as to why this section should be repealed and if not, how the citizens will have to face hardships and will be put behind the bars without any hustle and justification (which itself is a core of Criminal Code that 100 criminals can get away but no innocent should be punished).

1.1 AIM AND OBJECTIVES

The aim and objectives of the study is to examine the use of the law of sedition under Section 124 A of the Indian Penal Code. It has manifold objectives, the primary being to what extent the law has been misused by successive governments at the Centre and the States and the consequent threat to the citizens’ freedom of speech and expression. Another important objective is to introduce necessary course corrections to strengthen the citizens’ fundamental right to speech and expression in the world’s largest democracy. Sedition law has a much wider ambit and is ambiguous and does not have certainty as it covers every kind of verbal dissent even if they are not strong worded, only that they were made against the Government or its agencies. It deals with words like “contempt” and “Disaffection” which are not clearly defined as to what constitutes what!

As the section 124-A, Explanation 1. states

“The expression "disaffection” includes disloyalty and all feelings of enmity. The mechanisms used by the governments with time has been that they won’t be taking any kind of dissent or criticism whatsoever, that’s why whenever there had been any commotion about any policy or government acts passed, this law has been used as a tool to kill all the speeches and everyone has been put behind the bars without

reasonable explanations. Now even in the post-independence period there is no surety of freedom of any kind.

Every time any citizen is arrested under this section they are labelled as "Anti-Indian" or "Anti-National" even before any Judicial Decisions are made. And even if they are found not guilty the label won't be lifted, as this is the post effect of this section. If any dissent is made even against the Government agencies also, they are prejudiced with this section. Cases of sedition and under the stringent UAPA showed a rise in 2019, but only 3 per cent of the sedition cases resulted in convictions. Data for the year 2019 released by the National Crime Records Bureau also show that sedition cases rose even as the category under which they come — 'Offences Against the State', which includes charges under the UAPA and Official Secrets Act (OSA) — saw a steep fall of 11.3 per cent from the year before.

As per the Crime in India Report, this decline, however, was largely explained by the drop in cases registered under the Prevention of Damage to Public Property Act — from 7,127 in 2018 and 7,892 in 2017 to 6,079 in 2019. The UAPA cases formed the second largest chunk under this category, after the property act.

This dissertation surrounds itself as what effect it is making on the citizens, whether it is making the object clear of this section. As from the reports itself it is clear that the sedition law is being used a shield by the government to curb down every dissent made by their own citizens.

1.2 RESEARCH PROBLEM

The problem arises at the face that why in the first place we have a sedition law in a Democratic country like ours. Secondly, whenever any act or law is passed by the legislature it also states about its objective which it will be serving with. With the history and present scenarios, we of all people know as to what this law is serving and to whom. Nowhere, it can be seen that this section can justify itself of being in our criminal law. Since the research is doctrinal in nature thus, I am putting the best set of

questions which need to be queried about. Such as: whether the law itself is requisite in a Democratic Country. Secondly, Whether Sedition and Article 19(1)(a) i.e., Freedom of Speech and Expression can have an equilibrium between them or can there be existence of them in the same context. Thirdly, whether this section needs an amendment or should be wholly repealed. As why the Government is not able to differentiate between Dissent and Constructive Criticism!

1.3 HYPOTHESIS

This dissertation revolves around this colonial law formed to bent every dissent made against them. This research proposes on to repeal this law so as to put an end on the misuse and misery the people have been went to.

This is the Hypothesis on which Dissertation rests.

1.4 RESEARCH METHODOLOGY

The methodology adopted in the dissertation is exploratory, descriptive, and explanatory. Exploratory because the researcher, based on the study undertaken, is convinced that this paper will lay the foundation for discovering the new frontiers of knowledge and research on this crucial subject in the future. Descriptive because the researcher will explore and explain the issue while providing additional information on the law, including the practices. More to the point, the researcher will also try to explain in greater detail the various infractions and violations of the law, fill in the missing gaps and expand our understanding on the pros and cons of the law and the imperative need for checking the abuse or misuse of the law. As for the explanatory method, the researcher makes a humble attempt to dot the I's and connect the T's to understand the cause and effect. The researcher seeks to explain the developments in this critical area and disseminate information to the academic community, intelligentsia and the society at large so that the research paper could influence the decision-making process at the highest level and facilitate the much-needed course corrections. More to the point, the methodology adopted in this paper is primarily historical analytical because whatever

data available on this subject is mainly covered by secondary sources of information such as newspapers and periodicals. The two important judgments of the Supreme Court of India: Kedar Nath Singh vs. State of Bihar; and Balwant Singh vs. State of Punjab – can be classified under primary sources. As the subject under study has an important bearing on the citizens' freedom of speech and expression, any study or analysis would remain incomplete if the public opinion on the subject is not sought. The Researcher primarily got all the data from articles and Government printed Statistics. The NCRB reports and law reports are also the sources of the research.

1.5 LITERATURE REVIEW

During the present study the researcher has gone through various articles, books, Journals, Editorials, Law Reports, and Case laws as of Supreme Court and High Court.

Gautam Bhatia's book discusses the history, conceptual basis, and operation of these provisions. One of its chapter deal with the sedition law where it describes factors that make sedition law come into existence and how this law was inserted under article 19(2) of Indian Constitution to provide as reasonable restriction of freedom of speech and expression. The evolution of sedition law in India and their relationship with the freedom of speech and expression can also be understood.

Arvind Ganachari in his article stated that it was used as a political weapon by the government to suppress voices of the people in earlier times. So as to no one can raise their voices against the action of the government. In a retrospective analysis, it is understood to have been so enacted to stifle anti-colonial voices of the time (pre-Independence). As a precedent, therefore, this section was used against various nationalist leaders, most notably against Bal Gangadhar Tilak and Mahatma Gandhi. Various countries abolished sedition law like the UK. Once more, the question arose relating to existence in India where the law continues to be in existence.

Priyanka Pareek in her article[3] has stated it is very saddening that even after six decades of Independence, people of this country cannot express their views, opinions, even when it is their fundamental right to do so, and there have been various instances where this freedom has been totally curtailed on the grounds of sedition. One of such very important freedoms is the freedom of speech and expression which by the rampant abuse of the law of sedition is being curtailed repeatedly. In her view it is thus a dire need of this democratic society to repeal a law that does not give the citizens a right to express themselves as if the people who are rulers of a democratic society are not allowed to voice their opinions then there cannot exist any bigger doom for a country who claims to be the biggest democracy in the world.[4]

Nivedita Saksena & Siddhartha Srivastava in their article[5], has analysed the modern offence of Sedition and have observed that it is being used as an effective means to restrict free speech, and has been used by contemporary governments for reasons that are arguably similar to those used by our former oppressive rulers. According to them many other statutes govern the maintenance of public order and may be invoked to ensure public peace and tranquillity. They opine, it is time that the Indian legislature and judiciary reconsider the existence of provisions related to sedition in the statute books.[6]

Sarah Sorial (2010) in his article said that there can be a direct and indirect relationship between two of them one act which was foreseeable by the person who did seditious act and secondly, where the person was doing the act in good faith who had no idea about the consequence. But if we see in Indian context there is no such classification both the act would amount to the same punishment. There is also no way to measure the actual harm like in case of hurt, murder, etc. It's all about the mental capacity of

[3] Priyanka Pareek, "Sedition and freedom of Speech", available at: http://racolblegal.com>sedition-the-british-indian-law (last accessed on April 22, 2021).
[4] Ibid
[5] Nivedita Saksena and Siddhartha Srivastava, "An Analysis of the Modern Offence of Sedition", NUJS Law Review.
[6] Ibid

persons to persons for some persons something can be more seditious for some persons it can be not at all. Due to this also need to check whether in such kind of offenses mens rea plays a crucial role? As even in England mens rea was required before it was repeal

In *Shreya Singhal v. Union of India*[7], the Court laid that irrespective of the degree of derogation and insult, a certain degree of proximity needed to exist between the utterance and the potentiality of public disorder. This is progressive step in the direction of laws pertaining to sedition as it further limits the scope of sedition. The Court in the case positioned the requirement for a substantive and a procedural analysis of the restrictive law concerned to determine its reasonability.

Every hate speech against the government is not sedition. Hate speech is a lesser serious offence than sedition. Alexander Brown, in his article has explained in wide manners that hate speech is one that involves emotions, feeling of hate should be understood "as a heterogeneous collection of expressive phenomena". The Law Commission of India on Hate Speech has also explained the difference between hate speech and sedition. Hate speech is a public tranquillity that indirectly affects the state but sedition is a direct offence against the state. Simply disobeying the government does not amount to sedition. As it is observed in the article, Sedition law in India is now obsolete in a modern democratic system of government and need reconsideration by the Indian judiciary and legislature. It also explained the reason why the sedition provision in India needs to be reconsidered is because there are others laws that maintain public order and peace and tranquillity. Such offences should not fall under the sedition provision because the punishment for sedition has draconian effect on less serious offences. The provision should be either amended or repeal from the statutory book. It also explains that sedition provision expects citizens to have "popular affection" towards the government in every expect. It also explained that sedition provision suppresses the freedom of the citizens and that it threatens the democratic value. That is why the

[7] (2015) 5 SCC 1532

sedition provision should be abolished by taking the example of modern democratic country like England and New Zealand.

The abuse of sedition provision in India can be witnessed from the case of *Shreya Singhal case*[8] where two girls were arrested for advocacy. But the court has distinguished between advocacy and incitement. The article with Special Reference to *Shreya Singhal vs. Union of India*,[9] have discussed the facts and judgment of the case. As per the judgment, advocacy is not punishable under the sedition but only incitement is punishable. Sedition provision is used by the government as an instrument to control people.

Tonnie O Iredia stated in his article, Trends In Sedition Laws: Implications For The Practice of Journalism in Developing Societies, "activists, political opponents and media professionals face frivolous daily charges of sedition". The author also explained how sedition is used as a tool to suppress free speech and expression in a democratic system especially in developing countries.

1.6 CHAPTERIZATION SCHEME

Chapter 1: Introduction

The Author of this Dissertation starts it with the Introduction of the topic i.e. what the sedition generally is. The Introduction not only includes the meaning but also the aims and objectives of the research and the research methodology i.e. what ways have been approached and adopted by the researcher to make this research possible. The Literature Review has also been taken into consideration. It generally states the General Problem faced by the people regarding this section.

[8] (2015) 5 SCC 1532
[9] Ibid.

Chapter 2: Historical Developments of Law Of Sedition

This Chapter discusses the origin of the Sedition in the contemporary India Under the British Rule and also the chaos made by this section. It also leads us through ample of case laws stating the deteriorating condition of the citizens. It also states the pre and post condition of Independence of India as the mis-happenings caused by this section has been used to curb the speech of the citizens, hasn't changed much even after the independence. It also elaborates the constitutional validity by various Judicial judgements of the Apex Court i.e. Supreme Court. In the case of *Kedar Nath V. State of Bihar*, the apex court decided that Section 124 – A IPC, 1860 is Constitutionally valid.

Chapter 3: Current Position of Sedition In India

This chapter introduces itself after the post-Independence condition of India in inference of sedition hasn't made much of difference. With ongoing case laws against citizens shows as it is still being use as a tool to kill the speech. Examples has been provided with the statistics of the imprisonment and Judiciary stand on this.

Case laws has been the after the Independence to this period. And also, how Sedition and Freedom of Speech can coexist with each other.

Chapter 4: International Perspective

An important principle of comparative law is that useful lessons can be drawn from studying how other jurisdictions approach common problems. This chapter examines sedition laws in a number of selected countries, focusing on how other jurisdictions seek to reconcile the need to prescribe seditious conduct with the requirements of international law. The International Perspective has been very vital for the understanding of this law in worldwide terms. This Chapter gives us a glimpse of this law as being seen by some of the Nations, not only this but also why many nations have repealed this from their Acts/Statutes.

Chapter 5: Conclusion and Suggestion

As the law has proved in Pre and Post era that it has not been that fruitful but only been a con for the Peoples, this chapter makes clear why this section should be scrapped from the IPC, 1860. Also, how this section has been used as a blunt sword to make them bleed then killing them. Repealing them is the only way as Offences against the state is also provided under various sections.

CHAPTER 2

HISTORICAL DEVELOPMENT OF LAW OF SEDITION IN INDIA

2.1 Introduction

One of the significant laws prevailing in any state, are the laws relating to self-preservation or the ones which secure the stability in a state. In almost every liberal democracy, in addition to the liberties guaranteed by the state, there are restrictions imposed by the state on the liberties in case, security of the state is threatened. From its inception, sedition has been regarded as an offence against the state and is placed under the category of political crimes. Sedition is also considered as a type of hate speech directed at the state or sovereign.[10] Time and again the retention of sedition in the statute books has been justified on the ground that the law of sedition acts as a weapon in the hands of authorities to resist rebellion and to maintain public order. The interpretation of offence of sedition has also been a matter of controversy throughout history. For understanding the scope and ingredients of the offence of sedition, it is necessary to discuss its conceptual dimensions, historical background and development which is being discussed in this chapter.

2.2 Sedition Historical Background

In India, the history and the interpretation of the law of sedition is looked at from two different perspectives, one being, judicial and the other is political.[11] The Charter Act of 1833, established a legislative council to handle civil, defence, and commercial

[10] Sarah Sorial, Sedition and the Advocacy of Violence: Free Speech and Counter-Terrorism 3 (Routledge Taylor and Francis Group, 2012)
[11] Anushka Singh, Sedition in Liberal Democracies 137 (Oxford University Press, New Delhi, 2018).

interests of the East India Company. Lord Thomas Bakington Macaulay along with other members of the Law Commission took charge to draft the Criminal Penal Code for India, in order to have a uniform system of justice applicable all across the Indian British Empire. The Law Commission appointed for the drafting of a penal code was doubtful of the competence of the Indian Legislature to enact a general law of sedition. Therefore, the Law Commission suggested that the Imperial Legislature should draft such law and be made applicable to the whole Empire.[12] The Charter Act of 1833, contained a restriction on the legislature under section 43 as follows:

"The Governor-General-in-Council shall not have the power of making any law or regulation which shall in any way affect the prerogative of the Crown, and the authority of the Parliament, and the Constitution or the rights of the said Company, or any part of the unwritten laws or Constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or Dominion of the said Crown over any part of the said territories."[13]

The Law Commission proposed section 113, punishing the excitement of disaffection against the government established by law in the territories of East India Company. Section 113 of the Draft Penal Code provided:

"Whoever, by words, either spoken or intended to be read, or by signs, or by visible representations, attempts to incite feelings of disaffection to the Government established by law in the territories of East India Company, among any class of people who live under that Government, shall be punished with banishment for life or for any term from the territories of the East India Company, to which fine may be added, or with simple imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

[12] D. Gopalakrishna Sastri, The Law of Sedition in India 10 (India Law Institute, New Delhi, 1964
[13] Ibid

Explanation: Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government against unlawful attempts to subvert or resist is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation is not an offence within this clause."

By the mid-nineteenth century, the British managed to consolidate their position in India and had to face their challenge in the form of the revolt of 1857.[14] Behind this backdrop, The Indian Penal Code, 1860, (hereinafter referred as IPC) was enacted by the British to tackle the resentment posed by the press.[15] According to Rajiv Dhawan, Commissioner of International Commission of Jurists,

"The Indian Penal Code, 1860, was a comprehensive code. Not all the provisions were directed against free speech but virtually all could be used against it."[16]

It is interesting to note that the provision of sedition was a part of Lord Macaulay's draft penal code in 1837 as one of the clauses in section 113 but did not make it to the final code which was enacted in 1860.[17] Section 113 of the Draft Penal Code, punished 'attempts to excite feelings of disaffection to the government'. The provision made a distinction between disaffection and disapprobation and explained that 'such a disapprobation of the measures of the government as was compatible with the disposition to render obedience to the lawful authority of the government, and to support the lawful authority of the government against unlawful attempts to subvert or resist that authority, was not disaffection. Therefore, making of any comments on the measures taken by the government with an intention to seek changes in the measures,

[14] Shivani Lohiya, Law of Sedition (Universal Law Publishing, New Delhi, 2014).
[15] Ibid
[16] On sedition: Sarim Naved | KAFILA – COLLECTIVE EXPLORATIONS SINCE 2006 last visited on 25/05/21
[17] Supra

was not an offence within this section.[18] Sir James Stephen while introducing the bill seeking an amendment to IPC for including the offence of sedition, mentioned that the reason of its omission was nothing but a 'mistake' and observed that:

"Nothing could be further from the wish of the government of India than to check, in the last degree, any criticism of their measures, howsoever hostile, may, howsoever disingenuous, unfair, and ill-informed it might be. So long as the writer or speaker neither directly nor indirectly suggested or intended to produce the use of force, he did not fall within the section".[19]

In the light of debates before the council, which included controversy and criticism, the reason that the provision on sedition did not make it to the final draft is considered as vague. It is opined that one of the reasons for its omission was that Governor-General Lord Canning was against the inclusion of such a provision, as he viewed it as a restriction on freedom of speech.[20] This was evident from his remarks on the Press Bill 1857. The transfer of power of Indian territories from East India Company to the Queen in 1858 is cited as another reason for the omission of a provision on sedition in 1860. The Law Commission was hesitant to enact such a provision as it held itself to be incompetent to do so in light of the changed circumstances and thus making such law to be invalid.[21] The British were prompted by the increasing Wahabi activities between 1863-1870, which aimed at establishing Muslim rule in India.[22] Wahabis were collecting money and gathering men from Bihar and Bengal through their agents appointed at various places. To book these agents, E.C. Barley, Secretary to Government of India, Home Department suggested the amendment to the Penal Code in order to counter the problem of seditious proceedings, not amounting to waging, or

[18] W.R. Donogh, A Treatise on the Law of Sedition and Cognate Offences in British India (Thakker, Spink and Co., Calcutta, 1911).
[19] D. Gopalakrishna Sastri, The Law of Sedition in India 10 (India Law Institute, New Delhi, 1964).
[20] Ibid
[21] William E. Conklin, "The Origins of Sedition Law" Crim.L.Q. 277-289 (1972-1973).
[22] S. Narrain, "Disaffection and the Law: The Chilling Effects of Sedition Laws in India" (visited on 24/05/21)

attempting to or abetting to wage war against the Queen. The situation got worsened with the murders of Viceroy Lord Mayo and Justice Norman of the Calcutta. A. Eden, Secretary of the Judicial Department, remarked,

"There can be no doubt that where a population is at once ignorant and fanatical, as are the Mohammedans of India, seditious teachings are to be made a substantive offence".[23]

In the light of rising public discontent sedition was made a part of the Indian Penal Code in 1870. Support from the words of Sir James Stephen was also drawn, who defended the inclusion of the offence of sedition in Indian Penal Code, 1860, and addressed its objection, for it not being consistent with freedom of the press, in the following words:

"The people might express or excite disapprobation of any measure of the government that was compatible with a disposition to render obedience to the lawful authority of the government; in other words, you might say what you liked about any government measure or public man; you might publish or speak whatever you pleased, so long as what you said or wrote was consistent with a disposition to render obedience to the lawful authority of government. Law and liberty exclude each other, liberty was what you might do, and law was what you might not. The question is not whether the press ought or ought not to be free, but whether it ought to be free to excite rebellion".[24]

The Act XXVII of 1870 contained in section V of the Indian Penal Code defined sedition as:

Whoever by words, either spoken or intended to be read, or by signs, or by visible representation or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation

[23] Arvind Ganachari, Nationalism and Social Reform in a Colonial Situation, Pg56.
[24] Exciting Disaffection, Sec 124A of Act XXVII of 1870.

for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation- such a disapprobation of the measures of the government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disaffection, is not an offence within this clause.[25]

Chapter IV dealing with General Exceptions and Chapter V dealing with Abetment was made applicable to the offence of sedition by virtue of section 13 of the Act XXVII of 1870. Section 14 of the Act XXVII of 1870 provided that no charge of such an offence to be entertained by any court, unless the prosecution be instituted by order of, or under the authority of, the local government.[26] This definition of the offence of sedition in India was based on three laws of England, The Treason Felony Act,1848, the Common Law with regard to seditious libel, and the law as to seditious words. Section 3 of the Treason Felony Act, 1848, provides that whoever imagines, intends or plans, to depose Her Majesty, her heirs or his successors from the crown, wages war against Her Majesty, or heirs or successors, enforces pressure by violent means to bring alteration of policies of Her Majesty, urge a stranger to invade the United Kingdom or publish any writing or gives an open speech to propagate and achieve the above aim.[27]

According to the definition of sedition in India, criticism of the government was allowed only under one condition, that was, obedience to the lawful authority of the government but how this obedience was to be judged was not mentioned.[28] On the other hand, in England, if one had the feelings of disloyalty towards the Queen and showed that in the form of writing, he was held liable to punishment, but the proposed section

[25] Ibid.
[26] An act to amend the Indian Penal Code.
[27] Section 3 of the Treason Felony Act, 1848
[28] Visited on 02/04/21 http://www.nls.ac.in/resources/csseip/files/Seditionlaws_cover_final.pdf>

on sedition in India did not relate to man's wishes or feelings, but simply to his writings or words, and the feelings intended to be produced in others.[29] Even though the definition of the offence of sedition was ambiguous, yet it was more precise and less obscure than the definition of the offence under the English law.[30] The inherent ambiguities in the definition of the offence of sedition, its scope was expanded further by employing wider meaning to the words used in the definition of the offence of sedition. The word 'disaffection' and 'disapprobation' were held to be different from one another and an attempt to incite ill-will feelings towards the government was held to be not the same as disapprobation.[31] The need for the amendment in the provision of the offence of sedition was soon felt after sedition charges were pressed against editors of nationalist newspapers, Surendra Nath Banerjee, editor of 'Bengalee' and Bal Gangadhar Tilak, editor of 'Kesari'.[32] It was observed in these trials that the problem with the definition of sedition is the understanding of the word 'disaffection'.[33] In Tilak's case, Justice Strachey interpreted the word 'disaffection' as the absence of affection. He observed that 'hatred', 'enmity', 'dislike', 'contempt', 'disloyalty', and all feelings of ill-will against the government count as disaffection.[34] Justice Strachey's interpretation went beyond the law in the IPC, 1860. 'Disaffection' came to be known as something equivalent to 'disloyalty'. The two subsequent trials for sedition further widened the scope of the offence.[35] Despite broad interpretations to the offence the accused were found not guilty of the offence. It was realized that the 'explanation' to the offence was resulting in ambiguities about the nature of the law.[36] The provision was amended by Act No.26 of 1955, replacing the punishment as imprisonment for life and/or with fine or imprisonment for 3 years and / or with fine.

[29] Supra
[30] Supra
[31] Queen Empress v. Jogendra Chandra Bose, ILR 19 Cal 35.
[32] Ujjwal Kumar Singh, Political Prisoners in India 24 (Oxford University Press, New Delhi, 1998).
[33] Ibid.
[34] A.G. Noorani, Indian Political Trials: 1775-1947 119-120 (New Delhi, 2009).
[35] Queen Empress v. Ramchandra Narayan and Others, ILR (1898) 22 Bom 152., Queen Empress v. Amba Prasad, ILR (1898) 20 All 55.
[36] Ibid

- **Following was the provision for sedition added in 1898 to IPC:**

Section 124A of IPC– Sedition[37] - '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 obtaining 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.[38]

The provision of the law of sedition is based on the principle that every state, whatever its form of government, has to be armed with the power to punish those who by their conduct jeopardise the safety and stability of the state, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption in the state or to public disorder.[39] If the government established by law is subverted, the being of the state will be in jeopardy. Therefore, the continuous existence of the government established by law is an essential condition for the stability of the state.

[37] Section 124A of Indian Penal Code, 1860.
[38] Section 124A of Indian Penal Code, 1860.
[39] K.D. Gaur, The Indian Penal Code

That is why 'Sedition' as an offence under Section 124A of IPC,1860, has been placed under Chapter VI relating to offences against the state.[40] When the need was felt to amend the law of sedition, there was another debate surrounding the freedom of the press was to repeal Vernacular Press Act, passed in 1878. The Act introduced in pre-censorship of newspapers by the government. The British sensed the discontentment raised by Vernacular Press Act, therefore, the repeal of the same was desired. In the debate to repeal this Act, it was also suggested that section 124A of IPC also needs to be amended to make it more effective to restrict libellous expression. But the government feared that if Vernacular Press Act, 1878 is repealed, then a lacuna would be created to contain seditious expressions by the Press. The government decided to repeal the Vernacular Press Act, 1878 and make changes in the law of sedition under IPC. The government proposed that where there is no obvious intention to resist or subvert the government then such a case should not be considered as a case for sedition. This proposed amendment was prompted because sedition charges were imposed on a number of newspapers, where the government failed to prove the charge at trial.

In 1898, an amendment was proposed to the existing provision on sedition as it was felt in the words of Mr. Chalmers (who was in charge of the Bill) that '*the law, as it stood then, was not clearly drafted and would benefit with less equivocal terms'*. In the wake of recent events and the interpretation given to the provision, it was viewed by the member that an appeal to violence should not be considered as a significant element to determine the guilt of the accused.[41]

By the Amendment Act IV of 1898,[42] 'hatred' and 'contempt' were added with the word disaffection which included both 'disloyalty' and 'feelings of enmity'. The main objective of the bill was to introduce a comprehensive law for dealing with the growing number of seditious events in India. To ensure that the individual opinions towards government were not suppressed the law was redrafted in such a manner that

[40] Ibid.
[41] Anushka Singh, Sedition in Liberal Democracies 137 (Oxford University Press, New Delhi, 2018).
[42] The Indian Penal Code, 1860 (Act. No IV of 1898)

it provided in clear terms what amounted to sedition and what did not amount to sedition. Further, section 153A was incorporated with the code penalising the promotion of feelings of hatred or ill-will between different classes of Indian people.

The West Minster Parliament enacted the Prevention of Seditious Meetings Act, 1907, in order to prevent public meetings, likely to lead the offence of sedition or to cause disturbance as in many parts of India, meetings were held against the British rule, with the main objective of overthrowing the Government. The Prevention of Seditious Meetings Act, 1911, repealed the Act 1907. Section 5 thereof enabled the statutory authorities to prohibit a public meeting in case such meeting was likely to provoke sedition or disaffection or to cause disturbance of public tranquillity. Violation of the provisions of the Act was made punishable with imprisonment for a term, which could extend to six months or fine or both. The said Act 1911 stood repealed vide Repealing and Amending (Second) Act (Act No. IV of 2018).[43]

2.2.1 Pre-Independence Constitutional Rulings

Ironically, some of the most famous sedition trials of the late 19th and early 20th centuries were those of Indian nationalist leaders. In 1897 three notable trials took place. Two of these were held in Bombay and the third at Allahabad. All of them had a direct bearing on the Special Act of 1898. These trials were closely followed by his admirers across the country and internationally. Section 124A had been the subject of consideration in the following cases.

- ***Queen-Empress v. Jogendra Chunder Bose[44]***

Brief facts: The first State trial for sedition on record is the case of Queen-Empress v. Jogendra Chunder Bose, better known as the 'Bangobasi case' that being the name of the newspaper in which the alleged seditious matter appeared. The articles in question were the direct outcome of the legislation of 1891, commonly known as the "Age of

[43] https://lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf
[44] (1892) ILR 19 Cal 35

Consent Act." The Bangohasi, of which the four accused were respectively the proprietor, editor, manager, and printer, was a weekly vernacular newspaper published in Calcutta, and having a large provincial circulation. The material passages from the Article were charged with offences of sedition. At the trial, which took place in the High Court at Calcutta, it was urged on behalf of the Crown that 'no attempt at a reasonable discussion of the Age of Consent Bill was to be found in the articles charged, while the defence, on the other hand, contended that they 'did not exceed the bounds of legitimate criticism of the measure in question.

Observations: Mr. Justice C. Petheram while delivering the judgment defined the term 'disaffection' in the following words-

"Disaffection means a feeling contrary to affection, in other words, dislike or hatred. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the government, or to subvert or resist that authority, if and when occasion should arise, and if he does so intending to create such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is bought about by his words, or any feeling of disaffection in fact produced by them."

To determine that the work in question is seditious or not, His Lordship observed that the following considerations should be kept in the mind:

"The class of paper which is being prosecuted, and the class of people among whom it circulated, taking into consideration the articles which have been made the subject of the indictment, and the others which have been cut in during the course of the trial. Those articles are not addressed to the lowest or most ignorant mass of the people. They are addressed to people of the respectable middle class, who can read and understand their meaning more or less the same class as the writers. You will have to consider not only the intent of the person who wrote and disseminated the articles

among the class named, but the probable effect of the language indulged in. Then you will have to consider the relations between the government and the people, and having considered the peculiar position of the government and the consequence to it of any well organised disaffection, you will have to decide whether there is an attempt or not to disseminate matter with the intention of exciting the feelings of the people till they become disaffected."

For determining that whether the articles intended to excite feelings of enmity against the Government, or on the other hand, were they merely expressing, though in strong language, the disapprobation of certain Government measures?

His Lordship observed

"You will bear in mind that the question you have to decide has reference to the intention and, in fact the crime consists of the intention, for a man might lawfully do the act without the intention. The evidence of intention can only be gathered from the articles. The ultimate object of the writer may be one thing, but if, in attaining that object, he uses as the means the exciting of disaffection against the Government, then he would be guilty under section 124A."

- ***Queen-Empress v. Balgangadhar Tilak[45]***

Brief facts: In this case, Tilak was the proprietor, editor, and publisher of a weekly vernacular called the Kesari, published at Poona, and having a large circulation in the province. His co-accused was the acting manager. The seditious matter charged was contained in two different series of publications, which appeared in the issue of the 5th June 1897. The first was a highly metaphorical and barely intelligible rhapsody, partly in verse, entitled 'Shivaji's Utterances.' The other purported to be a report of the proceedings at the Shivaji Coronation Festival, with a summary of the speeches delivered at the celebration by Tilak himself, who was also the President. The Articles

[45] (1897) I.L.R. 22 Bom. 112, 151

envisaged the pathetic condition of Indians during British Rule. Some of the extracts that were charged with sedition are as follows-

".....Foreigners are dragging out Lakshmi (affluence) violently by the hand (or by taxation), by means of persecution. Along with her plenty has fled, and after that health also. This wicked Akabaya stalks with famine throughout the whole country. Relentless death moves about spreading epidemics of diseases.... How do the white men escape by urging these meaningless pleas? This great injustice seems to prevail in these days in the tribunals of justice.....If thieves enter our house, and we have not strengthened in our wrists to drive them out, we should without hesitation shut them up and burn them alive. God has not conferred upon the foreigners the grant inscribed on copperplate of the Kingdom of Hindustan. Go not circumscribe your vision like a frog in a well. Get out of the Penal Code, enter into the extremely high atmosphere of the Shrimat Bhagavad-Gita, and consider the actions of great men." It was contended by the Crown that a comparison had been drawn between the conditions of the people under Shivaji and under British rule altogether unfavourable to the latter and that this was done for the purpose of exciting disaffection. For the defence it was argued that the articles describing the sufferings of the people were quite consistent with loyalty. They no doubt set forth grievances, but it was not seditious to do that. It was further pleaded that the object of the accused was only to create a national sentiment. There was no suggestion of "overthrowing the British Government."

Observations: Mr. Justice Strachey, defined 'disaffection' in the following terms-

"It means hatred, enmity, dislike, hostility, contempt, and every form of ill will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government."

While dealing with the effects of 'disaffection' on the punishment he observed-

"That the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment, if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. On the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection, and the unsuccessful attempt to excite them, so that if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded."

- ***Queen-Empress v. Ramchandra Narayan and another***[46]

The decision is of the highest value as affording not only the interpretations of the learned Judges as to the law of sedition, but also their views on its proper application, and the measure of punishment to be awarded for the crime.

Brief facts: The first accused was the editor, and the second was the proprietor, publisher of a newspaper called the Pratod, which was printed and published at Islampur in the Satara district. The article "Preparations for becoming Independent" written by the first accused and published by the second accused was charged as seditious. Some of the extracts of the articles in question are mentioned below: Canada is a country in North America under the British rule, the people of which have now become intolerant of their subjection to England. Though they are subject to the British people, they are not effeminate like the people of India. It is not their hard lot to starve themselves for filling the purse of Englishmen: They are not obliged to pay a pie to England. Their income from land revenue and taxes are expended for their own benefit.

They enact their own laws independently, and appoint their own officers, except one or two who are sent from England. Like us, they are not men given to prattling, but can act up to their word. There is also strong unity amongst them. Spirited men show by

[46] (1897) I.L.R. 22 Bom. 152

their actions what stuff they are made of. There are no people on earth who are so effeminate and helpless as those of India. We have become so callous and shameless that we do not feel humiliation, while we are laughed at by all nations for losing such a vast and gold-like country as India. What manliness we can exhibit in such a condition is self-evident."

Observations: Sir C. Farran, C. J., observed that-

"An attempt to excite feelings of disaffection to the Government is equivalent to an attempt to produce hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance."

He further explained the difference between disaffection and disapprobation in the following words-

"... disapprobation of the measures of Government is not disaffection, provided that it is of such a nature as to be compatible with the disposition to obey Government and to support its lawful authority against attempts to resist or subvert it. A loyal subject who disapproves of Government measures is not to be deemed disloyal or disaffection on that account if, notwithstanding his disapprobation of such measures, he is ready to obey and support the Government. If he is at heart loyal, he is not disaffected merely because he disapproves of certain measures of Government." On the other hand *"he may be a rebel at heart, though for the time being prepared to obey and support Government."*

Justice Parson's interpretation of the term 'disaffection' is also important. He interpreted the terms in the following manner -

".... to be employed in its special sense as signifying political alienation or, that is to say, a feeling of disloyalty to the Government or existing power, which tends to a disposition not to obey, but to resist and attempt to subvert that Government or power. Its meaning thus exactly corresponds to the almost, if not quite, universally

accepted meaning of its adjective 'disaffected.' To make or attempt to make a person disaffected, that is to excite or attempt to excite in him a feeling of disloyalty to Government, or to excite or attempt to excite in his mind a disposition to disobey, to resist the authority of, or to subvert the existing Government, is the act under this section declared an offence."

Justice Ranade's definition of the same term is a model of precision and apt phraseology he defined the term in the following words -

"Disaffection, as thus judicially paraphrased, is a positive political distemper, and not a mere absence or negation of love or goodwill. It is a positive feeling of aversion which is akin to 'disloyalty' a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people, and weaken the bond of allegiance, and prepossesses the minds of the people with avowed or secret animosity to Government, a feeling which tends to bring the Government into hatred or contempt by imputing base or corrupt motives to it, make men indisposed to obey or support the laws of the realm, and promotes discontent and public disorder."

- ***Queen-Empress v. Amba Prasad***[47]

This was the last of the three notable trials of the year 1897 and it took place at Allahabad.

Brief facts: Amba Prasad was committed by the Magistrate of Moradabad to the Court of Session of Moradabad for trial on a charge that on or about the 14th of July 1897, he did attempt to excite feelings of disaffection to the Government established by law in British India by publishing in a newspaper called the Jami-ul-ulam, of which he was proprietor, editor, and publisher, an article "Azadi band hone se kabal namuna" and had thereby committed an offence punishable under Section 124A of the Indian Penal Code.

[47] (1898) ILR 20 All 55

Decision: His Lordships while dealing with the issue that how the intention of the accused of creating the feelings of disaffection among others can be ascertained observed:

"The intention of a speaker, writer or publisher may be inferred from the particular s peech, article or letter, or it may be proved from that speech, article or letter, considered in conjunction with what such speaker, writer, or publisher, has said, written, or published on another or other occasions. There it is ascertained that the intention of the speaker, writer, or publisher was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken or written, or published, could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or false, and, except on the question of punishment or in a case in which the speaker, writer, or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did, in fact, excite such feelings of disaffection."

- ***Annie Besant v. Advocate General of Madras.***[48]

The case dealt with Section 4(1) of the Indian Press Act, 1910, that was framed similarly to Section 124A. The relevant provision said that any press used for printing/publishing newspapers, books, or other documents containing words, signs, or other visible representations which tended to provoke hatred or contempt to His Majesty's government…or any class of subjects (either directly or indirectly, by way of inference, suggestion, metaphor, etc.) would be liable to have its deposit forfeited. In this case, an attack was levelled against the English bureaucracy. The Privy Council followed the earlier interpretation of Justice Strachey and confiscated the deposit of Annie Besant's printing press.

[48] (1919) 21 BOMLR 867

- ***Trial of Mahatma Gandhi***

In March 1922, Gandhi was tried before Mr. Broomfield, I.C.S., District & Sessions Judge of Ahmedabad, for sedition in respect of two articles, which he wrote in his paper "Young India". Before that, there was acute unrest and hostility to government, primarily due to the doctrines preached by Gandhi, and his campaign of non-cooperation and civil disobedience. This had resulted in some acts of violence and bloodshed. The most recent were attacks on peaceful citizens involving much bloodshed and destruction of property by an infuriated mob in Bombay on the occasion of the visit of the Prince of Wales in 1921. Another was the inhuman burning alive of a number of policemen by a maddened mob at Chauri Chaura near Agra. Of course, Gandhi deplored and denounced these acts of violence; and even suspended the campaign for some time, himself going on fast by way of penance.[49]

The trial, which was attended by the most prominent political figures of that time, was followed closely by the entire nation. Mr. Justice Strangman chaired the trial. Mr. Gandhi explained to the presiding judicial officer why he had become an uncompromising disaffectionis and non-co-operator from being a dependable royalist, and why to disobey the law was his moral duty. In a bold and explicit statement which also highlights the fact that the offence of sedition was best suited to a colonial regime based upon strict control over any possible criticism of the regime, Gandhi ji commented on the law that was used to try him and demanded that the judge give him the maximum punishment possible:

"Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen.
Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as

[49] TRIAL OF MAHATMA GANDHI-1922 – Advocatetanmoy Law Library (visited on 15/04/21)

he does not contemplate, promote or incite to violence.[50] *But the section under which I am charged is one under which mere promotion of disaffection is a crime. I have studied some of the cases tried under it, and I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. I have endeavoured to give in their briefest outline the reasons for my disaffection. I have no personal ill-will against any single administrator; much less can I have any disaffection towards the King's person. But I hold it a virtue to be disaffected towards a government, which in its totality has done more harm to India than the previous system. India is less manly under the British rule than she ever was before. Holding such a belief, I consider it to be a sin to have affection for the system. And it has been a precious privilege foe me to be able to write what I have in the various articles tendered in as evidence against me."*

Mr. Justice Strangman, acknowledged the stature of Gandhi and his commitment to non-violence in a remarkably respectful response, and expressed his inability to not hold him guilty of sedition under the law, and sentenced him to six years imprisonment.[51]

The ambiguity being created by the explanation in interpreting the term disaffection was brought to light by such cases. So as to remove any further misconception in interpreting section 124A, the legislature introduced Explanation III to the section, which excluded 'comments expressing disapprobation' of the action of the Government but does not intend to lead to an offence under the section. The main purpose behind adding another explanation was to make the law more precise. The Select Committee, while considering the law of sedition, explained this addition in the following words:

"We have added a further explanation to clause 124A. The second explanation was intended to protect fair and honest criticism which had for its object the alteration of

[50] He called it the 'prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen.' See A.G. NOORANI, INDIAN POLITICAL TRIALS: 1775-1947 235 (2009).
[51] http://repealseditionlaw.in/learn/book/history/victims visited on

the policy pursued by the Government in any particular case. Some people were apprehensive that the express declaration of this principle might be held impliedly to negative the right of people to criticize Government action when that criticism could not lead to a reversal of such action; for instance, criticism on past expenditure, or criticism on an appointment which the critic may think objectionable. I think this apprehension was quite unfounded, but in order to allay it, we have introduced the third explanation".[52]

The Select Committee discussions displays that the British Government was not in favour on granting freedom of expression to India to the extent enjoyed in England. They found it difficult to limit the scope of sedition to direct incitement to violence or to commit rebellion in view of the fact that the landscape was under foreign rule and inhabited by many races, with diverse customs and conflicting creeds.

While the British Government was justifying expanding the ambit of laws on sedition, the court in *Kamal Krishna Sircar v. Emperor,*[53] disallowed to term a speech that condemned Government legislation declaring the Communist Party of India and various trade unions and labour organizations illegal, seditious. The court opined that imputing seditious intent to such kind of speech would completely suppress freedom of speech and expression in India. It is not necessary to bring the present Government into hatred or contempt for suggesting some other kind of Government. It does not mean that one may not make speeches of this kind. There is no reason for suggesting that people are guilty of sedition or of attempting to bring the Government into hatred or contempt on my statement that I do not like a lot of things which people do constantly from day to day.

The case replicates the tendency of the then Government to use sedition to suppress any kind of criticism. Identifying this aspect of section 124A IPC, in *Niharendu Dutt*

[52] K.I. Vibhute, P.S.A. Pillai's Criminal Law 335 (Lexis Nexis Butterworths, Nagpur, 2012).
[53] AIR 1935 Cal 636.

Majumdar v. the King Emperor[54] the court deviated from the literal interpretation given to section in 124A IPC in Bal Gangadhar Tilak. Mr. Justice Gwyer, the then Chief Justice, while interpreting what amounts to seditious speech and what does not amount to the same observed –

"The first and foremost fundamental duty of every Government is the preservation of order, since the order is the condition precedent to all civilization and the advance of human happiness. This duty has, no doubt, been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of the government that, in our opinion, the offence of sedition stands related. It is the answers of the State to those who, for the purpose of neither attacking nor subverting it, seek to disturb its tranquillity, to create a public disturbance, and to promote disorder, or who incite others to do so. Words, deeds, or writings constitute sedition if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Governments, but because where government and the law have ceased to obeyed because no respect is felt any longer for them only anarchy can follow. Public disorder, or the reasonable anticipation, or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that is their intention or tendency." It was held by the Court that the offence of sedition was connected to disruption of public order and prevention of disorder and until and unless the speech leads to public disorder or reasonable anticipation or likelihood of it, it cannot be termed seditious.[55] Thus, in Bal Gangadhar Tilak the core of the defence argument was

[54] AIR 1942 FC22 Pg-26
[55] AIR 1942 FC 22.

confirmed. The Federal Court opined that all unpleasant words cannot be regarded as 'actionable' and consequently acquitted the appellant.

- ***King Emperor v. Sadashiv Narayan Bhalerao***[56]

In the present case the Privy Council while over ruled the decision of the Federal Court in the previous case and observed-

"There is nothing in the language of either S. 124A, Penal Code, or the Rule which could suggest that the acts 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. The offence consists of exciting or attempting to excite in others certain hard feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by the article, is absolutely immaterial. If the accused intended by the article to excite rebellion or disturbance, his act would doubtless fall within 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite a rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section."

The reading of 'public order' in section 124A IPC in Niharendu (supra), was not accepted and the literal interpretation in Bal Gangadhar Tilak (supra), and later in Ramchandra Narayan (supra), and Amba Prasad (supra), was upheld.

2.2.2 CONSTITUENT ASSEMBLY DEBATES

The irony of the sedition law used against nationalists like Gandhi and Tilak ongoing in the statute books of independent India was not lost on those drafting the Constitution. While in their Drafting the Constitution, the Constitutional Framers included 'sedition' as a basis on which laws could be mounted limiting the fundamental right to speech

[56] A.I.R. (34) 1947 Privy Council 82/84

(Article13) but in the final draft of the Constitution, sedition was eliminated from the exceptions to the right to freedom of speech and expression (Article 19 (2)). This amendment was the outcome of the initiative taken by K.M. Munshi, a lawyer and active participant in the Indian independence movement. He proposed these changes in the debates in the Constituent Assembly. The way in which the sedition law has been used as a convenient medium to stifling any form or expression of dissent or criticism mirrors the fears and concerns expressed by some of the constitutional drafters regarding the ease with which the sedition law can be misused and abused. From the Constituent Assembly Debates, it is understood that there had been serious opposition for the inclusion of sedition as a restriction on freedom of speech and expression under the then Article 13 of the draft Indian Constitution. Such a provision was termed as a shadow of colonial times that should not see the light of the day in free India. The Constituent Assembly was unanimous in having the word 'sedition' deleted from Article 13 of the draft Constitution. The draft of 'Justiciable Fundamental Rights' prepared by the Fundamental Rights Sub-Committee, drafted Article 8, constituting freedom of speech and expression with an exception that in the event of 'utterance of seditious' matter, the government has the power to restrict the speech.[57] Article 8 recited as:

"Rights of freedom: There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the government of the union or unit concerned whereby the security of the union or the unit, as the case may be, is threatened : The right of every citizen to freedom of speech and expression, provision may be made by law to make the publication or

[57] Draft of 'Justiciable Fundamental Rights', Art. 8 as prepared by Fundamental Rights Sub Committee, Constituent Assembly of India, Vol III, available at: Constitution of India (last accessed on May 10, 2021).

utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable".[58]

Mr. Somnath Lahiri, a member of the sub-committee disapproved of making sedition a restriction on freedom of speech and expression. He observed that *"the freedom of speech and expression as a right has been framed from a police constable's point of view and not from the point of view of a free and fighting nation. He feared that such a restriction might be misused by the government in power to suppress any voice against it".*[59]

The issue of making sedition as a restriction on the freedom of speech and expression was debated again when the interim report of the sub-committee was submitted before the Constituent Assembly. It was presented as Article 13 before the assembly, followed by an extensive debate. Shri Damodar Swarup Seth, argued that such civil rights like freedom of speech and expression must be free from any restrictions such as libel, slander, defamation, sedition, otherwise the very purpose of granting such right would be defeated.[60]

Shri K.M. Munshi also defended the omission of the word sedition from the said article, observing that "the term sedition was of doubtful and varying import and did not fit in the phraseology of the article". He also suggested the substitution of words that undermines the security of or tends to overthrow, the state in place of sedition.[61]

[58] Ibid. Mr. Somnath Lahiri was an Indian statesman, writer and a leader of Communist Party of India. He was a member of Constituent Assembly of India from Bengal and later served as a member of Odisha legislative assembly. He was the sole communist member in the Constituent Assembly in 1946.
[59] Ibid. Shri Damodar Swarup Seth was a member of Constituent Assembly from United Provinces (now Uttar Pradesh. He was also a national executive member of the Socialist Party of India.
[60] Ibid.
[61] Ibid. Kanaiyalal Maneklal Munshi, popularly known as K.M. Munshi, was an Indian Independence movement activist, politician, writer and educationist from Gujarat state. He was also founder of Bharatiya Vidya Bhavan, an educational trust in 1938.

Sardar Hukum Singh was also against the retention of word sedition in the said article. He argued the idea of retaining sedition as a restriction would take away the power of the court to declare sedition law as unjust, wherever it finds so.[62]

Pandit Thakur Das Bhargava also supported the motion for excluding sedition from the said article and also proposed the addition of the word 'reasonable' followed by 'restrictions'. The rationale behind the addition of the word 'reasonable' was to give power to courts to declare unconstitutional any restriction on freedom of speech and expression if it fails the test of reasonableness.[63]

Seth Govind Das argued that the very basis of adding Section 124A in the IPC was to prosecute freedom fighters, therefore, there shall be no place for such a law in fee India.[64]

T.T. Krishnamachari by supporting its exclusion from the said Article observed that since the law of sedition has been used in the past, against our leaders, therefore, no Indian would recommend its retention as a restriction on freedom of speech and expressions.[65]

The Constituent Assembly had to face another issue relating to the interpretation of the word 'sedition' if retained in the said article. The word sedition was widely interpreted as something connected with public disorder, being an offence against public tranquillity. The confusion arose after the interpretation by the judicial committee of the Privy Council that sedition under the IPC, did not necessarily imply any intention

[62] Ibid. Sardar Hukum Singh was an Indian politician and the speaker of the Lok Sabha from 1962-1967. He was elected to the Constituent Assembly of India as a member of Shiromani Akali Dal.

[63] Ibid. Pandit Thakur Das Bhargava was a member of Constituent Assembly of India and later was a member of Parliament representing Hisar, Haryana in the Lok Sabha.

[64] Ibid. Seth Govind Das was an Indian Independence activist and a distinguished Parliamentarian. He was well known for his support of Hindi as the national language of India. He was also a close associate and follower of Mahatma Gandhi. The Government of India awarded him the civilian honour of the Padma Bhushan in 1961.

[65] Ibid. T.T. Krishnamachari was the Indian Finance Minister from 1956-1958 and from 1964-1966. He was also a founding member of the first governing body of National Council of Applied Economic Research in New Delhi. He was a member of Drafting Committee and later served as a Deputy Viceroy from 1947-1950.

or tendency to incite disorder.[66] Therefore, the Constituent Assembly reached a consensus that instead of using the word 'sedition' some more general words such as 'undermines the security of the state' to be used as such words would include sedition as well. The Constituent Assembly decided to drop the express mention of sedition as a restriction on freedom of speech and expression and Article 13 (2) was adopted with amendments and enumerated as Article 19 (2) in the Constitution, which ran as:[67]

"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State".

During the discussions Shri M. Ananthasayanam Ayyangar said:

"If we find that the government, for the time being, has a knack of entrenching itself, however, bad its administration might be it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word 'sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word 'sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself unless the speeches lead to an overthrow of the State altogether".[68]

[66] Durga Das Basu, Commentary on the Constitution of India 2390 (Wadhwa and Company, Law Publishers, Nagpur, Vol 2, 8th edn., 2007).
[67] Ibid
[68] Constituent Assembly of India, 2nd December 1948; Constituent Assembly Debates Official Report, Vol.VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014.

As a result of the vehement opposition in the Constituent Assembly, the word 'sedition' does not find a place in our Constitution.

The framers of our Constitution were undoubtedly aware of the tainted history of sedition laws and did not want to confine the right to free speech of independent Indians by these draconian provisions. By eliminating sedition from the terms included in Article 19(2) the Constitution makers signalled their wish to move away from the colonial order where legitimate dissent was denied to Indians.[69]

2.2.3 Post-Independence Developments

In 1947 after India attained independence, the offence of sedition continued to remain in operation under Section 124A of the IPC.[70] In spite of the fact that sedition was expressly omitted by the Constituent Assembly as a ground for the limitation of the right to freedom of speech and expression, it was still being curbed under the appearance of this provision of the IPC. On three noteworthy occasions, the constitutionality of this provision was challenged in the courts.

2.2.3.1 (Prior to 1st Constitutional Amendment of 1951)

After independence, where for the first time section 124A IPC came up for consideration was in the case of *Romesh Thapar v. State of Madras*[71] wherein the petitioner was a printer, publisher, and editor of a weekly journal called Cross

[69] http-//www.repealseditionlaw.in/learn/book/history/ca last visited on April 09, 2021.

[70] The Indian Penal Code, 1860, Sec.124A. ("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. 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").

[71] Romesh Thapar v. State of Madras, AIR 1950 SC 124.

Roads printed and published in Bombay. The Government of Madras, the respondents, in the exercise of their powers under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 issued an order on 1st March, 1950, whereby they imposed a ban upon the entry and circulation of the journal in the State of Madras. The government contended in the order that the ban was imposed on the circulation of the weekly Journal for 'the purpose of securing the public safety and the maintenance of public order.' The petitioner challenged the order before the Supreme Court of India under Article 32 of the Constitution of India on the ground of it being violative of Article 19(1) (a). The issue before the Court was whether the law under which the ban on entry-circulation was valid under A.19 (2) of the Constitution. Whether Art. 19(2) empowered government to make law for the purpose of securing public order and maintenance of public safety.

Mr. Justice Patanjali Sastri while delivering the majority opinion observed that-

"There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation, the publication would be of little value. It is therefore perfectly clear that the order of the government of Madras would be a violation of the petitioner's fundamental right under Article 19(1) (a) unless section 9(1-A) of the impugned Act under which it was made is saved by the reservations mentioned in clause (2) of Article 19 saves it's the operation."

In the plain words, it was held that freedom guaranteed by Art. 19(1) (a) is essential for a man's existence. It includes within its ambit the freedom of propagation of ideas through publication and circulation. The government can impose restrictions on such circulation or publication, if and only if, Art. 19(2) permit government to do the same.

The controversial issue before the court was that whether the expression 'Security of State' under Article 19(2) includes 'securing public safety' and 'maintenance of

public order'. While interpreting the expression 'Public Order' the Supreme Court observed-

"A 'public order' is an expression of wide constitution and signifies the state of tranquillity which prevails among the members of a political society as a result of the internal regulations enforced by the government which they have established. 'Public safety' is used as a part of the wider concept of public order, "Public safety" ordinarily means the security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context."

"...The Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Article 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it and made their prevention of the sole justification for legislative abridgment of the freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression..."

It can be deduced that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrowing of it, such law cannot fall within the reservation under clause (2) of Article 19. It follows that Section 9(1-A) which authorizes imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorized restrictions under clause (2), and is therefore void and unconstitutional.

A similar issue was raised before the Supreme Court in the case of *Brij Bhushan and Another v. State of Delhi* [72] wherein the court held Section 7(1)(c) of the Act

[72] AIR 1950 SC 129

unconstitutional and Void on the ground that 'public safety' and 'public order' does not undermine the 'security of the state'. The restriction imposed by the State on these grounds was held to be ultra vires to the Art. 19(2).

Dissenting Opinion of Mr. Justice Fazl Ali[73] - Mr. Justice Fazl Ali while delivering the dissenting opinion in above-mentioned cases opined that under Article 19(2) of the Constitution of India the restriction on 'Freedom of speech and expression' can be imposed on the ground of maintenance of public order and safety. "Public order; is an expression in the general sense may be construed to have references to the maintenance of what is generally known as law and order in the province. It is clear that anything that affects public tranquillity within the State or the province will also affect public order and the State Legislature is therefore competent to frame laws on matters relating to public tranquillity and public order.

"Sedition is principally an offence against public tranquillity and secondly that broadly speaking there are two classes of offences against public tranquility:

(a) those accompanied by violence including disorders which affect tranquillity of a considerable number of persons or an extensive local area, and

(b) those not accompanied by violence but tending to cause it, such as seditious utterances, seditious conspiracies, etc.

Both these classes of offences are such as will undermine the security of the State or tend to overthrow it if left unchecked, and, as I have tried to point out, there is a good deal of authoritative opinion in favour of the view that the gravity ascribed to sedition is due to the fact that it tends to seriously affect the tranquillity and security of the State." Mr. Justice Fazl Ali was of the opinion that even a small riot or an affray could undermine the security of the State, therefore, the legislature was held to be competent

[73] AIR 1950 SC 129 & AIR 1950 SC 124

to legislate and impose restrictions on the grounds of public disorder and public unsafety.

The Supreme Court declared that unless the freedom of speech and expression threaten the 'security of or tend to overthrow the State', any law restricting the same would not fall within the purview of Article 19(2) of the Constitution.

The Decisions of Apex Court in following the case prompted legislators to amend Article 19(2) of the Constitution of India 1950.

2.2.3.2 (After 1st Constitutional Amendment of 1951)

By the first Constitutional Amendment two additional restrictions i.e., 'friendly relations with foreign State' and 'public order' were added to Article 19(2), for the reason that in Romesh Thapar, the court had held that freedom of speech and expression could be restricted on the grounds of threat to national security and for 'serious aggravated forms of public disorder that endanger national security' and not 'relatively minor breaches of peace of a purely local significance'.

After the First Constitutional Amendment Article 19(2) reads as follows-

"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause 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 concerning contempt of court, defamation or incitement to an offence."

The changes effected by this amendment, which have been given retrospective effect, are[74]

[74] Sarvaria s.E, Ranelson's Indian Penal Code, Lexis Nexis Butterworths Wadhwa Nagpur, 10th Edition (2008), Volume I, Page-1106-1107

i) Several new grounds of restriction upon the freedom of speech, namely, friendly
relations with foreign states, public order, and incitement to an offence were introduced
ii) Deletion of the ground 'tends to overthrow the State'.
iii) Widening the scope of the expression relating to 'security of the state', by substituting it with the expression 'in the interest of the security of the state'
iv) Substitution of the words 'libel, slander' by the word 'defamation' and
v) Insertion of the expression 'reasonable restrictions' to govern all the above grounds.

The reason for the absence of the term 'sedition' from Article 19(2) was that the framers of the Constitution had included terms with wider connotation which includes the activity of sedition along with other activities 'which are detrimental to the security of the State as sedition'.

After the First Constitutional Amendment came into operation an important question relating to the constitutional validity of Section 124A of the Indian Penal Code was raised on the grounds of it being violative of Art.19 (1) (a) in few cases leading to a conflict of decisions in High Courts. There were two divergent views in this regard.

The protagonists of one view held that Section 124A of I.P.C is ultra-virus of the Constitution insofar as it seeks to punish merely bad feelings against the Government. It is an unreasonable restriction on freedom of speech and expression guaranteed under Art.19(1) (a) and is not saved under Article (2) of the Constitution by the expression in the interest of public order.[75] They said that it should be declared void because the clause (1) of Art.13 of the Constitution of India declares that pre-

[75] Gaur K.D, Commentary on the Indian Penal Code, Universal Law Publishing Co Pvt Ltd, 2006th Edition, Page-410

constitution laws are void to the extent to which they are inconsistent with the fundamental rights.

The argumentative issue of constitutional validity of Section 124A was raised in the case of *Tara Singh v. State of Punjab*[76], the East Punjab and Haryana High Court on the grounds of it being violative of Art. 19(1)(a). Mr Justice Weston while holding section 124A unconstitutional observed -

"India is now a sovereign democratic State. Governments may go and be caused to go without the foundations of the State being impaired. 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 limitation placed by Clause (2) of Article 19 upon interference with the freedom of speech, however, is real and substantial. The unsuccessful attempt to excite bad feelings is an offence within the ambit of Section 124A. In some, instances at least the unsuccessful attempt will not undermine or tend to overthrow the State. It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the constitution. The section then must be held to have become void."

This view was affirmed by the Allahabad High Court in the case of *Ram Narayan v State*[77] The court overturned Ram Nandan's conviction and declared Section 124A unconstitutional. Mr. M. C Justice Desai while explaining his ruling observed-

"…that exciting hatred, contempt or disaffection towards the Government may in some cases affect the security of the State as for example when a violent overthrow of the existing system of Government is advocated in the teeth of the Constitution, but not in every case and a restriction on every speech exciting such a feeling towards the Government cannot be said to be in the interests of security of the State."

[76] 1951 CriLJ 449
[77] Ram Nandan v. State, AIR 1959 All 101

It was further observed that reasonable restriction can only be imposed in cases where speech has tended to, disturb the public order or undermine the security of the State. If a speech contains the germs of incitement to violence; it may not be completely destroyed by a final exhortation to eschew violence.

Mr. Justice Gurtu, while agreeing with Justice Desai added-

"Section 124A must be invalidated because it restricts freedom of speech in disregard of whether the interest of public order or the security of the State is involved, and is capable of striking at the very root of the Constitution which is free speech (subject of limited control under Article 19(2)."

The Court also quoted Pt. Jawaharlal Nehru, who while introducing the first Constitution of India (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."*

2.3 KEDAR NATH AND THE MODERN DEFINITION OF SEDITION

In post-independence India, however, the judgement with the most impact came in January 1962. he decision of the Supreme Court laid down the interpretation of the law of sedition as it is understood today. The constitutional validity of section 124A IPC came to be challenged in the case of Kedar Nath Singh v. State of Bihar[78] In the case, the constitutional bench of the Supreme Court defined the scope of sedition for the first

[78] AIR 1962 SC 955.

time and this definition has been taken as a precedent for all matters relating to Section 124A since. Until Independence, there were broadly two views on Section 124A: that of the judgements given by the Federal Court, and that of the judgements passed by the Privy Council (the highest court of appeal for Commonwealth countries, they were abolished in India following the passing of abolition of privy council jurisdiction act, in 1949). The former asserted that public disorder or the reasonable anticipation or likelihood of public disorder is the crux of the offence; the latter said that the speech itself, irrespective of whether or not it leads to an incident, could be an offence. Taking into account Article 19A of the constitution, the bench observed in the judgement's headnote, *"If the view taken by the Federal Court was accepted, Section 124A would be constitutional but if the view of the Privy Council was accepted it would be unconstitutional."* Later, it states that it stands with the Federal Court and the constitution. In this decision, five appeals to the Apex Court were clubbed together to decide the issue of the constitutionality of Section 124A of the IPC in light of Article 19(1)(a) of the Constitution. The Constitution Bench upheld the validity of section 124A and kept it at a different pedestal.

The Court formed a line between the two terms, 'the Government established by law' and 'the persons for the time being engaged in carrying on the administration' stating: *'Government established by law' is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in Section 124-A, has been characterized, falls, under Chapter VI relating to offences against the State. Hence any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of*

disloyalty to the Government established by law or enmity to it imports the idea of a tendency to public disorder by the use of actual violence or incitement to violence.[79]

While upholding the constitutionality of Section 124-A of IPC 1860, Mr. Justice B. P. Sinha observed that:

"The security of the State, which depends upon the maintenance of law and order, is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such 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."

"This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded again becoming a license for vilification and condemnation of the Government established by law, in words that incite violence or have the tendency to create public disorder. 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."

Consequently, the duty has been cast upon the Court, of drawing a clear line of separation between the ambits of a citizen's fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order.

Hence, the Supreme Court upheld the constitutionality of the sedition law, but at the same time curtailing its meaning and limiting its application to acts involving intention

[79] AIR 1962 SC 955

or tendency to create disorder, or disturbance of law and order, or incitement to violence. It observed that if the sedition law would not survive the test of constitutionality, if wider interpretation was given to it.

2.4 CONSTITUTIONAL VALIDITY OF SECTION 124-A:

Today, the law of Sedition has conceived controversial importance mainly on the account of change in the body politics and also because of the constitutional provision of freedom of speech guaranteed as a fundamental right.[80] During the British rule in India, human rights were violated by the rulers on a very wide scale. Even access to basic rights of food, health, work, education was denied. Therefore, the framers of the Constitution, many of whom had suffered long incarceration during the British regime, had a very positive attitude towards Fundamental rights. The Fundamental Rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. These rights have been defined as the basic human freedoms which every individual has a right to enjoy for proper and harmonious development of personality.[81]

The Fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his Fundamental Rights are the very essence of the democratic way of life adopted by the Constitution.[82]

It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution because of the basic fact that they are members of the human race.[83]

[80] Tewari R.B., Law of Sedition In India, Essays on the Indian Penal Code, The Indian law Institute, 2005, Page-281
[81] Article 12 and 13 Of The Constitution Of India - Academike (lawctopus.com) last visited on May 16, 2021.
[82] Daryao v. State of Uttar Pradesh, A.I.R 1961 SC 1457
[83] *M. Nagarj & Ors V. Union of India & Ors* (2006) 8 SCC 212 Para-20

In *I.R. Coelho V. State of T. N*[84], the Supreme Court observed-

"It is necessary to always bear in mind that fundamental rights have been considered to be heart and soul of the Constitution....Fundamental rights occupy a unique place in the lives of civilized societies and have been described in judgments as "transcendental", "inalienable", and "primordial".

After the Constitution of India came into operation it entrusted all the citizens with certain Fundamental rights against State. Articles 12 to Article 35 of Part III of the Constitution of India envisage these rights. These rights have been categorized into the following six categories:

i. Right to Equality (Article 14 to Article 18)
ii. Right to Freedom (Article 19 to Article 22)
iii. Right against Exploitation (Article 23 to Article 24)
iv. Right to Freedom of Religion (Article 25 to Article 28)
v. Cultural and Educational Rights (Article 29, Article 30)
vi. Right to Constitutional Remedies (Article 32)

Freedom of Speech and Expression is considered to be as one of the most imperative among all the rights. Freedom of Speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties.[85]

In the case of *Maneka Gandhi,*[86] Mr. Justice P.N Bhagwati has emphasized on the significance of the freedom of speech and expression in the following words-

[84] (2007) 2 SCC 1
[85] Jain M. P., Indian Constitutional Law, Wadhwa and Company Nagpur, Fifth Edition, 2008, Page -986
[86] A.I.R 1978 SC 597

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic setup. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential."

However, this Freedom is not absolute right i.e., it is subjected to the reasonable restrictions laid down in Article 19(2).

Section 124-A of the Indian Penal Code that makes Sedition offence constitutionally valid. However, the Section restricts the fundamental freedom of speech and expression. But the condition is that the restrictions are in the interest of public order and are inside the ambit of permissible legislative interference with the fundamental right. Both federal court and Privy Council had a different opinion of the sphere of Section 124-A of the Indian Penal Code. It was held by the Federal Court that words, deeds, or writings constitutes an offence under Section 124-A only when they had the intention or tendency to disturb public tranquillity to create public disturbance or to promote disorder, whilst the privy council has taken the view that it was not an essential ingredient of the offence of Sedition under Section 124-A that the words etc, should be intended to or to be likely to incite public disorder. Either view can be taken and supported for good reasons. If the view taken by the federal court was accepted Section 124-A would be used as Constitutional but if the view of the Privy Council was accepted it would be unconstitutional. It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution and another interpretation would render them unconstitutional the court would lean in favour of the former construction. Keeping in and the reason for the introduction of Section 124-A and the History of Sedition the Section must be so construed as to limit its application

to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.[87]

An Allahabad case having held that Section 124A placed restriction on freedom of speech and expression that is not in the interest of the general public, also declared Section 124A as ultra vires the Constitution.[88] But overruling this decision Supreme Court held that Section 124-A intra vires. Supreme Court said that if the word Sedition is removed from Article 13(2) it shows that criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom speech and expression and Press unless it is such as to undermine the security of or tend to overthrow the State. So, keeping in mind all the points Supreme Court set very narrow and stringent limits for freedom of speech and expression. Freedom of speech and expression is the foundation of all democratic organizations. According to Supreme Court without freedom of speech and expression, free political discussion no public education, the functioning of the democratic Government is not possible. A freedom of such amplitude might invoke risks of abuse. Therefore, unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the state or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restriction which it seeks to impose may have been conceived generally in the interest of public order. It follows that Section 9(1-A) of Madras Maintenance of Public Order Act, 1949 which authorises impositions of restrictions for the wider purpose of securing public safety or maintenance of public order falls outside the scope of authorised restrictions under clause (2) and is therefore void and unconstitutional.

After coming into force of the Constitution the validity of this Section was considered by the Supreme Court in *Romesh Thappar*[89] *and Brij Bhushan's*[90] cases. After the

[87] Kedar Nath v. State of Bihar on 20 January, 1962. Equivalent Citation: 1962 A.I.R 955, 1962 SCR SUPL. (2) 769. Bench Sinha, B.P.
[88] Ram Nandan v. State of UP. A.I.R 1959 ALL 101: 1959 CRLJ 128 (FB)
[89] A.I.R 1950 SC 124.
[90] A.I.R 1950 SC 129.

decision of these cases Constitution first amendment came into existence in 1951. According to the Supreme Court if any person criticises public measure or comment on Government action, within a reasonable limit and consistent with the fundamental right of freedom of speech and expression than he would not come under the Section 124-A of the Indian Penal Code. Only when the words have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the provisions of the Section are attracted. Any act which has the effect of subverting the Government by bringing that Government into contempt or hatred or creating disaffection against it would be within the penal statues because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of a tendency to public disorder by the use of actual violence on incitement to offence. The protagonist of one view holds that Section 124-A of the Indian Penal Code is ultra vires of the Constitution insofar as it seeks to punish merely bad feelings against the Government. It is an unreasonable restriction on freedom of speech and expression guaranteed under Article 19(1) (a) and is not saved under Article 19(2) of the Constitution by the expression 'in the interest of public order'.

In *Tara Singh v. State of Punjab,*[91] Section 124A of the Indian Penal Code was struck down as unconstitutional being contrary to freedom of speech and expression guaranteed by under Article 19(1)(a). As per Chief justice Watson, India is a sovereign democratic State. The Government may go and be caused to go without the foundation of the state being impaired. A law of Sedition though necessary during the period of foreign rule has become inappropriately by the very nature of the change which has come about. The advocates of the others view held that Section 124-A of the Indian Penal Code is Constitutional, and is not in contravention of Article 19(1) (a) as it is stated that the expression in the interest of public order is of wider connotation, and includes not only the acts which are likely to disturb public order but something more than that. The Constitution 40th amendment act, 1976, incorporated the Prevention of

[91] A.I.R 1951 EP 27; Romesh Thapar v. State of Madras, A.I.R 1950 SC 124: 1950 SCR 594.

Publication of objectionable matter act, 1976, in the 9th schedule by objectionable matter we mean the matter which incites disaffection towards the Government or to commit any offence or to interfere with the production and distribution of essential commodities or seduction of any matter or armed forces, defamation of the president, vice president, prime minister, speaker, or governor of a state. The restriction imposed on any of these grounds could not be challenged on the ground of unreasonableness.[92] Also with the inclusion of fundamental duties by the 42nd amendment, the implication is that nobody should exercise his freedom of speech and expression so as to violate the fundamental duties, and the courts may likely be inclined to give a harmonious interpretation to the restriction imposed on the exercise of the right for the enforcement of the fundamental duties as they have done in the case of fundamental rights and the directive principle of state policy. For instance, if a person is illegally detained, a writ of habeas corpus can be obtained by the detenu. But if the Government does not separate the judiciary from the executive or introduce free, he and compulsory education the court cannot help the aggrieved.[93]

When Supreme Court held the validity of Section 124-A of the Indian Penal Code under the freedom of speech and expression, there is no separate guarantee of freedom of the press, and the same is included in the freedom of expression, which is conferred on all citizens.[94] It has also been by this judgement that freedom of the press under the Indian Constitution is not higher than the freedom of an ordinary citizen. It is subjected to the same limitation as are provided by Article 19(2). It has been held by the court in the above cases that the press is not immune from paying taxes, from following labour laws, regulating services of the employees, Law of contempt of court, Law of defamation, and, concerning the regulation of commercial Activities of a Newspaper.

[92] V.N. Shukla's Constitution of India by Mahendra P. Singh 11th Edition Published by Eastern Book Company.
[93] The Constitutional Law of India 46 th Edition by Dr. J.N. Pandey by Central Law Agency.
[94] Virendra v. State of Punjab, A.I.R 1958, SC, 986.

Further restrictions have been imposed on the freedom of speech and expression by Article 51-A defining fundamental duties of a citizen 42nd Amendment in 1976. Under Article 51 A, No one should in the exercise of the freedom of expression or the press do any of the following acts:

(1) To Disparage the Constitution, its ideals and institutions, the National Flag or the National Anthem.

(2) To Undermine the Sovereignty, Unity, and Integrity of India.

(3) To disrupt the spirit of common brotherhood among all the people.

(4) To Insult the rich Heritage of our composite culture.

It has been held by the Supreme Court that the right to speech and expression includes the right to acquire and impart ideas and information about the matters of common interest. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. While the Supreme Court decision lay to rest the debate on the scope and Constitutionality of the Section 124-A of the Indian Penal Code, the life Sedition law is entangled with that of political dissent in the country. A brief search for reported high court and Supreme Court cases on Sedition indicates the kinds of situations where the Sedition law is commonly used. For instance, in 1947 the Government prosecuted Ghulam Rasood choari, the Editor of an Agra based Urdu weekly called Ehsas for exhorting the Muslims of the country especially the Muslims of Kashmir to violence against the Government and bringing the readers of paper into 'hatred' and contempt disaffection with a government.[95]

In his Urdu weekly Ghulam Rasool described Indian rules over Kashmir as tyrannical. It was alleged by the prosecution that this Article was published during the crucial period when Kashmir was being debated in the security council and when the Indian

[95] Ghulam Rasood Choari v. The State 1968 CRILJ 884

Government sent a note of protest against the talks going on between Pakistan and China regarding the Sino-Pakistan to locate and align their common border in the occupied areas of Jammu and Kashmir. It is further alleged that the Article was published and curtailed during the critical period of Moharram in order to make a strong appeal to the Muslims and to incite communal fanaticism amongst the Muslims. The session court in Agra convicted Ghulam Rasood of offences under Section 124-A and 505 of the Indian Penal Code sentencing him to six months rigorous imprisonment.

Regarding the Constitutionality of the Section 124-A of the Indian Penal Code two opinions bring out with remarkable clarity. It shows that firstly that Sedition is essentially an offence against public tranquillity and secondly that broadly speaking there are two classes of offence against public tranquillity:

(a) Those accompanied by violence including disorders which affect tranquillity of a considerable number of the person or extensive local area.

(b) Those not accompanied by violence but tending to cause it such as seditious utterances, seditious conspiracies, etc.

Both these classes of offence are such as will undermine the security of the state or tend to overthrow it if left unchecked, and as I have tried to point out, there is a good deal of authoritative opinion in favour of the view that the gravity ascribed to Sedition is due to the fact that it tends to seriously affect the tranquillity and security of the state. In principle, then it would not have been logical to refer to Sedition in clause (2) of Article 19 and omit matters which are no less grave and which have equal potential for undermining the security of the State. It appears that the framers of the Constitution preferred to adopt the logical course and have used the more general and basic words which are apt to cover Sedition as well as other matters which are detrimental to the security of the State as Sedition.[96]

[96] Stephen's Criminal Law of England (Vol.11 Page No 242 and 243).

2.5 Conclusion

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 characterised by its incorrect application and use as a tool for harassment.

In the judgment of the Supreme Court in Kedar Nath itself demonstrates certain deficiencies in how the law is currently understood. It is seen that sedition in India has denigrated to a threat to be used to suppress dissenting voices, and most cases that are booked under section 124A do not actually fulfil the necessary criteria, which is why most do not come to fruition.

CHAPTER 3

CURRENT POSITION OF SEDITION IN INDIA

3.1 Introduction

Sedition is overt conduct, such as speech and organization, that tends towards insurrection against the established order. Sedition often includes subversion of a constitution and incitement of discontenting (or resistance) to lawful authority. Sedition may include any commotion, though not aimed at direct and open violence against the laws. Seditious words in writing are seditious libel. A seditionist is one who engages in or promotes the interests of sedition. Typically, sedition is considered a subversive act, and the overt acts that may be prosecutable under sedition laws vary from one legal code to another. Where the history of these legal codes has been traced, there is also a record of the change in the definition of the elements constituting sedition at certain points in history. This overview has served to develop a sociological definition of sedition as well, within the study of state persecution.

In the present-day context, it is noted that sedition has lost its value, mainly due to its highly subjective nature as a penal law, and the large amounts of media attention and public criticism that instituting such a charge receives. It is to be understood that sedition has become a tool for intimidation to suppress dissent, and this can be done through tracking and examining the historical precedents that set the basis for this usage.

These continuing areas of discrepancy and the lack of congruence across states and regimes concerning the main constituent elements of sedition give rise to the need to study and analyse the laws of sedition. Therefore, through the course of this article the authors seek to trace the various aspects of sedition law with regard to its main

controversies, i.e., infringement on free speech and suppression of dissent and discourse. Also, we make a case of irrelevance of sedition as a penal law in a democratic setup. In its current form, there is a grey area which lies between actual law and its implementation.

Black's Law Dictionary defines sedition as:

"……. communication or agreement which has as its objective the stirring up of treason or certain lesser commotions, or the defamation of the government. Sedition is advocating, or with knowledge of its contents knowingly publishing, selling or distributing any documents which advocates, or, with knowledge of its purpose, knowingly becoming a member of any organization which advocates the overthrow or reformation of the existing form of government of this state by violence or unlawful means. An insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state…." [Black's Law Dictionary, Sixth Edition, St. Paul, Minn. West Publishing Co., 1990.]

3.2 MEANING OF SEDITION

The word "sedition" has been derived from the latin word "Seditio" meaning 'sed' – apart and 'itio' – going, thus signifying something which is 'going away from.[97] As defined by the Oxford Dictionary, it is conduct or speech inciting people to rebel against the authority of a state or monarch. In the legal sense, sedition, as defined by the black law dictionary, it is an insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state.[98]

Sedition is a term of law which refers to overt conduct, such as speech and organization, that is deemed by the legal authority as tending towards insurrection against the

[97] Oxford Dictionary
[98] Black Law Dictionary (2nded, 1910).

established order. Sedition often includes subversion of a constitution an incitement of discontent (or resistance) to lawful authority. Sedition may include any commotion, though not aimed at direct and open violence against the laws. Seditious words in writing are seditious libel. A seditionist is one who engages in or promotes the interests of sedition.[99]

The present chapter seeks to examine in detail the essential ingredients of Section 124A of the Indian Penal Code 1860. An endeavour has been made to outline the constitutional validity of the law of sedition in India with the help of relevant case laws. The word "Sedition" does not occur in Section 124-A of the Indian Penal Code or in the Defence of India Rule. It is only found as a marginal note to Section 124-A, and is not an operative part of the section but merely provides the name by which the crime defined in the section will be known.[100]

3.2.1 INGREDIENTS OF SECTION 124A OF I.P.C

Section 124A of the Indian Penal Code 1860 defines the offence of sedition and prescribes punishment for sedition. The law is placed bang in the middle of Chapter VI of the section in the Indian Penal Code that deals with "Offences against the State", a passage that deals with serious offences including waging war against the state. The punishment that this section carries extends up to life imprisonment, and the charge is both non-bailable and cognizable. All of these indicate the seriousness of the crime.[101] Pre-Independence, 124A remained much the same as at its inception, with minor amendments, which were predominantly for the sake of clarifying and unifying the way that it had been interpreted at common law. Section 124A, IPC defines the offence of sedition and prescribes punishments for sedition which may extend up to imprisonment for life, and fine, or imprisonment up to three years and fine. The word sedition does not occur in the body of the section. It finds place only as a marginal note to the section

[99] http://en.metapedia.org/wiki/"Sedition last visited on April 17, 2021.
[100] Emperor v. Sadashiv Narayan Bhalerao, A.I.R 1947 PC 82
[101] Siddharth Narrain, 'Disaffection' and the Law- The Chilling Effect of Sedition Laws in India, Economic & Political Weekly EPW february 19, 2011 vol xlvl no 8, Page33

which is not an operative part of the sedition, but simply states the name by which the offence defined in the section is known.

Section 124-A reads as[102]:

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, a 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.

3.2.2 <u>INGREDIENTS</u> – The following are the two essentials of sedition:

1) Bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards the Government of India.
2) Such act or attempt may be done
   i) by words, either spoken or written, or

[102] Section 124A of Indian Penal Code, 1870

ii) signs, or

iii) by visible representation.[103]

By its very nature this offence precedes the stage of waging war or attempting to wage war against the state. The crime of sedition is quite comprehensive as is apparent from its definition under the section and it may be in the form of oral utterances or statements in writing or signs or visible representations. The use of the words 'or otherwise' shows that it may have any other form as well.

Since at the time of its incorporation in the Code India was under the British rule, the language of the section had to be such as would cover almost any activity that needed to be crushed so that the British empire could remain safe and intact. The necessity to have a law of sedition is based on the base that every state, whatever its form of government, wishes to be armed adequately to deal with activities prejudicial to the security and stability of the state.

In other words, to promote public order and to protect security of the state, the law regarding sedition has the main object of maintaining tranquillity of the state and not to allow subversion of the government established by the law.

- **Whoever**

  The use of the word 'whoever' in the circumstances mentioned in the section include not only the writer of seditious writings but also one who uses the printed matter in such a manner as to excite feelings of disaffection towards the government established by law in India.

- **By words, either spoken or written**

  Sedition requires the use of words. In the word "written" print is included by the General Clauses Act (10 of 1986). The section specifies that the words may be either

[103] The Indian Penal Code by S.N. Mishra.

spoken or written. Therefore, seditious speech and seditious writing both are punishable under this section. Reciting a seditious poem at a meeting was held to be an offence under this section.

Similarly, sending by post a manuscript, seditious in nature, for publication along with a covering letter that the material is circulated was held to be punishable under this section even though the material never reached the addresses as it was intercepted before reaching.

- **Sign**

The use of the word 'sign' shows that sedition may be in the form of signs also and oral or written statements are not always necessary.

- **Visible representation**

The expression 'or visible representation' means any kind of representation that may be seen. The crime of sedition can, therefore, be committed not only by words of mouth or words in writing but also by any other kind which can be seen such as by engraving, woodcutting and may be even by drawing, painting, or photography. The only condition to be fulfilled is that the visible representation should be such as establishes the essential elements of the offence under this section.

- **Or otherwise**

The words "otherwise" show the universality of the means by which the offence may be committed. The expression 'or otherwise' has been deliberately used to indicate that the modes of committing sedition are not exhausted merely by use of spoken or written words or by signs or by visible representation. Any other way of committing the offence has been covered within the expression 'or otherwise'.

- **Hatred or contempt**

Hatred suggests an ill will, while contempt infers a low opinion. A feeling of hatred or contempt must be generated or attempt to generate any such feeling must be made. If the object of a speech is to bring the government and its offers into hatred or contempt or generate hostile feelings against them, the section will come into play. An attack in the course of a speech on the government, money lenders and landlords accusing them of oppressing the peasants and the government protecting such money lenders and landlords generates hatred or contempt against the government and is thus sedition.

- **Brings or attempts to bring**

The section shows that bringing or attempting to bring into hatred or contempt the government established by law in India have both been made punishable. The section shows that bringing or attempting to bring into hatred or contempt the government established by law in India have both been made punishable. It is not necessary to bring the case within Section 124-A that it should be shown that the attempt was successful, it is enough if he has attempted. Whether the attempt has achieved the result is immaterial.[104] However, the prosecution must prove that the stage of the act was the stage of attempt and not merely the stage of preparation. The term "attempt" used in its ordinary connotation in Section 124-A means some external act, something tangible and ostensible which can be an act in the eye of law showing progress towards the actual commission of the offence. It does not matter that the progress was uninterrupted.[105]

[104] Emperor v. Bhaskar, (1906) 8 BOMLR 421.
[105] Emperor v. Ganesh, (1910) 12 BOMLR 105.

- **Excites or attempts to excite disaffection**

The offence under this section does not require an intention to incite violence, of public disorder.[106] The essence of the offence under this section consists in the intention with which the language is used. It is not necessary that disaffection must always be excited. It is sufficient if an attempt is made to excite disaffection. Preparation to excite disaffection is not punishable under this section. The word 'disaffection' is the opposite of affection and as such its meaning is also just the reverse of affection. The reverse of affection may mean dislike. Disaffection towards the government established by law in India may be equivalent to hostility or disloyalty towards the government. The concept may have within itself a political tinge of alienation, or it may even be a feeling of enmity.

- **Explanation 1**

The first explanation under the section has been added with the object of explaining the meaning of the word in a non-exhaustive sense. The explanation clarifies that the word 'disaffection' includes disloyalty and all feelings of enmity.

- **Explanations 2 and 3**

The second explanation defines that disapprobation of the measures of the government through comments with a view to seek their change by lawful means are permissible provided there is no exciting or attempt to excite hatred, contempt or disaffection.

Similarly, the third explanation explains that disapprobation of the administrative or other action of the government is also permissible under law provided exciting or attempt to excite hatred, contempt or disaffection are absent. The difference between these two explanations mainly is that while in the former the attack is on

[106] Ram Nandan v. State, A.I.R. 1959 All. 101.

the measures of the government, in the latter it is on the administrative or other action of the government.

- **Disapprobation**

The word 'disapprobation' used in the second and third explanations means disapproval. The courts have held that it is possible to disapprove someone's conduct, action or sentiment and yet like him. Similarly, there are many things which the government does about which people may have reservations and they may disapprove the same.

That is why the last two explanations under the section say that disapprobation of the measures of the government or its administrative or other action is not an offence if the means are lawful and there is no exciting or attempt to excite hatred, contempt or disaffection.

According to section 13 of Act XXVII of 1870, Chapters IV and V of the Indian Penal Code relating to general exceptions and abetment respectively are applicable to the crime of sedition under this section.'

- **Intention**

The essence of the crime of sedition consists in the intention with which the language is used[107], and such intention has to be judged primarily on the basis of the language used. In arriving at its conclusion as to the intention of the accused in making a speech, the Court must obviously have regard to the class of audience to which, and the circumstances in which, the speech was made and must then decide as to the probable effect of the speech, the speech must be read as a whole.[108] The Court should in every case consider the book or newspaper article as a whole, and in a fair, free and liberal spirit and not dwell too much upon isolated passages, or upon a strong word here or there, which may be qualified by the context, but

[107] Arjun Arora v. Emperor, AIR 1935 All 295.
[108] Fakrulal Islam v. Emperor, AIR 1943 All 246.

endeavour to gather the general effect which the whole composition would have on the minds of the public.[109] The speech has to be seen as whole and not in pieces.

3.3 Statutory provisions governing sedition in India

The word sedition has not been defined in the Constitution of India or any statutes. However, the word 'Sedition' has been used as the marginal note of Section 124A of I.P.C. The Section penalises bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government established by law in India.[110]

- **Indian Penal Code (IPC), 1960**

Section 124A forms the main section that deals with sedition in the Indian Penal Code. This section carries with it a maximum sentence of imprisonment for life.

- **Criminal Procedure Code, 1973**

The CrPC contains Section 95[111] which gives the government the power and the right to declare certain publications forfeited and thereby forfeit such material punishable under Section 124A but which may be done only if the conditions for validity of an order of forfeiture is fulfilled.[112] This section has a twofold requirement. Firstly, the material should be punishable under Section 124-A and secondly, the government must give reasons for its opinion to forfeit the material so punishable. In addition to this

[109] Per Lord Kenyon, C.J. in R v. Reeves, 26 How St. Tr 592.
[110] The Indian Penal Code, Section 124 A
[111] The Criminal Procedure Code, 1973, Section 95 reads:
"(1) Where- (a) any newspaper, or book, or (b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under Section 124-A or Section 153-A or Section 153-B or Section 292 or Section 293 or Section 295-A of the Indian Penal Code, the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever in found in India and any Magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any book or other document may be or may be reasonably suspected to be."
[112] Lalai Singh v. State of U.P, 1971 Cr LJ 1519 (All)

power, the government has the right to issue search warrant for the purposes concerning the forfeiture of such publications.

- **Unlawful Activities (Prevention) Act (UAPA), 1967**

Supporting claims of secession, questioning or disrupting territorial integrity and causing or intending to cause disaffection against India fall within the ambit of 'unlawful activity' which is provided for and highlighted under Section 2(o)[113]. Moreover, Section 13 provides for the punishment of unlawful activities and prescribes imprisonment extending to seven years including a fine.

- **Prevention of Seditious Meetings Act, 1911**

The Prevention of Seditious Meetings Act, 1911 was introduced by the British Officials to curb dissent by criminalizing seditious meetings. Section 5 of the Act authorizes a District Magistrate or Commissioner of Police to prohibit a public meeting in a proclaimed area if, in his/her opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.[114] Considering this legislation was brought to limit the meetings being held by the nationalists to oppose the British government, the further application of this Act seems unjustified and unnecessary.

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[113] Section 2(o) in The Unlawful Activities (Prevention) Act, 1967, reads:
"unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), —
(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
(iii) which causes or is intended to cause disaffection against India;

[114] The Prevention of Seditious Meetings Act, 1911, Section 5 reads:
"The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity."

3.4 Recent developments in the law

Since the eponymous decision of the Supreme Court in Kedar Nath, the courts have applied the law of sedition on various occasions. There have been only fourteen cases of sedition in the last fifteen years, of which only two were heard before the Supreme Court. Further, there have been only three convictions, of which one conviction was made by the Supreme Court.

In the other case of *Nazir Khan vs. State of Delhi*[115], the accused underwent training with militant organisations such as Jamet-e-Islamic and Al-e-Hadees, and was given the task of carrying out terrorist activities in India. He then kidnapped British and American nationals visiting India, and demanded that ten terrorists that were confined in jail be released in exchange for the release of the foreign nationals. However, he was caught by the police after one of the hostages managed to escape. He was subsequently tried for several offences, including sedition. The Supreme Court held it to be an act of sedition noted that the "line dividing preaching disaffection towards the Government and legitimate political activity in a democratic set up cannot be neatly drawn." The court held it to be an act of sedition.

In the other case of *Mohd Yaqub vs. State of W.B.*[116] the accused had admitted to being a spy for the Pakistani intelligence agency ISI. He would receive instructions from the agency to carry out anti- national activities. He was thus charged for sedition under Sec 124A of the IPC. Citing the elements of sedition that were laid down in Kedar Nath, the Calcutta High Court found that the prosecution had failed to establish that the acts were seditious and that they had the effect of inciting people to violence. Thus, the accused were found not guilty as the strict evidentiary requirements were not met.

[115] AIR 2003 SC 4427
[116] (2004) 4 CHN 406.

In another case of *Gurjatinder Pal Singh v. The State of Punjab*[117], the accused petitioned the Punjab & Haryana High Court for an order to quash the First Information Report ('FIR') that had been filed against him under Sec 124A. At a religious ceremony organised in memory of the martyrs the petitioner gave a speech to the people presently advocating the establishment of a buffer state between Pakistan and India known as Khalistan. Crucially, it was held that even explicit demands for secession and the establishment of a separate State would also not constitute a seditious act. Thus, the FIR against the accused was quashed.

In *Balwant Singh vs. State of Punjab*[118], the Supreme Court overturned the convictions for 'sedition', (124A, IPC) and 'promoting enmity between different groups on grounds of religion, race, etc.', (153A, IPC), and acquitted persons who had shouted – "Khalistan zindabaad, Raj Karega Khalsa," and, "Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da".

In the very famous case of *Binayak Sen vs. State of Chhattisgarh*[119], one of the accused Piyush Guha made an extra-judicial confession that Binayak Sen, a public health advocate, had delivered certain letters to him to be delivered to Kolkata. These letters allegedly contained Naxal literature – some contained information on police atrocities and human rights. Convicting the accused of sedition, the High Court cited the widespread violence by banning Naxalite groups against members of the armed forces. However, it did not explain how the mere possession and distribution of literature could constitute a seditious act. Further, the High Court did not address the question of incitement to violence, which was evidently absent in this case.

In the case of *P. Alavi v. State of Kerala*[120] the court held that criticizing the present judicial set up or functioning of the parliament or legislative assemblies would not be

[117] (2009) 3 RCR (Cri) 224.
[118] 1995 (1) SCR 411.
[119] (2011) 266 ELT 193.
[120] (2013) 122 AIC 502.

amount to offence of sedition. The court further says that the slogans raised by the petitioners were not capable of inciting any class or community of persons to commit any offence.

The law of sedition seems to criminalize peaceful expression, a large number of cases being filed against the people having any sort of political dissent in the country and any alternate political philosophy which goes against the interest of the ruling government.[121]

In one such recent case, *P.J. Manuel vs. State of Kerala*[122], the accused affixed posters on a board at the Kozhikode public library and research centre, exhorting people to boycott the general election to the Legislative Assembly of the state. The poster proclaimed, "No vote for the masters who have become swollen exploiting the people, irrespective of difference in parties." Consequently, criminal proceedings were initiated against him under Section 124A of the IPC for the offence of sedition. The court held that the content of the offense of sedition must be determined regarding the letter and the spirit of the Constitution and not to the standards applied during colonial rule and ordered an acquittal.

In fact, sedition can be quantified as a tool being used by political authorities to suppress dissent in present-day India. The widespread presence of media criticism, intellectual forums, and the international backlash has prevented actual prosecution and conviction under section 124A however, the threat of being booked under the same provision has been wielded widely.

Arundhati Roy, one of the most renowned cases of a possible booking under sedition led to a major discussion on whether the popular writer's remarks that 'Kashmir has

[121] See, AnandTeltumbde. "Yet Another Binayak Sen",46 Economic and Political Weekly, 10-11 (Feb 5, 2011), See also Jyoti Punwani, "The Trial of Binayak Sen"45(52) Economic and Political Weekly (Dec., 2010).
[122] ILR (2013) 1 Ker 793.

never been an integral part of India' bordered on what constituted sedition in the nation's laws. The charge never came to fruition, probably because the statement did not fulfill the essential criteria of inciting disorder of some kind.

In the May 2016 issue of Caravan magazine, in an essay titled ‘My Seditious Heart’, Arundhati Roy wrote that her views disagreeing with those of the establishment. What used to be seen as a critical perspective before, is now called sedition in India.

In March 2016, Karnataka authorities have, gained notoriety for slapping sedition cases recklessly, not sparing even school students. In Noronha's case, the Karnataka Chief Minister even declared that her links with Maoists needed to be probed. The irony is, over several decades since Independence, firebrand left-wing extremists who spoke of power coming from the barrel of the gun, armed revolt against the government and planning to overthrow the State were seldom brought to book, leave alone being convicted of sedition.

"Neither the sedition law, much less any other criminal provision, would apply if a citizen chanted 'Pakistan Zindabad[123]' since India was neither at war with Pakistan nor had it been declared an enemy country. Not only sedition, no criminal law provision appears in her (Noronha's) case," says retired Supreme Court judge B. Sudarshan Reddy.

Rubbishing the charges against Noronha, Justice Reddy adds: "This is totally unacceptable. Liberal constitutional democracy is in peril. The time has come for the judiciary to step in and counter this trend."

Clearly, the college student's ordeal is emerging as a poignant case of abuse of the sedition law. Calling the provision of sedition as "impermissibly vague", a faculty member at the National Law School of India University, Bengaluru, explains: "In

[123] Amulya Leona Noronha’s Case, 2016.

criminal law, it is a basic principle that the provisions must be clear and the words used definite. This is to ensure certainty in the application of the law. By reading the provision, a person should be able to tell the acts that the provision prohibits. In the case of sedition, one can never say what this means. In criminal law, where the consequences of a criminal allegation are severe, uncertainty itself is abuse of process."

One of the burning and contemporary instances where the freedom of speech and expression is under a threat is JNU sedition case. The event called 'A Country without Post Office - Against the Judicial Killing of Afzal Guru and Maqbool Bhatt' organised by some Jawahar Lal Nehru University (hereinafter JNU) students at JNU campus on 9 February 2016 received both national and international attention because some students allegedly raised the so-called 'anti-national' slogans against the nation. It is noted that those slogans were held 'anti-national' by the government just because it was demurrable and not patriotic. In fact, section 124A of IPC itself has a history of being the enemy of freedom of speech and expression. Indeed, it is considered as a draconian law that was brought into the IPC to suppress the voice of our great freedom fighters. Mahatma Gandhi, Lokmanya Tilak were some of them. Unfortunately, the law was used to suppress the voice of freedom during British rule, today it is used as a weapon to force down Nationalism in the throats of the people and suppress their original dissent.

In the *Bidar 'school play'*[124] case, District Judge Managoli Premavathi observed, "What the children have expressed is that they will have to leave the country if they do not produce documents; except that, there is nothing to show that they have committed the offence of sedition." The court said as per the prosecution's case only the extracted portion is offensive. "But the dialogue, if read as a whole, nowhere makes out sedition against the government, and as such ingredients of Section 124A of IPC (sedition) are not prima facie made out." The judge held, *"The dialogue, in my considered opinion,*

[124] Bidar court says no sedition in school play, grants bail to all | India News, The Indian Express last visited on May 26, 2021.

does not go to bring into hatred or contempt or to excite disaffection towards the government."

Recently, courts have given two significant rulings cautioning that criticism of the government cannot not grounds for invoking the sedition law.

In *Disha Ravi's case*[125], a Delhi court On February 23, granted bail to activist Disha ravi in a case of sedition. the Delhi court said, "The offence of sedition cannot be invoked to minister to the wounded vanity of the governments." It also said the government could not put citizens "behind bars simply because they chose to disagree with the state policies".

In *Farooq Abdullah's case*[126], On March 3, the Supreme Court dismissed a Public Interest Litigation (PIL) against former Jammu and Kashmir Chief Minister Farooq Abdullah demanding he be charged with sedition. The Supreme Court said, *"Expression of views which is dissent and different from the opinion of the government cannot be termed seditious."* The Supreme Court also imposed a fine of Rs 50,000 on the petitioners for making an unsubstantiated charge of sedition.

The basic essence of any law is to grow in order to placate the needs of the people and keep abreast with the developments taking place in the country. The present India has evolved up to a great extent. With the advent of modern technology and globalization, the conditions have changed and most importantly the attitude of people towards the Government has revolutionized. The law of Sedition being followed to date is the one enacted in the context of a entirely different kind of India in the late 1800's by the Britishers with the goal to quell and oppress the Indian Freedom struggle. The time seems apposite to repeal this outdated, archaic colonial-era law and get rid of a provision that has no place in a country that prides itself on a constitution that guarantees to all its citizens the fundamental right to dissent. The law was criticized by

[125] Disha Ravi's Case, 2021.
[126] Farooq Abdullah's case, 2021.

Prime Minister Jawaharlal Nehru, who told Parliament in 1951 that he found Section 124A "highly objectionable and obnoxious" and "the sooner we got rid of it the better."[127] .But his government and all the subsequent governments retained it and misused it. Such hypocrisy of Indian politicians kept alive this colonial law which should have been repealed by the first Indian Parliament. There is no place in a democracy for a black law that conflates disaffection with disloyalty. Democracies like India must be confident enough in their powers to withstand criticism where people have the power to change governments through a vote. No democratic government can afford to charge people with sedition and put them behind bars for saying things that they have the freedom to say. By retaining it the governments have repudiated the concept of human rights evolved through long years of freedom struggle. Clinging to an all-encompassing vaguely worded sedition law will do more harm than good to our democracy.

The Supreme Court of India in the *Kedar Nath Case*[128] has upheld the constitutional validity of the law only with the interpretation that it is to be applied only to actions that have a direct and unambiguous connection to violence or public disorder; else its application would be unconstitutional. However, in practice, the law continues to be used as a weapon of oppression against all voices raised against all dissenting. Politicians with power, police authorities have always ignored the nicety that the scope of the sedition law is severely limited. For them, it is the process of being dragged to the court that is the punishment. So even if someone charged with sedition is acquitted along the way, he faces punishment by been put through a torturous legal process simply because they expressed the 'anti-government' opinions. Trial courts have been increasingly guilty of entertaining sedition charges and sometimes even convicting at the initial stages. The case of sedition charged on Kanhaiya Kumar would also not have existed if the law laid by the apex court is strictly implemented as it lacks the necessary proximate nexus between the speech and consequence. The literal interpretation of

[127] Repeal the sedition law, The Hindu, April 21, 2011 last visited on May 27, 2021.
[128] Ibid

section-124A is despotic and is widely criticised by the higher judiciary violating the constitutional scheme Therefore, it is better to do away wholesale with the current law.

India is still slapping sedition cases on people, including lecturers, journalists, human rights activists, and cartoonists when the offence has been rendered obsolete in many countries, either through a formal scrapping of the sedition law or by rendering it virtually toothless because of judicial rulings. Interestingly, the country which gave India its sedition law, the United Kingdom, which was considered the most enthusiastic user of sedition law, repealed it in 2009 on its becoming obsolete - the last case dating back to 1947.[129] The government has since then rarely used this heavy arm of the criminal law against trenchant critics of the state. The then Parliamentary Under-secretary of State at the Ministry of Justice, Claire Ward, said at that time *"Sedition and seditious and defamatory libel are arcane offences - from a bygone era when freedom of expression wasn't seen as the right it is today."* According to him the existence of these obsolete offences in their country had been used by other countries as justification for the retention of similar laws. Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries.[130]But democratic India even with all its bitter experience of the operation of this law fails to realize it and continues to retain and use it. It is time that the lead of modern constitutional democracies such as the United Kingdom is followed. There is an urgent need to re-examine the need for this undemocratic law in the world's largest democracy and send Section 124A to where it actually belongs — to the scrap heap of repealed laws. What was once an instrument of British colonialism to suppress the freedom struggle cannot be retained by the state to silence the voices of its own people. If someone raises slogans against India or endangers the security of India, he should be dealt with under appropriate laws existing under Chapter VIII of the IPC. Various other statutes also govern the maintenance of public order and may be invoked to ensure peace and

[129] Nuggehalli Nigam, (2016) Do We Really Need a Sedition Law? Last visited on May 27, 2021.
[130] Sonwalkar Prasun, "Sedition law in UK abolished in 2009 continues in India" Hindustan Times, Feb 16, 2016, London last visited on May 24, 2021.

tranquillity. The law of sedition is too colonial, too dangerous, and too destructive of the basic freedoms of the people and hence should be scrapped.

3.4.1 Inherently vague

It is a fundamental principle of criminal law that no man shall be put in peril on an ambiguity. Most authorities have pointed out that the definition of the offence of sedition is inherently vague.[131]

A theoretical plea for revolution is permissible. There must be an incitement for immediate use of violence for such a plea to constitute an offence. In 1970 a unanimous judgment of the United States Supreme Court noted: "decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action".[132]

In 1977, Britain's Law Commission recommended the abolition of the law of sedition. In 1984, Lord Denning expressed the view that "the offence of seditious libel is now obsolete". No one has cited Stephen on sedition as approvingly as Chief Justice Sinha did. The authoritative work, Media Law: The Rights of Journalists and Broadcasters by Geoffrey Robertson, QC, and Andrew Nicol, QC, opined that Stephen's definition of seditious libel "is frighteningly broad and the crime has been used in the past to suppress radical political views. Even in the twentieth century it was used against an Indian nationalist and against Communist organisers. However, the post-war tendency has been to narrow the offence considerably. There has been no prosecution for sedition since 1947, and the offence now serves no purpose in the criminal law."

[131] The plague of sedition, essay by A.G Noorani last visited on May 24,2021.
[132] Brandenburg vs. Ohio; 395 U.S. 444 at 467.

3.5 SEDITION LAW VIS-À-VIS FREEDOM OF SPEECH

'Democracy' and 'Freedoms' are two sides of the same coin. Freedoms are very vital in the true realization of democracy. Freedom of speech and expression is the fulcrum of the Constitution of India. Part III of the Indian Constitution which consists of fundamental rights is regarded as the sanctum sanctorum of the Constitution. If India is regarded as the world's largest democracy, it is only because of the importance and primacy that the Constitution attaches to the citizens' fundamental rights as well as civil liberties.

To give voice to the importance of the freedom of speech, John Stuart Mill argued that for the stability of a society one must not suppress the voice of the citizens, how so ever contrary it might be. In certain cases, to reach a point of the right conclusion, debates and open public discussions are inevitable. Mill further advocated that a good government is one where the "intelligence of the people" is promoted.[133]

Democracy is not synonymous with majoritarianism, on the contrary, it is a system of inclusiveness, where every voice is counted. In the unforgettable words of Charles Bradlaugh: *"Better a thousand-fold abuse of free speech than denial of free speech. The abuse dies in a day but the denial slays the life of the people and entombs the hopes of the race."*[134]

Observing that criminality and morality do not co-exist, the supreme court held that the free flow of ideas in a society makes its citizen well informed, which in turn results in good governance.[135]

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[133] Pooja Dantewadia, V., 2020. Sedition Cases In India: What Data Says. (online) https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html

[134] Jewish Supremacism, Freedom of Speech and My Book Jewish Supermacism. Available at: Freedom of Speech and My Book Jewish Supremacism – David Duke.com last visited on May 23, 2021.

[135] S. Khusboo v. Kanniamal & Anr, AIR 2010 SC 3196.

The relationship of Sec 124-A of the Indian Penal Code and Art 19 of the Constitution of India is a strained relationship. The Constitution of India guarantees freedom of speech and expression in Article 19(1)(a), which provides that "all citizens shall have the right to freedom of speech and expression."[136] The Indian Supreme Court has held that freedom of expression under Article 19(1)(a) includes the right to seek and receive information, including information held by public bodies.[137] In the case of *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors.*[138], emphasising the importance of the freedom of speech the Supreme Court observed*: "Freedom of speech goes to the heart of the natural right of an organized freedom-loving society to 'impart and acquire information about that common interest"*. In the case *of Shreya Singhal v. Union of India*[139], section 66A of the Information and Technology Act, 2000, was declared unconstitutional on the ground that it was in direct conflict with the fundamental right of freedom of speech and expression. The Supreme Court held that under the Constitutional scheme, for the democracy to thrive, the liberty of speech and expression ―is a cardinal value and of paramount importance.[140]"

By Article 19(2)[141], however, the constitutional right to freedom of expression is limited. In this sense, the Constitution of India is less protective of peaceful expression

[136] Article 19(1)(a) of the Constitution of India, states that "All citizens shall have the right (a) to freedom of speech and expression."

[137] While writing the constitution in the late 1940s, violence from the bloody partition of the country at the time of independence weighed heavily on the minds of political leaders. While establishing a democracy that enshrined freedom of expression, some were, as lawyer Rajeev Dhawan said, "very wary of giving too much room to free speech, civil liberties, due process and religious freedom." See Rajeev Dhavan, Publish and Be Damned: Censorship and Intolerance in India (New Delhi: Tulika Books, 2008).

[138] AIR 1995 SC 2438, see also LIC of India v. Prof. Manubhai D. Shah & Cinemart Foundation, AIR 1993 SC 171.

[139] AIR 2015 SC 1523

[140] Ibid.

[141] Article 19(2) of the Constitution of India, 1950 permits "reasonable restrictions… 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 offense."

than the ICCPR[142]. The extent and scope of protection of free speech and expression in India are largely determined by the interpretations of the terms "in the interests of," and "reasonable restrictions" of the various grounds listed in Article 19(2). The supreme court decisions on the same, however, have been inconsistent.

One of the examples - The court has interpreted the phrase "in the interests of" in section 19(2) broadly, holding that speech that has "a tendency" to cause public disorder may be restricted even if there is no real risk of it doing so.[143] The court explained: *"If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction 'in the interests of public order' although in some cases those activities may not actually lead to a breach of public order."*[144]

Further, the court clarified that:

"The anticipated danger should not be remote, conjectural, or far-fetched. It should have a proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a powder keg."[145]

The Court in the case of *Shreya Singhal*[146] observed that *"There are three concepts which are fundamental in understanding the reach of this [freedom of speech and expression] most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1) (a). It is only when such discussion*

[142] ICCPR under section 19(2) permits only restrictions that are "necessary" "for respect of the rights or reputation of others, for protection of national security or of public order (order public) or of public health or morals."
[143] Ramji Lal Modi v. The State of Uttar Pradesh, 1957 SCR 860 (upholding constitutionality of section 295A of the Indian Penal Code).
[144] Ibid.
[145] S. Rangarajan Etc. v. P. Jagdjivan Ram, 1989 SCR (2) 204, 226.
[146] Supra 101

or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc." (emphasis added)

In several cases, scepticism has been expressed about the potential misuse of the sedition law. In one of the articles[147] of Justice A P Shah, he warns about the very basis for the logic of sedition law. He compares the idea of sedition to a parochial view of nationalism which often endangers the diversity of opinions rather than protects against rebellion.

In the case of *Ramesh Yashwant Prabhoo v. Prabhakar Kashinath Kunte & Ors.*[148] , the use of religion in electoral campaigns was challenged under section 123 of the Representation of the People Act, 1951. It was contended that repeated use of open threats to India's constitutional commitment to secularism could be construed as 'disloyalty' and the threat of public nuisance this would generate was also palpable. However, the Court did not accept it and held that the candidate expressed at best a 'hope' for the creation of a monolithic Rashtra than, in fact, acting on the elimination of minorities and thus threatening to eliminate other religions. Significantly, Section 123 of the Act, 1951 covers the use of such speech in campaigns, and therefore there is no question of invoking the provisions of 124A IPC. Thus, the expression of a particular image of the country does not alone amount to a threat to the security of the nation.

To the question of whether Article 19(2) and Section 124-A are contradictory or compatible with each other. There are three arguments that can be made:

[147] A P Shah, Free Speech, Nationalism and Sedition, Economic & Political Weekly, Vol. 52, Issue No. 16, 22 Apr, 2017 last visited on May 23, 2021.
[148] AIR 1996 SC 1113.

1. Section 124A ultra-vires the Constitution since it infringes Article 19(1)(a) and is not saved by the expression 'in the interest of public order'.[149]

2. Section 124A is not void because the expression 'in the interest of public order' has a wider amplitude and is not only confined to 'violence'. It must undermine the authority of the government by bringing in hatred or contempt or disaffection towards it.[150]

3. In *Indramani Singh v. State of Manipur*[151], it was held that Section 124A is partly void and partly valid. Exciting mere disaffection or attempting to cause disaffection is ultra vires, but the restriction under Article 19(2) to excite hatred or contempt against the Government established by law in India, is valid.

The Indian Supreme Court has made clear that only restrictions in the interest of one of the eight specified interests can pass constitutional muster.[152] In March 2015, in striking down section 66A of the Information Technology Act, the supreme court ruled that *"any law seeking to restrict the freedom of speech can only pass muster if it is proximately related to any of the eight subject matters set out in Article 19(2)."*[153]

[149] Ram Nandan v. State of U.P, AIR 1959 All. 101.

[150] Debi Soren v. State, AIR 1954 Pat. 254. The Supreme Court has also endorsed the view of Patna High Court in so far as the expression "in the interest of public order", is concerned. The SC is also of the opinion that the expression has a wider connotation, see Ramji Lai Modi v. State, AIR 1957 S.C. 620 and also State of U.P. v. Ram Manohar Lohia, 1960 SCJ 567. Another view is that the words "in the interests of public order" is equivalent to "for reasons connected with public order". Walliullah, J, observed in Basudev v. Rex, AIR 1949 All. 523. (F.B.), that the expression 'for reasons' connected with "must mean a real and genuine connection between the maintenance of public order on the one hand and the subject of legislation on the other". See also Ram Nandan v. State, AIR 1959 All. 101.

[151] 1955 CriLJ 184.

[152] (2016) 227 DLT 612, para. 17: a law restricting speech "cannot pass muster if it is in the interest of the general public. Such law has to be covered by one of the eight subject matters set out under art. 19(2). If it does not, and is outside the pale of 19(2), Indian courts will strike down such law."

[153] (2016) 227 DLT 612

3.5.1 Expression does not amount to sedition

The court has been categorical in expressing that every criticism does not amount to sedition and the real intent of the speech must be considered before imputing seditious intent to an act. In the case of *Balwant Singh v. State of Punjab*[154], the Court refused to penalise casual raising of slogans few times against the State by two persons (Khalistan Zindabad, Raj Karega Khalsa, and Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da). It was reasoned that raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established nor could the same give rise to feelings of enmity or hatred among different communities or religious or other groups.

Likewise, in *Javed Habib v. State of Delhi*[155], it was held: *"Holding an opinion against the Prime Minister or his actions or criticism of the actions of government or drawing inference from the speeches and actions of the leader of the government that the leader was against a particular community and was in league with certain other political leaders, cannot be considered as sedition under Section 124A of the IPC. The criticism of the government is the hallmark of democracy. As a matter of fact, the essence of democracy is criticism of the Government. The democratic system which necessarily involves advocacy of the replacement of one government by another gives the right to the people to criticize the government. In our country, the parties are more known by the leaders. Some of the political parties in fact are like personal political groups of the leader. In such parties, leader is an embodiment of the party and the party is known by the leader alone. Thus, any criticism of the party is bound to be the criticism of the leader of the party."*

[154] AIR 1995 SC 1785.
[155] (2007) 96 DRJ 693.

In *Bilal Ahmed Kaloo v. State of Andhra Pradesh*[156], decided by A.S. Anand, J., and K.T. Thomas, J., of the Supreme Court in 1997, a Kashmiri youth was convicted for sedition by the trial court.

The Supreme Court set aside the conviction and sentence because they felt that even though the accused was part of a militant group, the ingredients weren't sufficient to constitute sedition. If anything, it is the lower courts that have actively championed for a larger scope of application of anti-sedition laws against speech in the country. The misuse of the section has been so rampant that the Supreme Court in a recent case was forced to re-iterate that 'criticism is not sedition' and only a "violent revolution" against the government attracts the charge of sedition."[157]

In the case of *Sanskar Marathe v. State of Maharashtra & Anr.,*[158] a cartoonist Aseem Trivedi was booked under section 124A IPC for defaming the Parliament, the Constitution of India, and the National Emblem and attempting to spread hatred and disrespect against the Government through his cartoons. The court distinguished between strong criticism and disloyalty observing-*…….. "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, to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence."*

In the case of *Arun Jaitley v. State of U.P.,*[159] Renowned Lawyer and politician Arun Jaitley, posted an article titled 'NJAC Judgment – an Alternative View' in October 2015 that was critical of a Supreme Court judgment which struck down the National Judicial Appointments Commission Act, 2014, and the Ninety-ninth Amendment to the Constitution. He observed: *"The judgment ignores the larger constitutional structure*

[156] AIR 1997 SC 1785.
[157] Common Cause v. Union of India, WP(C) 683 of 2016.
[158] 2015 Cri LJ 3561.
[159] 2016 (1) ADJ 76.

of India. Unquestionably, independence of the judiciary is a part of the basic structure of the judiciary is a part of the basic structure of the Constitution. It needs to be preserved…The majority opinion was understandably concerned with one basic structure independence of judiciary but to rubbish all other basic structures by referring to them as 'politicians' and passing the judgment on a rationale that India's democracy has to be saved from its elected representatives. The Indian democracy cannot be a tyranny of the unelected and if the elected are undermined, democracy itself would be in danger…No principle of interpretation of law anywhere in the world, gives the judicial institutions the jurisdiction to interpret a constitutional provision to mean the opposite of what the Constituent Assembly had said. This is the second fundamental error in the judgment. The court can only interpret – it cannot be the third chamber of the legislature to rewrite a law…I believe that the two can and must co-exist. The independence of the judiciary is an important basic structure of the Constitution. To strengthen it, one does not have to weaken Parliamentary sovereignty which is not only an essential basic structure but is the soul of our democracy."[160] A magistrate in Mahoba district in Uttar Pradesh registered a sedition case against Arun Jaitley for his views. The Allahabad High Court quashed the complaint holding that a critique of a judgement of the Supreme Court on National Judicial Appointment Commission does not amount to sedition as it was mere criticism and none of the ingredients of Section 124A were present, also the magistrate was irresponsible by Suo-moto registering such meritless case. The High Court held: *"The initiation of criminal prosecution has serious consequences. It relates to the life and liberty of citizens and carries with it grave consequences. Viewed in that light it is obvious that the exercise of power by the Magistrate must be preceded by due application of mind and circumspection."*[161]

While interpreting Section 124A, IPC the court observed: *Hence any acts within the meaning of Section 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it,*

[160] Arun Jaitley v. State of Uttar Pradesh, Application s/s 482 No. 32703 of 2015.
[161] Ibid.

would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of a tendency to public disorder by the use of actual violence or incitement to violence.[162]

Hence, expression of strong condemnation towards the State or State institutions can never amount to sedition for the simple reason that no institution or symbol alone embodies the whole country in its entirety. In many cases, the critique over a failed law expressed through for, instance, the burning of the Constitution, or expression of disappointment with members of Parliament through a visually disparaging cartoon or an image of Parliament cannot amount to sedition because often the protests may be rooted in an idea of India which has been frustrated by its elected representatives, or a law that has demeaned or disappointed citizens of India.

3.6 Conclusion

In light of all the case laws cited aforesaid, including the various instances wherein overregulation and uncalled for arbitrary usage of sedition laws have been utilised by the Government to suit their interests, it is pertinent to be note that there is an urgent need to narrow down the interpretation of the Section 124A of IPC in order to prevent its indiscriminate use in the frivolous and arbitrary manner. If this kind of regulation is undertaken wherein the law is moulded by the government to work in their favour, then Section 124A will continue to have a "chilling effect" on freedom of speech and expression. Democracy is meaningless without freedoms and sedition as interpreted and applied by the police and Governments is a negligence of it. But before the law loses its importance, the Supreme Court, which is the protector of the fundamental rights of the citizens has to step in and evaluate the law and could declare Section 124A unconstitutional if necessary.

[162] 2016 (1) ADJ 76.

CHAPTER 4

INTERNATIONAL PERSPECTIVE

4.1 Introduction

When deciding on the matter of defining freedom of speech, India should also look at other countries. While these examples, not wholly legally binding, hold persuasive value and can guide India on dealing with its own sedition law. An important principle of comparative law is that useful lessons can be drawn from studying how other jurisdictions approach common problems. This chapter examines sedition laws in several selected countries, focusing on how other jurisdictions seek to reconcile the need to proscribe seditious conduct with the requirements of international law.

In the 19th century sedition law was used by most countries as these laws were considered as a powerful tool to suppress the voice of the citizen against the government. Similarly, the British Empire enacted the sedition law in its colonies to get control over their territories. Even after the independence countries like India hold this law which was once hurdles in their own path of freedom. While most of the countries repeal the law or minimized its effect so that it can't be further misused by the state even by a country like the UK.

4.2 UNITED KINGDOM

The principle of sedition law can be traced from some of the British oldest laws, Such as the Statue of Westminster 1275. Where Divine rights belong to the king which was not questioned. It was required to prove an intention to make the offense of sedition. Much like most of their laws, England set the judicial precedent for the concept of sedition in the form of the offense of seditious libel. The English "Star Chamber" court

in 1606 defined seditious libel as a criticism of public persons, the government, or the King.[163]

The consequences were barbaric by today's standards, but seemingly on par with the prevalent legal scenario. The intent of the libel and the actual damage suffered as a consequence of such libel were considered to be irrelevant. The truth was no defence to the offense either. The Church and the State being intrinsically linked and interchangeable to such an extent as to practically be considered one and the same (even with different heads for both organs), seditious libel was equated to religious blasphemy.

The history of seditious libel and this case, in particular, are telling examples of the underlying significance of making sedition a crime; questioning the State's authority is not condoned by the State. Sedition and blasphemous libel were liberally used by the State to curb questioning of authorities by civilians in the eighteenth and nineteenth centuries.

Sedition is defined in the case of R. vs Sullivan, Fitzgerald J. as *"Sedition in itself is a comprehensive term and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State and lead ignorant persons to endeavour to subvert the Government and the laws of the Empire. The objects of sedition generally are to induce discontent and insurrection and to stir up opposition to the Government, and bring the administration of justice into contempt, and the very tendency of sedition is to incite the people to insurrection and rebellion."*[164]

However, British democracy evolved in the 20th century where the offenses of sedition dropped sharply with the time and the 1970s was the last decade where any prosecution took place. The Criminal Justice and Immigration Act of 2008 abolished religious

[163] De Libellis Famosis, (1606) 5 Co. Rep. 125a
[164] R v. Sullivan (1868) 11 Cox C.C. 44 at p. 45

blasphemy as an offense while the Coroners and Justice Act of 2009 removed sedition as an offense, along with seditious libel.[165] Therefore as the law now stands, sedition in any manner or form is not a criminal offense in the United Kingdom Due to this United Kingdom law commission examine whether there is any necessity of sedition libel law in a modern democracy and following this law commission report in February 2010,[166] they prepared a note on freedom and privacy that these laws violate article 12 of Human Right Act, 1998 also in contravention to the European Convention on Human rights. While repealing the sedition as an offense the parliament stated the reason that

"Sedition, seditious act and defamatory libel are arcane offenses – from a bygone era when freedom of expression wasn't seen as the right, it is today… The existence of these obsolete offenses in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom… Abolishing these offenses will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech."[167]

Subsequently, the crime of sedition and seditious libel was abolished by the Coroners and Justice Act, 2009.[168] The primary consideration was the language of the offense which was archaic in nature and did not portray the real image of the present democratic nation. Which was used by the king or state to suppress the voices of the people. Secondly, only 3 cases were reported in the 1990s and there was no major case reported in recent years. Thirdly, many countries already repealed the law or minimized the

[165] Clare Feikert – A halt, Sedition in England: The Abolition of a Law from a Bygone Era, October 2, 2012, http://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-alawfrom-a-bygone-era/ (accessed 21 Mar. 2021)

[166] The Law Commission, Treason, Sedition and Allied Offences (Working Paper No.72), paragraphs 78 and 96(6) (1997); the Law Commission, Criminal Law: Report on Criminal Libel (Cm 9618) (1985).

[167] Criminal libel and Sedition Offences Abolished, Press Gazette (April 13, 2021)

[168] Section 73: Abolition of common law libel offences etc
"The following offences under the common law of England and Wales and the common law of Northern Ireland are abolished—
(a) the offences of sedition and seditious libel;
(b) the offence of defamatory libel;
(c) the offence of obscene libel"

effect of sedition law for giving the right to freedom of speech and expression due to this many international institutions pass the law due to this many provisions of the statute were being violated such as article 12 of human rights act,1998.

Sedition was abolished in the United Kingdom through the Coroners and Justice Act, 2009. The then Justice Minister, Claire Ward, said at the time of the Act's enactment,[169] *"Sedition and seditious and defamatory libel are arcane offences from a bygone era when freedom of expression wasn't seen as the right it is today. Freedom of speech is now seen as the touchstone of democracy, and the ability of individuals to criticise the state is crucial to maintaining freedom."*

According to Claire Ward, *"The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom.[170]"*

Robertson and Nicol point out that *"many of the criminal laws that affect the media, official secrets and prevention of terrorism, and most of the laws relating to contempt, reporting restrictions and obscenity cannot be invoked in the criminal courts by anyone except the Attorney-General or the Director of Public Prosecutions (who works under the Attorney's superintendence). In all these cases the Attorney-General is not bound to take legal action, even if the law has clearly been broken. He has a discretion to prosecute or not to prosecute depending on his view of the public interest. In exercising his discretion, he is entitled to take into account any consideration of public policy that bears on the issue and the public policy in favour of free speech is important in deciding whether to launch official secrets or contempt or obscenity prosecution. Actions that appear to compromise free speech are likely to be criticised in Parliament, where the Attorney must answer for both his and the DPI's (Director of Public Prosecution) prosecution policy."*

[169] http://www.pressgazette.co.uk/node/44884 last visited on 29th May 2021
[170] Ibid.

Sir John Simon had said on December 1, 1925, in the House of Commons: *"There is no greater nonsense talked about the Attorney-General's duty than the suggestion that in all cases the Attorney-General ought to prosecute merely because he thinks there is what lawyers call 'a case'. It is not true, and no one who has held that office supposes that it is."*

It is seen that in the seven years since the repeal of criminal sedition, there has been no military coup or any attempts to destabilize the government, nor has there been any internal warfare, rebellious uprisings, or civil wars. But then again, one has to keep in mind that the United Kingdom is a stable democracy and not a fledgling one that was at risk of a rebellion or coup at any point of time in recent history.

4.3 NEW ZEALAND

New Zealand inherited the Brtritish common law on sedition. It was codified in Sections 81 – 85 of the Crimes Act of 1961.[171] A commission was constituted to examine the constitutionality of the law of sedition. Following are the points that were noted by both England and New Zealand in abolishing the crime of sedition: Sedition is defined in vague and uncertain terms. This offends the fundamental principles of criminal law. In any case, it refers to a particular historical context (sovereignty residing in the person of the King) which no longer holds. The law is archaic and must be done away with. While certain political views may be unreasonable or unpopular, they cannot be criminalized. This offends democratic values. The definition of sedition offends fundamental freedoms of speech and expression which are universally recognized. In practice, the law is used to silence political opposition or criticism of the government. This has a "chilling effect" on free speech.

[171] legislation.govt.nz/act/public/1961/0043/37.0/096be8ed80488ad9.pdf last visited on April 28, 2021.

The commission, while recommending the abolition, also expressed concern over retaining the law as it gave the executive an opportunity to abuse it no matter the safeguards placed.

4.4 AUSTRALIA

The Australian states and territories inherited the common law concerning sedition, but Western Australia, Queensland, and Tasmania codified the law at the end of the nineteenth or early twentieth century. However, the code provisions mirrored the common law. The Commonwealth passed the Crimes Act in 1914,[172] which contained various offences against the Government including treason. Australia was one of the Commonwealth countries where sedition law was enforced. Foremost legislation where sedition offense was found in Crime Act 1920. The provision of sedition under this act was more in a wider form similar to Indian Sedition. Which does not require to have subjective intention and incitement to violence due to this law become more dangerous in nature. For the same reason, the Hope Commission (1984) and Gibbs Committee (1991) was formed that recommended that the Australian definition of the sedition law should be a line up with the other Commonwealth nation.

Subsequently, Provision was again suggested by the former committee that Conviction should be limited to that act which incites violence and the requirement to incitement of violence to overthrow the constitutional body.

In 2005 most of the existing provision on sedition was repealed by the Anti-terrorism Act. Where a new provision was inserted into the Criminal Code. Afterward, there was again an issue raised whether the word sedition is suitable to describe the offenses after the 2005 amendment for this Australian Law reform commission studied the provision and recommended that.[173] *"The Australian Government should remove the term*

[172] http://www.lawcom.govt.nz/ last visited on March 08, 2021.

[173] Royal Commission on Australia's Security and Intelligence Agencies, Report on the Australian Security Intelligence Organization (1985) cited in Australian Law Reform Commission, ―Report on Fighting Words: A Review of Sedition Laws in India‖ (July 2006)

sedition from federal criminal law. To this end, the headings of Part 5.1 and Division 80 of the Criminal Code should be changed to Treason and urging political or inter-group force or violence', and the heading of s 80.2 should be changed to Urging political or inter-group force or violence"

National Security legislation Act 2010 Implementede the recommendation of a law reform commission where the word sedition was substituted regarding "urging violence offenses."

4.5 UNITED STATES OF AMERICA

The United States Constitution proscribes the State from enacting any legislation curtailing the first amendment – right to expression. There has been a debate among the jurists whether the first amendment guarantee was aimed at eliminating seditious libel.[174] It is argued by many that this doctrine 'lends a juristic mask to political repression'.[175] Despite the conflicting views and the attempts by courts to narrow the scope of sedition, it survives as an offence in the United States, though it is very narrowly construed and can even be said to have fallen in disuse.[176]

It was argued by many that the first amendment aimed at abolishing seditious libel.[177] However, this view has been opposed on grounds that the first amendment does not protect speech of all kinds; therefore, suggesting that the law on sedition was abolished by it would amount to interpreting history through one's own civic sensibilities.[178]

In the United States of America as well, sedition was criminalized hundreds of years ago. The Sedition Act of 1798[179] criminalized sedition for the main purpose to protect

[174] 77 Eng. Rep. 250 (K.B. 1606).
[175] Judith S. Koffler and Bennett L. Gershman, ―New Seditious Libel‖ 69 Cornell L. Rev. 816 (1984).
[176] Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore and Alternative Law Forum, Bangalore, Sedition Laws and Death of Free Speech in India: https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf
[177] Supra note 163.
[178] L. Levy, ―Legacy of Suppression‖ 10 (1960) in Mayton.
[179] 1 Stat. 596

the nation from 'Spies and traitors', which was later repealed in 1820 afterward, the sedition act, 1918 come into the picture which was aggressively used during the First world war period which followed the communist ideology.[180] Act survived the series of cases where constitutional validity was of the act was acknowledged.

The United States of America thus criminalized speaking up against the Government and its various members including members of Congress and the President, merely a little more than twenty years after the inception of the country itself. A country which was born after a war of independence from Britain, whose citizens formed the original colonies that later evolved into the USA. A country that was formed by an act of rebellious warfare would naturally know the dangers of a violent uprising. The country later verged on the violent division of its territory after the southern states attempt to secede during the course of the American Civil War.

The USA was also faster to abolish the crime of sedition than its parent country Britain. In 1919, Justice Holmes, with Justice Brandeis of the American Supreme Court held a dissenting opinion, one that has been largely appreciated, that the First Amendment to the American Constitution which guaranteed the right of free speech abolished the crime of sedition and seditious libel in the *Abrams v. United States*[181] case. It is interesting to note that whenever the judiciary or the legislature has had to step in to alter the concept of sedition, the backdrop is usually a progressive social movement. In one of the cases, while adjudicating the question regarding validity. Where the court laid down the 'Clear and present danger test' for limiting the scope.[182] *"Words which, ordinarily and in many places, would be within the freedom of speech protected by the*

Section 2 of the Sedition Act, 1798 defines sedition as : To write, print, utter or publish, or cause it to be done, or assist in it, any false, scandalous, and malicious writing against the government of the United States, or either House of Congress, or the President, with intent to defame, or bring either into contempt or disrepute, or to excite against either the hatred of the people of the United States, or to stir up sedition, or to excite unlawful combinations against the government, or to resist it, or to aid or encourage hostile designs of foreign nations.

[180] This Act was a set of amendments to enlarge Espionage Act, 1917.

[181] 250 U.S. 616, 630 (1919)

[182] Schnek v. United States 249 U.S. 47 (1919).

First Amendment may become subject to prohibition when of such a nature and used in such circumstances as to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent."

Sedition was also brought as an offence under the Alien Registration Act 1940 (also known as the Smith Act) which penalised advocacy of the violent overthrow of the government. The constitutional validity of this Act was challenged in *Dennis v. United States.*[183] Applying the ― clear and present danger test, the court upheld the conviction on the grounds that:

"…the words [of the act] cannot mean that, before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby, they will strike when the leaders feel the circumstances permit, action by the Government is required. The argument that there is no need for the Government to concern itself, for Government is strong, it possesses ample powers to put down a rebellion, it may defeat the revolution with ease needs no answer. For that is not the question. Certainly, an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt."

In the case of *Yates vs USA,*[184] the Supreme Court narrows down the restriction on the freedom of speech and expression. The court distinguished advocacy to 'overthrow as an abstract doctrine from an advocacy to action'.[185] It was reasoned that the Smith Act did not penalise advocacy of the abstract overthrow of the government and the Dennis

[183] 341 U.S. 494 (1951).
[184] 354 U.S. 298 (1957).
[185] Ibid.

(supra) did not in any way blur this distinction. It was held that the difference between these two forms of advocacy is that 'those to whom the advocacy is addressed must be urged to do something, now or in the future, rather than merely to believe in something'.

In the United States, the *New York Times v Sullivan case*[186] set the golden standard on the free press, thereby allowing unrestricted freedom of the press to report on the growing civil rights movement in the country. The civil rights movement largely depended on the press to gather followers from the African-American community and eventually lead to the end of segregation and legal racism in the country. If the court had held in the case that opinions directly against public officials were not to be printed by the media, the outcome may have been delayed, to say the least. An important aspect of this judgment was that it established a standard of malice to be established in a case brought against a publisher for publishing content against a public official.

In the United States, an attempt has been made to resolve the conflict, so far as the freedom of speech is concerned, by the application of the "clear and present danger" test enunciated by Mr. Justice Holmes in the famous case of *Schenck v. United States*[187] and further refined and applied in numerous subsequent cases.[188] The Supreme Court of India refused to import the doctrine of the clear and present danger when urged to do so in the case of *Babulal Parvate v. The State of Maharashtra.*[189] The Supreme Court thought - and maybe rightly - that the doctrine will not be in keeping with our constitutional scheme. It is time that the judiciary evolved some formula towards reconciliation of the freedom of speech with the need for social control.

While the crime of sedition has not been struck down in the USA, it is practically an obsolete offense now as multiple cases like the Sullivan case[190] have made it abundantly

[186] 376 U.S. 254 (1964).
[187] 249 U.S. 47 (1919)
[188] Abrams v. United States, 250 U.S. 616. The test sought to draw a balance between the freedom of speech of the individual and police power of the state and provided a handy guide to the courts for deciding cases involving restrictions on freedom of speech
[189] A.I.R. 1961 S.G. 884.
[190] Ibid.

clear that publishing anything against a public authority is not a crime and is protected by the First Amendment. *Brandenburg v. Ohio*[191] laid down the limitations to such freedom and the essence of the judgment boils down to the rider that speech may only be considered to be an offense if it incites "imminent lawless action"[192].

Hence, Generally, USA Court provides wide protection to the freedom of speech and various doctrines are being practiced such as the present danger test to protect the interest of the persons.

4.6 GERMANY

Volksverhetzung ("incitement of the people") is a legal concept in Germany. The word loosely translates to 'sedition', although the law bans the incitement of hatred against any particular race or religion.

4.7 CANADA

Sedition laws are independent of the laws that pertain to hate crime, in Canada. Canadian citizens enjoy liberal freedom as the laws to restrict freedom of speech are rarely enforced upon them. As a matter of fact, there has been no new sedition brought to light after the 20th century.

4.8 SOUTH KOREA

The Republic of Korea did away with its sedition laws during democratic and legal reforms in the year 1988.

4.9 NIGERIA

Introduced during the early years of the twentieth century, the law on sedition in Nigeria too is of colonial origin. Reading Section 51 of the Criminal Code, it is evident that it draws inspiration from the English definition of sedition. It classes an act as seditious

[191] 395 U.S. 444 (1969).
[192] Ibid

if it is done with an intention to harm the person of the President or the governor, the justice administration system, or the government, if it attempts to alter "any matters without the use of lawful means, or if it raises discontent, disaffection, the ill will of hostility in the population or between different classes of the population in Nigeria." Writers have come to the conclusion that the law was introduced with a view to curbing the writings and speeches of the educated elite under British colonial rule.

4.10 NETHERLANDS

In the Netherlands, it is a crime to insult the King, the Heir Apparent, and their spouse; under Articles 111-113 of the Dutch Penal Code.

4.11 MALAYSIA

To provide a clearer contrast to the mostly anti-sedition-law scenario in the more liberalized western legal structure, we take a look at the situation in South-East Asian countries. This part of the world is still home to various countries that are either not democratic or are home to populist cultures that call for death or stringent punishment for seditionists.

In Malaysia, which was also a British Colony, the Sedition Act was brought about, quite unsurprisingly, by the British colonial authority as late as in 1948.[193] This was akin to the circumstances that criminalized sedition in India in the late 1800s. Article 3 of the Sedition Act of Malaysia criminalizes, *"the commission, attempt, or conspiracy to commit any act which has or would have a seditious tendency; uttering any seditious words; and printing, publishing, offering for sale, distributing, reproducing, or importing any seditious publication".*

[193] The Sedition Ordinance came into force on July 19, 1948.

The Malaysian sedition act is infamous for its stringent provisions and its ever-expanding scope that now includes speech against Islam and other religions.[194]

On 11th July 2012, the Prime Minister of Malaysia had announced his plans to repeal a colonial-era law curbing free speech in the latest political reform. While announcing his plans he said that, *"The Sedition Act represented a bygone era and would be replaced with a new law to prevent incitement of religious or racial hatred. It will be the latest repressive law to be annulled as part of his pledge to protect civil liberties. ...We mark another step forward in Malaysia's development. The new National Harmony Act will balance the right of freedom of expression as enshrined in the constitution, while at the same time ensuring that all races and religions are protected."*[195]

Even though the promises to repeal the Act were made, he backtracked on his promise and in a speech made to the UN even promised to bolster the act and make it stronger and wider in scope.[196] In a worrisome move in late 2015, the apex court of Malaysia also upheld the validity of the law and firmly affirmed the regressive nature of the law.[197]

Critics of the concept of sedition as a crime often blame it as a colonial hangover and evidence of the British legacy, but the Malaysian example serves as a reminder to the fact that sometimes states actively embrace, adopt and enlarge such laws in an attempt to secure their own future and power.

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[194] Lawyers Rights Watch Canada, "Lawyers and The Rule of Law on Trial: Sedition In Malaysia", May 2000:http://www.lrwc.org/ws/wp-content/uploads/2013/02/Lawyers-and-the-Rule-of-Law-onTrial-Sedition-in-Malaysia.pdf. last visited on April 15, 2021.

[195] http://www.guardian.co.uk/world/2012/jul/12/malaysia-repeal-repressive-sedition-law last visited on April 15, 2021.

[196] Malaysia Backtracks on Sedition Law. The Diplomat: http://thediplomat.com/2014/11/malaysia-backtracks-on-sedition-law/ last visited on April 15, 2021.

[197] "Malaysia Court Dismisses Challenge to 'Unconstitutional' Sedition Law". The Guardian, 6th October,2015:https://www.theguardian.com/world/2015/oct/06/malaysia-court-dismisses-challenge-tounconstitutional-sedition-law last visited on April 17, 2021.

Authoritarian powers especially those that do not derive their power from the popular vote are already working against popular opinion and in such a scenario tend to look at a free-flowing public opinion as an omniscient danger to their presence. Ideologies provoke rebellions and uprisings, and sedition laws can be used as a method of clamping down on the free flow of thought and opinion in the country.

4.12 HONGKONG

In Hong Kong, sedition laws are once again a remnant of British colonial history. However, it has been strongly shaped by the influence of the Chinese. China has, after all, had a legacy of such strict control on its populace to arguably be considered a part of its traditional history. Speaking up against the State is hardly encouraged in the Republic of China. The Hong Kong Government passed the Ordinance on Chinese Publications (Prevention) in October 1907.

Under section 2 of the Ordinance, *"any person who printed, published, or offered for sale or distributed any printed or written newspaper or book or other publication containing matter calculated to excite tumult or disorder in China or to excite persons to crime in China would be liable for a fine not exceeding five hundred dollars or a maximum of 2 years imprisonment or both."*

The ordinance was, therefore, a classic example of the form a sedition law takes. Impeding the flow of opinions and thoughts in a country is the basic idea of sedition law. Numerous ordinances and acts were enacted over the subsequent decades that expanded the crime of sedition in the country.[198]

It was only 1997 that the amendment to the laws was made and the ambit the punishment of the crime of sedition were reduced in a significant manner.[199] The reasoning behind such reduction was provided by the committee that proposed the

[198] Like the Post Office Ordinance 1900, Seditious Publications Ordinance 1914, Sedition Ordinance 1938, Control of Publications Consolidation Ordinance 1951, Crimes Ordinance 1971.

[199] Judicial Independence and The Rule of Law in Hong Kong", Hong Kong University Press (2001), Page 78.

amendment and reads as, *"The offense of sedition is archaic, has notorious colonial connotations and is contrary to the development of democracy. It criminalizes speech or writing and may be used as a weapon against legitimate criticism of the government."*[200]

Though it is easy to blame the British for leaving a trail of sedition laws in their wake as a lasting reminder of their role as colonialists, one cannot deny the various factors involved that have led to their continued existence. Hong Kong is a noticeable example for two main reasons:

Firstly, the departure of the British did not dampen the State's enthusiasm to continually expand and increase the ambit and power of sedition laws in the country. If anything, once the British left, the State's policy on sedition as a crime seems to have intensified.

Secondly, there is a singular geopolitical reason for Hong Kong to have such strong anti-sedition laws; China. China uses such laws to quell disquiet and opposition to its influence on Hong Kong which many in the state resent and oppose.[201]

4.13 INTERNATIONAL FRAMEWORK

• In the Universal Declaration of Human Rights, 1948 (UDHR), Article 19 states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

[200] Legislative Council of Hong Kong, Report of the Bills Committee on the Crimes (Amendment) (No.2) Bill 1996: Paper for the House Committee Meeting on 13 June 1997 (Leg Co Paper No. CB (2)2638/96-97).

[201] Carol P. Lai, Media in Hong Kong: Press Freedom and Political Change, 1967-2005 145 (Routledge, Abington, Oxfordshire, 2007)

- Article 19 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) states:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or of morals."

- Article 10 of the European Convention on Human Rights Act, 2003 (ECHR) states:

"1. Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary for a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

- Article 9 of the African Charter on Human and Peoples' Rights, 1979 (ACHR) states:

"1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law."

4.14 Conclusion

We saw complete legislative abolishment of sedition in the United Kingdom and judicial abolishment of the same in the United States of America, even though the UK is a common law country more so than the US. The underlying rider to any fundamental right is that one has the absolute freedom to enjoy such rights provided that the right of no other person is infringed in such exercise. As representatives of the people, the Government is tasked with protecting the political community from domestic and international threats to their Security and the common good. Since, now it is the people who are sovereign, there is no need of Laws like Sedition. Sedition prevents the Government from criticism due to the sole reason that they are Sovereign. Since, they are no more sovereign, they are not entitled for this protection. This is the reason why Sedition Laws are getting repealed across the world. New Zealand, England, Australia are the countries who have repealed the Law of Sedition. The vagueness involved in the definition of the crime has also acted significantly in its dissolution. Apart from it, the stiffness, which got created due to the uprising of freedom of speech and expression, also played an important role in creating a dilemma on the legitimate use of the Law. The whole idea of freedom of speech and sovereignty of the people left no scope of execution for the Law. When the reason for which the Law was made is itself no more in existence, there is no other purpose left for carrying such Law any further.

CHAPTER 5

CONCLUSION AND SUGGESTION

"No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgment of his peers or by the law of the land. To no one will we sell or deny or delay right or justice."

- Magna Carta.

5.1 CONCLUSION

Ever since from the time the law of sedition originated in England, there have always been discrepancies in its application with the application being uncertain and non-uniform in all the cases. Initially, its application was kept vague and uncertain in light of the fact that it was used for the oppression of masses as and when it suited their interests and undermined their authority. It was used as a weapon for the fulfilment of political motives by curbing speeches which threatened the authority of the state.

The courts have also failed to give a clear and unambiguous interpretation of the offence. In the recent years, the application of the law of sedition so arbitrary that it has become a matter of great controversy. Although the position which we have about sedition was settled back in 1960 but still it has continued to be used as a tool of harassment. Indian society has developed at ahigh rate in the last 50 years and people have showed 'tolerance' towards what could be termed as 'incitement to violence'. The nature of government has also changed and the government is understood different from its representative. The justification that it is applied for the maintenance of public also does not strong valid, as in the present-day sedition is used to meet the local problems and the problems that broadly can be termed as defamation of the elected representative.

Most of the democracies in the world have removed sedition offense from their statute books. The reason being – that it is an outdated law, more law of colonial times to oppress rather than deal justice, which suddenly seems to reveal its ugly head in the present generation which is rather unforgiving of anything that curtails its fundamental freedoms, the example of England should also be taken where it was abolished seeing it had become obsolete. Various other provisions address the offences related to public tranquillity and can very well be applied. India today as a democratic state needs to overthrow this narrow approach of not tolerating healthy criticism also and it is high time that legislature and judiciary come up with newer reforms that either scrap off the laws relating to sedition or amend it in such a way that itis no more arbitrary and can be applied uniformly. This rule of colonial regime should no more be used to curb the rights of the citizens in its present form. Every individual has a right to criticize the government in a democratic state and hence doing so should not be regarded as "anti-national" and he should not be termed as a "traitor" as criticism is definitely not seditious as involves no incitement to violence. Criticism is the basis of democracy and hence sedition laws need to be changed for the smooth functioning of the democracy.

The sedition law needs reconsideration" – Dr. Justice (Retd.) Balbir Singh Chouhan[202]

In a democracy, singing from the same songbook is not a benchmark of patriotism. People should be at liberty to show their affection towards their country in their own way. For doing the same, one might indulge in constructive criticism or debates, pointing out the loopholes in the policy of the Government. Expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means. Every irresponsible exercise of right to free speech and expression

[202] Sedition law needs relook: Balbir Singh Chauhan, Law Commission chief, THE ECONOMIC TIMES, (Mar. 22, 2016), Sedition law needs relook: Balbir Singh Chauhan, Law Commission chief - The Economic Times (indiatimes.com) last visited on May 08, 2021.

cannot be termed seditious. For merely expressing a thought that is not in consonance with the policy of the Government of the day, a person should not be charged under the section. Expression of frustration over the state of affairs, for instance, calling India no country for women', or a country that is racist for its obsession with skin colour as a mark of beauty are critiques that do not threaten the idea of a nation. Berating the country or a particular aspect of it, cannot and should not be treated as sedition. If the country is not open to positive criticism, there lies little difference between the pre- and post-independence eras. Right to criticise one's own history and the right to 'offend' are rights protected under free speech.

Sedition is an offense consolidated into the IPC which has been discovered as being convenient to quiet or teach critics. This nineteenth century law, instituted to hush the Indian individuals by the colonial rulers, has been held by the popularity-based government in free India. Not just that, it has perhaps been utilized more regularly by free India's administrations than the colonial government did during the 77 years of its presence in the country.

As compared to other countries like United Kingdom, United States and Australia, India's perception of Sedition Law is different. While the law has been abolished in other countries on the basis of it being arbitrary, it is still valid in the eyes of Law in India. The political parties in power are misusing the Sedition Law against those who are putting their views in favour of opposition. Somebody putting forward his/her opinions regarding a particular issue cannot be charged with Sedition unless the thoughts provoke the public in general against the government. The Law should be applied only after completely investigating the motive and result of the said opinion. While it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy. Therefore, every restriction on free speech and expression must be carefully scrutinised to avoid unwarranted restrictions.

Section 124A, on the face of it, appears clear in that it seeks to penalise any activities that lead to disloyalty against or feelings of contempt or enmity against the government.

In light of the above observations, it is time that the Indian legislature and judiciary reconsider the existence of provisions related to sedition in the statute books. These provisions remain as vestiges of colonial oppression and may prove to undermine the rights of the citizens to dissent, protest against or criticise the government in a democracy.

5.2 SUGGESTIONS

In the first draft that was up for examination, the word sedition had been incorporated as one of the justifications for limitation on discourse. "Take again section 124A of the IPC" Jawaharlal Nehru said during a parliamentary debate centred on freedom of speech in 1951. He stated: "Now as far as I am concerned that particular section is highly objectionable and obnoxious and it should have no place in any body of laws that we might pass. The sooner we get rid of it the better."[203]

- Section 124A, IPC since its enactment and the present conditions, it would be appropriate to revise the formulation of the offence so as to make it a patently reasonable restriction under Article $17(8. The legislature should narrow the ambit of section by amending it.
- All speech-related offences should be made non-cognizable and bailable offences; so that there is at least a judicial check on the police authority acting on the basis of politically motivated complaints. This would also reduce the harmful impact of using custody and arrest as a way of harassing anyone exercising their rights of freedom of speech and expressions under Article 19(1)(a).[204]

[203] Parliament debate of "Freedom of Speech", 1951 (Available at): http://www.thehindu.com/opinion/editorial/seditionseriously/article3882414.ece

[204] AIR 1995 SC 2438, see also LIC of India v. Prof. Manubhai D. Shah & Cinemart Foundation, AIR 1993 SC 171.

- All police departments must be instructed that, decisions on whether or not to arrest someone for speech should not be based on threats of violence or disorder by those who dislike or are somehow offended by that speech. Decisions to arrest someone for speech should be based solely on an evidentiary assessment of whether or not the individual has violated a law.[205]
- In the case of offences under Sec. 153-A[206] and Sec. 295-A[207] of the IPC, it is mandatory under Sec. 196(1)[208] of the CrPC to obtain prior sanction of the government before taking cognizance of the offences. It is suggested to be extended to the S.124A of the Indian Penal Code i.e., Sedition.
- Introduce education programs for all police officers to ensure that they are fully aware of the limitations imposed by the Supreme Court on laws restricting freedom of expression.

- Pending repeal or amendment of section 124A of the Indian Penal Code, police should be specifically informed[209] that, under applicable Supreme Court decisions:

    1. The sedition law is only applicable to speech that has the tendency or intention of creating public disorder.[210]

[205] Jewish Supremacism, Freedom of Speech and My Book Jewish Supermacism. Available at: <http://davidduke.com/freedom-of-speech/>
[206] 153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
[207] 295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.
[208] 196. Prosecution for offences against the State and for criminal conspiracy to commit such offence. (1) No Court shall take cognizance of – any offence punishable under Chapter VI or under section 153A, of Indian Penal Code, or Section 295 A or subsection (1) of section 505] of the Indian Penal Code (45 of 1860).
[209] Jewish Supremacism, Freedom of Speech and My Book Jewish Supermacism. Available at: <http://davidduke.com/freedom-of-speech/>
[210] Kedarnath Das v. State of Bihar, AIR 1962 SC 955.

2. Mere criticism of the government or government policies cannot be the basis of prosecution under Indian Penal Code section 124A.[211]

3. Speech or expression perceived as disrespectful of India or its national symbols cannot, alone, be the basis of a prosecution for sedition.

4. Consistent with the guidelines accepted by the Bombay High Court, make it mandatory for police to obtain a legal opinion in writing, along with reasons, from the law officer of the district and from the state's public prosecutor before filing sedition charges.[212]

- All prosecutions and investigations to be dropped and closed into the cases where the underlying behaviour involved peaceful expression or assembly. India needs to chalk out a clear plan and time table for the repeal or amendment of laws that criminalize peaceful expression or assembly and, where legislation is to be amended, consult thoroughly with law fraternity and civil society groups in a transparent and public way.
- It will be unjustifiable to scrap any law only because of its tendency of being misused. Section 124A should be applied in rarest of rare cases. The prima facie evidence of incitement to violence should be there before any person is booked under Section 124A. The government should ensure that the law is used reasonably and with restraints.

5.3 WHY SHOULD SEDITION UNDER S.124-A BE OMITTED

The National Crime Records Bureau (NCRB) shows a rise in arrests for sedition between 2014 and 2016. Between 2014 and 2016, 179 people were arrested and 112 sedition cases filed with only two of the cases resulting in conviction. The point of the matter is that when a law instead of being constructively used is being misused by the authorities to marginalize their critics, such law should be deleted before it becomes a

[211] P. Hemalatha v. The Govt. Of Andhra Pradesh, AIR 1976 AP 375.
[212] AIR 1955 SC 104.

potent weapon of oppression. Most of the cases of Sedition do not make it to court, let alone result in conviction. While the Courts understand the exact principles under which S.124-A can be invoked, this has not stooped the Government from charging innocent individuals. Even though the authorities know that their case would not have a standing in Court, they use this opportunity to torture individuals with arrest and harassment, in malefic of setting a deterrent for anyone who dares speak against them. Majority of the cases reek of political propaganda under the garb of nationalism. One cannot be so naive to believe that S.124-A exists solely to protect the sovereignty of the country and to maintain public order. There are various other laws which fit the criteria, then what is the need of S.124-A particularly when its history is the witness of how potent it is to muffle the voices rising against injustices of the administration. Reasonable restrictions provided under Article 19(2), Unlawful Activities (Prevention) Act, 1967, Sections 121,122,123,131,141,143,153-A, Contempt of Court Act, 1971 and Prevention of Insults to National Honour Act, 1971, provide more than enough safeguards for acts likely to come under Sedition. Then why is a draconian law of pre-independence era, under a false pretence, being used to hound the populace of an independent and democratic country. It is ironic that the country, England, which planted the seeds of S.124-A on Indian Soil, has since long repealed the same out of the fear of being associated to draconian laws. S.124-A violates one of the basic facets of a democracy i.e., holding a government accountable. In a country where citizens cannot voice the criticism of their government's actions, demand accountability, raise questions and point at wrongdoings cannot, be a functional democracy. Citizens cannot be lulled into a false sense of security to enforce their fundamental rights and then be prosecuted for doing the same. This section is the fine line between a democratic and an authoritarian government and one incident in a charged political climate can change the setting. We must keep in mind that S.124 does not only violate freedom of speech but also aids the government in nakedly disenfranchising it political rivals and critics. As citizens, it is our responsibility to be aware of such political abuse and it is our duty to guard our own freedom.

Every strong criticism of the government, a minister or a chief minister or the prime minister causes some amount of disaffection towards them. When people read about the corrupt deeds of a government what exactly is the feeling that is generated in them? Is it contempt or hatred or a feeling of love and sympathy for such a government? In a democracy the people change such governments through vote. No democratic government can afford to charge people with sedition and put them behind bars for saying things which they have the freedom to say. So, the offence of sedition has no place in a democracy. That is why the British repealed it in their own country even though they had brought in the toughest variety of sedition when they ruled India. But democratic India even with all its bitter experience of the operation of this law by the colonial government retained it and used it liberally against its people taking refuge under a Supreme Court decision validating it.

It falls on the judiciary to protect Articles 19 and Article 21 of the Constitution. Justice Kurian Joseph recently made some anguished remarks that the police are neither independent nor professional. My position is that the time has come for the judiciary to set up a search committee in every State, and a particular judge of the High Court has to Suo moto check each sedition case being filed. And if it is baseless, if it has been used to only terrorise the ordinary citizen expressing his views, it must be quashed without putting the onus on the citizen to come to the court. It's true that the police have become totally politicised, but who is to stop this? Who is to guard us? It is the judiciary that has been charged with this job and they can't expect the ordinary citizen to always come to the court. Our legal aid system is just not as robust as it should be. The problem is not with the section, but with its abuse.

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