Contempt of Court and Sedition Laws: Tools to Suppress Democracy

Dissertation submitted in partial fulfilment for the requirement of the Degree of

L.L.M.

Submitted By

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DECLARATION BY THE CANDIDATE

I hereby declare that the dissertation entitled **"Contempt of Court and Sedition Laws: Tools to Supress Democracy"** submitted at is the outcome of my own work carried out under the supervision of **Prof. (Dr.) Gitu Singh , Director, BBD University, Lucknow.**

I further declare that to the best of my knowledge the dissertation does not contain any part of work, which has not been submitted for the award of any degree either in this University or any other institutions without proper citation.

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CERTIFICATE OF SUPERVISOR

This is to certify that the work reported in the L.L.M. dissertation entitled **"Contempt of Court and Sedition Laws: Tools to Supress Democracy"** submitted by **Rishabh Tiwari** at **BBD University, Lucknow** is a bona fide record of his original work carried out under my supervision.

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Rishabh Tiwari

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LIST OF ACRONYMS AND ABBREVIATION

AIR	All India Reporter
Art.	Article
Anr.	Another
Consti.	Constitution
Cr. L.J.	Criminal Law Journal
Ind.	Indian
Ors.	Others
SC	Supreme Court
SCC	Supreme Court Cases
SCW	Supreme Court Weekly
U.K.	United Kingdom
U.P.	Uttar Pradesh
U.S.	United States of America
&	And
J.	Hon'ble Justice
Sec	Section
UOI	Union of India
Q.E	Queen Empress
V.	Versus
Vol.	Volume

LIST OF CASES

Mohandas Karamchand Gandhi and others vs Unknown on 12 March, (1920) 22 BOMLR 368, 58 Ind Cas 915

R.N. Dey v. Bliagyabati, (2004)4 SSC 400.)

Arundhati Roy vs Unknown, (2002) AIR 2002 SC 1375

K. A. Abbas vs The Union of India on 24 September, 1971 AIR 481

Prashant Bhushan vs Court, SUO MOTU CONTEMPT PETITION (CRL.) NO.1 OF 2020

Queen Empress v. Bal Gangadhar Tilak, ILR 22 Bom 112 (1898)

State of Punjab v. Gurdev Singh. (1991) 4 SSC 1: AIR 1991

Kedarnath v. State of Bihar, AIR 1962 SC 955

Ashok Paper Kamgar Union v. Dharam Godha, (‘AIR 2004 SC 105)

Shreya Singhal v. Union of India (AIR 2015 Supreme Court 1523)

CHAPTER 1
INTRODUCTION

1.1 BACKGROUND

Administration of justice is the most important and indispensable function of any modern state. For the effective administration of justice, faith of the people in the mechanism is to be retained. In order to retain faith of the people in the mechanism unwanted interference with it must be prevented. The preamble of contempt power and sedition conferred with the court is to achieve this object.

Contempt of Court Laws

The term contempt of court has been in use since centuries. In ancient times, Kings were regarded as the founder of justice and used to dispense the same by them self. The King's power were absolute and justice to people was subject to king's discretion. People could neither criticise the king nor the king's decision. The criticism of the king or the king's decision was punishable. But as the art of governance grew, the King yields his powers to his three organs of Government, the Executive, the Parliament and the Judiciary. With the time and change in how sovereign rules, the king or sovereign has delegated the function of giving justice to a body created by the same, that is judges. The judges were deemed to act in the name of the King. Any disrespect to the seat of justice was an affront to the dignity and majesty of law.

The idea of contempt of the King is referred to as an offence in the laws set forth in the first half of the twelfth century. Contempt of the King's writ was mentioned in the laws of King Henry-I. In the same laws there was mention of pecuniary penalty for contempt or disregard of orders. Thus in England before the end of the twelfth century contempt of court was a recognized expression and applied to the defaults and wrongful acts of suitors. After making a study of cases in the thirteenth century John Charles Fox concludes that there was no indication of trial of contempt out of court otherwise than in the ordinary course of the law and many cases of contempt in court were tried by indictment and not by a summary process[1].

[1] K. Bal Sankaran Nair, 'Law of Contempt of Court in India', 2004, p. 20.

criticism in modern democracies often taken in light of contempt of court. It is quite unique and noticeable that how a particular law has been a tool in the hand of sovereign almost since the evolution of human civilisation; especially used to restrict criticism even in the most flourishing democracies around the world in 21st century.

Contempt of law is not the law of man, but it is the law of kings. It is not law which representative legislators, responsibility reflecting the vox populi originally wrote, but is rather evolved from the divine law of kings, and its aspects of obedience, cooperation and respect towards government bodies. Though this is not the only source of the power, it is the seed from which the power grew, if later adopted and cultivated by men not adverse to its exercise. These later institutions agreeably accepted it, less as adjuncts of the King than to protect their own dignity and supremacy over the common people.

Sedition Laws

Sedition-this, perhaps the very vaguest of all offences known to the criminal law, is defined as the if speaking or writing of words calculated to excite disaffection against the Constitution as by laws established, to produce the alteration of it by other than lawful means, or to incite person to commit a crime to the disturbance of the peace, or to raise discontent or disaffection, or to promote ill feeling between different classes of the community. In the 13th century, the rulers in England viewed that sedition is a threat to their sovereignty. A charge of sedition is, historically, one of the chief means by which Government, especially at the end of 18th and the beginning of the 19th century, strove to put down hostile critics. It is evident that vagueness of the charge is a danger to the liberty of the subject, especially if the courts of justice can be induced to take a view favourable to the government[2.]

In order to understand a crime in a very real sense, one should attempt to finds its origin and then to study the political thinking underlying its inception into the body of criminal law. As Sir James Stephen States in his history the English criminal law commission adopted his Articles relating to seditious offences “Almost verbatim”. Stephen traced the first application of the offence of seditious conspiracy to the trial of redhead Yorke in 1795. Several prosecutions for seditious conspiracy followed shortly thereafter. One of them the O’ Connell decision held that every sort of attempt by violent language to affect “Any public object of an evil charter” was a seditious conspiracy. Needless to say, “No precise or complete definition

[2] Black’s law dictionary deluxe 10th addition Pg.no. 1563

has ever been given of objects which are to be regarded as Evil". But criticism rebellion or incitement against the Government or the monarch was not something which started in 18th century. It uses to happen prior to that too. Hence this case can't be called as the origin.

To find out the origin of the requisite of all three offences one must go beyond the French revolution period. The important precedent reflecting them appears to be De LibellisFamosis what came to be called Sedition in sixteenth century England was mostly comprehended under the heading of treasonable words in the fifteenth century or under the doctrine of the Scandalum Magnatum if it involved peers or high crown officials? Although the court did previously treat Sedition did not appear as a separate legal crime until 1606. It appears in review that three major principles of the contemporary seditious offences can be found in 1606-star chamber decision of De LibellisFamosis In the case of De LibellisFamosis the accused published poems making fun of the Archbishops of Canterbury.

A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of his majesty, his heirs or successors, or the Government and Constitution of the United kingdom, as by law established, or either house of Parliament, or the administration of justice or to excite his majesty's subjects to attempt otherwise than by lawful means, the alteration of any matter in church or State by law established or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection among his majesty subjects, or to promote feelings of ill-will and hostility between different classes of such subjects[3]. It is quite clear that the intention behind the incorporation of this crime was to provide a safeguard to the parliament monarchy and the church from insurgency.

The law on Sedition serves the state and not the community. It has become the slave of the state turning against society and therefore it poses serious problems for the functioning of democracies around the world. History has witnessed that some of the very prominent people have been victims of this Law. Socrates, Voltaire, Mandela, Gandhi have all been victimized under it. The purpose of a prosecution under the said law is that one should be silent and not ask questions even though injustice is rampant.

[3] SakalpaperPltd. V Union of India AIR 1962 SC 305(315) 4

1.2 Literature Review

- Freedom of Speech and Expression is the basic right that forms the bedrock of any State that claims to be democratic writings Blogs, protesting through social Media, Networks, and Email Campaign are various tools while come under the concept of freedom of speech and expression. The right of free Speech is not historical right. Socrates was poisoned for asking People to question Facts. For a long time in history the right to speak one's mind and articulates one's thought were subjected to extreme penalty. The struggle continues even today under the so called "Democratic Rights". This is no more than an Expression of Unequal relation under Capitalism. The Law of Sedition is related to these who, for the purpose of attacking or subverting the State and Government and seek to disturb its tranquillity, to create Public disturbance and to Promote disorder, who incite others to Do so, Words, deed or writings Constitute Sedition. The Essential requirement for Sedition Law is to bring and attempt to bring Disaffection towards the Government. But now in India the Law of Sedition is to be misused by the Government and Authorities in the name of National Security and its Integrity. Our Constitution Provide us the Right to freedom of Speech and Expression. But the fact is that there is Loophole in the manner of Sedition Law which is nothing but a Toy in the hands of Government. This is only used to suppress the voice of Citizen who criticized the Government and its Policies. However, he had a logical Reason behind it. But in the Name of Nation Security those People were put behind the Bar with Charged of Sedition. Rule changed Rulers come and went by. But the Law remained the same and still being used widely and blatantly to curb the voice of the people sadly even in the Present Rule of Democracy. A law which Penalizes such Criticism is violation of the Constitutional Guarantee of freedom of speech and expression and is therefore unconstitutional. The Constitutional challenges to Sedition Laws arouse because the Law is struck down as being violations of the fundamental right to the freedom of Speech and Expression. Many social activists oppose Sedition Law according to him Sedition Law Constitutionally being used to harms across the Country.
- Here are some Books, acts, journals and international acts related to contempt of court and sedition law:
- Trial of Mahatma Gandhi, Durgadas Basu, Commentary on the Constitution of India (Wadhwa 8th Edition 2007 1950, H.M Seervai, Constitutional Law of India Vol.11, 1130 (Universal Law Publisher 4th Edition 2003)

- Inamdar N.R Political Thought and Leadership of Lokmanya Tilak, concept publishing company, New Delhi, 1983
- Abhinav Chandrachud. Republic of Rhetoric: Free Speech and the Constitution of India-Zaboor Ahmad (2018) Abhinav Chandrachud. Republic of Rhetoric: Free Speech and the Constitution of India, Asian Affairs, 49:1, 154-156 is an autopsy of the right to free speech in India. It makes a refined analysis of British and Indian laws relating to free speech. Independent India has maintained a great degree of colonial continuity in terms of rights to free speech and expression even after the British left India, they have repealed the laws but India is in continuity with that laws.
- legalserviceindia.com/journal/l255-Contempt-of-Court.This journal talks about how contempt of court is suppressing the rights of freedom to speech and expression while hampering and curtailing due course of justice:
- When Mahatma Gandhi refused to apologise to Bombay High court for ‘contempt’
- Prashant Bhushan famously quoted Mahatma Gandhi in a sedition case of 1922 when he told court that he did not seek mercy. But 100 years ago in 1920 he had refused to apologise for contempt of court where Mahatma Gandhi refused to apologise to Bombay high court for contempt.
- Constituent Assembly Debates On 2 December, 1948 Part I-CONSTITUENT ASSEMBLY OF INDIA - VOLUME VII Thursday, the 2nd December 1948- I find that the first sub-clause refers to freedom of speech and expression. The restriction imposed later on in respect of the extent of this right, contains the word 'sedition'. An amendment has been moved here in regard to that. It is a matter of great pleasure that it seeks the deletion of the word 'sedition’. I would like to recall to the mind of honourable Members of the first occasion when section 124 A was included in the Indian Penal Code. I believe they remember that this section was specially framed for securing the conviction of Lokamanya Bal Gangadhar Tilak. specifically grants freedom of speech and expression--for securing which, as you and the majority of the Members of this House are aware, we resorted to individual Satyagraha under the leadership of Mahatma Gandhi in the year 1941, and as a consequence thousand, nay, hundreds of thousands of people of this country had to rot in the prisons. At that time all of us believed that when Swaraj is established every citizen of this country would also secure for himself the right of freedom of speech

and expression. We, no doubt, find that article 13 grants this freedom of speech and expression. But all this has been taken away indirectly by clause (2).

- Freedom of speech and the law of sedition in India by R K Mishra journal of the Indian law institute vol.8 no. 1 January-march 1966 pp 117-113 (15) pages resolved the judicial controversy regarding the validity of section 124-A IPC-1860 brings out basic problems involved in India in the enforcement of fundamental Rights. Mentioned the decision of Kedar Nath Singh vs the State of Bihar A.I.R 1962 S.C. 255. The law regarding the section 124-A had been thereto in uncertainty.
- Edward Snowden revealed the national security administration had conducted mass surveillance of us residents, government disagreed with these allegations and intentions- the department of justice brought criminal charges against Snowden under the Espionage Act. United States obtains final judgement and permanent injunction against Edward Snowden- The United States Department of justice -office public affairs (justice.gov/opa/pr/united states-obtains final judgement and permanent injunction.
- Another act was followed in UK where the Crime and Control act 2013 was passed and abolished the contempt of court. https://www.legislation.gov.uk/ukpga/2013/22/contents/enacted
- It changed the law on coroners and criminal justice in England and Wales. Among its provisions are: preventing criminals from profiting from publications about their crimes. abolishing the anachronistic offences of sedition and seditious, defamatory and obscene libel. Coroners and Justice Act 2009 https://www.legislation.gov.uk/id/ukpga/2009/25

1.3 Statement of Problem

Contempt of court and sedition laws came into existence during colonial era. The significance of these laws was to repress and control human rights such as freedom of speech and expression. Over the years, the democracies around the world have seen a significant evolution; democracies such as England which was the birthplace of these laws have repealed the same laws via Crime and Courts act 2013 & Coroners and justice act 2009. Moreover, the situation remains same in India even after the independence where these laws are used in 21st century to muzzle democratic right i.e., freedom od speech and expression.

1.4 Objectives

1. To understand the origin of Contempt of Court and Sedition Laws.

2. To examine the existing laws relating to Contempt of Court and Sedition Laws.

3. To understand the approach followed by judiciary in interpreting the Contempt of Court and Sedition Laws.

4. To point out lacunas and deficiencies in laws pertaining to Contempt of Court and Sedition Laws.

5. To study the various models of Contempt of Court and Sedition Laws present in other countries and views of scholars on the same.

1.5 Research Questions

1. Whether the existing legal framework around Contempt of Court and Sedition Laws is used as tool to muzzle right to freedom of speech and expression in India?

2. What are various measures that can be incorporated in the Indian legal framework such that Contempt of court and sedition laws could not be used to dilute the presence of right to freedom of speech and expression?

1.6 RESEARCH METHODOLOGY

The methodology applied is doctrinal. The subject of study is socio-legal. The research tries to investigate into particular principles of preventive theory of criminal justice and apply the same to solve growing problems in relation to crimes against women and children in the country. Comparative study with respect to public policy in relation to such offences in other countries shall also be carried out. Both primary and secondary sources such as case laws, articles, books shall be taken aid of.

1.7 SCHEME OF RESEARCH

The dissertation is divided into five chapters.

Chapter 1: - Provides the background of the topic and lays down brief introduction and includes abstract of research.

Chapter 2: - Examines the origin & historical background of Contempt of court & Sedition laws in context to India. The chapter demonstrates the extensive use of these laws by East India Company to muzzle Freedom of Speech.

Chapter 3: - Illustrates the present status of Contempt of court & Sedition laws in India. It examines the recent development and case laws about aforementioned laws.

Chapter 4: - Analyses the international framework revolving around Contempt of court & Sedition Laws.

Chapter 5: - Elucidates the conclusion and suggestion which must be taken into account to preserve and protect the true nature of democracy.

CHAPTER-2
Origin: Indian Context

2.1 Contempt of Court Laws

The origin of contempt of court laws in India could be traced back to the colonial laws by which India was governed under British rule. The development of contempt law in England did contributed in great principles to the law of contempt, which are presently followed by several common Law Jurisdictions and India is one of them.

The roots of English Law, from which the contemporary contempt doctrine sprouts, are thin but deep in history. The phrase contempt of court *(contemptus curiae)* has been in use in English Law for eight centuries. The Law conferred the power to enforce discipline within its precincts and punish those who fail to comply with its orders[4]. Sir John Fox had mentioned that contempt was extent as far back as the 10th century in England [5]. The idea of contempt of the King is referred as an offence in the laws set forth in the first half of the twelfth century. Contempt of the King's writ was mentioned in the e laws of King Henry-I. In the same laws there was mention or primary pecuniary for contempt or disregard of orders. Thus, in England before the end of the twelfth century contempt of court was a recognized expression and applied to the defaults and wrongful acts of suitors[6] .

From 1402 to 1640 a number of statutes were passed giving the superior courts powers to proceed summarily in certain cases against officers of the court, including juror. Styles Practical registrar published in 1657 shows that, certainly, by the middle of the seventeenth century the King's Bench was proceeding summarily against its officers. The roots of law of contempt of court in India has its origin in British administration in India. This originated from the judgment of J Wilmot in year 1765, where it was said that the contempt of court was necessary to maintain the dignity and majesty of judges and vindicate their authority.[7]

[4]Joseph 11. Begle's, 'Contempt of Court Criminal and Civil,' 1908, Vol. 21, Harv. L.R., p.161.
[5] Sally Walker, 'Freedom of Speech and Contempt of Court: The English and Australian Approach Compared'. Vol. 40, International and Comparative Law Quarterly, 1991, Pg. No. 583.
[6] John Charles Fox, 'The Nature of Coiiteinpt of Court', Vol. 37, Law Quarrely Review, 1921, Pg.No.191.

[7]Harshita Tomar & Nayan Jain, Contempt of Court: A Challenge to Rule of Law- A Critical Analysis, 2 JCIL (2016).

The development of Contempt Laws in Britain has been haphazard in itself, which had been introduced in India in a more haphazard manner. Power to punish for contempt being an attribute of courts of record, the creation of different courts of record in India necessarily meant the introduction of English law of contempt in so roe measure. This is how English law of contempt came to be introduced in India.[8]

The roots of Contempt Laws in India can be traced back to the pre-independence period, when the East India Company came to India and started administration of justice, they introduced the English law of contempt of courts in the country. In 1687, Company issued a charter. Thereby, in 1688, the company created a corporation at Madras comprising of a Mayor, twelve aldermen and sixty or more burgesses to administer the territory. The Mayor and the aldermen constituted a court named as Mayor's court. The court of admiralty was established under the crown's charter of 1683 which was empowered to hear apples from Mayor's court of Madras. All these Court's were 'Courts of record' and as such they were empowered to punish guilty of the contempt of court. Through the charter of 1726, a Mayor's court in each of three presidency towns was established. When the Mayor's courts were reconstituted under the charter of 1753, their status as court of record was maintained and they had power to punish persons for contempt.[9]

The Lord Minto's Government in 1908-1909 consulted all the Provincial Governments as to whether legislation should be undertaken:-

- (i) To enable High Courts other than chartered High Courts to protect themselves in respect of contempts of courts; and
- (ii) To empower all High Courts to give a reasonable measure of protection of courts subordinate to them in respect of contempt and in proper comments on pending cases.

The weight of opinion received was in favour of the legislation and a Bill was prepared in 1911, penalising contempt of authority of courts of Justice or of persons empowered by Law to record evidence on both and the publication of false or inaccurate report of pending Judicial proceedings or of comments torching persons concerned in them calculated to cause prejudice

[8]Report of the Sanyal Committee 1963, Ch. II, Para 2.
[9]Supra Note 8 at, Pg. No. 85-86.

in the public mind in regard to such proceedings. This Bill, as revised in the light of the comments received, adopted the simple device of making certain amendments in the Indian Penal Code and certain consequential amendments in the code of criminal procedure. It sought to produce two new sections after sections 228 of the Indian penal Code.[10]

The first of these sections was intended to render punishable the bringing into contempt of [11]

- (a) Any court of justice; or
- (b) Any person empowered by law to record or directs the recording of evidence on oath, when exercising such powers.

While referring to this section an, it was sought to be made clear that criticism, i.e., comments made in good faith which are in substance true would not ancient to contempt. The second section was intended to penalize the publication of false or misleading reports of pending judicial proceedings calculated to cause prejudice in the public mind. The Bill was introduced in the legislative council on

On 18th March, 1914. But the consideration of the Bill was postponed on account of the outbreak of the First World War. It was taken up again after the end of the war in 1921 and the then Law Member, Sir Tej Bahadur Sapru, reiterated an opinion given by him earlier that:

"an amendment in the Indian Penal code which would give power to subordinate courts to punish contempt amounting to what is known as 'scandalizing the court' is undesirable.... for the reason that Subordinate Courts are not....by their legal framing a traditional qualified to exercise such extraordinary jurisdiction."

He added that-

"in the event of Government finding it impossible to drop the measure, the power to initiate proceedings of inferior courts should be rested in the High Court's alone and that such proceedings might be stacked upon reference by an inferior court or on an application made by

[10] Indian Penal Code l860, Scc. 228.
[11] Report of the Sanyal Committee 1963, Ch. II, Para 3(3).
[12] Ibid.

the local government or by any party to a suit or case regarding which objectionable comments are published by a newspaper".[13]

Contempt of Courts Act, 1926

After further consideration, government finally abandoned the 1914 Bill and decided in favour of introducing legislation on the lines of Tej Bahadur Sapru's suggestions. Such, in short, was the genesis of the bill, which after important modification came to be enacted as the contempt of courts Act, 1926. The Bill as originally drafted perforated to define "Contempt of Court" and while assuming a power n the High Court (including chief courts and the courts of judicial commissioners) to punish for contempt of itself, sought to confer a like power on the High Court in respect of contempt of courts subordinate to it. It also sought to define the extent of the punishment which may be awarded in contempt cases. The Bill also included provisions relating to taking cognizance of offences by way of contempt and the procedure to be followed in respect of such offences.[14]

2.1.1 CASES IN PRE INDEPENDENCE IN INDIA RELATED TO CONTEMPT OF COURT:-

a) Legal Remembrancer v. Matilal Ghose & Ors., (1914) I.L.R. 41 Cal. 173, the Court observed that the power to punish for contempt was "arbitrary, unlimited and uncontrolled", and therefore should be "exercised with the greatest caution: that this power merits this description will be realised when it is understood that there is no limit to the imprisonment that may be inflicted or the fine that may be imposed save the Court's unfettered discretion, and that the subject is protected by no right of general appeal." The observation under this case affirms the arbitrary ,unlimited, and uncontrolled power of the courts: that their is no limit to the imprisonment that may be inflicted, or the fine that may be imposed, confirms the courts unfettered discretion. The arbitrariness of such power of the courts that the subject under the same is protected by no right of general appeal.

[13] Supra Note 11.
[14] Supra Note at Para 5.

b)Mohandas Karamchand Gandhi ... vs Unknown on 12 March, 1920

The facts are not in dispute, and may be stated briefly. The case which I have referred to is (In Re Jivanlal Varajrai Desai (1919) 23 Bom. L.R. 13). It arose under the disciplinary jurisdiction of this Court, in consequence of the above letter from the District Judge, whereby he submitted for the determination of this Court the question of the pleaders of the Ahmedabad Court who had signed what is known as the " Satyagraha pledge, " whereby they undertook (amongst other things) " to refuse civilly to obey these laws (viz. the Eowlatt Act) and such other laws as a committee to be hereafter appointed may think fit." The learned District Judge also mentioned the names of two barristers who had signed the pledge. The point was whether that pledge was consistent with their duties as advocates and pleaders. The result of that letter was that notices were issued by this Court, on the 12th July 1919, against the advocates and pleaders in question, and it was eventually held, on the 15th October 1919, by a Bench of this Court consisting of my Lord the Chief Justice and Mr. Justice Heaton and Mr. Justice Kajiji that the Satyagraha pledge which these advocates and pleaders had taken was not consistent with the performance of their duties as such to the Court and the public.

2.2 Sedition Laws

In order to understand Sedition Laws in a very real sense, one should attempt to finds its origin and then to study the political thinking underlying its inception into the body of criminal law. As Sir James Stephen States in his history the English criminal law commission adopted his Articles relating to seditious offences “Almost verbatim”. Stephen traced the first application of the offence of seditious conspiracy to the trial of redhead Yorke in 1795. Several prosecutions for seditious conspiracy followed shortly thereafter. One of them the O’ Connell decision held that every sort of attempt by violent language to affect “Any public object of an evil charter” was a seditious conspiracy. But criticism rebellion or incitement against the Government or the monarch was not something which started in 18th century. It uses to happen prior to that too. Hence this case can’t be called as the origin.

To determine the origin of Sedition Laws one must go beyond the French revolution period. The important precedent reflecting it appears to be De LibellisFamosis what came to be called Sedition in sixteenth century England was mostly comprehended under the heading of treasonable words in the fifteenth century or under the doctrine of the Scandalum Magnatum

if it involved peers or high crown officials. Although the court did previously treat Sedition did not appear as a separate legal crime until 1606. It appears in review that this major principle of the contemporary seditious offences can be found in 1606 Star chamber decision of De LibellisFamosis In the case of De LibellisFamosis the accused published poems making fun of the Archbishops of Canterbury.[15] As Sir James Stephen have stated afterwards in his book "Digest of Criminal Law" that "A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of his majesty, his heirs or successors, or the Government and Constitution of the United kingdom, as by law established, or either house of Parliament, or the administration of justice or to excite his majesty's subjects to attempt otherwise than by lawful means, the alteration of any matter in church or State by law established or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection among his majesty subjects, or to promote feelings of ill-will and hostility between different classes of such subjects. It is quite clear that the intention behind the incorporation of this crime was to provide a safeguard to the parliament monarchy and the church from insurgency.

The effects of French Revolution were visible in the Britain from 1857. As a result the period between 1860 and 1870 witnessed hectic activity on the legal front in context to Sedition Laws. The Indian Penal Code put together in 1861. It was designed to ensure the suppression of Natives but the British felt that something was missing. Hence in 1870 they introduced Section 124- A. A popularly known as the Sedition law, makes it a crime to "promote through word or deed, disaffection against the Government". This law Legislate affection. It means that if you do not love the government, you could go jail. Initially Section 124-A was used against newspaper who were not loving the Government sufficiently.

This highly Controversial Sections did not form a part of the Indian Penal Code when it was enacted in 1860, although it was proposed to be included by the draft prepared by the Indian law commissioner in 1837. It is said that the Section 124-A was originally enumerated under Section 113 of Macaulay's draft Penal Code of 1837-39, but it was only in 1870 that the provision for Sedition was inserted by the Indian Penal Code (amendment) act. The law of Sedition was proposed in India in 1870 in riposte to increasing Wahabi activities between 1863 and 1870. It was modified in 1898; the frame work of this Section was taken from several sources The treason felony act (1848 Britain) the common law of seditious libel (Libel

[15] www.uniassignment.com/essay/the pretext-of-orgin-Law-constitutional-administrative-essay

defamation in Permanent form) and English law pertaining to seditious words. According to it whoever has cognition about the India's freedom struggle would be well acquainted of the British mistreatment of the law associated with Sedition. It is unsuitable to ponder over that the British officials tried to crush the Indian freedom struggle with an iron hand and in retaliation to the protest against them some of the active instrumentalists of Indian freedom struggle were charged with Sedition. The first in a sequence of Sedition Cases against editors of National Newspaper was the trial of Jogindera Chandra Bose in 1891.

During the time of English law, the Indian Nationalists were punished and their voice were muzzled using the same statutes. With ever increasing repression the nationalist found different ways of disseminating ideas of 'freedom' other than press, through songs, theatre, Kirtan, Pravachans and public lecture. Unable to control the wave of nationalism the East India Company sought to use Sedition Laws to repress the same.

- (i) Firstly, by prosecuting the Newspaper,
- (ii) Secondly by amending the Indian Penal Code (IPC) and criminal procedure code (Cr.PC); applying different existing laws and enacting new cognate laws such as the sea custom act (1878). The seditious meeting act (1908) and the Indian press act (1910), to name a few. The chain reaction continued until the Mahatma Gandhi inaugurated an era of Satyagraha when the 'Terror of Law' was lost.

The Law of Sedition was an important during the colonial period from English law into the Indian Penal Code which consisted of partly the treason-felony act, the common law with regard to seditious libel and the law relating to seditious libel and the law relating seditious words.[16] The clause on Sedition stood as Section 113 Macaulay's draft Indian Penal Code (IPC) of 1837 [17] and was shelved for 20 years until the enactment of the Indian Penal Code in 1860. But when Indian Penal Code enacted the said clause was curiously omitted despite the tumultuous happenings of 1857-58, only to be inserted into the Indian Penal Code by way of an amendment in 1870. While introducing the amendment Sir James Stephen the law Secretary to Government of India justified on the pretext that it

[16] Walter RusellDonough, the History and Law of Sedition and Cognate Offences in India, Thacker Spink and co. Calcutta, 1914 2nd Edition Pg.no.180.
[17] Macaulay and the Indian Penal Code of 1862 by David Skuy: The Myth of the Inherent superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century. Modern Studies, Vol 32 No. 3 July 1998 pp 513-537.

aimed to bring about uniformity and remove incongruities in the existing law. He pointed out that the new Section 124-A of the Indian Penal Code aimed to punish.

Whoever by words, either spoken or intended to be read or by signs or by visible representation or otherwise excite or attempt to excite feelings of disaffection to the government established by law in British India shall be punishable with transportation of life to three years to which fine may be added.

In the initial years while the administration was discreet is not using the law of Sedition against criticism of official measures, through it dealt severely with any attempt of uprising however negligible. Criticism in Indian press largely reflected against some official measures and did not aim at the government itself. After 1870 the administration did not amend the law of Sedition until 1898 but sought to cover disapproving criticism by enacting two cognate laws

(1) The dramatic performances act xix of 1876 (DPA),

(2)The vernacular press act (ix) of 1878.
Hence these acts were termed 'Preventive Measures' while the first of these laws enacted due to two allegedly seditious play [18] the vernacular press act of 1876 was brought about by Lord Lytton to suppress sharp criticism of British policies as a result of the events of 1875-76, namely the Deccan agricultural riots of 1875-76 and the failure of relief measures. It aimed to control the publishers and printers of periodical magazines in native languages by means of a system of personal security.

It attempts to excite feelings of 'Disaffection' and 'disapprobation'. The Bill containing the law of Sedition Section 124-A of the Indian Penal Code was passed on November 25, 1870 as act xxvii an amendment to the Indian penal and continued to remain in force unmodified till 18 February 1898. Thus Section 124-A read as follows:

"Whoever by words, either spoken or intended to be read or by signs or by visible representation or otherwise excite or attempt to excite feelings of disaffection to the government established by law in British India shall be punishable with transportation of life to three years to which fine may be added".

[18] The Two Plays were: Cha-Ka Durptan (The Miror of tea planting) by Girish Chandra Ghosh in Bengali and MalbarraocheNatak by Narayan Bapujikantikar in Marathi. MSA/JD/1876/Vol.24/398.

In 1897 at the first of three famous sedition trials of the Kesari newspaper editor Bal Ganga Dhar Tilak justice James Strachey held that reports of the hardship suffered by his Majesty's subjects during a period of famine and plague could amount to an "incitement to murder" and disloyalty to the crown. Strachey found that a mere attempt to create ill- will was sufficient grounds for Sedition- regardless of the strength to "disaffection" produced, or indeed, whether any had been produced at all. He expanded the already broad concept of "disaffection' to include "hatred", "enmity", "dislike", "hostility", "contempt" and other aversions.

Subsequently it was used against Bal Ganga Dhar Tilak and Mohan Lal Gandhi. Tilak was found of guilty in 1916, despite a strong defence by Mohammad Ali Jinnah. During the trial Jinnah asked a question which has puzzled many. What is this "disaffection", he asked, "absence of affection". Gandhi was arrested a few years later. His opinion on Sedition was very clear. He called it "the prince among the political Sections of the Indian Penal Code designed to suppress the liberty of the citizen".

The evolution of Sedition laws could be traced from these laws has been used to suppress the voices inside the Britain and later it grew as a tool to stampede the voices of Indians ruled by East India Company. In 1922, Mohandas Karamchand Gandhi was brought to court for his articles in Young India magazine. Gandhi famously denounced the law against sedition in the court: "Section 124A 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."

2.2.1 CASES IN PRE INDEPENDENCE IN INDIA RELATED TO SEDITION:

a) Queen Empress vs. Jogendra chander Bose and others (THE BANGOBASI CASE, 1891)

The first trial on record for Sedition was Queen Empress v. Jogendra chander Bose and others, more commonly known as the Bangobasi case of 1891, which brought up the question of limits of legitimate criticism against the official measures. The Bangobasi a newspaper edited by Jogendra Chandra, while reacting to the passage of the age of consent bill (1891), raised the cry of 'religion in danger' and charged the Government for Europeanizing India by brute force and held it responsible for the economic deprivation of Indians. However, it also stated that Hindu neither believed in rebellion nor were they capable of it.

The issue raised in this case was whether the Bangobasi exceed the bounds of legitimate criticism.

The prosecution charged that the intention was to bring the people into a frame of mind- 'we would rebel if we could and that the religion feelings of the people were so excited that public peace was implied. The defence argued that there was no reference to 'rebellion' and that it only differentiated between "European and native method of thought". However, the judge 'thought that attempted to hold it up to the hatred and contempt of the people.' During trial of the case, the accused tendered an apology and the proceedings were dropped against him. In 1891 the East India Company has become intolerant of the slightest criticism and also prosecuting them under Sedition Laws

b) BAL GANGADHAR TILAK TRIAL IN 1897:

In 1897, the trial against **BAL GANGADHAR TILAK under Sedition began.** The facts of the case that Government claimed that some of the speeches that referred to Shivaji Killing Afzal khan, had instigated the murder of the much-reviled plague commissioner rand and another British officer lieutenant Ayherst, which occurred a week later. The returning from the reception and dinner at Government house, Pune, after celebrating the diamond jubilee of Queen Victoria's rule. Bal Ganga Dhar Tilak was convicted of the charge Sedition, but released in 1898 after the intervention of internationally known figures like Max Weber on the condition that he would do nothing by Act, speech, or writing to excite disaffection towards the Government. [19]

In 1898 the Laws of Sedition were amended and During the debate on Sedition the British parliament took into account the defence argument in Tilak cases and the decision into subsequent cases, to ensure there were no loopholes in the Law . The British included the terms 'hatred and 'contempt' along with disaffection. Disaffection was also stated to include 'disloyalty and all feelings of enmity'. The 'diverse customs and conflicting creeds' in India were used to justify these amendments in British parliament during the debates.

In 1908, Tilak was prosecuted once more for Sedition. Despite a spirited defence from Mohammad Ali Jinnah, one of the most prominent faces of the Bombay bar, the judges sentenced Tilak to six years rigorous imprisonment with transportation.

In 1916, Bal Gangadhar Tilak was again prosecuted for sedition where the D.I.G of police criminal investigation department (CID) J.A guider moved the district magistrate Pune, Alleging that Bal Ganga Dhar Tilak was orally disseminating seditious information. He cited three of Tilak's speeches in 1916, one given in Belgaum and two in Ahmednagar. In this case it was observed by the court that disaffection is a positive feeling of aversion which is akin to disloyalty, a defiant insubordination of authority, or when, it is not defiant makes men indisposed to obey or support the Laws of the realm, and promote discontent and public disorder.

[19] Economic and Political Weekly Vol xlvi no 8 February 19, 2011.

c) SEDITION TRIAL OF GANDHI 10th March 1922:

The most famous Sedition Trail after Tilak's case was the trial of Mohandas Gandhi in 1922. Gandhi was charged, along with Shanker banker, the proprietor of young India for three Articles published in the magazine. The trial which was attended by the most prominent political figures of that time was followed closely by the entire nation. In his trial Gandhi told to the judge that how he had become an uncompromising 'disaffection' and non-co-operator and why it was his moral duty to disobey the Law. Gandhi commented on Sedition that was used to try him and demanded that the judge give him the maximum punishment possible.

According to Gandhi Section 124-A of the Indian Penal Code perhaps the prince among the political Sections which 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 he does not contemplate, promote or incite to violence. But the Section under which Mr. Banker and Gandhi were charged is one under which mere promotion of disaffection is a crime. Most of the cases under Section 124 A of the Indian Penal Code is against loved of India patriots. During the trial of Gandhi he said that I have endeavoured to give in their briefest outline the reason for May disaffection. I have no personal ill-will against any single administrator much less can I have any disaffection towards the king's person. But it is a virtue to be disaffected towards a Government which in its totality has done more harm to India than previous system. India is less manly under the British rule than she ever was before. Holding such a belief, Gandhi consider it is to a sin has affection for the system. And it has been precious privileges for me to able to write what i have the various Articles tendered in as evidence against me. Significantly Gandhi in his statements before the court refers to the nature of political trials that were ongoing at that time. "My unbiased examination of the Punjab martial Law cases had led me to believe that at least ninety-five per cent of convictions were wholly bad. My experience of political cases in India leads me to the conclusion that in nine out of ten the condemned men were totally innocent. Their crime consisted in the love for their country [20].

[20] Retrieved from www. Harley.com/people/Mohandas-gandhi.html, at 6.30 am May 9, 2015.

Judge strongman, in remarkably respectful response, acknowledges the nature of Gandhi and his commitment to Non-violence but says he is bound by the Law to hold him guilty of Sedition, and sentences him to six years imprisonment. The irony of the Sedition Law used against Nationalists like Gandhi and Tilak continuing in the statues books of independent India was not lost on those drafting the Constitution. While in their draft Constitution, the Constitutional framers included ‘Sedition’ and the term ‘public order’ as a basis on which Laws could be framed limiting the fundamental right to speech (Article 13), in the final draft of the Constitution both ‘public order’ and Sedition were eliminated from the explanation to the right to freedom of speech and expression (Article 19(2)). This amendment was the result of the initiative taken by K.M Munshi who proposed these changes in the debates in the constituent assembly.

CHAPTER 3

INDIAN PERSPECTIVE: CONTEMPT OF COURT AND SEDITION LAWS

3.1 CONTEMPT OF COURT UNDER CONSTITUTION OF INDIA

Article 129 and 215 of the Constitution of India is in the nature of empowering courts for the contempt. While Article 129 empowers the Supreme Court, Article 215, on the other hand, empowers High Courts to punish people for their respective contempt if caught or being complained fiddling with their Jobs . Although High Courts have been given special powers to punish contempt of subordinate courts, as per Section 10 of The Contempt of Courts Act of 1971.

Article 129, of the Constitution of India, states that "The Supreme Court shall be a court or record and shall have all the powers of such a court including the power to punish for contempt of itself.

Supreme court as a guardian of right to personal liberty, cannot do anything by which that right is away, especially when supreme court is acting suo motu as in proceeding for its own contempt.

Art.215 of the Indian Constitution prescribes that the High Courts to be courts of record. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Object

The jurisdiction regarding contempt of court is a special jurisdiction. It must be used to uphold the dignity of the courts and the majesty of law untainted.

Another importance of this contempt power is to ensure the majesty of judicial institutions so that it may not be lowered, and also to preserve the functional utility of the constitutional deliverables keep functioning smoothly & untendered due to accuse in system.

Procedure to be followed

The procedure provided by the Contempt of Court Act, 1971 has to be followed in the exercise of the jurisdiction under article 129 and 215 of the Indian Constitution.

Any individual can recourse to any of the following three options:

1. He may place the information in his possession before the court and request the court to take action.
2. He may place the information before the Attorney General and request him to take action.
3. He may place the information before the Attorney General and request him to move the court.

3.2 Legislation revolving around Contempt of Court: -

The Indian Constituent assembly debates represented an extensive look in coming times when it came to misuse of Contempt of Court and Sedition Laws. On 1 December 1948, Congress leader and educationist K.M. Munshi, a key voice in the Constituent Assembly, said that there should be no room for 'sedition' in independent India.

He argued that "Now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore, the word 'sedition' has been omitted. As a matter of fact, the essence of democracy is criticism of Government."

The Speaker of the Constituent Assembly, Seth Govind Das, delivered an even more forceful argument on this count.

Das came from a family that was proud to be pro-monarchy, having received several grants and jagirs for its service to the crown. However, a leading participant in the Satyagraha movement, Das himself had been jailed by the British for committing sedition.

He emphasised that neither titles, nor sedition had a place in free India.

He said that "My grandfather held the title of Raja and my uncle that of Diwan Bahadur and my father too that of Diwan Bahadur. I am very glad that titles will no more be granted in this country. In spite of belonging to such a family I was prosecuted under Section 124 A and that also for an interesting thing. My great grandfather had been awarded a gold waist-band inlaid with diamonds. The British Government awarded it to him for helping it in 1857 and the words, "In recognition of his services during the Mutiny in 1857" were engraved on it. In the course of my speech during the Satyagraha movement of 1930, I said that my great-grandfather got this waist-band for helping the alien government and that he had committed a sin by doing so and that I wanted to have engraved on it that the sin committed by my great-grandfather in helping to keep such a government in existence had been expiated by the great-grandson by seeking to uproot it. For this I was prosecuted under Section 124 A and sentenced to two years' rigorous imprisonment."

3.2.1 **Definition of Contempt of Court under the Contempt of Courts Act, .1971**

According to Section **2(a)** of the Contempt of Courts Act, 1971 defines 'Contempt of Court' means Civil Contempt and Criminal Contempt;

Section **2(b)** of Contempt of Courts Act, 1971 defines 'Civil Contempt' means wilful disobedience to any Judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

Section 2(c) of the act defines 'Criminal Contempt' means the publication (whether by words spoken or written, or by signs, or by visible representation, or otherwise, of any matter or the doing of any other act whatsoever which:

1-Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
2-Prejudices, or interferes or tends to interfere with, the due process of any Judicial proceedings; or
3-Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

3.2.2 Civil Contempt under the Act

The term civil contempt has been defined under section 2(b) of the Act. As per the definition civil contempt means useful disobedience to any Judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. To understand the scope of the definition it can be sub-divided into two parts:

- (I) Wilful disobedience to any Judgment, decree, direction, order, writ of other process of a court;
- (ii) Willful breach of an undertaking given to a court.

The terms Judgment, decree etc, are not defined in the Act and will take their natural meanings. A "decree" is the formal expression of an adjudication which conclusively determines the rights of parties with regard to all or any of the matters in controversy and may be either preliminary or final. An "order" means the formal expression of any decision of a civil court which is not a decree. A "Judgment" means the statement given by the Judge on the grounds of a decree or order. The word "Judgment" will have to read with or "decree" and "order," for there cannot be disobedience of the grounds as such, "writ" refers to the prerogative writs that can be issued under Articles 226 and 32 of the Constitution. "Direction" may be understood as similar to "order". An example of "other process of a court" could be a summon to appear as a witness. The term "undertaking" is considered separately.

Both the two sub parts of the definition of civil contempt speak of something done willfully. The world 'willful' is therefore, very important for the correct interpretation of the term civil contempt. The word 'willful' denotes deliberate and intentional act or omission.

- **Willful**

The meaning to be attached to the words 'willful' and 'willfully' has to be ascertained on a close examination of the scheme and nature of the legislation in which the words appear and the context in which they are used.

In Ashok Paper Kamgar Union v. Dharam Godha, (‘AIR 2004 SC 105) the court has explained the meaning of 'willful.' According to the court 'willful' means an act or omission, which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt, the order to the court must be of such a nature which is capable of execution by the person charged in nonanal circumstances.

The circumstances established in the case are not sufficient for drawing the conclusion that the opposite parties had either intended or actually disobeyed the decree of this court. In fact, the applicant could have put his decree into execution and if the execution court had found that the Judgment-debtor has opportunity to obey the

decree and had not obeyed it, the court could have taken coercive measures against the opposite parties. Contempt proceedings are not meant to pressurize Judgment debtors.[21]

- **Not a Substitute for Execution Proceedings**

It may reiterate that weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for the maintenance of the court's dignity and majesty of law. Further an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemnor and the court. [22]

Contempt proceedings are not intended to be a substitute of the execution process. When execution is available, the, parties should approach the court or authority who can execute that order. Contempt proceedings are not substitute for proceedings for enforcement of the private legal rights. There is a marked difference between a complaint made by an individual for a wrong done to him and a petition moved before a court inviting to take notice of the fact that

[21] Dr. Laxmi Narain v. Jia Lai Jain, AIR 1975 All 213 at Pg. No. 214-215

[22] R.N. Dey v. Bliagyabati, (2000) 4 SCC 400 Para 7.

its contempt has been committed. The contempt is of the court and not of the individual.[23]

It has been held in the case *of* Ahmed R.V. Peermohammedv. Jogi S. Bhar that contempt proceedings cannot be used as a lever for obtaining speedy execution of an executable decree instead of resorting to the nominal procedure prescribed by the law for executing such decrees. In the case of Om Prakash v. Secretary, Home Department**,** it has been held that a contempt proceeding cannot be a substitute for execution proceedings and moreover, contempt proceedings should not be allowed to be used as a lever by the litigants for bringing pressure on the State functionaries in getting the decree or orders executed without resorting to the remedies available under the Act itself.

- **Non-compliance of Void Order**

The Supreme Court of India has recently examined the question of void order in the context of the breach of injunction under order 39 Rule 2 A of the code of Civil Procedure 1908. The question before the court was "whether a person who disobeys an interim injunction made by the civil court can be punished under Rule 2A of the order 39 where it is ultimately found that the civil court had no jurisdictions to entertain and try the suit." The court took into consideration number of decisions of the Indian Courts and foreign courts and hold that the ultimate decision holding that the court had no jurisdiction did not make interim orders passed meanwhile either nonets or without jurisdiction.

In *Shiv Chander Kapoor v. Amar Bose,* J.S. Venna J. speaking for a 3- Judge Bench observed thus, with reference to the statement of law that 'void' is meaningless in an absolute sense; and 'unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.' In the words of Lord Diplock, 'the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to Sue.'

[23] Amil Nakta v. Union of India, (1985) 3 SCC 382 al p. 385.

To the same effect is the opinion of Jagannatha Shetty, J. "If an act is void or ultra-virus it is enough for the court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce as new state of affairs.[24]

- **Vague Order No Contempt**

It is well settled that disobedience of orders of court, in order to amount to 'civil contempt' under section 2(6) of the contempt of courts Act, 1971 must be 'willful' and proof of more disobedience is not sufficient. Where there is no deliberate flowing of the orders of the court but a more misinterpretation of the executive instructions, it would not be a case of civil contempt. [25]

The fundamental principle of criminal law, including the law of contempt of courts, is that if there is a bonafide dispute or if there is possibility of some justification for the action complained of or there is no mens rea, the benefit of doubt must go to the accused.

Once the order had been passed by the court not only the plain meaning of the language used is to be considered but also the spirit and the sense in which the order had been passed has also to be kept in mind may be that in some cases the order may be couched in such a language that it may create some kind of doubt and confusion in the mind of those who have to comply with it, but the best way, in such cases, is not to circumvent the order but to try as much as possible to comply with it first.

- **No Specific Direction No Contempt**

Earlier order of Supreme Court for restoration of complainant's seniority in service without any specific direction regarding monetary consequences. The corporation granting promotion to complainant and treating such promotion relating to certain period as mere notional without monetary benefits. Absence of specific direction in earlier order to that effect. The punishment

[24] State of Punjab v. Gurdev Singh. (1991) 4 SCC 1: AIR 1991 SCW 2796 (Paras 5,6.7)
[25] William Wade, 'Administrative Law', 1988, Pg. No. 352

was, therefore, not awarded however Supreme Court made it clear that promotion for said period should be accompanied by monetary benefits."

3.2.3) Criminal Contempt:-

Section 2(c) of the Contempt of Courts Act, 1971 posits criminal contempt to mean: Publication (a) by words spoken or written; (b) or written or by signs; (c) or by visible representations or otherwise or any manner; (d) or any act whatsoever which-

(i) Scandalizes or tends to Scandalize, or lowers or tends to lower the authority of any court; or

- Prejudices or interferes or tends to interfere with the due course of any judicial proceeding; or
- (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct the administration of the justice in any other matter.
  The definition of the term 'contempt' in section 2(c) of the Contempt of

Courts Act, 1971 makes it clear that contempt may be committed either by publication (whether by words spoken or written or signs) or by the doing any other act which leads to any of the consequences contemplated in sub-clauses (i), (ii) and (iii) of sub- section (C) of section 2 of the contempt of Courts Act, 1971. Hence in the instant case even though a letter may have been delivered in private capacity to a Magistrate, it may still lead to the consequences which are regarded as the essence of criminal contempt. Its tendency to scandalize or lower the authority or interfere with the due course of any judicial proceeding is the crucial test. Reactions to such letters or representations are bound to vary with individuals. Nevertheless, it is not unlikely that a Magistrate or Judge may feel greatly scared and demoralized by such serious allegations and this may interfere with the fearless and conscientious discharge of his duties. It is therefore a salutary principle enshrined in the law of contempt of court that no person should be allowed to do any act which has the effect of leading to any such consequences. In such circumstances the absence of publication is immaterial. In Advocate Geneiah Oiissa v. Baiadakaiiia Mishia. (1973) it was pointed out, reading section 2(c) (i) and (ii) a criminal contempt does arise when disparaging allegations casting aspersions on the conduct of Judges, disputing their integrity with reference both to their administrative as also judicial conduct are made by a person in a petition to the High Court.

Sarkaria, J. postulates a pithy analysis of clause (c) of section 2, of the Contempt of Courts Act, 1971. In Rachapudi Subba Rao v. Advocate General, *A.P* it is was noted that in the categorization of contempt in the three sub-clauses (i) to (iii), only category (ii) refers to judicial proceedings." Scandalizing of court in its administrative capacity will also be covered by sub-clause (i) and (iii). The phrase 'administration of justice' in sub clause (iii) is for wide in scope than 'course of any judicial proceedings.' "The last words in any other manner" of sub-clause (iii) further extend its ambit and give it to a residuary character. Although sub-clauses (i) to (iii) describe three distinct species of 'Criminal contempt" they are not always mutually exclusive. Interference or tending to interfere with any judicial proceeding or administration of justice is a common element of sub-clauses (ii) and (iii). This element is not required to be established for a criminal contempt of the kind falling under sub-clause (i) of the contempt of Courts Act, 1971.

Under clause (c) of section 2, "publication of any matter" or "doing of any other act" which ultimately obstructs the smooth administration of justice or breaks the rule of laws essential for constituting the offence of "criminal contempt." Therefore it is important to know the precise meaning of these two concepts.[26]

- **Publication of Any Matter**

"Criminal Contempt" envisages primarily publication of the infonnation. The Act has not defined what constitutes "publications." According to the Concise Oxford Dictionary, publication means "making the public known." In the light of this definition it may be said that for constituting the offence of "criminal contempt," such publication must result in scandalizing or tending to scandalize the authority of any court, or lowering or tending to lower the authority of any court, or it prejudices the due course of any judicial proceedings, or interferes or tends to interfere with or obstructs or tends to obstruct the administration of jusfice in any other manner. Otherwise it does not amount to "criminal contempt." Similarly, a more possibility of

[26] N. Maheslnvaia Swaniy and K. ManikPiabhu, 'Contempt of CouH: A Review,' Journal of Andra Law Times. Vol. 69. 1992. Pg.no. 42.

occurring any of the above incidents does not also amount to "criminal contempt," unless there is an intention to that effect. In Delhi Judicial Service Association, Tis Hazari Court v. State of Gujrat and Others, the Supreme Court has observed as follows:

"The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the court against insult or injury, but to protect and to vindicate the rights of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. 'It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage.' The object and purpose of punishing contempt for interference with administration of justice is not to safeguard or protect the dignity of the Judge or the Magistrate, but the purpose is to preserve the authority of the courts to ensure an ordered Hfe in society."

- **Scandalizing the Court - Section 2(c)(i)**

A 'Scandal' is 'thing or a person causing general public outrage or indignation' and to 'Scandalize' someone is to 'offend the moral feelings, sensibilities etc.,or to shock.' Quite a few people behave in a Scandalous manner and many of them are men and women who hold office in the organs of State such as the Governments, Legislatures or Courts.[27] This archaic and quaint expression of "scandalizing" is derived from the historic times in England when a strong measure of awe and respect for the status of the sovereign and his Judge was considered essential to his maintenance of public order. The crime of scandalizing the court has been described "as an act done or writing published calculated to bring a court or Judge of court into contempt or to lower its authority.[28]

- **Scandalizing Distinguished from Defamation/Libel**

It may be noted that distinction is to be made between an acts which scandalizes or tends to scandalize a Judge in his private or personal capacity and an act which scandalizes him in is

[27] Vinod A. Bobde, 'Scandalising the Court', Journal of Supreme Court Cases, Vol. S. 2003, Pg.no.32
[28] T.R. Andhyarujina, 'Scandalizing the Court is it Obsolete?' Journal of Supreme Court Cases, Vol 4,2003, Pg.no.12

official capacity. An attack on personal or private capacity of a Judge constitutes 'libel' and not contempt. The official capacity cannot be differentiated into judicial and administrative capacity. They are intertumed. Any aspersion on the administrative capacity of the Judge or the court, which undennines, lowers, or tends to undermine or lower its authority and dignity by imputing motive so as to create a distrust in the minds of the public as to the capacity of the Judges to mete out even-handed justice is scandalizing the court. The image and personality of the High Court is an integrated one.

Contempt is a little more than libel. A defamatory attack on a Judge may be libel so far as the Judge is concerned and it would be open to him to proceed against the libeller in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt.

The *Supreme Court in Perspective Publications (P) Ltd case* [29] summarized the law on this aspect, as under:

- (1) "It will not be right to say that committals for contempt scandalizing the court have become obsolete.
- (2) The summary jurisdiction by way of contempt must be exercised with gi-eat care or caution and only when its exercise is necessary for the proper administration of law and justice.
- (3) It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a Judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer scrutiny and respectful, even though

outspoken, comments of ordinary man."

- (4) A distinction must be made between a mere libel or defamation of a Judge and what amounts to contempt of the court. The test in each case would be whether the impugned publication is a mere defamatory attack on the Judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by this court. It is only in the latter case that it will be punishable as contempt.

[29] Perspective Publication (P) Ltd & Anothers v. State of Maharashtra. (1969) 2 SCC 687

- (5) Alternatively the test will be whether the wrong is done to the Judge personally or it is done to the public. The publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the minds of the Judge himself in the discharge of his judicial duties."

  In ***B.K. Lala v.R.C. Dutt*** [30] it was emphasized that men's rea is not at all a necessary constituent of contempt. Lack of knowledge or intention is only material in relation to the penalty which the court would inflict and the test is if the matter complained of is calculated to interfere with the course of justice and not whether the contemnor intended the result. It is no argument to contend that the contemnor issued only a notice under section 80, C.P.C. to the Judge in asserting his civil rights and that he did not intend to be continuous. The test is not intention of the contemnor but whether the writing in fact does turn to lower the prestige of the judiciary.

3.3) Recent Case Laws Relating to Contempt of Court.

a) SUO MOTU CONTEMPT PETITION (CRL.) NO.1 OF 2020

-Facts of the Case

The two tweets which are published over Twitter, a micro-blogging web site, which are: i)“When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs.” Published on 27th June 2020 and

ii)“CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!” Published on 29th June 2020.
These two tweets aforementioned have taken into consideration by Supreme Court after a petition has been filed in Supreme Court by one Mahek Maheshwari bringing to the notice of the same and the Supreme Court has taken Suo motu cognizance of the aforesaid tweet and

[30] AIR 1967 Cal. 153. follows AIR 1954SC 186

Suo motu register the proceedings. The apex court has had issued notice to the Attorney General for India and to Shri. Prashant Bhushan, Advocate.

It is relevant to paraphrase the statement made by Shri. Prashant Bhushan before the Supreme Court of India on 20.08.2020-"I have gone through the judgment of this Hon'ble Court. I am pained that I have been held guilty of committing contempt of the Court whose majesty I have tried to uphold — not as a courtier or cheerleader but as a humble guard — for over three decades, at some personal and professional cost. I am pained, not because I may be punished, but because I have been grossly misunderstood. I am shocked that the court holds me guilty of malicious, scurrilous, calculated attack on the institution of administration of justice. I am dismayed that the Court has arrived at this conclusion without providing any evidence of my motives to launch such an attack. I must confess that I am disappointed that the court did not find it necessary to serve me with a copy of the complaint on the basis of which the suo motu notice was issued, nor found it necessary to respond to the specific averments made by me in my reply affidavit or the many submissions of my counsel. I find it hard to believe that the Court finds my tweet has the effect of destabilizing the very foundation of this important pillar of Indian democracy. I can only reiterate that these two tweets represented my bonafide beliefs, the expression of which must be permissible in any democracy. Indeed, public scrutiny is desirable for healthy functioning of judiciary itself. I believe that open criticism of any institution is necessary in a democracy, to safeguard the constitutional order. We are living through that moment in our history when higher principles must trump routine obligations, when saving the constitutional order must come before personal and professional niceties, when considerations of the present must not come in the way of discharging our responsibility towards the future.

Failing to speak up would have been a dereliction of duty, especially for an officer of the court like myself.

My tweets were nothing but a small attempt to discharge what I considered to be my highest duty at this juncture in the history of our republic. I did not tweet in a fit of absence mindedness. It would be insincere and contemptuous on my part to offer an apology for the tweets that expressed what was and continues to be my bonafide belief.

Therefore, I can only humbly paraphrase what the father of the nation Mahatma

Gandhi had said in his trial: I do not ask for mercy. I do not appeal to magnanimity. I am here, therefore, to cheerfully submit to any penalty that can lawfully be inflicted upon me for what the Court has determined to be an offence, and what appears to me to be the highest duty of a citizen."

The contempt of court case against Bhushan was initiated by the Supreme Court for his tweets in June criticising the top court and Chief Justice of India SA Bobde. Bhushan was convicted by the Court on August 14, 2020 and was sentenced to a token fine of Re. 1 on August 31, 2020.

b) Arundhati Roy vs Unknown on 6 March, 2002 [31]

The Supreme Court of India found the Respondent guilty of contempt and sentenced her to one day's 'symbolic' imprisonment and a fine. In response to the Court's earlier decision on developing a dam, Arundhati Roy criticized the Court for muzzling dissent and subsequently staged a protest in front of the Court. This led to Suo moto contempt proceedings initiated against her. The Court reasoned that freedom of speech and expression is not absolute but subject to restrictions prescribed by law, such as the Contempt of Courts Act which aims to maintain confidence in and uphold the integrity of the judiciary. Further, the Court found that the Roy's statements were not made in good faith and in the public interest and therefore could not be considered fair judicial criticism.

Facts

This case concerns a Suo-moto contempt petition (that is, a petition initiated by the Court on its own motion) against the Respondent, Arundhati Roy, a Booker-prize winning author.

During the course of a writ petition by grassroots-movement Narmada Bachao Andolan, the Court addressed issues of environmental damage and displacement of marginalized communities due to the development of a reservoir dam on the river Narmada. Following a

[31] AIR 2002 SC 1375, 2002

Supreme Court order that allowed for the height of the dam to be increased, the Respondent wrote an article criticizing this decision. Subsequently, protests were staged in front of the gates of the Supreme Court by Narmada BachaoAndolan and the Respondent. This led to contempt proceedings based on a complaint lodged with the police. During the proceedings, all Respondents denied the allegations concerning specific slogans and banners and the proceedings were dropped. However, along with her denial, Roy's response to the show cause notice criticized the Court for issuing proceedings in the first place. She stated that: "On the grounds that judges of the Supreme Court were too busy, the Chief Justice of India refused to allow a sitting judge to head the judicial enquiry into the Tehelka scandal, even though it involves matters of national security and corruption in the highest places. Yet when it comes to an absurd, despicable, entirely unsubstantiated petition in which all the three respondents happen to be people who have publicly questioned the policies of the government and severely criticized a recent judgment of the Supreme Court, the Court displays a disturbing willingness to issue notice. It indicates a disquieting inclination on the part of the court to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it. By entertaining a petition based on an FIR [First Information Report] that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm."

On the basis of the above averments, suo moto contempt proceedings were initiated against the Respondent for imputing motives to the Court. In her reply affidavit to the contempt notice, the author reiterated her stance and stressed her continuous dissent against the decision of the Supreme Court. She further noted that she believed this to be a matter of her right to express her opinions as a citizen as well as a writer.

Sethi, J. delivered the Court's judgment

The Court firstly stated that freedoms of speech and expression guaranteed by the Constitution are subject to reasonable restrictions imposed by law, one of these being the Contempt of

Courts Act which, amongst other objectives, is directed at maintaining the dignity and the integrity of the courts and the judiciary.

It dismissed as irrelevant the Respondent's argument that the issue of whether truth could be pleaded as a defense to contempt proceedings had to be determined. "Contempt proceedings have been initiated against therespondent on the basis of the offending and contemptuous part of the reply affidavit making wild allegations against the court and thereby scandalised its authority. There is no point or fact in those proceedings which requires to bedefended by pleading the truth", it said.

The Court went on to say that the affidavit as a whole was not being considered for contempt but that part which made allegations questioning the integrity of the Court. It stated that the purpose of contempt proceedings was not to preserve an individual judge's reputation but to maintain public confidence in the judicial system. Judicial criticism must not be based on a gross misstatement and must not be directed at lowering the reputation of the judiciary. In order to be considered fair criticism, the Court said that the statement "must be made in good faith and in the public interest, which is to be gauged by the surrounding circumstances including the person responsible for the comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved." The Court considered that the Respondent's statement was not based on any understanding of the law or the judicial system. It said that her statements alleging the judiciary's willingness to issue notice on "an absurd, despicable, entirely unsubstantiated petition" whilst exhibiting a lack of willingness to entertain a case concerning "national security and corruption in the highest places" and its intention to silence criticism along with her lack of remorse, made it difficult "to shrug off or to hold the [unsubstantiated] accusations made as comments of [an] outspoken ordinary man".

Accordingly, the Court found the Respondent guilty of criminal contempt and sentenced her to "symbolic" imprisonment of one day and imposed a fine of Rs. 2000 with the proviso that if she failed to pay the fine she would be imprisoned for three months

4) In Vijay Kurle, 2020 (SCC Online SC 711)

Supreme Court: In the case where the Supreme Court Registry refused to register the application seeking recall of the order dated 04.05.2020 by which the Court sentenced advocates Vijay Kurle, Nilesh Ojha and Rashid Khan Pathan to undergo simple imprisonment for a period of 3 months each with a fine of Rs. 2000/-, the bench of L. Nageswara Rao and Aniruddha Bose, JJ dismissed the appeal and imposed an exemplary cost of Rs. 25, 000 on advocate Rashid Khan. While doing so the Court said, "If the Appellant continues to file such repetitive applications in this litigation which are not maintainable, he will be visited with deterrent actions referred above such as initiation of criminal contempt proceedings or a direction to the Registry that no further applications in this litigation will be received."

The bench of Deepak Gupta and Aniruddha Bose, JJ had on, 27.04.2020, found the 3 advocates guilty of contempt of court in the light of scandalous allegations levelled by them against Justice RF Nariman and Justice Vineet Saran.

"In a country governed by the rule of law, finality of the judgment is absolutely imperative and great sanctity is attached to the finality of the judgment. Permitting the parties to reopen the concluded judgments of this Court by filing repeated interlocutory applications is clearly an abuse of the process of law and would have far-reaching adverse impact on the administration of justice."

It is worth noting that earlier an application was filed by the contemnors seeking recall of the judgment dated 27.04.2020. This Court was, however, of the opinion that the recall applications were not maintainable and the only proper remedy available to the contemnors is to file a Review Petition.

Hence, calling the present application an abuse of process of court, the bench said,

"The application for recall of an order by which an earlier application for recall of the judgment was dismissed is not maintainable. The only remedy open to the Appellant was to have filed a Review Petition as suggested by this Court in the order dated 04.05.2020."

The Court held that the order dated 04.05.2020 neither suffered from the vice of lack of jurisdiction nor did it violate the principles of natural justice.

“A perusal of the order dated 04.05.2020 discloses that the Appellant and the other contemnors were heard before the applications were dismissed. Therefore, the contention of the Appellant is without any substance.”

Background of the Contempt proceedings-

The basis of the contempt proceedings was two letters dated 20.03.2019 and 19.03.2019 received by Chief Justice of India Ranjan Gogoi and other judges of the Court, admittedly signed by Vijay Kurle (State President of Maharashtra and Goa of the Indian Bar Association) and Rashid Khan Pathan (National Secretary of the Human Right Security Council) respectively. The Court had already discharged Mathews Nedumpara last year in September, after he denied any role in sending those complaints.

It is pertinent to note that the bench of RF Nariman and Vineet Saran, JJ had barred Nedumpara from practicing as an advocate in the Supreme Court for one year, after he had argued before the Court during a proceeding:

“Judges of the Court are wholly unfit to designate persons as Senior Advocates, as they only designate Judges’ relatives as Senior Advocates.”

He was referring to the judgment where with the intent to make the exercise of senior designation more objective, fair and transparent so as to give full effect to consideration of merit and ability, standing at the bar and specialized knowledge or exposure in any field of law, the 3-judge bench of Ranjan Gogoi, RF Nariman and Navin Sinha, JJ laid down elaborate guidelines for the system of designation of Senior Advocates in the Supreme Court as well as all the High Courts of India.

He also took the name of Senior Advocate Fali S. Nariman. When cautioned by the Court, he took his name again. Thereafter, on being questioned by the Court as to what the relevance of taking the name of Fali S. Nariman was, he promptly denied having done so.

In its order dated 27.04.2020, the Court found all 3 advocates guilty of contempt and said,

“When we read both the complaints together it is obvious that the alleged contemnors are fighting a proxy battle for Shri Nedumpara. They are raking up certain issues which could have been raised only by Shri Nedumpara and not by the alleged contemnors.”

On 04.05.2020, the Court sentenced all 3 to undergo simple imprisonment for a period of 3 months each with a fine of Rs. 2000/-. It further said that in default of payment of fine, each of the defaulting contemnors shall undergo further simple imprisonment for a period of 15 days.

All 3 of the advocates were not willing to argue on sentence on the ground that according to them the judgment was per incuriam and they had a right to challenge the same. The Court, hence, noticed that there was not an iota of remorse or any semblance of apology on behalf of the contemnors.

3.4) SEDITION UNDER CONSTITUTION OF INDIA: -

The right to freedom of speech and expression is an implicit part of any democratic nation; to curb this right is to curb free will and liberty of thought. If one cannot voice his or her opinion freely then it invalidates the point of having an opinion. In the past, the successive governments have often been alleged to have used certain laws as their weapon of choice to suppress this very free speech that forms the basic foundation of democracy.

One such law is the sedition law, which in our legal system, is embodied under section 124A of the Indian Penal Code (IPC). It states that:

"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." [32]

Sedition, therefore, in simplified terms, is an act by any person or entity who seeks to incite "disaffection" against the State of India. Such a person will be subjected to the due process of law which may extend up to life imprisonment.

[32] AIR 2002 SC 1375, 2002

Charges under this provision of law will naturally be brought against speech or writing that happen to incite acts of a seditious nature and therefore constitute a limitation on the fundamental right of freedom of speech and expression provided for under Article 19 of the Constitution. As with any limitation on a fundamental right, the concept of imprisonment or even chastisement for seditious behavior has its detractors who believe that in a proper Democracy, seditious behavior is also covered under and protected by the freedom of speech and expression. Such an idea is in direct conflict of traditional notions of nationalism and patriotism while others claim that India is not a nation so weak as to be in any actual danger by mere seditious words and ideas. However, the debate on sedition is not limited only to India and has a long jurisprudential history in almost every country in the world. To offer some perspective on the situation in India, it is imperative to compare and contrast the history and future of sedition in India and other countries across the world.

It is pertinent to understand the very ideology of the section 124A of Indian Penal Code, 1860. The ideology of this provision can be understood by understanding the explanation 1 of this provision. It is pertinent to produce the explanation 1which is provided as under:

“Explanation 1.the expression disaffection includes disloyalty and all feelings of enmity.”

Here the point of issue is the word disloyalty. In a democracy is there a need to be loyal towards the elected government. What is the scope of loyalty? Honest criticism is also included in disloyalty? These are a few questions that need to be answered or given a thought to understand the ideology behind the creation of the law of sedition of the draftsman of this section. It is important to know and understand the meaning or the scope of the term sedition.

The scope of sedition laws can be traced from the common law. In R. v. Burns , it was observed that:

“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 endeavor to subvert the Government and the laws of the Empire. The objects of Sedition generally are to induce discontent and insurrection, and stir up opposition

to the Government ... and the very tendency of sedition is to incite the people to insurrection or rebellion"

The same view of the English Court was reiterated by the Supreme Court of India in Nazir Khan v. State of Delhi, 2003.

It was further stated by the Apex Court that:

"Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder."

ARTICLE 19(1) (2) OF THE CONSTITUTION OF INDIA:

Only Article 19(1) (a) of the Constitution is restricting a person by doing such Act which is against the integrity and sovereignty of the India. This ground was also added subsequently by the Constitution 16 th amendment Act 1963. The main object behind this is to prohibit anyone from making the statements that challenge the integrity and sovereignty of India. Reasonable restrictions can be imposed on the freedom of speech and expression, in the interest of the Security of the State. All the utterance intended to endanger the Security of the State by crimes of violence intended to overthrow the Government, waging war and rebellion against the Government, external aggression or war etc, may be restrained in the interest of the Security of the state.[33]

The problems related to meaning and scope of the Section 124-A of the Indian Penal Code is the question of vires which arises because of the guarantee of freedom of speech in the Constitution of India and the Power of the Courts under the Constitution to Act as the guarantors and protectors of Liberties. Article 19(1) (a) says that all citizens shall have the Right to freedom of speech and expression. But this Right is subject to limitation imposed under Article 19(2) which empowers the State to put 'Reasonable' restriction on the following grounds, like Security of the State, friendly relations with the foreign States, public order, decency and morality. Contempt of Court, Defamation, Incitement to Offence and Integrity and Sovereignty of India. The limits set out the freedom of speech and expression by Article 19(2) as originally enacted came to be considered by the Supreme Court in few cases. 68 Referring to the limits set out by Article 19(2) to permissible legislative abridgement of the

[33] State of Bihar v. Shailabala Devi A.I.R 1952 SC 329

Right of free speech and expression the Court held that they were very narrow and stringent. Freedom of Speech and expression means the Right to express one's own conviction and opinions freely by words of mouth, writing, Printing, Pictures or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, signs and the like.The expression connotes also publication and thus the freedom of the Press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. The freedom of propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication, indeed, without circulation the publication would be little value. Freedom of expression has four broad special purposes to serve:

(1) It helps an individual to attain self-fulfilment;

(2) It assist in the discovery of truth;

(3) It strengthens the capacity of an individual in participating in decision making;

(4) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others.

- **Tara Singh v. The State** [34]

The validity of Section 124-A of the Indian Penal Code was directly in issue. The east Punjab High Court declared the Section volative as it curtailed the freedom of speech and expression in a manner not permitted by the Constitution. The Court was of the opinion that Section 124-A had no place in the new democratic set up. India is now a Sovereign Democratic State. Governments May go and be Caused to go Without the Foundation of the State Being Impaired. A Law of Sedition Though Necessary During a Period of Foreign Rule has Become Inappropriate by the Very Nature of the Change which has come about.

By the Constitution 1 st amendment Act 1951 two changes consequence were introduced in the provision relating to freedom of speech and expression.

(1) It considerably widened the latitude for legislative restriction on free speech by adding further grounds therefore,

(2) It provided that the restriction imposed on the freedom of speech must be reasonable

34 Tara Singh Gopi chand v. State A.I.R 1951 E.P.27

3.5) Legislation revolving around Sedition :-

Sedition in India is considered as an offence even after the Constitutional provisions guaranteeing freedom of speech and expression. This law was brought in colonial India by British to curb those activities of the Indian population that could criticise the misgovernance by the Crown. One of the dominant purposes of section 124A of IPC was to strengthen colonial rule and to suppress the voice of Indian people. However, in contemporary India, while determining the fate of a citizen in terms of freedom of speech, the offence of sedition and other related offences play a crucial role. The balance between the fundamental right to speech and expression, and the offence of sedition can be contemporarily observed to incline towards the latter, and consequently, a significant dilution of the right to free speech and expression is observed. Such dominance by state in the arbitrary use of section 124A of IPC against the citizenry is gradually leading to a defeat of the idea of the constitutional framers.

3.5.1) OPPOSITION IN THE CONSTITUENT ASSEMBLY

At the time of the Indian movement for independence from British rule, the law of sedition was applied against great nationalists, such as Annie Besant, Bal Gangadhar Tilak and Mahatma Gandhi, as a tool to curb dissent. Keeping such excesses in mind, the Freedom of Speech and Expression was originally encompassed in Article 13 of the Draft Constitution. In its original form, this provision guaranteed this right subject to restrictions imposed by Federal Law to protect aboriginal tribes and backward classes and to preserve public safety and peace. [35]

A proposal for an amendment to this provision was moved in the Constituent Assembly to permit the imposition of limitations on this right on the grounds of "libel, slander, defamation, offences against decency or morality or sedition or other matters which undermine the security of the State**."**

[35] Constitutional Assembly Debates, December 7, 1948, speech by Damodar Swarup Seth 17available at http://164.100.47.132/LssNew/constituent/vol7p21.pdf.

[36] The most vocal opposition to such an inclusion came from the renowned activist and lawyer Dr. K.M. Munshi. To support his position, Dr. Munshi cited the wide divergence in the judicial interpretation of the term 'sedition'. Further, he believed that public opinion with respect to sedition had evolved over the years, and taking cognizance of the changing nature of public opinion, a line needed to be drawn between constructive criticism of the Government which was crucial to address the grievances of the people, and an incitement to violence which would undermine security and disrupt public law and order).

However, in light of the biased nature of judicial pronouncements pertaining to cases of sedition in India, along with a precipitous rise in the abuse of sedition law to incarcerate nationalists, the final drafters of the Constitution felt the need to exclude sedition from the exceptions to the right to freedom of speech and expression. A prominent objection to the inclusion of sedition as an exception to the freedom of speech and expression was raised by Sardar Hukum Singh, who noted that in the United States of America, any law that limited a fundamental right is mandatorily subjected to judicial scrutiny and must be deemed constitutional. However, by granting a blanket protection to any sedition law that the Parliament may legislate upon, the courts in India would be incapacitated from striking down an errant law for violating the right to the freedom of speech and expression. He also criticised the validation of laws on the ground that they were "in the interest of public order" or undermined the "authority or foundation of the state" as classifications that were too vague.[37]

There was a clear consensus among the members of the Constituent Assembly on the oppressive nature of sedition laws. They expressed their reluctance to include it as a ground for the restriction of the freedom of speech andexpression. The term 'sedition' was thus dropped from the suggested amendment to Article 13 of the Draft Constitution

Whenever it comes to defining the freedom of speech in India, or striking a balance between restrictions and rights, constituent assembly debates are the best resort. Such an approach is also called "originalist approach". This is simply because the founding fathers of the Constitution, with utmost deliberation have manifested the framework of rights of citizenry and the state. This manifestation is always relevant, as it reflects the intention of the framers of

[36] Soli J. Sorabjee, Confusion about Sedition, August 12, 2012, available at http://www.indianexpress.com/news/confusion-about-sedition/987140 See also Soli J Sorabjee, Aseem Trivedi's cartoons don't constitute sedition, September 15, 2012, available at http://newindianexpress.com/opinion/article607411.ece 2014

37 Constitutional Assembly Debates, December 7, 1948, speech by S.H. Singh 16 available at http://164.100.47.132/LssNew/constituent/vol7p21.pdf

the Constitution while conferring these rights to state and citizenry. Further, these debates assist in drawing logical justifications of any power conferred upon citizens or state.

As far as the freedom of speech and expression in the Indian Constitution is concerned, charting out the logic behind the conferred powers and restrictions becomes equally pertinent, to ascertain the scope of curtailment of these rights by the state.

In India, article 19(1) (a) confers the freedom of speech and expression to the citizens, and clause 2 of the same deals with reasonable restrictions to be imposed on such a right. The grounds of reasonable restrictions on such freedom are sovereignty and integrity of India, security of state, friendly relation with foreign states, public order, or decency or morality or in relation to contempt of court, defamation or incitement of offence.

However, it is crucially important to note that sedition was one of the grounds in the earlier version of the article. Before beginning of debate in relation to the restrictions, the draft in relation to the restrictions read as the following:

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State."

On December 1, 1948, Shri Damodar S. Seth[38] mentioned that if sedition is provided as a ground to curb free speech and expression, then all the regressive Acts such as the Official Secrets Act, 1923 will remain intact. He further says that the freedom of speech and expression, which includes the freedom of press, will become virtually ineffective if sedition is mentioned as a ground for restriction of freedom of speech and expression.

[38] Constituent Assembly Debates on Dec. 1, 1948 *availableat:*https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-01

Further, Shree K.M. Munshi referred many incidents where mere criticism of government, or holding an ill-will against the government was termed as sedition. He went on to say that in a democracy, such terms are unwelcome, as criticism of government forms the foundation of a democratic setup of State.

3.5.2) Legislations Criminalising Sedition in India

The primary legislation criminalising sedition in India is the Indian Penal Code, 1860. Section 124A of the Code defines sedition, and mentions the punishment associated with the same. The core elements of sedition are bringing or attempting to bring contempt, hatred or disaffection towards the government. Further, the explanations to the section clarify that mere disapprobation of measures or actions of government, intended to bring a constructive change by lawful means, without arising feelings of hatred, contempt or dissatisfaction does not amount to sedition. Following is the language of the section: 9 of The Indian Penal Code, 1860 (Act 45 of 1860), s. 124A.

"Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

Further, section 95 of the Code of Criminal Procedure, 1974 empowers the government to forfeit any publication if it is found to be inappropriate. The grounds of forfeiture have been

explicated further, where sedition, as described in section 124A is the first ground of such forfeiture. Following is the language of the relevant part of the section:

"Where-
(1) any newspaper, or book, or

(2)any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A of the Indian Penal Code (45 of 1860), 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 found in India and any Magistrate may by warrant authorise 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 such book or other document may be or may be reasonably suspected to be.

"

- **SECTION 66A OF THE INFORMATION TECHONOLOGY ACT 2000:**

The Information Technology Act came into force in 2000, but Section 66A was added as an amendment in 2008, which was notified in February 2009. Section 66A deals with "Computer related offences", and outlines Punishment of imprisonment up to three years, a fine up to Rs 5 lakh or both. The Purpose of Section 66A, according to the annotations of the Law reads," Punishments for sending offensive Messages through Communication service etc. According to Section 66A reads:

Any person who sends by means of a Computer resource or a communication device-

- (a) Any information that is grossly offensive or has menacing character; or
- (b) Any information which he knows to be false but for the purpose of causing annoyance, Inconvenience, Danger, obstruction, Insult, Injury, Criminal intimidation,

enmity, hatred, or ill-will, Persistently makes by making use of such computer resource or a communication device,

- (c) Any Electronic Mail or Electronic Mail Message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such message shall be punishable with imprisonment for a term which may extend to two three years and with fine.

For the purpose of this Section terms " Electronic Mail" and "Electronic Mail Message" means a Message or information created or transmitted or received on a Computer, Computer system, Computer resource or Communication device including attachments in text, images audio, video and any other electronic record which may be transmitted with the Message."

- **ABOLITION OF SECTION 66A OF I.T ACT:**

The Supreme Court struck down Section 66A of the IT Act, calling it unconstitutional. It also modified another Section which deals with the liability of intermediaries such as Google, face book and twitter but upheld the Government Right to block content. The judges said that the Section suffered from the vice of vagueness and was overbroad meaning "virtually any opinion on any subject would be covered by it."

- **KEDAR NATH AND THE MODERN DEFINITION OF SEDITION**

As stated earlier, the decision of the Supreme Court in Kedar Nath laid down the interpretation of the law of sedition as it is understood today. In this decision, five appeals to the Apex Court were clubbed together to decide the issue of the constitutionality of Section124A of the IPC in light of Article 19(1)(a) of the Constitution. In the Court's interpretation the incitement to violence was considered an essential ingredient of the offence of sedition. Here, the court followed the interpretation given by the Federal Court in Niharendu Majumdar. Thus, the crime of sedition was established as a crime against public tranquillity as opposed to a political crime affecting the very basis of the State. The Court looked at the pre-legislative history and the opposition in the Constituent Assembly debates around Article 19 of the Constitution. Here, it noted that sedition had specifically been excluded as a valid ground to limit the freedom of speech and expression even though it was included in the draft Constitution**,** [39]

"Deletion of the word 'sedition' from draft Art. 13(2), therefore, 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 of expression and of the press, unless it is such as to undermine the security or tend to over-throw the State." Further, the court also observed that the Irish formula of "undermining the public order or the authority of the State" as a standard to impose limits on the freedom of speech and expression had not found favour with the drafters of the Constitution

This was indicative of a legislative intent that sedition not be considered a valid exception to this freedom.

As a consequence, sedition could only fall within the purview of constitutional validity if it could be read into any of the six grounds listed in Article 19(2) of the Constitution Out of the six grounds in Article 19(2), the Court considered the 'security of the state' as a possible ground to support the constitutionality of Section 124A of the IPC.77 The Court made use of the principle that when more than one interpretation may be given to a legal provision, it must uphold that interpretation which makes the provision constitutional. [40]

Any interpretation that makes a provision ultra vires the Constitution must be rejected. Thus, even though a plain reading of the section does not suggest such a requirement, it was held to be mandatory that any seditious act must be ac-companied by an attempt to incite violence and disorder. However, the fact that the aforementioned Irish formula of "undermining the public order or the authority of the State" that been rejected by the members of the Constituent Assembly was ignored by the Court. This was despite making a reference to this fact earlier in the judgment. The reasoning of the Court was that since sedition laws would be used to maintain public order, and the maintenance of public order would in turn be in the interests of the security of the state, these laws could be justified in the interests of the latter.

[39] Kedar Nath v. State of Bihar, AIR 1962 SC 955
[40] R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628

3.6) Case Laws Relating to Sedition Laws

(A) Shreya Singhal v. Union of India

Shreya Singhal v. Union of India (AIR 2015 Supreme Court 1523) was decided by a bench featuring Justice Rohinton Nariman and Justice Jasti Chelameshwar. A statute suffers from the "vice of vagueness" when its terms are so imprecise and ill-defined, that people of ordinary intelligence have no way of telling what it permits and what it proscribes. As a Constitutional concept, vagueness was incorporated into Indian jurisprudence in Baldeo Prasad, K.A Abbas, and Kartar Singh all three judgments were cited by the Court. The strongest precedent was Baldeo Prasad, where a Law criminalised "Goondas", but failed to define who a "Goonda" was. On this basis, it was struck down.

Vague statutes not only offend the rule of Law by allowing citizens no opportunity to plan their affairs, but they also – invariably – end up delegating far too much Power to administrative officials responsible for their implementation. With numerous cases of abuse reported over the years, this was specifically seen in the context of Section 66A. What is important to note, however, is that unlike in K.A. Abbas, where the Court cited vagueness but ultimately upheld the statute, here the Court actually invalidated a speech-restricting Law on the grounds of vagueness? This makes yesterday's judgment a crucial precedent, going forward.

B) ASEEM TRIVEDI: CASE ON SEDITION

The arrest of cartoonist Aseem Trivedi has generated a lot of debate on the Sedition Law in India and whether it is repugnant to the fundamental right of freedom of speech and expression guaranteed by the Constitution of India in the Sanskar Marathe v. The State of Maharashtra, 2015. In Aseem Trivedi case, it was being used to punish cartoon deemed insulting to the nation, including one that replaces the four lions of the Indian emblem with bloody hungry wolves and inscription "Satyamev Jayate" which mean truth always prevail with 'Bhrasht mev

jayate' (which mean corruption alone prevails). Mr. Aseem Trivedi has also been accused of insulting national emblems and violating India's information technology Law. Aseem Trivedi cites named 'cartoonaganistcorruption.com' for displaying objectionable pictures and texts related to flag and emblem of India. Hence the Government suspended the domain name and its associated services'. One cartoon depicts the Indian parliament building as a toilet. At the right end of the cartoon, a little above the halfway line, there is a roller with toilet paper. To the left there is a pink flush, attached to a commode below with three files hovering over it. The commode looks like the Indian parliament. 'National toilet', says cartoon title, with this line beneath the sketch 'Isme Istamal hone wala toilet paper ko ballot paper Bhi Kehte Hain.

One carton depicts the Indian parliament building as an India' wearing a tri colour sari, about to be raped by a Character Labelled 'corruption'. The title of the cartoon is 'gang rape of mother India.' Another cartoon shows politics and corruption in a sexual position to expose their immoral relationship. The line beneath the cartoon reads, "the immoral relationships are always harmful for a house hold.'

The petitioner alleged that Assem Trivedi refused to make an application for bail till the charges of sedition were dropped. Contending that publication and/or posting such political cartoons on website can by no stretch of imagination attract a serious charge of sedition and that Assem Trivedi was languishing in jail on account of the charge of sedition being included in the FIR, the petitioner, a practicing advocate in this Court, moved the present PIL on 11 2 / 21 Cri.PIL 3-2015 September 2012. The matter was mentioned for circulation and this Court passed the following ad-interim order:

" In the facts and circumstances of the case, by this ad-interim order we direct that Mr.Assem Trivedi be released on bail on executing a personal bond in the sum of Rs.5,000/-.

c) Kanhaiya Kumar v. State of NCT Delhi, 2016(W.P (CRL 558/2016))

On 12 February 2016, two policemen in plain clothes arrested the president of the student union of the Jawaharlal Nehru University (JNU), Kanhaiya Kumar. On 9 February, students from JNU had allegedly shouted slogans at an event marking the death anniversary of Mohammad Afzal, who was convicted in the 2001 terror attack on the parliament. On Tuesday, 23 February, Umar Khalid and Anirban Bhattacharya, two of the alleged organisers of the event, surrendered themselves to police custody following an eleven-day-long manhunt. Kumar, Khalid and Bhattacharya have been charged under the Indian Penal Code (IPC) Section 120B, which deals with criminal conspiracy against the state, and 124A, which contentiously attends to sedition.

Though few have ever been convicted by the Supreme Court for sedition, many have been booked under Section 124A. Most recently, before Kumar, Khalid and Bhattacharya, section 124A was invoked against Hardik Patel from Gujarat, who has been asking for reservations for the Patidar community. Sedition in India is a cognizable (not requiring a warrant for an arrest), non-compoundable (not allowing a compromise between the accused and the victim), and non-bailable offence. The penalty can range from a fine to three years or life imprisonment. But these penalties would be awarded after the judgement, which can take a long while to come. Meanwhile, a person charged with sedition must live without their passport, barred from government jobs, and must produce themselves in the court on a loop. All this, while bearing the legal fee. The charges have rarely stuck in most of the cases, but the process itself becomes the punishment.

After careful perusal of the chargesheet and consideration of the material, all the accused persons are summoned to face trial and they have been summoned to investigating officer for March 15-2021.

CHAPTER-4

INTERNATIONAL FRAMEWORK: -

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles). The Article 19 of UDHR proclaims ‘’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.’’

4.1 UNHRC resolution highlighting online freedom of expression and noting UNESCO internet Universality Indicator Framework:-

On 4 July 2018, the UN Human Rights Council adopts a new Resolution on the promotion, protection and enjoyment of human rights on the Internet, which highlights online freedom of expression and privacy and recognizes UNESCO’s ongoing process of developing Internet Universality indicators, which contributes to advancing online human rights and achieving Sustainable Development Goals.

The Resolution re-affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, and highlights privacy online is important for the realization of the right to freedom of expression and other rights. The Resolution emphasizes protecting safety of journalists in the digital age and condemns online attacks against women,

including sexual and gender-based violence and abuse of women, including women journalists and media workers, in violation of their rights to privacy and to freedom of expression.

UNESCO echoes with the Resolution particularly in its stressing the importance of applying a human rights-based approach when providing and expanding access to the Internet, and of the Internet being open, accessible and nurtured by multi-stakeholder participation.

- **ARTICLE 19** welcome the adoption of a resolution on "freedom of opinion and expression" at the UN Human Rights Council.[1] The resolution – led by Brazil, Canada, Fiji, Namibia, Netherlands and Sweden, and co-sponsored by over 50 countries from all regions – was adopted by consensus at the Council on 16 June 2020. This is a particularly welcome development given the long hiatus since the previous iteration of this resolution, with the last substantive text on this topic adopted over a decade ago in 2009.

The resolution reaffirms that the right to freedom of expression constitutes one of the essential foundations of democratic societies and development, and recognises that it is an important indicator of the level of protection of other human rights and freedoms. It moreover reaffirms that the same right to freedom of expression that people have offline must also be protected online. The resolution contains positive language on specific issues related to the right to freedom of expression, including on the right to information, internet shutdowns, responses to misinformation, counter-terrorism and violent extremism, encryption and anonymity tools, and safety of journalists.

- **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."

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 in 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 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 in 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."

4.2) Position in United States of America

4.2.1) Julian Assange's Case: -

Julian Paul Assange is an Australian editor, publisher, and activist who founded WikiLeaks in 2006. WikiLeaks published a series of leaks provided by U.S. Army intelligence analyst Chelsea Manning. These leaks included the Baghdad airstrike Collateral Murder video (April 2010), the Afghanistan war logs (July 2010), the Iraq war logs (October 2010), and Cablegate (November 2010). After the 2010 leaks, the United States government launched a criminal investigation into WikiLeaks.

- **Founding WikiLeaks and publications**

WikiLeaks published internet censorship lists, leaks, and classified media from anonymous sources, including revelations about drone strikes in Yemen, corruption across the Arab world, extrajudicial executions by Kenyan police, 2008 Tibetan unrest in China, and the "Petrogate" oil scandal in Peru.

WikiLeaks first came to international prominence in 2008, when 'most of the US fourth estate' filed an amicus curiae brief—through the organizational efforts of the Reporters Committee for Freedom of the Press (RCFP)—to defend Wikileaks against a DMCA request from the Swiss bank Julius Baer, which had initially been granted.

In September 2008, during the 2008 United States presidential election campaigns, the contents of a 'Yahoo!' account belonging to Sarah Palin (the running mate of Republican presidential nominee John McCain) were posted on WikiLeaks after being hacked into by members of Anonymous. After briefly appearing on a blog, the membership list of the far-right British National Party was posted to WikiLeaks on 18 November 2008.

In 2009, WikiLeaks released a report disclosing a "serious nuclear accident" at the Iranian Natanz nuclear facility. According to media reports, the accident may have been the direct result of a cyber-attack at Iran's nuclear program, carried out with the Stuxnet computer worm, a cyber-weapon built jointly by the United States and Israel.

In April 2010, Wikileaks released the Collateral Murder video, which showed United States soldiers fatally shooting 18 people from a helicopter in Iraq, including Reuters journalists Namir Noor-Eldeen and his assistant Saeed Chmagh. Reuters had previously made a request to the US government for the Collateral Murder video under Freedom of Information but had been denied. Assange and others worked for a week to break the U.S. military's encryption of the video.

In October 2010, Wikileaks published the Iraq War logs, a collection of 391,832 United States Army field reports from the Iraq War covering the period from 2004 to 2009.Assange said that he hoped the publication would "correct some of that attack on the truth that occurred before the war, during the war, and which has continued after the war". Regarding his own role within Wikileaks he said "We always expect tremendous criticism. It is my role to be the lightning rod … to attract the attacks against the organization for our work, and that is a difficult role. On the other hand. I get undue credit".

- **Criminal Investigation framed against Assange;-**

After WikiLeaks released the Manning material, United States authorities began investigating WikiLeaks and Assange personally to prosecute them under the Espionage Act of 1917. In November 2010, US Attorney-General Eric Holder said there was "an active, ongoing criminal investigation" into WikiLeaks. It emerged from legal documents leaked over the ensuing months that Assange and others were being investigated by a federal grand jury in Alexandria, Virginia.

In December 2011, prosecutors in the Chelsea Manning case revealed the existence of chat logs between Manning and an interlocutor they claimed to be Assange. Assange said that Wikileaks has no way of knowing the identity of its sources and that chats, including user-names, with sources were anonymous. In January 2011, Assange described the allegation that Wikileaks had conspired with Manning as "absolute nonsense". The logs were presented as evidence during Manning's court-martial in June–July 2013.The prosecution argued that they

showed WikiLeaks helping Manning reverse-engineer a password, but Manning said she acted alone.

In 2013, US officials said that it was unlikely that the Justice Department would indict Assange for publishing classified documents because it would also have to prosecute the news organisations and writers who published classified material.

Assange was being examined separately by "several government agencies" in addition to the grand jury, most notably the FBI. Court documents published in May 2014 suggest that Assange was under "active and ongoing" investigation at that time.

According to the newly unsealed indictment, Assange faces 17 new charges — including publishing classified information — under the Espionage Act, a law typically reserved for spies working against the U.S. or whistleblowers and leakers who worked for the U.S. intelligence community.

legal representative, wrote that "the Espionage Act effectively hinders a person from defending himself before a jury in an open court." said that the "arcane World War I law" was never meant to prosecute whistleblowers, but rather spies who betrayed their trust by selling secrets to enemies for profit. (improve)

4.2.2) Edward Snowden's Case:-

Edward Joseph Snowden (born June 21, 1983) is a former computer expert and former systems administrator, intelligence consultant who copied and leaked highly classified information from the National Security Agency (NSA) in 2013 when he was a Central Intelligence Agency (CIA) employee and subcontractor. Edward Snowden released confidential government documents to the press about the existence of government surveillance programs. According to many legal experts, and the U.S. government, his actions violated the Espionage Act of 1917, which identified the leak of state secrets as an act of treason. His disclosures revealed numerous global surveillance programs, many runs by the NSA and

the Five Eyes Intelligence Alliance with the cooperation of telecommunication companies and European governments, and prompted a cultural discussion about national security and individual privacy.

- **Criminal charges against Edward Snowden: -**

On June 14, 2013, United States federal prosecutors filed a criminal complaint against Snowden, charging him with three felonies: theft of government property and two counts of violating the Espionage Act of 1917 (18 U. S. C. Sect. 792 et. seq.; Publ. L. 65-24) through unauthorized communication of national defense information and wilful communication of classified communications intelligence information to an unauthorized person.

Specifically, the charges filed in the Criminal Complaint were:

- 18 U.S.C. 641 Theft of Government Property
- 18 U.S.C. 793(d) Unauthorized Communication of National Defense Information
- 18 U.S.C. 798(a)(3) Willful Communication of Classified Intelligence Information to an Unauthorized Person

Each of the three charges carries a maximum possible prison term of ten years. The criminal complaint was initially secret, but was unsealed a week later.

- **United States Obtains Final Judgment and Permanent Injunction Against Edward Snowden**

On Sept. 29, 2020, the U.S. District Court for the Eastern District of Virginia entered a final judgment and permanent injunction against Edward Snowden, a former employee of the Central Intelligence Agency (CIA) and contractor for the National Security Agency (NSA).

In September 2019, the United States filed a lawsuit against Snowden, who published a book entitled *Permanent Record* in violation of the non-disclosure agreements he signed with both CIA and NSA. The lawsuit alleged that Snowden published his book without submitting it to the agencies for pre-publication review, in violation of his express obligations under the

agreements he signed. Additionally, the lawsuit alleges that Snowden has given public speeches on intelligence-related matters, also in violation of his non-disclosure agreements.

The United States' lawsuit did not seek to stop or restrict the publication or distribution of *Permanent Record*. Rather, under well-established Supreme Court precedent, *Snepp v. United States,* the government sought to recover all proceeds earned by Snowden because of his failure to submit his publication for pre-publication review in violation of his alleged contractual and fiduciary obligations.

In December 2019, the U.S. District Court for the Eastern District of Virginia, found in favor of the United States in the suit against Snowden on the issue of liability and held that Snowden breached his contractual and fiduciary obligations to the CIA and NSA by publishing *Permanent Record* and giving prepared remarks within the scope of his pre-publication review obligations, but reserved judgment on the scope of these violations or the remedies due to the government. On Tuesday, the court entered judgment in the government's favor in an amount exceeding $5.2 million and imposed a constructive trust for the benefit of the United States over those sums and any further monies, royalties, or other financial advantages derived by Snowden from *Permanent Record* and 56 specific speeches.

"Edward Snowden violated his legal obligations to the United States, and therefore, his unlawful financial gains must be relinquished to the government," said Deputy Attorney General Jeffrey A. Rosen. "As this case demonstrates, the Department of Justice will not overlook the wrongful actions of those who seek to betray the trust reposed in them and to personally profit from their access to classified national security information."

"Intelligence information should protect our nation, not provide personal profit," said G. Zachary Terwilliger, U.S. Attorney for the Eastern District of Virginia. "This judgment will ensure that Edward Snowden receives no monetary benefits from breaching the trust placed in him."

"We will pursue those who take advantage of sensitive positions in government to profit from the classified information learned during their government service," said Jeffrey Bossert Clark, Acting Assistant Attorney General of the Civil Division.

This lawsuit is separate from the criminal charges brought against Snowden for his alleged disclosures of classified information. This lawsuit is a civil action, and based solely on

Snowden's failure to comply with the clear pre-publication review obligations included in his signed non-disclosure agreements.

This matter is being handled by the U.S. Attorney's Office for the Eastern District of Virginia and the Department of Justice's Civil Division.

4.3) **Fate of Sedition and contempt of court laws in the United Kingdom:-**

England, during the colonial rule in India, imposed many restrictions on the freedom of speech and expression, including restraints on publication, writings, acts, artistic works, literature and even education. There have been many restraints that were removed during the colonial rule itself, and further restrictions that were removed much later. However, the laws relating to sedition, even after much debate and deliberation still find room in the Indian civilization, regardless of them being abolished in the UK in the year 2009, which is the source of such a legacy.

In the UK, there were majorly two ways to restrict freedom of speech and expression. First one was treason, second being seditious libel. These were in addition to *Scandalum Magnatum* of 1275, which covered all the offences against the authority of government or that of the crown. The treason act was in acted in 1351, this statute in life is all the offences directed against the authority of the king. Even prediction of the death of the king was considered an offence [41]

However, the legislations criminalising sedition in the United Kingdom continued to be in place in some form or another. The Law Commission of England proposed repeal of sedition law in 1977. After 32 years of the recommendations, the Coroners and Justice Act, 2009 abolished sedition as an offence. The Act removed sedition and seditious libel as crimes. Presently, the UK has no law which declares sedition or seditious libels as crimes. However, in order to prevent the state from any terrorist activity, the United Kingdom Terrorism Act, 2000 has provided for stringent penal laws in relation to possession of any document or material

[41] (John Barrell, Imagining the King's Death: Figurative Treason, Fantasies of Regicide 754 (Oxford University Press, Oxford, United Kingdom, 2000)

directed against the security of the state. Further, the Act restricts accessing any information that could prove to be in violation of the state security. [42]

In regard to abolishing the archaic offence, the Parliamentary Under Secretary of State at the Ministry of Justice, Claire Ward was quoted [43]

"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... 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... Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech."

During debates on the Coroners Act in the House of Lords, Lord Lester of Herne Hill noted that the common law of sedition had rarely been used in England over the course of the past century. Interestingly, the last major case in England where there was an attempt to try an individual for sedition involved the publication of Salman Rushdie's book, *The Satantic Verses* (R v. Chief Metropolitan Stipendiary (Ex Parte Choudhury), [1991] 1 QB 429). This book was alleged to be a "scurrilous attack on the Muslim religion" and resulted in violence in the U.K., as well as a severance of diplomatic relations between the U.K. and Iran. An individual attempted to obtain a summons against Mr. Rushdie and his publisher, alleging that both parties had committed the offense of seditious libel. Ultimately, the application for the summons failed after the judges found that there was not a seditious intent by either of the parties against any of the UK's democratic institutions.

It is unlikely that this offense will be missed, and hopefully now they are off the books it will help to open the door for other common law countries that retain it to move forwards and abolish the offence too

[42] The U.K. Terrorism Act, 2000, s. 56,57,58.

[43] Clare Feikert Ahalt, "Sedition in England: The Abolition of a Law From a Bygone Era", Library of Congress, October 2, 2012, *available at* https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from- a-bygone-era/ (last visited on May 20, 2020)

CHAPTER 5
CONCLUSION AND SUGGESTIONS

CONCLUSION

The historical roots of Contempt of court and sedition laws are originated and developed during the colonial Era. The main objective for the legislations of these laws were to suppress freedom of speech, stampede fight for freedom in British Rule Territories and administration of public at large via judiciary. On its face, the Sedition Law of general application the Government has been applying the Law in an arbitrary manner, in bad faith and for an improper purpose to prevent political opposition. It cannot be said that the Sedition Act is prescribed by Law or that persons charged with Sedition are being deprived of their liberty of the person in accordance with Law. The effect of restriction- the stifling of all political speech- is disproportionate to the aim of protection of the National Security.

These laws has been included and been followed in Indian legislation after the independence with absolute impunity. The Indian Constituent assembly debates represented an extensive look in coming times when it came to misuse of Contempt of Court and Sedition Laws. On 1 December 1948, Congress leader and educationist K.M. Munshi, a key voice in the Constituent Assembly, said that there should be no room for 'sedition' in independent India. He argued: "Now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore, the word 'sedition' has been omitted. As a matter of fact, the essence of democracy is criticism of Government."

The origin of these laws could be traced back to British, with the evolution and change in laws over the period of time. The contempt of court and sedition laws has become void with adoption of Crime and courts act 2013 and coroners and justice act 2009 respectively.

English laws were established as it is in India where at one hand these laws are repealed in English countries but In India it's still fighting with evolution instead of shutting down this law.

Moreover, the leader of Modern democracy i.e, USA has not been different in pursuing to muzzle and suppress freedom of speech and expression in 21st Century. The legal proceedings initiated to hunt down Julian Assange and Edward Snowden under The Espionage Act 1917, has been the most significant case laws which represents the misuse of legislations to dilute and hamper freedom of speech and expression.

A democracy is defined by its ability to evolve with the times and exist as a dynamic reflection of global humanitarian concerns. As the law exists now, anybody who speaks up against the State can be charged with sedition. Arundhati Roy has been charged for sedition for making speeches that have caused absolutely no violence. Political cartoonist Aseem Trivedi was arrested on sedition charges for a cartoon that once again has had no violence attributed to it.93India cannot afford to be labeled as a regressive country and its actions towards its citizens of late have been criticized across the world. By taking the right approach towards sedition laws, India can bring about a change in public perception of itself. The solution is simple; existing laws need to be reworked to be narrower in what they consider a crime while a committee should be set up to consider the path to total abolishment. Change is slow even in a modern democracy like India, but change is inevitable and we need to gear up for the future.

SUGGESTIONS: -

The Indian parliament should immediately repeal the colonial- era Sedition Law, which local authorities are using to silence peaceful political dissent, Human Rights watch said today. The Indian Government should drop Sedition cases against prominent Activists such as, Arundhati Roy, Kanhaiya kumar and others, Human Rights Watch said. "Using Sedition Laws to silence peaceful criticism is the hallmark of an oppressive Government," said Meenakshi Ganguly, South Asia director at Human Rights Watch. "The Supreme Court has long recognized that the Sedition Law cannot be used for this purpose, and India's parliament should amend or repeal the Law to reflect this."

- In Tara Singh Gopi Chand vs. State & Sabir Raza vs. State, the constitutional validity of Section 124 A has been challenged. The Courts in Tara Singh decision and in Sabir Raza decision were of the opinion that section 124 a of the IPC is void on the enforcement of the constitution. The views the courts in aforementioned cases should be taken into consideration.

- In the light of recent changes in law of contempt and sedition in England, where The contempt of court and sedition laws has become void with adoption of Crime and courts act 2013 and coroners and justice act 2009 respectively. Similarly, India should look upon these changes in the same context.

- The amendment is required with regard to procedural aspects of S. 124A of the Indian Penal Code, 1860. There should be the power to conduct a preliminary inquiry by a police officer before registration of the case. To avoid political misuse of the provision. This would serve as a check against unnecessary harassment of persons wrongfully charged with 124A, while also ensuring a fair trial of those rightfully charged.

- Supervisory Amendments: It is also suggested that for further supervision in cases of alleged Sedition, the investigation/arrest of the accused u/s 124 A, should be confirmed by a gazetted or senior officer of the State or district before such arrest is made to avoid other repercussions of an allegedly false charge, in addition to the powers and duties of the police as u/s 156 & 157 of the CrPC.

- Equality before the law ought to be a basic element when these laws are being enforced. Moreover, the double standards and ambiguity with which the aforementioned statutes have been used to curb the freedom of speech could be in light when on 12th Jan 2018, four seniors most judges revolted against the Chief Justice of India Dipak Misra and launched an unprecedented public attack against his allegedly arbitrary way of assigning important cases to benches headed by junior Supreme Court judges, ignoring senior ones. Where Justice Chelameswar had went on record saying-‘’ All four of us are convinced that democracy is at stake. Let the nation decide on his (CJI Misra’s) impeachment.’’ Comparing and analysing two different statements made by Shri. Prashant Bhushan and

the four judges involved on 12th Jan 2018; we could clearly draw a line and find intelligible-differentia between the criticism; if four of the most senior judges who came over road and asked for the impeachment of CJI, did not created any distrust or such barriers in proper functioning of the Court then mere expression of aforementioned tweets by Senior Advocate should never be seen or dealt as contempt of court. Such hypocrisy outlines the behaviour pattern of our beloved Supreme Court when the freedom of speech is directed towards them.

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"COURT OF justice is the bulwark of rule of law, an individual liberty in a civilized society. The foundation of judiciary is based on public trust and confidence in the justice administration system. The power of courts to punish for its contempt is intended to ensure this trust and confidence and independence of judiciary from external sources. The Constitution of India explicitly recognizes this fact in three of its important provisions, viZ. articles 19(2), 129 and 215. Article 129 and 215 make the Supreme Court and High Courts, respectively, a court of record and the contempt power has been treated historically forming part of the concept of court of record."

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