LAW OF SEDITION VIS-À-VIS FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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This is to certify that ***Mr. Shashvat Giri,*** *student of LL.M. (One Year) has completed his Dissertation, titled* ***"Law of Sedition Vis-À-Vis Freedom of Speech and Expression in India"*** *under my supervision, in the partial fulfillment of the requirement for the LL.M. (One Year) Degree of 2023 of the School of Legal Studies, Babu Banarasi Das University, Lucknow, Uttar Pradesh. He has completed all formalities as required under the ordinance and the dissertation is forwarded for evaluation.*

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LIST OF ABBREVIATIONS

A.I.R	All India Reporter
All	Allahabad
Art.	Article
Bom	Bombay
C.J.	Chief Justice
Cal	Calcutta
CPGB	Communist Party of Great Britain
Cr. L.J.	Criminal Law Journal
ECHR	European Convention on Human Rights
F.C.	Federal Court
IPC	Indian Penal Code, 1860
Pat	Patna
Puj	Punjab
Q.B.	Queens Bench
S.C.	Supreme Court
S.C.C.	Supreme Court Case
U.K.	United Kingdom
U.S.A.	United States of America
UAPA	Unlawful Activities (Prevention) Act, 1967
UDHR	Universal Declaration of Human Rights
v.	Versus

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CHAPTER- 1

INTRODUCTION

One of the most fundamental tenets of a democratic society is the guarantee of a free and open exchange of ideas. It is only possible to refer to the government of a state as being democratic in the true sense of the word if that state's government allows its citizens freedom of speech and press. It is impossible to have a democratic system in states that repress their critics. It is impossible to have political responsiveness without the freedom of expression. Participation of the populace is essential to the functioning of a democratic system. People need to be able to communicate with one another and share their thoughts on issues pertaining to public policy and the government for this involvement to be successful. Dissenters have played the most significant and often surprising role in the political, economic, and social change of our society. This is despite the fact that all policy making and decisions of national interest are made by a select few privileged individuals. The legitimacy of democratic societies—societies in which individuals are free to speak their minds, express their opinions uninhibitedly, and have these rights legally guaranteed—depends on whether or not dissent is allowed to exist and thrive. This freedom exists for the aim of enabling an individual to realize their potential for self-fulfillment, assisting in the uncovering of the truth, enhancing a person's capacity for decision-making, and facilitating a balance between social consistency and change. Because it gives one's life purpose, the freedom to speak one's mind and express oneself is the most fundamental and fundamental of all human rights, the initial condition of liberty, the mother of all liberties. This kind of liberty is often referred to as an essential component of free societies. It is an unalienable and holy right that is essential for the protection of each individual citizen's independence, liberty, and dignity. Those three things are inextricably linked.

The right to free speech frequently raises challenging concerns, such as the extent to which the state can restrict an individual's behavior. Because the autonomy of the individual is the bedrock upon which this freedom is built, any constraint imposed on it is open to close examination. However, in order to ensure that this right is exercised

responsibly and that it is accessible to all citizens in an equitable manner, reasonable constraints can always be imposed on this right.

The right to free speech and expression is guaranteed to all citizens under the Constitution of India, specifically in Article 19(1)(a). This freedom, however, is not absolute; rather, it is subject to certain restrictions, such as those relating to the interests of the sovereignty and integrity of India, the security of the state, friendly relations with other states, public order, decency, or morality, or issues concerning contempt of court, defamation, or incitement to commit a crime.

Section 124A of the Indian Penal Code, 1860 makes it illegal to incite violence or hatred against the government. This portion of the constitution's applicability in the context of an independent and democratic nation is a topic of ongoing discussion. Those who are opposed to it view this provision as an archaic holdover from the time of colonial rule that has no place in a democratic society. Concerns have been raised over the possibility that this provision will be abused by the government in order to quash dissent. On the other hand, those who advocated for it argued that amidst growing concerns of national security, this section provides a reasonable restriction on utterances that are inimical to the security and integrity of the nation. Those who advocated for it argue that this section provides a reasonable restriction on utterances that are inimical to the security and integrity of the nation.

Both in its intention and in its application, the Sedition Law has to be one of the statutes in the IPC that has the most problems. It is a draconian weapon of choice that offers power and privilege to any elected administration, without paying any attention to the fact that in an independent democratic India, it is a government elected for only a term of five years. In a society as multi-faceted, pluralist, and secular as India, with its rich Constitution, the sedition legislation ought, in my opinion, to have been one of the first to be discarded. This is because India became independent from British rule, and subsequently it became a full-fledged Republic. It appears, however, despite the voices against it, of some of India's most revered leaders, to have survived, in fact despite having been an integral part of the overall draconian design of imperial legislation. This is despite the fact that it was an integral part of the overall draconian design of imperial legislation. This dissertation will

investigate the case histories of the judicial applications of this piece of legislation, and its authors hope to make a case for its immediate removal from the IPC. This is because there are multiple ways in which this piece of legislation can be used as a weapon of choice by any elected government, post-independence, for the exercise and perpetuation of its own power, particularly when it appears to be losing its grip on articulated public opinion. By acting in this manner, the government is making an assault on the fundamental ideals that form the basis of our Constitution. It would appear that those in political power are in no rush to rectify this inconsistency.

The recent increase in the number of sedition cases has raised concerns about the validity of such law as a reasonable ground for restricting the valuable right of freedom of speech and expression. This in turn is also considered by the Supreme Court in *S.G. Vombatkere* v. *Union of India.*[1]In this case Supreme Court is going to decide the constitutional validity of section 124-A of the IPC dealing with the offence of sedition.

1.1 REVIEW OF LITERATURE

Ratanlal & Dhirajlal in his book "*The Indian Penal Code*", has stated 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 tranquility of the State and lead ignorant persons to endeavor to subvert the Government and laws of the country.[2] The object of sedition generally are to induce discontent and insurrection and stir up opposition to the Government and bring the administration of justice into contempt and the very tendency of sedition is to incite the people to insurrection and rebellion.[3]

The Supreme Court has described sedition as disloyalty in action and 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.[4]

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[1] 2022 SCC OnLine SC 609.
[2] Ratanlal & Dhirajlal, *The Indian Penal Code* 223-4 (Lexis Nexis, Gurgaon, 36th edn., 2019).
[3] *Ibid.*
[4] *Nazir Khan* v. *State of Delhi,* AIR 2003 SC 4427.

In his book, **Dr. Hari Singh Gaur** discusses the repercussions of violating a person's right to freedom of expression in relation to the extent and ambit of the sedition offence. The crime of sedition is the result of two contending forces, namely freedom and security, being brought into a state of equilibrium with one another. The first symbolises the interest of the individual in being allowed the utmost right of self-assertion free from interference from the government and other parties, and the second represents the interest of the politically structured society in maintaining its own existence. .[5] According to the author's point of view, it is essential to achieve a healthy equilibrium between the competing demands of protecting individuals' rights to free speech while also ensuring the safety of the nation. [6]

Justice R.F. Nariman has discussed the content of the expression "freedom of speech and expression" in *Shreya Singhal case*.[7] There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc.[8]

Michael Head, in his book titled "*Crimes against the State: From Treason to Terrorism*"[9], described sedition as the true essence of the fundamental role of the criminal law, which is the maintenance of the prevailing political order. As sedition is an inherently political offence, it specifically targets advocacy that is regarded as threatening to the government or socio-economic order. Terrorism is another example of a crime committed against the state. In his work, he discusses crimes such as espionage, sedition, treason, and

[5] Dr. Hari Singh Gaur, *Penal Law of India,* (Law publishers (India) Pvt. Ltd, Allahabad, 11th edn., 2011).
[6] *Ibid.*
[7] *Shreya Singhal* v. *Union of India*, (2015) 5 SCC 1.
[8] *Ibid.*
[9] Michael Head, *Crimes Against the State: From Treason to Terrorism* 53 (Ashgate Publishing Company, 2011).

mutiny in numerous countries with legal systems that are analogous to those developed from English, most notably the United Kingdom, the United States of America.[10]

Justice Deepak Gupta in his article discussed that the Constituent Assembly also considered the law of sedition while debating on the right of freedom of speech.[11] He emphasized that sedition was included as an exception to the right to free speech in the first draft of the Constitution. But *K.M. Munshi* insisted that sedition should not be kept as an exception to free speech.[12] He was of the view that only incitement to violence or insurrection should be barred. Therefore, sedition was not included as an exception to free speech but security of State, public order or incitement to an offence find mention in clause (2) of article 19.[13] But it has been held in *Devi Saren* v. *State*[14] that section 124-A of IPC impose reasonable restrictions in the interest of public order and is saved by Article 19(2).

Taking into account the reports of Law Commissions, 39th and 42nd report of the Law Commission of India aimed at retaining the provision. 39th Law Commission Report aimed at retaining the punishment of life imprisonment for the offence of sedition, whereas the 42nd Law Commission Report aimed at extending the scope of government to include executive and judiciary too.

However, a positive transformation can be witnessed. The Law Commission of India, in its 267th report, and the recent consultation paper published on sedition in the year 2018, sought to restrict the wide scope of the term section 124-A, by including only those cases within the meaning of sedition, where there is incitement of violence, with a specific intent to subvert the government in power. Fact remains that the Law Commission of India has never suggested the repeal of sedition laws.

In her book titled "*Law of Sedition*,"[15] **Shivani Lohiya** traces the historical origin of the law of sedition. Most notably, she comprehends the changing interpretation of the offence of sedition with notable trials from the past. Additionally, she presents an insightful

[10] *Ibid.*
[11] Justice Deepak Gupta, "Law of sedition in India and freedom of expression" 4 *SCCJ* 21 (2020).
[12] *Ibid.*
[13] *Ibid.*
[14] AIR 1954 Pat 254.
[15] Shivani Lohiya, *Law of Sedition* 38 (Universal Law Publishing, New Delhi, 2014).

analysis of the law of sedition in its current form. She also made the comparison between the law of sedition and the freedom of speech and expression, and she is of the opinion that those in power are employing the law of sedition as a tool to crush dissent through the employment of the law of sedition.[16]

The book titled "*Sedition in Liberal Democracies*"[17], written by **Anushka Singh**, is a significant contribution to the understanding of the comparative examination of the crime of sedition. The book is organized in a general sense into three parts: the first part is a conceptual exploration of the political crime of sedition, the second part deals with a comparative history of sedition, tracing developments in four jurisdictions (the United Kingdom, the United States, Australia, and India), and the third part concludes with a discussion of the implications of sedition for contemporary political discourse. Colonial history, as well as postcolonial jurisprudence and constitutional conflicts, are fully covered in the portion that is devoted to India. The third section of the book, which is also the most interesting, discusses the effects of sedition law. Sedition laws have been utilised by different branches of the state to suppress political opposition and to send a strong message to those who dared oppose the existing quo.[18]

1.2 STATEMENT OF PROBLEM

It can be inferred from the above discussion that the law of sedition has been constantly misused by the government in power at the Centre and the States. Due to this misuse, questions have frequently been raised as to how an individual, having the freedom of speech and expression as a Fundamental Right, can be convicted for the offence of sedition. Another issue with definition of law of sedition in India is that the element of *mens rea* or the mental element is missing, which leads to wrong interpretation of this law. Such wider interpretation violates one's freedom of speech and expression when he voices his opinion as a true spirited citizen in a democratic country, while criticizing government's actions without having an intention of creating a public disorder. Therefore, in present times in

[16] *Ibid.*
[17] Anushka Singh, *Sedition in Liberal Democracies* 137 (Oxford University Press, New Delhi, 2018).
[18] *Ibid.*

India time has come to revisit the need of law sedition and its impact on the Fundamental Right of speech and expression of citizens.

1.3 RESEARCH HYPOTHESIS

1. Whether the law of sedition is violative of freedom of speech and expression?
2. Whether there is need to reform the law of sedition to make it in tune with freedom of speech and expression or repeal it altogether from the IPC?

1.4 AIMS AND OBJECTIVES

The Following are the objectives of the research:

1. To analyze the effect of Law of Sedition on Freedom of Speech and Expression in India.
2. To find out the extent to which the Law of Sedition is justified as a restriction on Freedom of Speech and Expression.
3. To analyze the judicial interpretations made on the law of sedition.
4. To find out lacunas in our Law of Sedition contained in the Indian Penal Code, 1860 with regard to the topic when compared with the law of other countries.
5. To analyze the effect of it being retained in statute books or to amend it to prevent frivolous and motivated prosecution or to repeal it.

1.5 RESEARCH QUESTIONS

1. Whether the definition of Sedition under Section 124-A of the IPC falls within reasonable restrictions under article 19(2)?
2. To what extent expressing disapproval of government measures is permissible?
3. Whether the law of sedition is increasingly being used as a political tool to stem legitimate dissent against the government?
4. Whether there is need to insert *mens rea* as an essential element of the offence of sedition?
5. Whether there is a need to reformulate the law of sedition or to repeal it vis-a-vis the exercise of the fundamental freedom of speech and expression?

1.6 RESEARCH METHODOLOGY

This dissertation will be based on Doctrinal Research. The researcher will use primary and secondary resources such as books, articles, case laws and various government and non-Government reports in order to draw conclusion. This study will be analytical research for analyzing the interplay between law of sedition and freedom of speech and expression in the light of judicial pronouncements to examine the appropriateness of the law of sedition in the democratic country like India.

1.7 SCOPE OF STUDY

The scope of the study will be based on to find out the viability of law of sedition in 21st century. The study will help to find out the lacuna in the definition of law of sedition and also the problems faced by law enforcement agencies in applying this law without violating freedom of speech and expression. The study will analyze Indian law of sedition and also the law of sedition prevalent in different countries. The study will also analyze the judicial interpretation of this law in India as well as in other countries. The study will help to solve the problem face by judiciary in protecting the fundamental right of free speech and expression of citizens while dealing with statements, acts which amount to sedition. The study will give recommendations and suggestions to prevent the abuse of law of sedition, and how to reformulate this law to lay down a uniform and a clear procedure to deal with cases amounting to sedition so that it does not encroach upon Fundamental Right of free speech and expression.

1.8 SCHEME OF CHAPTERS

1. Introduction
2. Historical Background of freedom of speech and expression and law of sedition
3. Sedition vis-à-vis freedom of speech and expression in UK and USA
4. Constitutional status of law of sedition and freedom of speech and expression
5. Sedition vis-à-vis freedom of speech and expression: Judicial Interpretation
6. Conclusions and Suggestions

*****

CHAPTER- 2

HISTORICAL BACKGROUND OF FREEDOM OF SPEECH AND EXPRESSION AND LAW OF SEDITION

The British attempted to suppress Indians during the colonial era by passing laws like the Seditious Meetings Act of 1907, the Vernacular Press Act of 1870, and the provision of sedition in the Indian Penal Code. The need to overcome these limitations ultimately led to the establishment of the right to free expression as a fundamental right.[19] On December 1, 1948, December 2, 1948, and October 17, 1949, members of Indian Constituent Assembly discussed over the merits of this provision. For example, clause (1) Article 13 of the draft Constitution states that:

> *"Subject to the other provisions of this Article, all citizens shall have the right –*
>
> *(a) To freedom of speech and expression*
>
> *Proviso: Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the state from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the security of, or tends to overthrow the state."*[20]

There were relatively few members in the Constituent Assembly who were opposed to the proviso that was attached to the right, despite the fact that almost all of the members of the assembly were satisfied with its inclusion.[21] They contented that citizens would only be able to express themselves openly if there were no restrictions to their expression and

[19] Rai Bahadur G.K. Roy, *Law relating to Press and Sedition* 133 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2nd edn., 2013).

[20] Available at: https://www.constitutionofindia.net/historical_constitutions/draft_constitution_of_india__1948_21st%20February%201948 (last accessed on August 12, 2022)

[21] Aqa Raza, "Freedom of Speech and Expression as a Fundamental Right in India and the test of Constitutional Regulations: The Constitutional Perspective", available at: https://www.researchgate.net/publication/306899769_'Freedom_of_Speech_and_Expression'_as_a_Fundamental_Right_in_India_and_the_Test_of_Constitutional_Regulations_The_Constitutional_Perspective (last accessed on August 10, 2022).

that enforcing censorship was an unjustifiable British practice that a free India should not replicate.[22]

The right to freely express oneself can be traced all the way back to ancient Greece. -The expression "free speech" was first used around the later decades of the fifth century BC. This expression was derived from the Greek word "**Parrhesia"**, which can be translated as either "free speech" or "to speak candidly".[23] The issue of free speech has long been a source of tension between religious and political groups in Europe. It continued right up until the Protestant Reformation in the sixteenth century, which was the beginning of the new religious tradition known as Protestantism.[24] Although King James I issued a speech restraint, it was ultimately responsible for the Declaration of Freedoms issued by Parliament in 1621. The freedom of speech had become widely recognized as a natural right by the end of seventeenth century. After the French Revolution, in 1789, when the Declaration of the Rights of Man was drafted, freedom of speech was recognized as a significant and important human right.[25]

Numerous international and regional instruments have acknowledged the significance of the right to freedom of speech and expression, including the following:

- Article 19 of the Universal Declaration of Human Rights guarantees individuals the right to freely express their thoughts and ideas. It states that everyone should have the right to hold opinions without interference and that everyone should have access to the information or the ability to disseminate it through any medium.[26]

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[22] *Ibid.*

[23] Origin of Free Speech, available at: https://www.history.com/topics/united-states- constitution/freedom-of-speech (last accessed on August 10, 2022).

[24] Protestantism is a religious movement that began in the 16th century as a reaction to what its adherents saw as flaws in the Roman Catholic Church. They stress the priesthood of all Christians, justification by faith alone rather than good works, and the Bible's authority in faith and morals.

[25] The Freedom of Speech, available at: http://law.jrank.org/pages/22450/Freedom-Speech- Origins-Free-Speech-Concerns.html (last accessed on August 11, 2022).

[26] Article 19 of Universal Declaration of Human Rights: 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, available at: https://www.humanrights.com/course/lesson/articles-19-25/read- article-19.html (last accessed on August 10, 2022).

- Freedom of expression and the right to freely disseminate information are protected under Article 10 of the European Convention on Human Rights, which states that public authorities should not put any restrictions on these rights. On the other hand, the article does not preclude the necessity of holding a licence in order to operate in the broadcasting, television, or cinema industries. The freedom that is guaranteed by this article is not absolute; rather, it is subject to the restrictions that are imposed for the purpose of protecting national security, public safety, territorial integrity, health, morality, or defamation, or for maintaining the impartiality of the judiciary.[27]
- Article 19 of the International Covenant on Civil and Political Rights ensures that individuals have the right to express their opinions without any sort of interference. It states that everyone has the right to information and further that everyone has the right to distribute it. This freedom, however, is not absolute and is subject to laws that restrict it in the interest of maintaining public order, health or morality, and defamation.[28]

2.1 CONCEPT OF FREEDOM OF SPEECH AND EXPRESSION

[27] Article 10 of European Convention on Human Rights: (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.
This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
(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 as are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary; available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf (last accessed on August 12, 2022).

[28] Article 19 of International Convention on Civil and Political Rights: (1) Everyone shall have the right to hold opinion 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 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 (order public) or of public health or morals; available at: https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (last accessed on August 12, 2022).

In a democratic society, the right to freely speech and express oneself is widely regarded as one of the most important and valuable rights. This right ensures that citizens are able to take an active role in the political processes that take place within a nation. According to **Sir Ivor Jennings's** own words:

> *"without free elections, the people cannot make choice of policies without freedom of speech the appeal to reason which is the basis of democracy cannot be made without freedom of association electors and elected representatives cannot be bound themselves into parties for the formulation of common ends".*[29]

The ability of the citizens of a nation to express their perspectives regarding the various policies or actions of a state gives that state the opportunity to rectify any shortcomings that were brought to light by those citizens.[30] The right to freely express oneself is not only a fundamental right, but also a moral right because it incorporates a sense of responsibility into its exercise. If a person is bestowed with an idea and has the desire to communicate it, then it is their moral obligation to do so for the sake of their own conscience as well as the common good. The citizen's conscience is a source of the state's continued vitality, and as such, the moral right to free expression is given legal status. However, this moral right to freely express oneself is defeated if a person is dishonest, and if the speech in question is unwarranted and without foundation. The moral right does not include the right to make deliberate or irresponsible mistakes.[31] When people are free to say what they want without fear of retribution or punishment, ideas, opinions, and facts can spread without hindrance. This freedom includes the right to share one's own ideas as well as those of others. This sharing can take place in any way, including the publication, circulation, and distribution of material that contains ideas and opinions.[32] The freedom of speech and expression is a comprehensive right that gives rise to a number of other rights, including the right to remain silent, freedom of discussion, the right to be informed, the freedom to demonstrate, and the right to criticize the government.[33] It has been remarked

[29] Om Prakash Agarwal, *Fundamental Rights and Constitutional Remedies* 260 (Metropolitan Book Co. Ltd., New Delhi, 1953).
[30] *Ibid.*
[31] *Id.* at 281.
[32] *Supra* note 15.
[33] *Ibid.*

that the right to "freedom of speech and expression" is not a right that belongs solely to the individual, but rather that this right exists for the benefit of the community in order for it to be heard and informed.[34] The concept of "Liberty of Thought" serves as the foundation for the rights to "freedom of speech and expression", and this right holds significance not just for the life of an individual, but also for the life of the community as a whole.[35]

It is important to note that in order to exercise one's right to freedom of speech and expression, there must be a second person to whom one may communicate his or her opinion or thoughts; in other words, there must be a communication of one's ideas and views to other people, which may be accomplished through publication or circulation. According to clause (a) of article 19 of the Constitution of India, the right to freedom of speech and expression is only extended to Indian citizens. This right is not guaranteed to the foreigners.[36] Despite the fact that the Indian Constitution's Article 19(1)(a) does not directly guarantee for the freedom of the press, it is generally understood to do so implicitly as one of the essential facet of the right to free speech and expression.[37]

To comprehend the significance of free speech and expression in a democracy, it is necessary to examine free speech theory and how it has manifested itself not only in the Constitution, but also in judicial decisions. In his book titled "On Liberty", **John Stuart Mill** makes the observation that:

> *"Both thought and expression go together and no matter how immoral a thought might be but still there should be absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral or theological as it contributes to man's interest of being a progressive being"*.[38]

John Stuart Mill argues that people will always be interested in uncovering the truth, despite the fact that there is a possibility that their conclusions will turn out to be wrong. If their conclusions do turn out to be correct, however, then they are afforded the

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[34] T.K. Tope, *Constitutional Law of India* 143 (Eastern Book Company, Lucknow, 2010).
[35] Krishna Pal Malik, *Right to Information* 15 (Allahabad Law Agency, Faridabad, 2013).
[36] *Hans Muller of Nurenburg* v. *Supdt*., *Presidency Jail*, *Calcutta*, AIR 1955 SC 367.
[37] *Printers (Mysore) Ltd.* v. *Assistant Commercial Tax Officer* (1994) 2 SCC 434.
[38] John Stuart Mill, *On Liberty* (Longman Roberts & Green, London, 4th edn., 1869) *available at*: https://www.bartleby.com/130/ (last accessed on August 13, 2022).

sanctity of truthful speech.[39] If someone's words could hurt others in some or other way, the state should step in to put restrictions on it. **Justice Oliver Wendell Holmes** observed in *Abrams* v. *United States*[40], in which he mentioned John Stuart Mill's theory.

> *"The attainment of ultimate good that is desired by all men is best reached by putting the idea out there in the market, exposed to market forces. In the competitive environment of the market, if such idea is accepted then it can be said such idea is the best version of idea that is available."*[41]

Chief Justice Patanjali Shastri made the following observation:

> *"freedom of speech and expression lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, that it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits."*[42]

2.2 HISTORICAL BACKGROUND

The government has a long history of misusing the law of sedition in order to allegedly carry out its intended functions. All sorts of tactics have been employed by governments in order to suppress dissent, taint public opinion, silence political opponents, divert attention from the government's shortcomings, and stifle basic fundamental rights like "freedom of speech and expression".[43]

The history of sedition laws in India, as well as its interpretation, are analysed from two distinct points of view, one of which is judicial, and the other of which is political.

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[39] *Ibid.*
[40] 250 U.S. 616 (1919).
[41] *Supra* note 38.
[42] *Romesh Thappar* v. *State of Madras*, AIR 1950 SC 124.
[43] *Supra* note 9 at 1.

Both viewpoints are considered equally valid.[44] East India Company's civic, military, and commercial interests were vested in a legislative council according to the Charter Act of 1833. The Criminal Penal Code for India was drafted by **Lord Thomas Babington Macaulay** and other members of the Law Commission to provide a unified legal framework for the whole Indian subcontinent under British rule.

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

> "*Whoever, by words, either spoken or intended to be read, or by signs, or by visible representations, attempts to incite feelings of disaffection to the Government established by law in the territories of East India Company, among any class of people who live under that Government, shall be punished with banishment for life or for any term from the territories of the East India Company, to which fine may be added, or with simple imprisonment for a term which may extend to three years, to which fine may be added, or with fine.*
>
> *Explanation: Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government against unlawful attempts to subvert or resist is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation is not an offence within this clause*."

By the middle of the nineteenth century, the British had successfully consolidated their position in India and were forced to face the challenge that came in the shape of a mutiny in 1857.[45] In light of this situation, the British government passed the Indian Penal Code in 1860 in an effort to suppress the discontent that was caused by the press.[46]

It is worth noting that Lord Macaulay included a sedition provision in section 113 of his draft penal code in 1837, but that it was ultimately omitted from the final code that

[44] *Supra* note 17 at 137.
[45] *Supra* note 15 at 3.
[46] *Ibid.*

was implemented in 1860.[47] "Attempts to excite feelings of disaffection to the government" were a punishable offence according to Section 113 of the Draft Penal Code. The provision created a distinction between disaffection and disapprobation and explained that "such a disapprobation of the measures of the government as was compatible with the willingness to render obedience to the lawful authority of the government, and to support the lawful authority of the government against unlawful attempts to undermine or oppose that authority, was not disaffection". Accordingly, making any remarks on the measures adopted by the government with the objective of seeking changes in the measures was not considered an offence within the meaning of this section.[48] During the introduction of the Bill that sought an amendment to the Indian Penal Code for the inclusion of the offence of sedition, **Sir James Stephen** mentioned that the reason for its removal was nothing more than an error, and he made the following observations:

> "*nothing could be further from the wish of the government of India than to check, in the last degree, any criticism of their measures, howsoever hostile, may, howsoever disingenuous, unfair, and ill-informed it might be. So long as the writer or speaker neither directly or indirectly suggested nor intended to produce the use of force, he did not fall within the section*".[49]

The offence of sedition did not make it into the final form because it is believed to be vague in light of the arguments that took place in front of the Council, which included controversy and criticism. It is believed that Governor General **Lord Canning's** opposition to including such a clause as a constraint on freedom of speech was a significant factor to its exclusion.[50] This was made very clear by the comments he made on the Press Bill of 1857. One of the reasons claimed for the lack of a section on sedition in 1860 is the fact that in 1858, sovereignty over Indian colonies was transferred to the Queen of England from the East India Company. The Law Commission was reluctant to enact such a provision because it believed that it lacked the authority to do so in light of the altered circumstances, rendering such law to be null and void.

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[47] Apurva Vishwanath, "Explained: What is the sedition law, and why Supreme Court's fresh directive is important" *The Indian Express,* May 12, 2022
[48] *Ibid.*
[49] D. Gopalakrishna Sastri, *The Law of Sedition in India* 10 (India Law Institute, New Delhi, 1964).
[50] *Ibid.*

The growing number of Wahabi activities between the years 1863 and 1870[51] which sought to establish Muslim dominance in India, served as a catalyst for the British to take action.[52] Wahabis sent out their agents to collect funds and recruit members from Bihar and Bengal. **E.C. Barley**, the Secretary to the Government of India's Home Department, proposed an amendment to the Penal Code in order to combat the problem of seditious proceedings. These proceedings did not amount to actively waging war against the Queen, attempting to wage war against the Queen, or aiding in the waging of war against the Queen.[53] The assassinations of **Justice Norman** of Calcutta and **Viceroy Lord Mayo** and brought the situation to a new and even more terrible. Secretary of the Judicial Department **A. Eden** made the following observation:

> "*there can be no doubt that where a population is at once ignorant and fanatical, as are the Mohammedans of India, seditious teachings are to be made a substantive offence*".[54]

Sedition was included in the Indian Penal Code in the year 1870 in response to the growing dissatisfaction of the general public. In addition, support was drawn from the comments of Sir James Stephen, who supported the inclusion of the offence of sedition in the Indian Penal Code, 1860, and answered the issue that the law did not allow for freedom of the press by stating the following:

> "*the people might express or excite disapprobation of any measure of the government that was compatible with a disposition to render obedience to the lawful authority of the government; in other words, you might say what you liked about any government measure or public man; you might publish or speak whatever you pleased, so long as what you said or wrote was consistent with a disposition to render obedience to the lawful authority of government. Law and liberty exclude each other, liberty was what you might do, and law was what you*

[51] The Wahabi Movement was by the Muslims and aimed at establishment of Dar-ul-Islam in India. They were successful in creating anti-British sentiments among Indians which stimulated the revolt of 1857. Syed Ahmed from Rae Bareli, was the leader of this movement in India, whose ideology was to condemn any change into the original practices of Islam. The Wahabi Movement in India, *available at*: https://edgearticles.com/2014/03/26/wahabi-movement/ (last accessed on August 14, 2022).

[52] S. Narrain, "Disaffection and the Law: The Chilling Effects of Sedition Laws in India", *Econ. Political Wkly*. 41 (2011).

[53] *Supra* note 15 at 4.

[54] Arvind Ganachari, *Nationalism and Social Reform in a Colonial Situation*, 56 (Kalpaz Publications, New Delhi, 2005).

might not. The question is not whether the press ought or ought not to be free, but whether it ought to be free to excite rebellion".[55]

Section 5 of the amending Act of the Indian Penal Code defined the offence of sedition as following:

"Whoever by words, either spoken or intended to be read, or by signs, or by visible representation or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation- such a disapprobation of the measures of the government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disaffection, is not an offence within this clause."[56]

It further provides that the provisions of Chapter IV, which deals with General Exceptions, and Chapter V, which deals with Abetment, were extended to the offence of sedition. According to Section 14 of the amending Act, no charge of such an offence may be accepted by any Court unless the "prosecution was initiated by order of, or under the authority from, the local government".[57] The Treason Felony Act of 1848, the Common Law with regard to seditious libel, and the law as to seditious phrases were the three laws of England on which this definition of the sedition offence in India was based. Section 3 of the Treason Felony Act, 1848, provides that "whoever imagine, intends or plans, to depose Her Majesty, her heirs or his successors from the crown, wages war against Her Majesty, or heirs or successors, enforces pressure by violent means to bring alteration of

[55] W.R. Donogh, *A Treatise on the Law of Sedition and Cognate Offences in British India* 6 (Thakker, Spink and Co., Calcutta, 1911).
[56] *Id.* at 8-9.
[57] *Id.* at 9.

policies of Her Majesty, urge a stranger to invade United Kingdom or publish any writing or gives an open speech to propagate and achieve the above aim."[58]

The analysis of definition of the offence of sedition reveals that criticism of the government was permitted provided it was criticized in obedience to the lawful authority of the government. However, it was not mentioned how this obedience was to be judged.[59] Whereas in England a person was held liable to punishment if they had feelings of disloyalty towards the Queen and showed that in the form of writing. However, the proposed section on sedition in India did not relate to a man's wishes or feelings, but rather to his writings or words, and the feelings he intended to produce in others.[60] In spite of the fact that the language of the definition of sedition was vague, it was, on the whole, clearer and more specific than the language that appeared in English law.[61] As a result of the intrinsic ambiguities in the language of the offence of sedition, the scope of the offence was extended even further by giving a broader meaning to the words that were used in the defining the offence of sedition. It is noticeable point that the expressions "disaffection" and "disapprobation" are not synonymous with one another, and it was also established that an attempt to stir ill-will feelings against the government is not the same as disapprobation.[62] As soon as sedition charges were brought against the editors of nationalist newspapers, such as Surendranath Banerjee, editor of "Bengalee", and Bal Gangadhar

[58] Section 3 of the Treason Felony Act, 1848: if any person whatsoever after the passing of this Act shall, within the United Kingdom, or without compass ,imagine, invent , devise or intend to deprive or depose our most gracious lady the Queen, her heirs or successors, from the style, honour, or royal name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or their measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both houses or either House of Parliament, or to move or stir or foreigner or stranger with force to invade the United Kingdom or any other Her Majesty's dominion or countries under obedience of Her Majesty, or heirs or successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter or declare, by publishing and printing or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the court shall direct.

[59] Centre for the Study of Social Exclusion and Inclusive Policy, "Sedition Laws and Death of Free Speech in India" (National Law School of India University, Bangalore and Alternative Law Forum, Bangalore, February 2011) *available at*: http://www.nls.ac.in/resources/csseip/files/Seditionlaws_cover_final.pdf> (last accessed on August 14, 2022).

[60] *Supra* note 55 at 5.

[61] *Supra* note 59.

[62] *Queen Empress* v. *Jogendra Chandra Bose*, ILR 19 Cal 35.

Tilak, editor of "Kesari", it became clear that the provision defining the offence of sedition needs to be amended.[63] During these proceedings, it became clear that the meaning of the phrase "disaffection" presents a challenge when attempting to define the concept of sedition.[64] The meaning of the word "disaffection" was given by **Justice Strachey** to be "the lack of affection" in the case of Tilak. He made the observation that any feelings of ill will toward the government, including "hatred", "enmity", "dislike", "contempt", and "disloyalty" constitute as disaffection with the government. The interpretation given by Justice Strachey went beyond what was required by the law in the IPC, 1860. It was eventually determined that the term "disaffection" was synonymous with "disloyalty". The scope of the sedition was subsequently extended by subsequent two sedition trials that took place.[65] The accused was held not guilty of the sedition despite the fact that the definition could be interpreted in a variety of ways. It was understood that the explanation to the definition of sedition was resulting in ambiguities regarding the nature of the law. These ambiguities were a result of the fact that the nature of the law was not clear.[66]

In 1898 the provision dealing with the offence of the sedition was substitutes as following:

> ***"Section 124A of IPC– Sedition-*** *'whoever by words, either spoken or written or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine mat 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*

[63] Ujjwal Kumar Singh, *Political Prisoners in India* 24 (Oxford University Press, New Delhi, 1998).
[64] *Ibid.*
[65] *Queen Empress* v. *Ramchandra Narayan and Others*, ILR (1898) 22 Bom 152 and *Queen Empress* v. *Amba Prasad*, ILR (1898) 20 All 55.
[66] *Ibid.*

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."*[67]

The underlying principle of law of sedition is that every state, regardless of the form of government it has, must be armed with the power to punish those whose actions put the safety and stability of the state in jeopardy, or who spread such feelings of disloyalty that have the potential to lead to disruption in the state or to public disorder. This principle underpins the provision of the law of sedition.[68] If the government that has been established by the law is overthrown, then the survival of the state itself will be in jeopardy. As a result, the continuity of the legal framework that was originally used to establish the government is a necessary requirement for the state to remain stable. Due to this reason, the offence of "Sedition", as defined by Section 124A of the Indian Penal Code of 1860, was moved to Chapter VI of the Code, which deals with offences committed against the state.[69]

When it became clear that the law against sedition needed to be changed, another contentious issue concerning the freedom of the press was whether or not the Vernacular Press Act, 1878 should be repealed. Newspapers were subject to pre-censorship for the first time as a result of the Act.[70] The British were aware of the dissatisfaction that was caused by the Vernacular Press Act, and as a result, they wished to get the law repealed. During the discussion about whether or not to repeal it, it was resolved that Section 124A of the Indian Penal Code (IPC) should also be amended in order to make it more effective in its objective to prevent libelous expression. However, the government was concerned that if the Vernacular Press Act of 1878 was repealed, then there would be less regulation in place to prevent the expression of seditious ideas in the press. The government repealed the Vernacular Press Act of 1878 and amended sedition law contained under IPC. It was proposed by the government that circumstances in which there is no clear intention to

[67] The Indian Penal Code, 1860 (Act 45 of 1860), s.124A.
[68] K.D. Gaur, *The Indian Penal Code* 225 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 4th edn., 2009.
[69] *Ibid.*
[70] *Supra* note 17 at 143.

oppose or overthrow the government should not be deemed to be cases of sedition. The impetus behind this amendment was that sedition charges were levelled against several newspapers where the government was unable to provide sufficient evidence to support the allegation at trial. Several of these publications include *Rahbar-i-Hind* in Punjab, *Akbar-i-an* in Punjab, *Shivaji* in Bombay, and *Banaras Akbar* in the North-Western Provinces.[71]

An article titled "*An appeal to the opponents of Congress*" was published by the editor of the newspaper titled "*Anand Bazar Patrika*". In this article, the editor emphasised that there is a limit to everything, including patience and obedience, and that oppression invariably results in acts of violence. The prosecution was withdrawn on the advice of the Solicitor General because he believed that it would make the existing situation in India much worse. The issue of prosecution was resurfaced when the editor of "*Silchar*" published an article on August 25, 1890.[72] The article included the dialogue that took place between a teacher and one of their students. The teacher responded to a student's inquiry regarding the relationship between English people and the people of India by drawing a parallel between the two groups and said that it is similar to the relationship between a tiger and a lamb. The first being a tiger and the second being a lamb respectively. In light of the interpretation that **Sir James Stephen** offered for the term "disaffection", the Advocate General recommended that the prosecution not be brought forward.[73] However, before section 124A of the Indian Penal Code was amended in 1898, the government was able to successfully prosecute four cases of seditious libel.

Queen Empress v. *Jogendra Chunder Bose*,[74] was the first case that was reported following the enactment of the law of sedition in 1870. It revealed the name of the publication that had published an article opposing the Age of Consent Bill. The following passages appeared in *"Bangobasi"* articles that were deemed seditious:

> *"The English ruler is our lord and master, can interfere with our religion and usages by brute force and European civilization. The Hindu is powerless to resist, but he is superior to your nation in good morals, in gentle conduct and in good education. Hindu civilization and the Hindu religion are in danger of being*

[71] *Ibid.*
[72] *Ibid.*
[73] *Ibid.*
[74] ILR (1892) Cal 35.

destroyed. The Englishman stands revealed in his true colors. He has the rifle and bayonet and slanders the Hindu from the might of the gun. How are we to conciliate him? We cannot expect mercy or justice from him. Our chief fear is that religion will be destroyed, but the Hindu religion will nevertheless remain unshaken. We suffer from the ravages of famine, from inundations, from the oppressive delays of the law courts, from accidents on steamers and railways. All these misfortunes have become more prevalent with the extension of English rule in India, but our rulers do not attempt to remove these troubles or to ameliorate our condition. All their compassion is expended in removing the imagery grievances of girl-wives and interfering with our customs. We should freely vent our real grievances. We are unable to rebel, but we are not of those who say it would be improper to do so if we could have been conquered by brute force, but we are superior to the English in ethics and morality, in which we have nothing to learn from them. You may crush the body, but you cannot affect the mind. Others like Aurungzeb and Kalapahar have tried before you and failed. You should not try and suppress girl-marriage because you won Plassey and Assaye. It is error and presumption on your part to attempt to reform our morals."[75]

The defence contended that the article did not go beyond the prescribed limits of criticism, and nothing could be construed as inciting rebellion. On the other hand, the prosecution argued that the article's language could be considered seditious because of its comparison of the government to Aurangzeb and Kalapahar, who are widely recognised as the greatest persecutors of the Hindu religion. Therefore people may feel discontented with the government.[76] **Sir C. Petheram, C.J**., observed that "the term 'disaffection' is opposite of affection whoever, by his words, written or spoken, arose a feeling in the others to resist the government, whenever occasion arises, or excite feelings of ill-will towards the government, is said to have committed an offence of sedition."[77] It is not essential that actual disturbance have happened in consequence of the use of seditious words in order for the offence of sedition. However, the jury was unable to come to a decision, and as a result

[75] *Supra* note 55 at 38-39.
[76] *Ibid.*
[77] *Ibid.*

the accused were discharged. The accused offered an apology, thus the proceedings against him were dismissed after the matter was remanded for a retrial.[78]

The existing law on sedition was proposed to be changed in 1898 because, in **Mr. Chalmer's** words, who was the member in charge of the amendment Bill, the legislation as it was at the time was not clearly defined and would benefit from fewer equivocal words. In light of recent incidents and the interpretation that has been given to the provision, the member is of the opinion that "an appeal to violence" should not be treated as a substantial element in determining whether or not the accused is guilty.[79]

Words "hatred" and "contempt" were added to the word disaffection, which already comprised "disloyalty" and "feelings of enmity", according to Amendment Act IV of 1898[80]. In addition, the section 153A was inserted to the Code to include a provision that punishes "promotion of feelings of hatred or ill-will between different classes of Indian people".[81]

The Prevention of Seditious Meetings Act was enacted in 1907 by the Imperial Legislative Council of the British. Its purpose was to prohibit the holding of public gatherings with more than 20 participants for the purpose of inciting civil unrest or seditious activity. The measure known as the Seditious Meetings Act of 1911 succeeded its predecessor, the Prevention of Seditious Meetings Act of 1907. In addition, the Seditious Meetings Act that was passed in 1911 was recently nullified by the Repealing and Amending (Second) Act that was passed in 2017.[82]

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[78] *Ibid.*
[79] *Supra* note 17 at 146.
[80] The Indian Penal Code, 1860 (Act. No IV of 1898).
[81] *Supra* note 17 at 146.
[82] (Act No. IV of 2018).

CHAPTER- 3

SEDITION VIS-À-VIS FREEDOM OF SPEECH AND EXPRESSION IN UK AND USA

In western liberal democracies, the significance of free speech is well established as it is considered as an implied right. The countries also have provisions relating to sedition to tackle the anti-national activities. For the sake of our discourse, the researcher undertakes the analysis of law of sedition in the era of freedom of speech and expression in countries like United Kingdom and the United States of America.

3.1 UNITED KINGDOM

Throughout the entirety of its existence, the crime of sedition has been classified as one of the various types of political crimes. These are the kind of crimes that are committed with ideological motivations in mind. In spite of the fact that those who commit political crimes are well aware of the repercussions such crimes have on society, they continue to do so in the belief that they are contributing to political progress by doing so.

There is no single source of authoritative criminal law in England. Both common law and legislation form the foundation of England's criminal justice system. Offences under common law and statute law come together to form political offences, which are defined as offences committed against the state, the King, or the government.

Political offences can sometimes be referred to as "filial offences" for the simple reason that these kinds of offences have a propensity to disrupt public order and risk the security of the state. According to the definition provided by **Sir James Stephens**, political offences are described as offences that may not affect the political constitution but do subvert the authority of the government in any area for a longer or shorter period of time.[83]

In his study on the criminal law in England, **P.J. Fitzgerald** distinguished between three distinct types of political offences. Treason is the first category of crimes, and sedition

[83] James Stephen, *History of Criminal Law in England* 294 (Macmillan, London, 1883).

is one of the offences that falls within that category. The second category of political offences includes offences against the administration of justice, such as conspiracies, and the third category of political offences involves the constitution of unlawful assembly.[84]

The political offences of treason, sedition, incitement to violence, and disaffection are allied offences that target the state's ability to maintain its security. Treason is considered to be the most serious political crime that may be committed in England. Since the passing of The Treason Act in 1351, it has also been considered a criminal offence under the law.[85] The Treason Act of 1351 divided treason into two distinct categories: "High Treason" and "Petty Treason". It was considered High Treason to plot the assassination of the King or a member of the royal family, to wage war against the monarch and provide support to the King's adversaries, or to forge the Great Seal. The crime of Petty Treason encompassed a variety of offences, such as the offence of murdering one's superior and the offence of forging coinage (later on elevated to High Treason). In the event of High Treason, the offender was subject to the death penalty as well as either drawing and quartering (in the case of males) or drawing and burning (in the case of females), and their property was confiscated by the Crown. In the event of a charge of Petty Treason, the potential punishments included being drawn and hanged without being quartered, being burned without being drawn, and having the traitor's possessions given back to his owner.[86]

The Act of 1351 was subjected to a number of reforms, each of which substantially broadened the definition of the treason offence. An act for the better security of the Crown and government of the United Kingdom, an act for the safety and preservation of His Majesty's person and government against treasonable and seditious acts and attempts, was enacted in 1848 as part of the Treason Felony Act.[87]

The crimes of treason and sedition were originally conceived of as being offences committed against the monarch of the United Kingdom and the government of that country. The Seditious Practices Act of 1848 defined what exactly constituted treasonous behaviour

[84] P.J. Fitzgerald, *Criminal Law and Punishment* 83-92 (Oxford University Press, Great Britain, 1962).
[85] *Supra* note 17 at 41.
[86] The Treason Act, 1351, *available at:* http://www.legislation.gov.uk/aep/Edw3Stat5/25/2/section/II (last accessed on September 22, 2022).
[87] Treason-Felony Act, 1848, *available at*: http://www.legislation.gov.uk/ukpga/Vict/11- 12/12/contents (last accessed on September 22, 2022).

at the time, which was regarded to be seditious behaviour. It was usual practise to provide an explanation for practises that were considered treasonous or subversive. Provisions from both the Sedition Act of 1661 and the Treason Act of 1795 were incorporated into the 1848 Act. The Sedition Act of 1661 expanded the definition of high treason to include actions such as stealing the crown from the King, fantasizing or waging war against the King, or instigating any foreigner to invade lands that belonged to the King. It was a crime to wage war against the King according to the Treason Act of 1351; nevertheless, according to the Sedition Act of 1661 and The Treason Act of 1795, it was also a crime to imagine, plan, or plot to wage war against the King.[88]

According to Section 3 of the Treason Felony Act, 1848, the acts of devising, compassing, inventing, or intending a levy of war against the Crown, or compelling the Crown to alter measures, inciting any foreigner to attack the territories of Her Majesty, or publication of any such intentions amounted to acts of felonies and was punished for a term of not less than seven years or transportation beyond the seas. According to Section 7 of the Treason Felony Act, 1848, the offences that were defined by the Act were equivalent to treason.[89]

The provisions of section 3 of the Treason Felony Act, 1848, which punishes the publication of any intention for the abolition of monarchy without incitement to violence, were challenged in 2001 by the "Guardian" newspaper. The act in question prohibits the publication of any intention for the abolition of monarchy. The newspaper said that it

[88] The Sedition Act, 1661, *available at*: https://www.british-history.ac.uk/statutes- realm/vol5/pp304-306 (last accessed on September 22, 2022).

[89] Section 3 of the Treason Felony Act, 1848: If any person whatsoever after the passing of this Act shall, within the United Kingdom or without compass, imagine, invent, devise or intend to deprive or depose our most Gracious Lady the Queen, Her Heirs or successors, from the style, honour or royal name of the imperial crown of the United Kingdom or of any other of Her Majesty's dominions and countries or to levy war against Her Majesty, her heirs, or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both houses or either house or parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other Her Majesty's dominions or countries under obeisance of Her Majesty, her heirs or successors, and such compassing, imaginations, inventions, devices or intentions or any of them, shall express, utter, or declare, by publishing or printing or writing or by open and advised speaking or by any overt act or deed, every person so offending shall be guilty of felony and being convicted thereof, shall be liable, at the discretion of the court to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour as the court shall direct.

violates the freedom of expression that is provided by the Human Rights Act of 1998, and that the only actions that should be considered criminal are those that inspire others to do violent acts. The court chose not to provide a response to the hypothetical question. In addition, an appeal was brought to the House of Lords in 2003, and the judges there agreed with the position made by the High Court, but they also did not dispute with the argument that the presence of a provision like this is incompatible with the contemporary legal system.[90]

The Law Commission made a recommendation in 1977 that the crime of treason should be reformed so that its scope would be limited to only include actions such as levying war against the sovereign, murdering the sovereign, and intentionally harming the sovereign, with the exception of during times of war. In addition, the Law Commission suggested that the crime of "misprision of treason", which is defined as "the offence of failing to inform about the charge of treason when one has knowledge of it," be repealed from the penal code. However, both of these offences are still considered to be crimes to this day, with the exception that the crime of treason no longer carries the possibility of being sentenced to death by the Crime and Disorder Act of 1998.[91]

Before the offence of sedition was decriminalized in England in 2009, it was possible to commit the crime of sedition in three different ways: first, by publishing seditious libel; second, by uttering seditious words; and third, by conspiring to commit an act in furtherance of a seditious intention.[92] Earlier, the concept of sedition in England took the shape of the common law offence known as seditious libel, which made it illegal to make any statements that were critical of the monarch. According to the Statute of Westminster from 1275, it was illegal to "utter or publish any false news or tales whereby discord or occasion of conflict or slander may grow between the King and his people or the great men of the realm." This provision applied to slandering the King and his subjects.

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[90] The Treason Felony Act, 1848, *available at*: https://www.theguardian.com/uk/2002/feb/18/monarchy.socialsciences (last accessed on September 23, 2022).

[91] The Law Commission of England, Working Paper No. 72 on Codification of the Criminal Law, Treason, Sedition and Allied Offences, London (1977).

[92] Centre for Study of Social Exclusion and Inclusive Policy, National Law School of India University and Alternative Law Forum, *Sedition Laws and Death of Free Speech in India* (Bangalore, 2011).

Historically, the crime of sedition referred primarily to those actions that would cause a conflict between the subjects and their respective kings. As soon as it was established, the Star Chamber, which was an English Court of Law, quickly transformed into a political institution and a tool to suppress any expression that was critical of the authorities. Initially, the Star Chamber was intended to enforce laws against influential people without any discrimination. Because of this, it was done away with in the year 1641. Any expression that, regardless of its level of truthfulness, had the potential to incite hostility or contempt toward the governing authorities was required to be censored in accordance with the definition of sedition provided by the Star Chamber.

The Law of Sedition was developed in England within the context of the Treason Laws to punish smaller offences than contemplating the death of the monarch or members of the royal family, which was considered to be High Treason and therefore a capital offence. During the middle ages in England, the concept of treason was split into two distinct categories: the first concerned the assassination of the King, while the second focused on the treacherous acts committed against the King. The latter category, which consisted of inciting hostility or contempt for the monarch through the use of words, was what seditious speech focused on.[93]

During the time of Henry VIII, the idea of treason as a crime was also interpreted in terms of the act of speaking ill of the monarch. This understanding dates back to that age. At that time, there was no consensus that a distinct classification of sedition offence was required. However, it was quickly realised that a person cannot be punished for such a serious act of treason simply for expressing words against the monarch. This realisation came quite quickly. It was clear that the accused needed to take some kind of obvious action in order to clear their name. Because of this, the idea of committing treason through words was done away with in 1628, which resulted in a gap in the law. In 1661, the Sedition Act was passed into law in order to fill this gap.

"Act for the Protection and Preservation of His Majesty's Person and Government against treasonable and seditious acts and efforts," this is what the Sedition Act of 1661

[93] J.G. Bellamy, *The Law of Treason in England in the Latter Middle Ages* 4 (Cambridge University Press, Cambridge, 1970).

was officially called. The Sedition Act of 1661 made it illegal to publicly say, write, print, or preach anything that could incite resentment or hostility toward the person or institution of His Majesty or the government that was established by law. This included any content that had the potential to turn the general public against the monarch. Any individual who was found guilty of such an act was subsequently regarded disabled for the purpose of holding any public office.[94]

After the expiration of the Licensing Act in 1894, the Sedition Act of 1661 became notorious for being a weapon of abuse in the hands of the government. Its purpose was to suppress printed criticism directed at the monarch and the administration. The prosecution for sedition eventually expanded to include not only cases of criticism of the monarch and the government via printed content but also acts that had the potential to cause hatred or contempt toward the crown and the government. Originally, the prosecution for sedition only involved cases of criticism of monarch and the government via printed content. Although the Sedition Act of 1661 was repealed, the majority of its prohibitions were reenacted in a number of subsequent legislation, one of which being the Treason Felony Act of 1848. Under the Treason Felony Act of 1848, the offence of sedition was understood along the same lines as it had been understood under the Treason Act of 1351 and the Sedition Act of 1661. Therefore, it is evident that during the times of the Middle Ages, as well as during the early years of modern England, there was no clear cut difference created between the offence of treason and the offence of sedition.

After the Sedition Legislation of 1661 was repealed, no other act that was similar to the Sedition Act was created, hence the Law Commission of England in 1977 came to the conclusion that English law does not have a proper definition of sedition. This conclusion was reached in 1977. The language of seditious intention was established by Sir James Stephen, and it was adopted in the common law of England. This definition eventually led to the development of the definition of sedition. An intention to bring 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

[94] The Sedition Act 1661, *available at*: https://en.wikipedia.org/wiki/Sedition_Act_1661 (last accessed on August 24, 2022).

establishes, or either house or parliament or the administration of justice, or an intention to excite His Majesty's subjects to attempt, other than by lawful means, the alteration of any matter in church or state by law established. The meaning of "sedition" was derived by **Sir James Stephen** from the definition of "seditious intention," which can be found above. He held that acts, words, or writings that were intended or calculated, under the circumstances of the time, to disturb the tranquilly of the state, by creating ill will, discontent, disaffection, hatred, or contempt, towards the person of the King, or towards the Constitution or Parliament, or the government, or the established institutions of the country, or by exciting ill will between different classes of the King's subjects, or encouraging any class of them to rebel against the established institutions of the country.[95]

During the seventeenth century in England, a movement known as the Bourgeois Movement challenged the authority of the Crown. The Glorious Revolution of 1688 brought about a huge change in the political climate of England, ushering in a new era characterised by democratic ideals. Following the events of this revolution, England transitioned into a liberal democracy that was founded on the principle of the rule of law as well as constitutional norms. In 1689, the Bill of Rights was passed into law, placing restrictions on the power of the monarch by mandating free and fair elections and laying the groundwork for a democratic form of governance. In addition to this, the bill granted members of parliament the parliamentary privilege, which is the right to speak their minds without fear of repercussions. Additionally, the measure includes rights such as the freedom to petition the government and the right to be treated equally in court. The United States Bill of Rights, which was enacted in 1789, was modelled after this statute.[96]

The time of political revolution in England led to conflict between the monarch and the government, which in turn led to the creation of more repressive legislation. The scope of the sedition statutes, which had previously been expanded solely to cover situations in which the king was criticised, expanded further once democracy was established in England.

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[95] *Supra* note 55 at 10-13.

[96] The Bill of Rights, 1689, *available at:* https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/revolution/collections1/collections -glorious-revolution/billofrights/ (last accessed on September 24, 2022).

According to **Justice Holt**, it was absolutely essential for the continuation of the government to conduct an investigation into the remarks that were responsible for the formation of negative opinions concerning the government in the minds of the general public. The people have a responsibility to the government to refrain from speaking in a manner that is subversive.[97] The interpretation of "sedition" that prevailed in common law did not include "disapprobation," which was defined as "a challenge to the policies of the King, government, or church," if the challenge was made with the goal of "seeking variations in those policies." The same understanding of the sedition offence persisted until it was eventually done away with in 2009.

According **to Sir James Stephen**, there is no room for sedition in a democracy since the people who make up the government are supposed to serve and protect the interests of the people. He made the observation that a disturbance in the peace could have been caused by the encouragement of an offence; but, an imagined attack on the government that has the potential to disrupt public order should not be punished.

Toward the end of the eighteenth century, the government instituted sedition prosecutions against individuals who supported the French Revolution. The publication of "Rights of Man" resulted in Thomas Paine being found guilty of seditious libel. He stated in his writing that a government does not have the right to rule if it is unable to protect the fundamental liberties of its people. Jacobinism was an ideology that had its origins in France. It criticised the dominance of the aristocracy and advocated for the reconstruction of the political ideology of the United Kingdom by incorporating democratic principles. Wordsworth, Thomas Paine, and Samuel Taylor Coleridge were among the radicals in England who supported the Jacobinism ideology. The individuals who backed the French Revolution were accused of participating in sedition, and they believed that it would be simple to establish their guilt on the basis of the radicals' negative remarks. Another well-known author, John Frost, was sentenced to prison for sedition in 1792 after being found guilty of promoting egalitarian ideals in his writing. In every single one of these instances,

[97] *R.* v. *Tutchin*, (1704) 14 State Trials 1096.

the government resorted to the employment of sedition laws as a restrictive measure to prevent a disruption of public order.[98]

A minister named Winterbotham was found guilty of expressing seditious comments in a chapel, supporting the revolution in France, and criticising the authority of the monarch. He was sentenced to prison. On another occasion, he was charged with sedition once again for delivering a session that contained content that was considered to be seditious. He was found guilty on all charges and given a sentence of two years in prison for each one.[99] These prosecutions led to an increase in the number of people reading these types of literature, which in turn led to an increase in the number of people joining organisations that supported the French Revolution. The Jacobin ideology, radicalism backing democratic values, and the monarchy's union with the democratic Parliament were all contested by Jacobin supporters. Any complaint or criticism levelled against the government was to be brought before the elected representatives of the Parliament, who were of the opinion that this was the only appropriate course of action. Individuals shouldn't resort to the press or public gatherings since doing so is seen as a sign of disrespect and contempt for the government. Instead, people should voice their concerns directly to the administration.

The Chartist Movement was yet another movement that advocated for the protection of fundamental civic rights, including representation in parliament. In the year 1819, a public assembly was organised at St. Peter's Field in Manchester, and over 80,500 people showed up to lend their support to the movement that was striving to reform the parliamentary system. The meeting was called without the permission of the government, and subsequent gunfire resulted in the deaths of 15 persons and injuries to more than 500 others. Sedition charges were brought against those who spoke during the assembly.[100] The 'public order' provision was introduced to the definition of the crime of sedition as a result of the above-mentioned Peterloo Massacre, which also added a new dimension to the understanding of the crime of sedition. The radicals voiced their opposition to this

[98] M. Lobban, "From Seditious Libel to Unlawful Assembly, Peterloo and the Changing Face of Political Crime 1710-1820" 10 *Oxford J Legal Stud* 308-52 (1990).
[99] Carl B. Cove, *The English Jacobins: Reformers in Late 18th Century England* 152 (Routledge Taylors Francis Group, London, 2017).
[100] *Supra* note 9 at 28.

modification because, in their view, the establishment of this link between sedition and unlawful assembly would put a damper on the right of the public to demonstrate.[101]

Up until the nineteenth century, the attitude of the judiciary was that it was more important to maintain public order and calm at any cost, including restricting people's rights to freedom of expression. In addition, the implementation of anti-seditious legislation increased during the First World War in the twenty-first century. John Mclean, an associate of the British Socialist Party, was convicted of sedition for delivering a speech in Glasgow in which he encouraged people to follow the example of Russian comrades and strike against the government. He also urged people not to provide any support to the government in its war against Russia. This speech led to Mclean's conviction. In the case of John Mclean, it was noticed that the government did not prohibit discussion on socialism; nevertheless, if the discussion takes the form of seditious speech, then it is necessary for the government to intervene.[102]

The filing of sedition charges was done primarily for the goal of conveying to the public the notion that communist doctrine posed a risk to the safety and stability of their lives. The Communist Party of Great Britain (CPGB), which was created in 1920, was forced to confront strong action from the government in 1925, when search and arrest warrants were filed against the members of the party. The office of the party was broken into, and a copy of their publication, Workers Weekly, was taken away. Twelve members of the Communist Party of Great Britain (CPGB) have been charged with seditious libel and seditious conspiracy with the intent to incite people against the Incitement to Disaffection Act of 1934 and further to overthrow the government. These charges were brought against them in the United Kingdom. The defence argued that the allegation of sedition could only be brought in the event that there was some direct overt act that incited individuals to engage in violent behaviour. However, the court did not agree and decided against it on the grounds that the publications were sufficient on their own to encourage

[101] *Supra* note 98.
[102] K.D. Ewing and C.A. Gearty, *The Struggle for Civil Liberties, Political Freedom and the rule of Law in Britain 1914-1945* 72-80 (Oxford University Press, New York, 2000).

others to engage in violent behaviour. As a result, each of the twelve members was found guilty of stirring up sedition.[103]

After democratic principles were entrenched in the political climate of England, the attitude of the judicial system towards the crime of sedition likewise shifted to reflect this development. However, there is little question that sedition as a crime under common law has always been recognised, right up to its elimination in 2009. On the other hand, the preservation of one's right to expression under common law was never given nearly as much emphasis as other rights, such as those relating to one's reputation or property. Traditionally, in England, freedom of speech and expression have never found a substantial position in the Constitution of England. This is in contrast to the First Amendment in the United States, which bans the state from drafting any law that contravenes such an essential right.

The Human Rights Act of 1998 was passed in order to ensure that individuals have the fundamental right to secure and certain status regarding their speech and expression. The courts have the responsibility to interpret any provision in such a way that it is as compatible as possible with Article 10 of the European Convention on Human Rights (hereinafter referred to as ECHR), which guarantees individuals the right to free speech and expression. This right is protected by the legislation. Article 10 of the European Convention on Human Rights protects an individual's right to freedom of speech, which includes the right to freely express one's viewpoint through various mediums such as periodicals, television, radio, works of art, and so on. This freedom may be restricted in the interest of national security, the territorial integrity of a state, further on the grounds of public health and morality, to maintain the impartiality of the judiciary, and to protect the rights and reputation of others, or in the event that class hatred is present. However, the authority that is restricting people's freedom of expression must establish proportionality between the restrictions that are being imposed and the harm that is being intended.[104]

[103] *Ibid.*

[104] The Human Rights Act, 1998, *available at*: https://www.equalityhumanrights.com/en/human-rights/human-rights-act (last accessed on September 26, 2022).

It is against the law for a public authority to behave in a manner that is in conflict with the rights that are provided by the European Convention on Human Rights (ECHR), as stated in Section 6 of the Human Rights Act of 1998. Unless the intention of the authority behind such action was to give effect to the requirements of the European Convention on Human Rights (ECHR).[105]

According to Section 12 of the Human Rights Act, 1998, the court will only issue an interim injunction to restrain publication if there is a reasonable expectation that the applicant would prevail in the matter. The importance of the right to freedom of expression, which is protected by the European Convention on Human Rights (ECHR), must be taken into consideration by the court as it deliberates over the question of whether or not restrictions should be placed on publications that include artistic, journalistic, or literary works.[106]

3.1.1 Freedom of Expression: Common Law vis-à-vis Convention Right

Only speech that was not expressly forbidden by the law might be publicly disseminated according to the principles of common law, which held that the right to freedom of expression did not qualify as a distinct or substantial liberty. There has never been a formal declaration of the right to freedom of thought or freedom of expression in England, as **A.V. Dicey** put it.[107]

When dealing with defences of fair comment, legislative restrictions on the right to demonstrate, or privileges to libels, judges used to view common law freedom of expression as an important component of the case**. Lord Keith** was of the opinion that the protection for the persistence of the right to freedom of expression under the common law was comparable to the protection under the ECHR. The House of Lords came to the conclusion, without dissent, that the common law prevented public bodies from initiating

[105] The Human Rights Act, 1998, s.6.
[106] The Human Rights Act, 1998, s.12.
[107] A.V. Dicey, *An Introduction to the Study of the Law of Constitution* 239-240 (Macmillan and Co., London, 10th edn. 1960).

imitation defamation lawsuits because it protected the right to freely express political opinions.[108]

The right to freedom of expression was addressed in a manner that was either more courageous or more empathetic once the convention rights were made into a kind of statute in the year 1998. By putting restrictions on the implementation of other laws, the judges in two landmark judgments have brought the right to free expression to the forefront.

In another case, **Lord Steyn** referred to this freedom as "the constitutional right to freedom of expression in England," which placed this right on a new footing as the House of Lords extended the qualified privilege defence to the cases of defamatory allegations published by the media in public interest. This right was placed on a new footing as a result of the extension of the qualified privilege defence.[109]

In the case of *R.* v. *Shayler*[110], the importance of one's right to freedom of expression was analysed during the process of determining whether or not it was compatible with the Official Secrets Acts. **Lord Bingham** made the observation that despite the fact that this fundamental right had been acknowledged at common law for some time, it was not supported by statute. The House of Lords made the observation that the right is not absolute and allowed for exceptions to be made in cases where the public interest was involved. Additional absolute restrictions on the disclosure of information in accordance with the Official Secrets Act were found to be incompatible with the treaty right. Therefore, if the official has referred to the non-disclosure of material for no major cause, then the courts have the jurisdiction to step in and interfere in order to maintain the convention right of freedom of expression. The addition of protection for freedom of expression in the Human Rights Act of 1998 is the only thing that can be blamed for the shift in perspective among judges. When looking at freedom of expression under common law and the Human Rights Act, Lord Bingham made the observation that the attitude to freedom of expression under common law was "hesitant and negative."[111] **Lord Sedley**

[108] *R.* v. *Secretary of State for the Home Department*, (2000) 2 AC 115 (HL).
[109] *Reynolds* v. *Times Newspapers Ltd*., (2001) 2 AC 127 (HL).
[110] (2003) 1 A.C. 247.
[111] *R.* v. *Chief Constable of Glowcestershire Constabulary*, (2006) UKHL 55, (2007) 2 AC 105.

believed that the passage of the Human Rights Act represented a "constitutional revolution."

In contrast to India, the definition of sedition as a crime in England encompassed a considerably broader range of activities. In India, the sole conduct that has been placed under the scope of sedition is the act of saying seditious words, however in England, before it was abolished, inciting or attempting to stir communal hate was also a part of sedition and was one of the elements of the crime. **Justice Claire** made the observation that:

"*sedition and seditious and defamatory libel are obsolete offences from an ancient era when freedom of expression was not considered as a right that it is today*."[112]

Following the modification of the method taken by the judiciary in two separate cases of sedition in 1909 and 1947, the prosecution for sedition slowed significantly, and some of the cases ended in failure. The judicial system contended vehemently that the incitement to violence and the attitude of the people towards the seditious discourse must both be viewed as major components of the sedition offence.

In 1909, a socialist from India was found guilty of demanding India's independence from British rule. In this case, the accused was found guilty of sedition for the very last time, and the last time sedition was prosecuted in England was in 1972, in a case involving three Irish rebels who were charged with seditious conspiracy for inciting people to join Irish Republicans in Northern Ireland to fight for independence of Ireland from Britain. This case marked the end of all prosecutions for sedition in England. In a case involving blasphemy that took place in 1988, an effort was made to revive the law of sedition. Muslims in Britain made fun of Salman Rushdie's satanic verses, in which he made a reference to a legend that certain verses uttered by Prophet Mohammad were withdrawn later by him on the ground that they came from the devil and not from god. The legend states that certain verses uttered by Prophet Mohammad were withdrawn later by him. These verses have been referred to as glaring verses by Arab historians, but western historians are the ones who came up with the term "satanic verses." On the basis that it

[112] Available at: https://frontline.thehindu.com/the-nation/the-plague-of-sedition/article30913046.ece (last accessed on September 28, 2022).

incited animosity among Her Majesty's subjects, there was a call for the author of the book, as well as the publishers and distributors of the book, to be brought before the courts and charged with seditious libel.[113]

The case was brought to trial in 1991, but the majority of the judges ruled against the prosecution on the grounds of sedition. They were of the opinion that the act of incitement to create a divide among different classes of population did not amount to sedition. Consequently, the majority of the judges ruled that the case should not be prosecuted. The ruling was well received since it defended the right to freedom of expression; but, it also aroused the fear that the response of the judges would have been different had the case been one of libel against Christians.

3.1.2 Putting Forward the Motion to End Suffrage

Civil rights organisations like as *English* and *Article 19* have been at the forefront of the call to repeal antiquated laws such as seditious libel and criminal libel on the grounds that such prohibitions inhibit individuals' rights to freedom of expression in liberal democracies. It was suggested that the existence of freedom of expression gets devalued when there are such archaic rules in place.

The provision relating to the abolition of seditious libel formed an Amendment in the bill as Amendment 178, which read 'abolition of offence of seditious libel: the offences of sedition and seditious libel under the common law of England and Wales are abolished.' The Coroners and Justice Bill was presented in the parliament in 2009, and the provision relating to the abolition of seditious libel. In the Parliament, there was no resistance voiced against the measure that would abolish the practise.

Robert Sharp, who synchronised the campaign of English Pen for abolition of sedition, was of the opinion that such an action on the part of the government was long overdue. Furthermore, the English people do not place respect with limitation to condemn the authority or an equal footing, according to Robert Sharp's assessment. It is not always the case that bringing criticism on an authoritative figure will bring that person's reputation

[113] D. Feldman, *Civil Liberties and Human Rights in England and Wales* 677-679 (Clarendon Press, Oxford, 1993).

into question. Consequently, the general public considered this transgression to be typical of a past in which people were less aware of their rights and were engaged in a struggle for democracy. The definition of the crime of sedition is interpreted differently in England with regard to one more facet of the crime. In contrast to India, where sedition charges have been pursued against anti-national comments because in India, sedition is seen to be an act of betrayal of the nation, sedition was not regarded as a crime against the entire nation in England.

In the year 2000, England passed a law called "The Terrorism Act," which has a provision that makes it a crime to engage in any form of behaviour that incites others to engage in terrorist activity. This Act is of the nature that it does not expressly penalise criticism of the government; yet, it does have all of the elements to punish the traditional sedition offences.[114]

It is a criminal to make any comment that is known to the public that directly or indirectly incites to acts of violence according to Section 1 (1) of the Terrorism Act, which was passed into law in 2006. Under the Terrorism Act of 2006, incitement against the government, which is generally believed to be a component of sedition, may also be prosecutable. In addition, the distribution of any comments of this kind is prohibited by Section 2 of the Act. The more expansive reach of this act may also result in the criminalization of expressions that constitute acts of sedition.[115]

When one considers the Terrorism Act of 2006 in conjunction with the right to freedom of expression, one can come to the conclusion that when it comes to matters of national security, restrictions on the right to freedom of expression are appropriate. Those who advocated for the elimination of the crime of sedition were of the opinion that it does not pose an immediate threat to either the country's security or the public order. In addition, they argued that there are other laws that already cover situations involving the disruption of public order. Because of this, there is no reason to have such an arbitrary law that the authorities can utilise to silence political criticism.

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[114] Sarah Sorial, *Sedition and the Advocacy of Violence* 29 (Routledge, London, 2012).
[115] *Supra* note 17 at 92.

The following are some further comments that Lord Denning made regarding the antiquated statute of seditious libel.

> "*The offence of seditious libel is now obsolescent. It sued to be defined as words intended to stir up violence, that is, disorder, by promoting feelings, of ill will or hostility between different classes of His Majesty's subjects but his definition was found to be too wide. It would restrict too much the full and free discussion of public affairs… so it has fallen into disuse for nearly 150 years".*[116]

In 1997, the Law Commission proposed a number of changes, one of which was the replacement of the offence of seditious libel with criminal libel. It was of the opinion that there is likely to be a sufficient range of other offences covering conduct that amounts to sedition, and we think that it is better in principle to rely on these ordinary statutory and common law offences rather than to have recourse to an offence that has the implication that the conduct in question is political.

The Disaffection Act, which was passed in 1934, is yet another law in England that makes it a crime to cause disaffection toward the monarch. The purpose of this act was to improve the provisions for the prevention and punishment of efforts to seduce members of His Majesty's forces away from their duty of allegiance. It is a crime under the Disaffection Act of 1934 to intentionally seduce any member of Her Majesty's forces, to intentionally aid, counsel, or procure the commission of an offence under this Act, or to intentionally have control of any material the circulation of which could constitute an offence under this Act. This crime is punishable by imprisonment for up to seven years.[117]

3.2 UNITED STATES OF AMERICA

The great revolution of the American War of Independence, which reached its peak with the setting down of the American Declaration of Independence in 1776, is considered the beginning of the history of freedom of expression within the context of American democracy. The declaration established civic liberties, one of which was the right to freely

[116] Lord Denning, *Landmarks in the Laws* 295 (Butterworth London, 1984).
[117] Incitement to Disaffection Act, *available at*: https://www.legislation.gov.uk/ukpga/Geo5/24-25/56/contents (last accessed on September 29, 2022).

express oneself. In the United States of America, the enactment of a statute criminalising seditious speech also has roots in a revolution, specifically the "French Revolution" that took place in 1789. The American Revolution led to the development of two distinct political ideologies in the United States. The ideology that supports maintaining the status quo is represented by one group, and the ideology that supports change is represented by the other group. [118]

During the time that the United States was under British colonial rule, the English common law of sedition was implemented to stifle speech that advocated for independence from the colonial government. Following the adoption of the Declaration of Independence, the constitutionality of sedition laws was called into question. The First Amendment to the Constitution of the United States, which was ratified in 1791, states that Congress shall make no law "abridging the freedom of speech, of religion, or of the press; or... restricting the freedom of assembly or of petition for governmental redress of grievances"; these freedoms were specifically mentioned.[119] According to the First Amendment, the right to freedom of speech is not unlimited and is subject to a variety of constraints, all of which have been upheld by the United States Supreme Court over the course of time. Obscenity, defamation, child pornography, and situations that threaten public order can all be grounds for restricting a person's right to free expression. Other grounds include obscene language, child pornography, and actual threats.

During the process of ratification of the Federal Constitution, a number of states, including Virginia, New York, and Rhode Island, contributed a declaration of the right to free speech. Certain states' constitutions, like those of Massachusetts, Virginia, and Pennsylvania, already contained provisions that were analogous to those pertaining to the protection of free speech.[120] The First Amendment guarantees individuals the right to speak their minds, which fosters public discourse on all aspects of government policy. On the one hand, it gives the courts the jurisdiction to deem any restriction on free speech to be

[118] *Supra* note 17 at 93.
[119] First Amendment to United States Constitution: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
[120] Zechariah Chafee, *Free Speech in the United States* 5 (Harvard University Press, Cambridge, 1954).

unconstitutional, and on the other, it mandates that Congress should exercise extreme caution when passing laws that place restrictions on people's ability to express themselves freely.[121]

Regarding the Bill of Rights, there were two very strong points of view. To begin, it was claimed that the Bill of Rights is a document intended for use during times of peace, and as a result, there will be no controversy regarding freedom of speech during times of conflict. This viewpoint was shot down before it even got a chance. The second point of view was that Congress does not have the jurisdiction to restrict people's rights to freedom of speech; in other words, this right is unqualified and does not have any limitations. This perspective was likewise unfounded due to the fact that the Bill of Rights cannot be taken in a literal sense. The answer is somewhere in the middle of these two points of view; namely, that the right to free speech is not curtailed in times of emergency, but that it may be necessary to restrict its use in the sake of protecting the nation.[122]

Blackstone's assertion "*that the liberty of the press...consists in laying no previous constraints upon publications and not in freedom from censure for criminal matter when published*" is the basis for one additional hypothesis that attempts to locate the boundaries of the right to freedom of expression.

However, this approach has been criticised on the grounds that it does not work within the framework of the democratic system in the United States, and on top of that, giving the death penalty for political criticism is just as repressive as censorship.[123]

The Founding Fathers certainly believed that the right to free speech was an essential one; nevertheless, they did not spend much time discussing the nature of this right or the boundaries within which it should be exercised. After the passage of the Sedition Act in 1798, the right was transformed into a contentious topic of discussion. Before the legislation, people generally agreed that the right to freedom of expression was unalienable. The divergent conceptions of the connection between the ruler and the ruled are at the heart of the tension that exists between the concepts of sedition and freedom of speech. This

[121] *Id*. at 6.
[122] *Id*. at 8.
[123] *Id*. at 10.

fundamental misunderstanding lies at the heart of the conflict. One of them is the idea that because the people are subordinate to the ruler, they do not have the authority to criticise the ruler through the medium of newspapers. They are required to go through their representatives in the legislative process in order to contest the measurements that were determined by the ruler. Another point of view holds that the common people are superior, and that kings are nothing more than their agents and servants.[124]

It was this initial realisation that paved the way for the development of the law of seditious libel. **Madison**, who was responsible for drafting the First Amendment, made the observation that:

> "*In the United States the people, and not the government, possess the absolute sovereignty," and that both the legislative branch and the executive branch are subject to constraints on their power. As a result, Congress does not have the authority to penalise anything that was considered illegal under English common law. A government that is responsible, limited, and elective in all of its branches may well be thought to require a greater "freedom of animadversion than might be tolerated by one that is composed of an irresponsible hereditary kind and upper house, and an omnipotent legislature.*"[125]

This is because an elective, limited, and responsible government in all of its branches allows for greater accountability in all of its operations.

It is possible to argue that the only way to resolve the conflict that arises from the existence of sedition laws and the right to free speech is for both the executive and the judicial branches to come to the realisation that the only way to resolve the issue is to strike a balance between the pursuit of the truth and the protection of the public interest. Therefore, when there is a war going on, people should be entitled to speak their minds without being subject to any kind of censorship, unless it is directly interfering with the way the war is being fought.[126]

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[124] *Supra* note 120 at 98.
[125] *Id*. at 19-20.
[126] *Id*. at 35.

There were two different schools of thought concerning the First Amendment. One of them is that the First Amendment simply prevented pre-censorship, and the legislation that related to seditious libel was not changed as a result of this. The second reason is that the First Amendment was written with the intention of removing any and all limitations placed on people's rights to freedom of speech and religion. After some time had passed, the political climate pushed the government to pass a distinct piece of legislation for the crime of sedition.[127]

3.2.1 The Alien and the Sedition Act

The Alien and Sedition Legislation was passed into law by the federalist government in 1798. This act provided law enforcement agencies with the authority to expel from the country any dangerous aliens who were deemed to be a threat to the republic. The primary motivation behind the passage of such an Act was to coerce citizens of France who supported Jacobinism and were critical of the policies of President Adam into leaving the nation.[128] The Alien and Sedition Act, 1798 was comprised of four sections, and the section that dealt with sedition was the fourth section. Seditious conspiracy with the intent to criticise any policy of the government of the United States or to interfere with the implementation of a law of the United States or to intimidate or prohibit any public servant from carrying out his duties was penalised under this law.[129]

The ideology of the centre ruling states, the British, was backed by the Federalist party, while the philosophy of the French was supported by the Republican party. The United States went to war with France as a direct result of the intensifying antagonism between Britain and France. The Federalist Party in the United States of America enacted the Alien and Sedition Acts in order to suppress the influence of French philosophy.[130] The republicans voiced their opposition to the sedition statute on the grounds that it violated the Constitution's guiding principles. It was a dictatorial attitude that ran against to the

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[127] *Supra* note 17 at 95.
[128] T. Tedford and D. Herbeck, *Freedom of speech in United States* 25 (Strata Publishing Co. USA, 5th edn., 2005).
[129] The Alien and Sedition Act, *available at*: https://www.napoleon-series.org/research/government/legislation/c_alien.html (last accessed on September 28, 2022).
[130] B.A. Ragsdale, *The Sedition Act Trials* 1-3 (Federal Judicial Centre, Federal Judicial History office, USA, 2005).

fundamental principles of liberal democracy to punish people for expressing beliefs that were different from the majority.

Their interpretation of the sedition legislation ultimately proved to be the deciding factor in the Republican party's win. They were of the opinion that putting limits on the freedom of speech that was protected by the Constitution was comparable to putting poison in a liberal democracy. On the other hand, the federalists defended the Sedition Act by arguing that the government possessed the ability to prohibit seditious sentiments in the public good and that this authority justified the passage of the act.[131]

Ten individuals were found guilty of sedition and another 25 were detained on similar charges under the Sedition Act of 1718. The Republicans James Callender, Benjamin Franklin Backe, Joseph Priestly, and Mathew Lyon, among others, were accused of engaging in seditious activity and faced charges as a result.[132] Mathew Lyon was the first person to be prosecuted for allegedly subverting the constitutionality of the Sedition Act by expressing his disapproval of the actions of the government. He was sentenced to a total of four months in jail and given a fine of one thousand dollars in the United States. Because of their use of politically motivated cases, Republicans have become known as the party that champions freedom of expression. The approach taken by the administration toward expressions of dissent led to unfavourable outcomes, which contributed to the defeat of the government by republicans in the year 1800.

The laws of the states remained to be in effect even after the federal law no longer applied. During the American Civil War, which began in 1861 when southern slave states founded a "confederacy" or the "South," sedition law was once again enforced in the United States. Those who demanded civil liberties for African Americans throughout the war were prosecuted for treason and faced serious consequences.[133] The call for the abolition of slavery was seen as a potentially subversive form of expression. In later years, the demands of the working class were also considered to be signs of subversive behaviour. The Industrial Workers of the World, sometimes known as the IWW, was a group that

[131] *Id*. at 2.
[132] *Supra* note 129.
[133] *Supra* note 128 at 32.

represented the working class and advocated for Marxist philosophy in substitution of capitalism in the United States. They were also referred to as "wobblies" at the time. Their approach including travelling to different parts of the world and engaging in conversation with factory owners, employees, and migrant labour. Their methods were interpreted as part of a larger plot to undermine the authority of the government, which led to this interpretation. In response to the expiration of the Sedition Act of 1798, the states of New York, Wisconsin, New Jersey, and California each passed its own version of a sedition statute.[134]

In the course of the First World War, the liberal democracy practised in the United States of America was forced to confront yet another challenge. In addition, the political climate shifted, which was a contributing factor in the division of the Republican Party into Democrats and Republicans. After delaying the United States' involvement into the war until 1917, Democratic President Woodrow Wilson eventually declared war in an effort to achieve peace. One of the numerous steps that needed to be taken in order to accomplish this purpose was to pass a new law criminalising sedition.[135]

3.2.2 The Espionage and Sedition Act

Two pieces of legislation were passed by the government in an effort to stifle anti-war nationalism. This was done since it was widely believed that people who opposed the war also opposed the government and the nation as a whole.[136] The Espionage Act of 1917 was the first piece of law that was passed, and it criminalised any utterance, which had the effect of reducing allegiance within the military forces. The other piece of legislation that was passed was the Sedition Act of 1918, which was essentially an amendment to the Espionage Act of 1917. The Sedition Act of 1918 criminalised any expression that was deemed to be scandalous, insulting, inconsistent, or disloyal toward the government of the United States of America, its flag, or its armed forces, or that had the potential to incite hatred or contempt toward the institutions of the government. This was the common conception of what constituted sedition throughout the twentieth century in the United States. The idea that

[134] *Id*. at 33.
[135] *Supra* note 17 at 100.
[136] R. Hargreaves, *The First Freedom, A History of Free Speech* 257 (Sutton Publishing Co. England, 2002).

any form of dissenting thought could potentially cause individuals to be incited to commit acts of violence was the reasoning behind the implementation of sedition laws. Because it was important to suppress such opinions, the laws were implemented.[137]

The statement "*if we cannot reason with men to be faithful, it is high time we compelled them to be loyal*" was said by **Senator Kenneth Mckelar** in defence of sedition laws.[138]

The Sedition Act of 1918 was put into effect in the first few years after it was passed into law in order to silence the voices of individuals who opposed the participation of the United States in the First World War. Both Alexander Berkman and Emma Goldman were found guilty of lobbying against the Selective Service Act of 1917 and received sentences of two years in prison each. The Selective Service Act of 1917 gave the federal government the authority to establish an army through the practise of mandatory military service. The two defendants were found guilty of violating the Conscription Law by spreading information about a "No Conscription Operation."[139]

1919–1920: The Year of the Red Scare This time period exemplifies the fact that sedition laws were not only implemented during times of war, but also continued to be enforced during times of peace as well. In the years 1919 and 1920, there were around 1400 arrests made, and out of those, 300 persons were given a sentence of 20 years in prison for political opposition. The Sedition Act of 1918 was finally overturned by Congress at the tail end of the 1920s.[140] Archival data demonstrate that the Sedition Act of 1918 was used to bring hundreds of prosecutions that resulted in severe punishments during the years of 1918 and 1920. In 1920, the Sedition Act of 1918 was finally overturned and no longer in effect. During the Second World War, the sedition legislation was generously implemented into practise for the first time. In 1936, President Roosevelt delegated a covert authority to the FBI, which was then led by J. Edgar Hoover, to monitor communists operating within

[137] *Ibid.*
[138] St. Kohn, *American Political prisoners* 9 (Praeger Publishers, USA, 1994).
[139] *Id*. at 337.
[140] G. Stone, *Perilous Times: Free Speech in War Time* 223-225 (Nouton Publications, New York, 2004).

the country. It is supposed that this served as a portent of the events that were to take place shortly after.[141]

3.2.3 The Alien Registration Act or the Smith Act

Following are some goals of the Act, as outlined by the Senate Judiciary Committee:

- To outlaw advocating insubordination, disloyalty, mutiny, or rejection of duty in US military or naval services.
- Prohibiting the violent overthrow or destruction of any US government.
- To expand the legal grounds for deporting aliens.
- To suspend deportation of aliens in hardship circumstances when the deportation is technical and the alien exhibits good moral character, subject to congressional review.
- To mandate that all aliens be registered and fingerprinted.[142]

Section 1 of Title 1 of the Act states that anybody who counsels, pushes, or spreads printed material to persuade US military or naval forces to mutiny or disregard their responsibilities is guilty of sedition. Section 2 further outlaws overthrowing the government by force or violence, or by publishing, selling, or distributing printed material promoting the overthrow of the government or forming a group, society, or aiding any society or organisation overawe the government to bring it down. Government means any US state, territory, or possession. Section 3 covers seditious conspiracy for the above purpose. Law enforcement can search any area and confiscate seditious material under clause 4. Section 5 imposes a $10,000 punishment or 10 years in prison for the above activities. Same provision in 1917 Espionage Act. The criminal is also forbidden from public sector employment for five years on conviction.

The concept of "national security" has been used as the primary justification for the existence of sedition laws in virtually every democratic nation. Nevertheless, there has been a change in how the idea of "national security" is interpreted by people. These days,

[141] *Ibid.*

[142] The Alien Registration Act, *available at*: https://www.mckendree.edu/academics/scholars/issue13/puloka.htm (last accessed on September 30, 2022).

the concept involves not only safety from external threats like terrorism or internal unrest, but also safety from threats to one's financial well-being. Because the concept of national security today encompasses a wider swath of territory, the existence of a law criminalising sedition is something that countries all around the world should be concerned about.[143]

The Smith Act of 1940 criminalised any act, aiding, advising, or teaching intended to overthrow the government of the United States or any state government through the use of force or violence. It also made it illegal to circulate or display any ideas that advocated for the overthrow of either government. People believed that the Smith Act was an anti-communist piece of legislation, despite its name. This encompassed within its purview any form of statement or membership that was hostile toward the government.

The Smith Act of 1940 was used for the first time to prosecute 29 leaders of the Socialist Workers Party, who had voiced opposition to the United States' participation in the Second World War. Additionally, it was believed that the party was to blame for the closure of the military factory in Minneapolis. 18 Members of the party were found guilty of participating in a plot to subvert the government of the United States and were sentenced to prison.[144]

The Cold War: One can look at the Cold War from either the American or the Soviet point of view. On the domestic front, it was a fight against communist ideology, while on the international front, it was a fight to establish United States global dominance over the Soviet Union. In 1949, 11 Communist Party members were charged for violating various provisions of the Smith Act. They were accused with seditious conspiracy because they advocated for Marxism-fundamental Leninism's ideas. It was believed that they were plotting to topple the government of the United States by preaching the values that they upheld. They were also held responsible for spreading content that was considered to be subversive. The case was widely covered in the media, and on the day of the hearing, there were more than 400 law enforcement officials present in the courtroom. The accused said that Marxism supports making the transition to socialism without resorting to violence. Following a trial that lasted for ten months, each of the 10 accused received a sentence of

[143] *Supra* note 9 at 4.
[144] *Id*. at 48.

five years in prison and a fine of $10,000. The conviction was upheld by the United States Court of Appeals on the grounds that there was a probability of harm and that the government cannot wait for it to become plain and present before taking action. All of the members were found guilty of sedition based on the argument that even the slightest threat could serve as a justifiable cause for curtailing a person's right to free speech.[145]

More than 90 members had been found guilty of violating the Smith Act by the time 1957 came to a close.[146] Even after the end of World War II, the Smith Act from 1940 remained in effect. Despite the fact that there was an attempt made by the judicial system to differentiate between the interpretation of the statute of sedition during times of war and times of peace. After the verdict in the Brandenburg's case, there was a change in the understanding of the law of sedition. In that judgment, it was noticed that the likelihood of imminent danger of violence is an essential part of the offence of sedition. This led to the shift in understanding. Nevertheless, there were also a few isolated incidents during the Vietnam War in which sedition charges were brought against individuals for their political opposition.

A different understanding of the concept of sedition can be gained from looking at another case that involved an officer in the United States Army named Oscar Lopez Riviera. Lopez Riviera was a Puerto Rican citizen who served the United States during the Vietnam War. It is said that Rivera was a leader in the organisation known as the "Fuerzas Armadas de Liberacion National," which fought for the independence of Puerto Rico and would be referred to from this point forward as the FALN. Rivera was taken into custody in 1971 on charges of possessing explosives, but he was later charged with seditious conspiracy to overthrow the government of the United States. He, along with the other members of the group, was not charged with any particular crimes of violence for the group's actions. He was found guilty and given a sentence of seventy years in jail. In 2014, he finished serving his sentence of 33 years, which at the time was the longest period ever served by any political prisoner. In 2009, when former President Bill Clinton offered him

[145] *Dennis* v. *United States*, 341 U.S. 494 (1951).
[146] *Supra* note 140 at 140.

clemency, he declined it due to the condition that would have required him to be released on parole.[147]

This case is the typical illustration of how individuals in authority can misuse the law of sedition to further their own agendas. Because there was no evidence that Rivera was involved in the violent acts, he was accused with seditious conspiracy despite the fact that he was the one who was being investigated.

As a result of the judiciary's increasingly liberal reading of the statute of sedition in the context of freedom of expression, the number of sedition cases filed in the United States has decreased. The most recent person to be convicted of seditious conspiracy occurred in the year 1995. In 2005, Laura Berg, a nurse who worked at a hospital run by the United States Department of Veterans Affairs and who was stationed in New Mexico, was falsely accused of sedition after writing a letter to the editor of a newspaper in which she accused political leaders of being negligent in their duties. However, the charges were eventually dismissed. In 2010, individuals affiliated with the Christian Patriot Movement were prosecuted for inciting sedition after accusing the government of violating the civil liberties of its own citizens. Once more, the accusations were dismissed since there was no evidence of any overtly violent behaviour whatsoever. The reformist stance of the judiciary has been the driving force behind the reduced friction between free speech and sedition.[148] The adoption of more stringent security rules is one more factor contributing to the demise of the sedition law. These statutes can include sedition as well as a wide variety of other behaviours that undermine the public order and security of a nation. Such provisions can be found, for instance, in the United States Patriot Act of 2001, which was enacted in response to the terrorist attacks on September 11, and is also known as the Intercept and Obstruct Terrorism Act. Domestic terrorism is defined by Section 802 of Act as any act that poses a danger to human life within the United States with the intent to terrify the civilian population, to exert influence on any policy of the government, or to interfere with the administration of the government by mass killings, kidnapping, or destruction. In addition, the Patriot Act's section 215 gives the FBI the authority to search any tangible

[147] *Supra* note 17 at 110.
[148] *Ibid.*

things associated with a suspect, such as books, emails, talks, and so on.[149] There is no question that the Patriot Act does not explicitly restrict people's rights to freedom of expression in the same way as the Sedition Act of 1798 and 1918 did; yet, the Patriot Act's implementation has a chilling effect that is difficult to avoid.[150] The United States Patriot Act provided the executive branch with extensive new powers, including the ability to detain non-citizens, to intercept on protected communication between a lawyer and a client, to restrict the operation of the Freedom of Information Act, to carry out deportations in secret, to keep an eye on religious and political groups, and to wiretap the communication of suspects.[151]

Both the Espionage Act of 1917 and the Smith Act of 1940, in addition to a number of additional anti-sedition legislation, are still in effect in the United States. Even though instances of sedition are uncommon, the threats that it poses to people's rights to free speech are something that simply cannot be ignored.[152]

In the legislation of the United States military, there is also a provision for sedition. Overthrowing or destroying lawful civil authority through insurrection, violence, or any other type of disturbance is a violation of the uniform code of military justice, which is found in Article 94. It states that anyone who, either by themselves or in collaboration with others, seeks to accomplish the aforementioned object is guilty of sedition. This applies whether they intend to do so alone or with others.[153]

One can make the observation that the use of sedition and other legislation related to national security is founded on a psychology of fear. To quote an article written by an American columnist named **Anthony Lewis**:

> *"We have surrendered again and again to dread of the Jacobian horror in France fuelled adoption of the Sedition Act in 1798... During World War I, both men and*

[149] Section 215 of the Patriot Act provides Access to records and other items under the Foreign Intelligence Surveillance Act.
[150] *Ibid.*
[151] Supra note 140 at 552.
[152] Supra note 138 at 22.
[153] Article 94 of Uniform Code of Military Justice: Any person who, with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition.

women might receive lengthy prison sentences for even moderately critical statements on the government... During World War II, irrational fear contributed to the recruitment of Japanese Americans as a weapon... The fear of the Soviet Union during the cold war gave rise to the excesses of Mclarthyism... The government responded to the anti-Vietnam War demonstrations with a significant increase in domestic intelligence gathering meant to monitor and silence opposition."[154]

Even though sedition laws are rarely used in modern times, the fact that they are still on the books provides the government the authority to determine on a case-by-case basis whether or not to restrict citizens' rights to freedom of speech.

At the moment, treason, sedition, and subversive activities are all included in the United States Code under Title 18, Chapter 115. This chapter stipulates that a seditious conspiracy to overthrow the government of the United States can result in a sentence of twenty years in prison, a fine, or both. If there is a conspiracy between two or more people to destroy or overthrow the established government of any state or territory of the United States, or if one person interferes with the operation of any law of the United States, or if one person undertakes control of any property of the United States, then those individuals are subject to a fine and a sentence of not more than twenty years in prison, or both. This provision can be found in Section 2384 of Title 18 of the United States Code. Any advocacy, teaching, or excitement to overthrow the government of the United States or any part thereof, by force or violence, is punishable under Section 2385. Additionally, in order to accomplish this goal, distributing or publishing any seditious material that excites others to cause the destruction or overthrow of established government in the United States is also punishable under this section. The violation of this section is penalised by imprisonment for a term of not more than twenty years, and the individual convicted of the crime is prohibited from holding a public job for a period of five years following the date of his conviction. The United States Supreme Court has never ruled that the sedition legislation violates the Constitution; rather, time and time again, new criteria have been established in order to impose restrictions on individuals' rights to freedom of speech. Despite this, there

[154] A. Sarat, *Terrorism, Dissent and Repression: An introduction, Dissent in Dangerous Times* 6 (University of Michigan Press, Michigan, 2005).

have been fewer restrictions placed on people's rights to speak their minds as a result of the First Amendment and judicial interference. The United States has not had a conviction for sedition since the 1990s, and there have been very few examples of this statute being used in the twenty first century. Nevertheless, the existence of such laws has always been an issue of debate in the context of freedom of speech.

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CHAPTER- 4

CONSTITUTIONAL STATUS OF LAW OF SEDITION AND FREEDOM OF SPEECH AND EXPRESSION

Under international law protecting human rights and the Indian Constitution, the right to freedom of expression is the most valuable right. The right to freedom of speech and expression is essential to the functioning of a democratic system, and any form of limitation should only be placed by the state after it has been subjected to the appropriate level of judicial examination. The framers of the Indian Constitution had a vision of a society in which everyone has the freedom to speak their mind in an atmosphere free from intolerance and without fear of retribution. After years of being forced to submit to unjust restrictions on expression and speech imposed by the British government, it became even more important to institute a protection to ensure that individuals are free to express their views and beliefs without interference. The inclusion of Sub-section (a) of Article 19(1) in the Indian Constitution was regarded as the realization of this desire and promise.

There are two competing claims working in the area of freedom of speech. These claims are protecting the rights of the speaker and the government's interest in maintaining public order. Thus, individual liberty and social control are operating in the same sphere which needs to be adjusted to create a balance for the working of vibrant democracy in which varying and dissenting views can be expressed and respected.

When it comes to guaranteeing free speech and granting the government sufficient power to maintain public order, the judiciary has had a difficult time striking a fine balance. Two dividing lines can be seen in the decided instances. In one group of instances, the courts show that they are concerned about protecting free speech and are not convinced by the state's arguments that certain types of speech may lead to public disorder. As opposed to the other, which values free expression less highly than maintaining public order, the latter serves to justify the former's abuses of power.

4.1 FREEDOM OF SPEECH AND EXPRESSION IN INDIA

Every individual ought to be eligible for certain fundamental rights. The primary meaning of the terms “freedom of speech” and “freedom of expression” is the right to speak one’s opinions without interference and without the fear of being punished for doing so. Every citizen in India has the right and the responsibility to debate public matters in an open and honest manner, whether they do it verbally, in writing, or by any other means of publication. This encourages engagement on the citizen’s part in the public and political activities of the nation, which in turn helps to establish a democracy that is positive and healthy. The Indian Constitution places the responsibility of recognising the rights of citizens and ensuring the citizens’ ability to freely exercise such rights on the state government.

The ability to speak one’s mind and express oneself freely helps individuals realise their full potential. It is beneficial to the process of discovering the truth and enhances the capability of an individual to participate in the decision-making process. It offers a framework that makes it possible to strike a reasonable balance between the maintenance of the status quo and the advancement of society. It is important for the state to provide full support to protect the right to freedom of speech and expression since doing so encourages citizens to participate in the governance of the country.

The Indian Constitution has been the driving force behind India’s open society as well as the nation’s long history of political stability. This right is protected in India by the Constitution of India, specifically Part III, Article 19(1) (a). The right to freely convey one’s opinions, perspectives, and thoughts verbally through written publication, motion pictures, or other forms of electronic media is an essential component of the freedom of speech and expression. This kind of unrestricted information sharing across a variety of platforms is a significant obstacle for the state to overcome in its pursuit of fairness in the regulation of the right. The Indian Judiciary has also been quite active in extending the scope of this right through a number of different court pronouncements, which have all contributed to this.

Justice Patanjali Sastri made the insightful observation in *Romesh Thappar* v. *State of Madras*[155] that:

> *"…freedom laid at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of proper government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected with Madison, who was the leading spirit in the preparation of the first amendment of the Federal Constitution, that it Is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigour of those yielding the proper fruits.*"[156]

Democracy cannot exist without the fundamental right to free expression. Individuals shape the society into a cohesive and productive whole through the process of democracy, which is the expression of the collective will of the people. No human being can be prevented from having opinions, ideas, or thoughts, nor can they be prevented from expressing them.

Assuring people's rights to free speech and expression is necessary to create an environment in which ideas can freely be exchanged and political and social issues can be discussed openly, both of which are prerequisites for genuine democracy. Because communication is the cornerstone of community life, the repression of this right would put the very existence of any healthy society in the future in jeopardy. This is the basis that society provides for freedom of speech and expression. The idea of rights was developed partly with the purpose of defending people against excessive governmental authority.

Article 19(1)(a) of the Constitution of India gives citizens the right to freedom of speech and expression, with the understanding that such rights are subject to reasonable restrictions as outlined in clause (2) of the same article. During the post-independence period, numerous provinces had significant disturbance and uproar as a result of issues relating to language, religion, and regional concerns. Due to the fact that Article 19(2)

[155] *Supra* note 42.
[156] *Ibid.*

limitations did not include "public order" as a ground to curb the right, state laws were unable to combat the developing threat that posed a threat to society. These kinds of protests received backing from a select few parts of the media. The court has expressed a variety of opinions about the imposition of restrictions on article 19(1). (a). It is essential to have a clear understanding that, despite the fact that restrictions on one's right to freedom of speech and expression are legal, this does not mean that any specific restriction is acceptable or that it should be imposed. In cases such as *Romesh Thappar* v. *State of Madras*[157] and *Bhushan* v. *State of Delhi*[158], the Supreme Court expressed their opinion that regulation on the press for the purpose of avoiding and curbing activity that is detrimental to public safety does not fall within the ambit of Article 19(2) and, as a result, needs to be struck down. In these cases, the court stated that the regulation on the press should be struck down. The failure of the government to issue restrictive orders was one of the contributing factors that led to the first amendment being made to the Constitution of India. The amendment brought about certain changes in Article 19(2) with new inclusions, authorising the government to impose restrictions on the freedom of speech and expression in the interest of the security of the state, friendly relations with other states, decency or morality, public order, or in relation to contempt of court, defamation, or incitement to an offence. The amendment also brought about certain changes in Article 19(2) with new inclusions. The phrase "tends to overthrow the state" was changed in the amendment to read "in the interests of the security of the state." The term "libel and slander" has been substituted by "defamation." The word "reasonable" was introduced before the expression "restrictions," and new grounds such as incitement to an offence, the sovereignty and integrity of India, and public order were incorporated.

4.2 IMPOSITION OF REASONABLE RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION

The Indian Supreme Court decided in the case *Indian Express Newspaper* v. *Union of India*[159] that the right to freedom of speech and expression cannot be exercised in an

[157] *Supra* note 42.
[158] AIR 1950 SC 129.
[159] (1985) 1 SCC 641.

unrestricted and unqualified manner. The state has the power to place reasonable restrictions on the rights to ensure that they are exercised fairly. Two prerequisites have been established by the Constitution of India in order to justify the control of individuals' rights to freedom of speech and expression. The first need for a restriction is that it serve one of the purposes outlined in Clause 2 of Article 19. The second condition stipulates that the limitation must be "reasonable" in nature.

The grounds on which reasonable restrictions can be imposed are as following:

1. Sovereignty and Integrity of India
2. Security of the state
3. Friendly relation with foreign States
4. Public order
5. Decency or morality
6. Contempt of court
7. Defamation
8. Incitement to an offence

Article 19(2) was amended twice before it finally settled on its current wording: in 1951, "public order" and "friendly relations with the foreign states" were included as grounds for restricting freedom of speech and expression, and in 1963, "sovereignty and integrity of India" were added as another.

The question that needs to be answered is how one may accurately draw conclusions regarding what is reasonable. Is it legal for a citizen to set fire to the flag of their country as a form of protest? Is it possible for a single person to demand independence in the manner that he understands it? Is it considered a respectful act to fly the Pakistani flag in Indian Territory? All of these different scenarios are different kinds of expression. It is entirely up to the audience to decide whether or not these expressions are appropriate to use in common parlance.

However, the question that needs to be answered is whether or not one has the right to express themselves even if the method of expression does not have the acceptance of the prevalent values and beliefs. Under the guise of "reasonable restrictions" in accordance

with Article 19(2), political parties have on multiple occasions restricted individuals' rights to free speech and expression in order to forward their own agendas. It is not entirely obvious what role the state should play in enforcing reasonable restrictions.

When there has been an undesirable circumstance for the government, such as a demonstration or public uproar over some public policy or social injustice, the state has always compromised the right of the people in order to obtain peace and security for the governance system. Individual liberties are protected by the Indian Constitution, and the government needs to stop abusing the grounds for 'reasonable restrictions' in order to demonstrate that it supports these rights. It is not the responsibility of the state to decide whether or not a restriction is acceptable, and the state should avoid taking on this role. It is imperative that citizens be provided with enough security in order for them to be able to freely enjoy their rights without feeling threatened. The occurrence of widespread injustice raises the question of whether or not the moment has come to revive the concept of free speech and expression in its true sense.

Article 19 (2) of the Constitution of India has an extensive list of grounds for imposing restrictions. In a series of rulings, the Supreme Court of India has declared that the constraint imposed by Article 19(2) must not be needless or imbalanced. This mandate comes from the court's interpretation of the constitutional provision. In addition, the procedure and the method that will be used to impose the restriction need to be fair, rational, and just as well.[160] The power of judicial review has been used by the courts to strike down legislation that have been deemed unconstitutional because they do not comply with the requirement that they be reasonable.[161] The true challenge lies in determining the extent to which it is acceptable to restrict people's rights to freedom of speech and expression. It is essential to strike a balance between preserving individuals' rights to speak their minds freely and maintaining the wider interests of the society as a whole. It is not hard to put forward a balance proposition in theory, but it is impossible to put it into practise because there are conflicting perspectives regarding the importance of free expression in comparison to community values and interests. In addition, what necessitates the

[160] *State of Bihar* v. *R. N. Mishra,* AIR 1971 SC 1667.
[161] *Bennett Coleman & Co.* v. *Union of India* AIR 1973 SC 106.

application of restriction is a complex collection of causes, each of which is accessible to multiple interpretations. There is a vested incentive on the part of religious organisations as well as political groups to influence the adoption of limitations. Under the guise of protecting the country, certain restraints have also been put in place that serve the interests of powerful people. This shield of safety has on occasion been of assistance to the government in carrying out its covert operations. Numerous publications have been charged with sedition on the basis that they are critical of the policies that are being implemented by the administration. In India, the crime of sedition has been subject to a significant amount of abuse in recent years. Its origins can be traced back to the Privy Council's interpretation of British colonialism as a means of putting down resistance. The Indian Supreme Court expressed their disagreement with the conclusions made by the Privy Council in the historic case of *Kedar Nath* v. *State of Bihar*.[162] It was opined that the essence of the crime of sedition as defined by Indian law is not merely criticism of the government, even if it is done in strong words; rather, it is the provocation to violence or the chance of creating public disorder by speech or publication. This was the majority view of those who examined the law. The court came to the conclusion that, given the progression of events, if the provision was not abolished, it may be exploited by a tyrannical government in order to impose its will on the nation.

The Supreme Court has made it abundantly clear on multiple occasions that the right to freedom of speech and expression cannot be unrestricted in any way, shape, or form and must be subject to reasonable limitations and constraints. The maintenance of peace and order within the state justifies the imposition of these limits. In the case of *Divisional Forest Officer* v. *Biswanath Tea*[163], the Supreme Court reached the conclusion that a free society gives citizens the ability to voice their minds and express their opinions without the fear of repercussions. This is the very core of what it is to have a democratic society. However, the state is the one that has the responsibility of ensuring that personal liberty and reasonable control coexist in a healthy manner. The following inquiry that springs to me is regarding the nature of what qualifies as a reasonable restriction. The absence of an accurate legislative definition makes it the role of the Court to decide whether

[162] 1962 AIR 955.
[163] AIR 1981 SC 1368.

or not the restriction that has been imposed in a given instance is fair. When it comes to determining whether or not a restriction is acceptable, there is no standard scale that can be used across the board. In the case of *State of Madras* v. *V.G. Row*[164], the Supreme Court came to the conclusion that whenever the state is obligated to apply the test of reasonableness, it should do so depending on the specific statute that is being challenged. It is not possible to apply a single norm or one overarching principle of reasonableness to all situations because there is neither such thing. In order to determine whether or not an action is reasonable, a number of elements, including the nature of the right that was violated, the necessity of correcting the abuse, and the circumstances that existed at the time, must be taken into consideration.

The word "reasonable" connotes being just and conscientious when used in common parlance. It is essential to reach a compromise between the constitutional guarantee of the right to freedom of expression included in Article 19(1) and the grounds for imposing reasonable restrictions that are outlined in Article 19(2).[165] The state has the authority to use the instrument of reasonable restriction in order to prevent defamation and incitement to commit an offence. This can also be done in the interest of protecting the sovereignty and integrity of India, as well as the security of the state, maintaining friendly relations with other states, maintaining public order, decency, and morality. However, the state cannot use these considerations as an excuse to suppress the genuine essence of freedom. Without the sanction of law that specifically authorises such intervention, the state is not permitted to infringe upon the rights of its citizens.

In relation to the application of reasonable restrictions, the Supreme Court has made different observations. In the case of *Sharda* v. *Dharampal*[166], the Supreme Court offered a straightforward interpretation of the requirement of reasonability. It was argued that the term "reasonable" ought to be understood in the simplest manner possible, in the same way that any ordinary or sensible person would comprehend it. It was decided in *Chintaman Rao* v. *State of M.P.*[167] that the Legislature cannot decide whether or not a restriction is

[164] AIR 1952 SC 196.
[165] AIR 1999 SC 2334.
[166] AIR 2003 SC 3450.
[167] AIR 1951 SC 118.

reasonable. This was the decision that was made. When it comes to determining whether or not a restriction is reasonable, the decision will be made by the court. In the case of *M.R.F. Ltd.* v. *Inspector, Kerala Government*[168], the court ruled that there must be a direct and substantial relationship between the object that is being worked toward and the reasonable restriction that is being imposed. In addition, the court warned against placing an excessive amount of limitation on the defendant. The Supreme Court of India stated in the case of *Papnasam Labour Union* v. *Madura Coats Ltd.*[169] that restrictions put on freedom must not be irrational, rampant, or excessive. It must be in the public interest and comply with Article 14 of the Constitution for something to be considered constitutional. In the case of *Dharam Dutt* v. *Union of India*[170], the court made it clear that there is no single scale that can be used to determine whether or not a restriction is fair. It is necessary to examine each individual situation based on the merits that it presents. The concept of freedom of speech necessitates that actual freedom be granted to individuals to such an extent that it outweighs the restrictions that are placed on it. In the case *Papnasam Labour Union* v. *Madura Coats Ltd*.[171], the court emphasised once again how important it is for a restriction to be able to demonstrate that it is fair from both a substantive and a procedural basis. In addition, the judge stated that the period of the restriction cannot be indefinitely imposed. In the case of *State of Bombay* v. *F.N. Balsara*,[172] the court took a liberal stance and came to the conclusion that it may be possible for regulating freedom of speech in order to implement directive principles to fall within the purview of reasonable restrictions.

In *Pathumma* v. *State of Kerela*[173], the Supreme Court laid down the following test to determine the reasonableness of a restriction in the circumstances of a particular case:

1. When determining whether or whether the restriction is appropriate, the court is required to take into consideration the Directive Principles of State Policy.
2. The limitations imposed must not be of an arbitrary or disproportionate nature, since this would go beyond what is required to protect the interests of the general

[168] AIR 1999 SC 188.
[169] AIR 1995 SC 2200.
[170] AIR 2004 SC 1295
[171] *Supra* note 169.
[172] AIR 1951 SC 318.
[173] AIR 1978 SC 771.

public. In order to strike a fair balance between the freedoms guaranteed by the article and the social control that can be achieved through the limitations stipulated by the article, the legislative body needs to choose the appropriate path with intelligent care and deliberation, as this is the path that is dictated by reason and good conscience.

3. It is impossible to establish a pattern that is either abstract or general, or a principle that is both fixed and applicable everywhere. It will be necessary for it to vary from case to case and take into consideration the changing conditions, the values of human life, the social philosophy of the constitution, existing conditions, and the surrounding circumstances. All of these things must be taken into consideration in the judicial verdict.
4. The court is tasked with analysing the nature and extent of the right, the nature of the wrong that is being attempted to be rectified by the statute, the ratio of the harm caused to the citizen to the benefit conferred on the person or community for whose benefit the legislation is passed, and the nature of the evil that is being attempted to be remedied by the statute.
5. It is important that there exists a clear relation between the restriction that was imposed and the purpose that was attempted to be attained by applying such a restriction.
6. The constraints that have been put in place to ensure the welfare of society are subject to the obligation of conforming to the preexisting social standards.
7. The limitation must not only be considered from the point of view of the citizens, but also from the perspective of the greater aim it is intended to serve. In other words, the court is tasked with determining whether or not the constraints imposed on the fundamental right are, in fact, contributing to the implementation of the social control that is envisioned in Article 19(1). No matter how significant a citizen's or an individual's right may be, it must always give way to the overarching interests of either the nation or the community.

8. The court has the authority to take into account matters of common report history of times and items of common knowledge as well as the conditions that were present at the time that the legislation was enacted for the purpose of this.[174]

4.3 SECTION 124A OF THE INDIAN PENAL CODE 1860 AND FREEDOM OF SPEECH AND EXPRESSION

In *Tara Singh* v. *The State*[175], which was decided before the Constitution First Amendment Act, 1951, and *in Debi Soren & Others* v. *The State*[176], which was decided after the amendment, the question of whether or not expressing disaffection, hatred, or contempt for the government can result in criminal prosecution. Both of these cases offer an intriguing example of different points of view held by the court in its interpretation of the question that was brought before it.

In the case of *Tara Singh,* it was stated that she had engaged in seditious discourse; hence, she was charged with violating Section 124A of the Indian Penal Code. The petitioner argued that the clause had become illegal since it was not covered by the restriction that was made in Article 19(2) of the Constitution of India. This was the petitioner's main argument. The court, in the course of evaluating the legitimacy of the decision that was handed down in *Romesh Thappar* v. *State of Madras*[177], came to the conclusion that section 124A places limitations on the freedom of speech and expression that is protected in Article 19(1) (a). Inciting or attempting to incite specific negative attitudes toward the government in other people is a violation of section 124A's definition of seditious activity. This means that every unsuccessful attempt to overthrow the government is an offence, and it will fall under the purview of section 124A even if there was no intention to really do so. Because the court was unable to distinguish between the portions of the law that were constitutional and those that were unconstitutional, it came to the conclusion that the entire law was null and void because it was impossible to distinguish between the constitutional and unconstitutional parts of the statute. These sentiments were echoed by the other courts. The court ruled in the case of *Sagolsem Indramani Singh* v. *The*

[174] *Ibid.*
[175] A.I.R. 1951 Punjab 27.
[176] A.I.R. 1954 Patna 254.
[177] *Supra* note 42.

State[178] that one cannot be punished for just criticising the government "in the interest of public order," despite the fact that the phrase "public order" is mentioned in clause (2) of Art. 19. The court stated in the case *Dr. Rammanohar Lohia* v. *The Superintendent of Central Prison*[179] that the incitement to the violation of any law does not necessarily result in public disorder. Additionally, the court stated that the relation between the law in question and the threat to public order must be clear and proximate, rather than remote or troublesome. In the case of *Ahmad Ali* v. *The State*[180], the court made the observation that disseminating discontent against the government cannot be considered to be a disturbance of public order until it leads to incitement to violence.

These examples provide credence to the argument that Article 124A of the Indian Penal Code violates Article 19(1)(a) of the Constitution and is, as a result, beyond the scope of the government's authority.

However, in the case of *Devi Soren*, the Patna High Court deviated from the verdict that had been rendered in the case of *Tara Singh*. In this case, the appellants delivered some unpleasant comments against the government during an annual conference held by *Bhagalpur Adibasi Mahasabha*. These speeches prompted responses from the people who were in attendance. It was asserted that the speech contained material that was of a subversive nature. However, the court decided that the statement did not come under the purview of the sedition statute because it merely criticised the administrative and legislative actions taken by the government, which is not something that may be penalised under section 124A. Although there may not be any encouragement to violence, sowing discord or disdain toward the government can have a significant impact on public order; as a result, section 124A is a justifiable restriction on the freedom of speech and expression. In addition, the court expressed the opinion that its conclusion would not be impacted in any way, regardless of whether a broader view of the section, as in the case of *Tilak*[181], or

[178] A.I.R. 1955 Manipur 15.
[179] A.I.R. 1955 All 193.
[180] A.I.R. 1956 All 598.
[181] *Emperor* v. *Bal Gangadhar Tilak*, (1917) 19 BOMLR 211.

a narrower understanding, as in the case of *Niharendu Dutt Majumdar*[182], was accepted. In the matter of *Tilak*, the court decided as follows:

> *"Disaffection means simply absence of affection. It means hatred, enmity, dislike, hostility, contempt and every form of ill will to the government .....whether any disturbance or outbreak is caused by these articles is absolutely immaterial."*[183]

In the case of *Niharendu Dutt Majumdar*, the court reached the following conclusion after choosing an interpretation of the clause that was more restrictive:

> *"The time is long past when the mere criticism of government was sufficient to constitute sedition…criticism of an existing system of government is not excluded, nor even the expression of a desire for a different system altogether… Public disorder or the anticipation or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence."*[184]

Therefore, according to the more expansive interpretation of the provision, every expression of ill will or hatred against the government is seen to be disaffection creating and constitutes sedition - regardless of whether or not these expressions result in public disruption and violence. On the other hand, the more restrictive interpretation would not penalise the kind of dissatisfaction or disdain for the government that does not produce public disruption. One may make the point that the approach that the court took in the case of *Debi Soren* is optimistic and liberal with regard to the issue of free expression. In addition, the viewpoint expressed by the court demonstrates that provision 124A is one that can legally exist.

The following is what the court decided in *State* v. *Ramanand Tiwari:*[185]

> *"If the section 124-A is read as a whole together with the explanations, it seems clear that the mischief which it contemplates has a reference to public order in the*

[182] *Niharendu Dutt Majumdar* v. *Emperor,* AIR 1939 Cal 703.
[183] *Supra* note 181.
[184] *Supra* note 182.
[185] A.I.R. 1956 Patna 188.

widest sense, even though the section does not make it necessary that there should be direct incitement to violence or disorder."[186]

These judgments demonstrate that the court supports the continuation of section 124A in its current form.

In the case of *Niharendu Dutt,* the Federal Court of India had ruled that the essential element of the crime of sedition as defined by Section 124A of the Indian Penal Code was the encouragement of public disorder or the reasonable anticipation that such an event will take place. Therefore, in order for a speech or a piece of writing to be considered seditious, it must either actually incite disorder or reasonable people must be satisfied that such a speech or piece of writing definitely intended to, or had the tendency to, incite disorder. Both of these conditions must be met. In the matter of *Sadashiv Narayan Bhalerao*[187], the judgment in question was overturned by the Privy Council, which then proceeded to return the legal landscape to as it had been.

Since India became a constitutional Republic, any act that could incite disaffection, hatred, or disloyalty toward the government of India would be considered seditious under Section 124A of the Indian Penal Code, regardless of whether there was any incitement of disorder or not. This would be the case even if there was no incitement of disorder.

In the case of *Kedar Nath Singh*[188], the constitutional validity of the provisions of Section 124A was challenged in front of a Constitution Bench of the Supreme Court. The challenge was primarily based on the ground that Section 124A was inconsistent with Article 19(1)(a) of the Constitution, which was the primary basis for the challenge. Following consideration of the several rulings, some of which I have already mentioned, the Supreme Court came to the conclusion stated below:

"It is well established that in the event that certain provisions of law, when viewed in a certain manner, would make them consistent with the Constitution, and when construed in another way, would render them unconstitutional, the Court would err on the side of favouring the former construction. When taken together, the

[186] *Ibid.*
[187] *Emperor* v. *Sadashiv Narayan Bhalerao,* (1944) 46 BOMLR 459.
[188] *Kedar Nath Singh* v. *State of Bihar,* 1962 Supp 2 SCR 769

provisions of the sections, when read in their entirety, along with the explanations, make it reasonably clear that the sections aim to make criminal only those activities that would intend to create disorder or have a tendency to disrupt public peace by resorting to violence. As was previously mentioned, the explanations that are attached to the main body of the section make it abundantly clear that criticism of public measures or commentary on actions taken by the government, regardless of how strongly it is worded, would be considered to be within reasonable limits and would be consistent with the basic right to freedom of speech and expression. It is only when words, whether written or spoken, etc., have the harmful tendency or intention of creating public disorder or disturbing law and order that the law steps in to prevent such activities in the interest of maintaining public order. This is because the law considers maintaining public order to be in the public's best interest. When interpreted in this manner, the section, in our view, strikes the appropriate balance between the fundamental rights of individuals and the objective of maintaining public order. It is also well established that in order for the Court to properly interpret an act, it should not only have regard to the literal meaning of the words that are used, but it should also take into consideration the history of the legislation that came before it, its purpose, and the wrongdoing that it seeks to prevent. When this is taken into consideration, we do not have any reservations about construing the provisions of the sections at issue in these cases in such a way as to limit their application to acts involving the intention or tendency to create disorder, or to disturb law and order, or to incite violence."[189]

The Supreme Court reached the conclusion that in order to constitute an offence of sedition under Section 124A, there must be evidence that the remarks, whether said or written, would have the potential to produce disruption or to disrupt public peace by resorting to violence. There is no basis for an offence being made unless it can be shown that the remarks will escalate to physical confrontation.

If one carefully examines the decision that the Constitution Bench made in the case of *Kedar Nath Singh*, it is clear that if the incitement to violence, the creation of disorder,

[189] *Ibid.*

or the disturbance of law and order that figured into the decision, the Constitution Bench very likely would not have struck down Section 124A. This is the case if one carefully analyses the decision that the Constitution Bench made. It was only considered constitutional when interpreted in the context of inciting violence, creating public commotion, or disrupting law and order, and this was the sole basis for this decision.

In 1974, the government that was in power at the time made still another amendment to Section 124A, which made it even stricter. The crime, which up until that point had been considered a non-cognizable offence, was changed into a cognizable offence, which meant that a person might be arrested by a police officer without first getting a warrant from a court. It is really disturbing to me that in a nation as progressive and free as India, we would choose to make the regulations of sedition even stricter and suppress the voice of the people.

The legal precedent that was established in the case of *Kedar Nath Singh* is very clear. The crime of sedition cannot be proven unless there is an instigation to violence, the creation of public commotion, or a disturbance of the law. Because there was no evidence or record to show that any violence had taken place despite the slogans being raised at a public place, the Supreme Court ruled in 1995 in the case of *Balwant Singh*[190] that raising slogans such as "Khalistan Zindabad," "Raj Karega Khalsa," etc. by themselves did not amount to an offence of sedition. This decision came as a direct result of the previous ruling, which stated that raising slogans such as "Khalistan Zinda

This position of law has been reiterated many times including in *Bilal Ahmed Kaloo's case*[191] and Common Cause vs. Union of India[192]. In both these cases, the Supreme Court directed the Courts to exercise care while invoking charges of sedition. The Courts were advised to follow the principles laid down in *Kedar Nath Singh's case*. It was again said that sedition charges cannot be levelled only for criticizing the Government or its policies.

[190] *Balwant Singh and Anr*. v. *State of Punjab*, 1995 (1) SCR 411.
[191] *Bilal Ahmed Kaloo* v. *State of A.P.*, (1997) 7 SCC 431.
[192] *Common Cause & Anr*. v. *Union of India* (2016) 15 SCC 269.

4.4 THE INTERPLAY BETWEEN FREEDOM OF SPEECH AND EXPRESSION AND THE LAW OF SEDITION

It is pertinent to quote the opinion of **Justice Nariman** in *Shreya Singhal's case*[193] to start the discussion on interplay between freedom of speech and expression and the law of sedition. He opined that:

> *"This brings up the question of what is meant by the phrase "freedom of speech and expression," so let's talk about it. Grasp the scope of this most fundamental of human rights requires an understanding of three principles that are crucial to the process. The first approach is to have a conversation, the second is to make an argument, and the third is to stir up excitement. Simply having a conversation about or even advocating for a specific cause, regardless of how controversial it may be, is at the core of Article 19(1)(a). Article 19(2) does not take effect until such conversation or advocacy has reached the level of provocation for which it was intended. At this point in time, a law could be passed to impose restrictions on speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc....."*[194]

This passage does an excellent job of summing up what principles ought to be applied even to the laws governing sedition. Despite the fact that Justice *Nariman* believes that debate and advocacy are intrinsic components of the right to 'Freedom of Speech and Expression,' the unpleasant reality is that the art of discourse itself is becoming less common. There is not a robust conversation taking place, nor is there any lobbying on issues and ideals. There is nothing but yelling and arguing with one other. Unfortunately, the recurring refrain is either you agree with me or you are my opponent, or even worse, you are an enemy of the nation and an anti-nationalist.

When determining whether Section 124A is constitutionally sound, it is necessary to evaluate the provision in light of Article 19 of the Constitution of India. Therefore, it is

[193] *Supra* note 7.
[194] *Ibid.*

very evident that promoting any new cause, regardless of how unpopular or uncomfortable it may be for those in positions of authority, must be allowed. The rule of law cannot be based on majority rule.

Even the people who make up the minority have the right to voice their opinions. It is also important to keep in mind that the system of "first past the post" is utilised in India. Even governments that are elected with a large majority of the vote do not receive fifty percent of the vote.[195] Because of this, even though they have the right to govern or are considered to be in the majority, it is not accurate to say that they speak for the entire population of the country. There is another very important aspect of this interplay between the right to free expression and the law of sedition, and here I would also discuss the crime of causing disharmony, which is punishable under Section 153A of the Indian Penal Code, as well as criminal slander, which is punishable under Sections 499-500 of the same code. Only actions directed against a lawfully constituted government can be considered seditious. The government is not a person but rather an institution and a body. It is not appropriate to compare criticism of individuals with criticism of the government.[196] During the tumultuous days of the Emergency, the President of one party made an attempt to link his leader with the nation. This attempt was a complete and utter failure, and I have no doubt that in the future no one will ever again make the mistake of trying to compare a single person with our nation, which is much larger than any one person.[197] It is possible that criticism of top functionaries could constitute defamation, for which they could take action in accordance with the law; nonetheless, there is no way that this could constitute sedition or cause unrest.

The law of sedition is frequently violated and exploited in inappropriate ways. People who criticise those in power are sometimes arrested by police officers at the request of those in power; yet, even if a person is granted bail from the court the following day, he has already endured the dishonour of being brought to jail. Because of the way in which the provisions of Section 124A are being misused, the question of whether or not we ought

[195] Nivedita Saxena and Siddhartha Srivastava, "An Analysis of the Modern Offence of Sedition", 7 NUJS Law Review (2014).
[196] *Ibid.*
[197] Caesar Roy, "Law of Sedition in India: A Critical Analysis", IBR 79-95 (2013).

to have another look at it deserves to be asked. Since the right to freedom of expression is guaranteed by the Constitution, it must take precedence over laws that criminalise seditious speech. Only when there is encouragement to violence or public disruption is seditious libel considered a criminal offence.

As a result of the ruling in *Kedar Nath Singh's case*, this is how the law of the land currently stands. It's unfortunate, but each and every day, we read about people getting jailed in various regions of the country for producing cartoons, making remarks that aren't quite complimentary about the heads of state, and other such offences.[198] When questioned about the poor law and order situation in various sections of the country, the police usually say that they do not have enough forces to handle the situation. When it comes to sedition or Section 153A or implementing the provisions of Section 66A of the Information Technology Act (which has been declared unconstitutional), there seems to be no shortage of manpower and the police acts with great enthusiasm. On the other hand, trials in criminal cases of rape, murder, and crimes falling under POCSO drag on for years and years because police officials do not have time to even depose before the courts. As a result, it is abundantly evident that there is one set of rules for the wealthy and powerful in the country, and another set of rules for the regular residents of the country. This is not something that can be tolerated in a nation that prides itself on adhering to the rule of law.

In the past few years, there have been a number of instances in which the law of sedition or creating disharmony has been rampantly misused by the police in order to arrest and humiliate people who have not committed the crime of sedition as outlined by the Constitution Bench of this Court.[199] These cases have given rise to a number of cases in which the police have misused the law. *Asim Trivedi*, a cartoonist, was taken into custody by the Mumbai police in 2011 for reportedly spreading a caricature that made fun of the Constitution and the National Emblem during an anticorruption event that was organised by *Anna Hazare*. The rally was held in Mumbai. As a result of this, the Bombay High Court

[198] *Kedar Nath Singh* v. *State of Bihar, 1962 SCR Supl. (2) 769.*
[199] *Ibid.*

issued directives to the police requiring them to consult senior officials before making any arrests on suspicion of sedition. The High Court of Bombay held[200] as under:

It is abundantly clear that the provisions of section 124A of the IPC cannot be invoked in order to penalise criticism of the persons for the time being engaged in carrying on administration or the use of strong words in order to express disapproval of the measures of the Government with the goal of their improvement or alteration through the utilization of lawful means. In a similar vein, comments expressing disapproval of measures taken by the government, regardless of how forcefully they are written, but which do not excite those feelings which inspire the desire to provoke public disorder through acts of violence, would not be subject to criminal punishment. A citizen has the right to say or write whatever he wants about the government, its policies, or its actions in the form of criticism or comments, so long as he does not incite people to violence against the government that is established by law or with the intention of creating public disorder. This right does not apply, however, if the citizen writes or says something with the intention of disrupting public order. This section's goal is to make it such that the only activities that can be considered illegal are those that have the potential to or are intended to cause a breach in the public peace through the use of physical force.

Cartoons, often known as caricatures, are graphical representations, words, or signs that are intended to be witty, humorous, or sarcastic in nature. After reviewing the seven cartoons in question that were drawn by the respondent, it is challenging to identify any wit, humour, or satire included within them. At a meeting that was held on November 27, 2011, in Mumbai as a part of a movement launched by *Anna Hazare* against corruption in India, cartoons were displayed. These cartoons were full of anger and disgust against the corruption that was prevalent in the political system, and they lacked any element of wit, humour, or sarcasm. But for this reason, the freedom of speech and expression that was available to the respondent to express his indignation against corruption in the political system in strong terms or visual representations could not have been infringed upon when there is no allegation of incitement to violence or the tendency or the intention to create public disorder. But for this reason, the freedom of speech and expression that was

[200] *Sanskar Marathe* v. *State of Maharashtra & Ors.*, 2015 CriLJ3561

available to the respondent to express his indignation against corruption in the political system in strong terms or visual representations

Without the aid of the law of sedition, I believe that our Nation, our Constitution, and our National Emblems are strong enough to stand on their own two feet. Earning someone's love, respect, and affection is something that can never be demanded. A person can be forced or compelled to stand while the national anthem is being sung, but you cannot force someone to respect the national anthem from within their heart. You can force or compel someone to stand while the national anthem is being performed. How can one possibly know what goes on in the thoughts and feelings of another person?

An individual in the state of Chhattisgarh who was 53 years old was detained on suspicion of inciting sedition through the use of social media by reportedly circulating rumours about power outages in the state. It was speculated that this action was taken with the intention of tarnishing the reputation of the government that was in charge of the state at the time. The accusation was ridiculous, and it once again brings attention to the improper use of power.[201] A journalist in Manipur launched a vicious attack against the state's Chief Minister and used language that was completely unacceptable in parliamentary settings while referring to the Prime Minister of the country.[202] The rhetoric used was inappropriate and uncalled for, but there was no intent to incite violence or sedition in this instance. At best, it could be classified as an instance of criminal defamation. Under the provisions of the National Security Act, the individual was incarcerated for a number of months. In the state of West Bengal, a party leader was taken into custody for morphing an image of the Chief Minister[203], and in the state of Uttar Pradesh, a man was taken into custody for morphing an image of the Prime Minister of the country; shockingly, this image had been morphed five years ago. Why was this man taken into custody all of a sudden after a five-year absence? Sedition charges have been brought against a rap artist who does not even reside in India. It is possible that the language she

[201] *Peoples' Union for Civil Liberties* v. *Union of India & Ors.,* W.P.(Crl.) No.199/2013.
[202] *Ibid.*
[203] *Ibid.*

used was completely uncalled for, and it is also possible that some other offences may be made out, but it does not appear that sedition was one of them.

People are still being arrested on a regular basis despite the fact that the statute against creating disharmony and Section 66A of the Information Technology Act, 2000, both of which have been declared unconstitutional, are in use. In point of fact, on February 15, 2019, a bench of the Supreme Court was compelled to issue directives mandating that copies of the Supreme Court's judgement in the case of *Shreya Singhal* be made available by every High Court in this country to all of the District Courts.[204] These directives were issued to every High Court in this country. It does not speak well of the Indian judiciary that the magistrates are unaware of the law of the land. Day in and day out, we hear of magistrates granting judicial custody or police remand in relation to such offences wherein the basic offences are not made out, and under Section 66A of the Information Technology Act, a law that is no longer valid. This is something that does not speak well of the Indian judiciary.

The law that was established in the *Kedar Nath Singh case*, which is the law of the land, needs to be applied in both its letter and its spirit. However, no action should be taken unless the actions lead to the creation of public disorder, the disturbance of law and order, or the incitement of violence. In point of fact, in my opinion, the law of sedition ought to be watered down, if not entirely done away with. The least that the government can do is to make it a non-cognizable offence so that individuals are not arrested at the drop of a hat whenever they say or write something that is considered controversial.

4.5 PRIVATE MEMBER'S BILL SUGGESTING AMENDMENT

In the year 2011, *Mr. D. Raja* presented the Indian Penal Code (Amendment) Bill to the Rajya Sabha as a private member Bill. The Bill's full title is the Indian Penal Code (Amendment) Bill. It was proposed in the **B**ill that Section 124A of the Indian Penal Code should be repealed because it is a colonial legislation that the British have been using to suppress speech and criticism directed against them. Nevertheless, despite the existence of

[204] Available at: https://www.thehinducentre.com/the-arena/current-issues/65817618-The-Law-of-Sedition-and-India-An-Evolutionary-Overview.pdf (last visited on September 28, 2022).

specialised laws designed to combat both internal and external threats to the nation's stability, it is still utilised in the independent and democratic country of India.

Another Bill, titled The Indian Penal Code (Amendment) Bill, 2015, was introduced in Lok Sabha by *Mr. Shashi Tharoor* to amend the original section. This bill proposed that only those words or actions should be considered seditious that directly result in the use of violence or incitement of violence. The issues regarding the meaning of this provision were brought back to life by this proposed amendment. Not only words, whether spoken or written, or signs or visible representations that are likely to inspire violence should be regarded seditious, the courts have decided in a number of different rulings, but they have also reached this conclusion.

4.6 SEDITION VIS-A- VIS OTHER STATUTES

The potential and influence of expression have always been taken into consideration by the courts when deciding whether or not it is permissible to restrict its use. In order for an act to be considered an act of sedition, it needs to be intentional and it needs to cause hatred. In India, it has come to be understood that causing a disruption to the established order of public life is an essential component of sedition. The term "public order" has been defined and distinguished from the terms "law and order" and "security of State" in the *Ram Manohar Lohiya case*[205], in which the Court observed that one must picture three concentric circles. The terms "law and order" and "security of State" are included in the definition of "public order." The circle that represents law and order is the largest one, followed by the circle that represents public order, and the circle that represents state security is the smallest one. Because of this, it became clear that a single act might have an effect on law and order but not public order, just as a single act might have an effect on public order but not state security. Because sedition is an offence against the state, greater standards of proof must be imposed in order to convict a person of the crime. This is required in order to protect fair and reasonable critiques from unwarranted tyranny on the part of the state. It is imperative that Section 124A of the Indian Penal Code be interpreted in light of Article 19(2) of the Constitution, and that the appropriateness of any restrictions

[205] *Supra* note 179.

imposed be rigorously evaluated with reference to the specific facts and conditions of each individual instance.[206]

Within the scope of its application, the Indian Penal Code of 1860 criminalises a wide variety of behaviors that endanger the social order of the country. For example, Chapter IV includes offences against the state such as waging or attempting to wage war, amassing arms and the like with the aim of waging war against India, concealing with the intent planned to conduct war,[207] and other similar offences. The provisions that relate to aiding in a mutiny are covered in Chapter VII. The following chapter, Chapter VIII, discusses behaviors that, if allowed, would disrupt the public's tranquilly. The definition of unlawful assembly may be found in Section 141 of the Indian Penal Code, as can the corresponding punishment. In addition, activities that promote animosity between different groups on the basis of factors like as race, religion, language, place of birth, etc. are prohibited under the Code. As a result, these are some rules that take care of any activity that might be engaged in for the goal of either waging war against India or causing a disruption of public order.

4.6.1 Criminal Procedure Code, 1973

Section 95 of the Criminal Procedure Code is the provision that grants the government the authority to seize and forfeit property for which a violation of Section 124A could result in criminal prosecution. This part has a prerequisite of two.

The following are the necessary requirements:

a. That the content is subject to punishment according to the sections
b. The government provides the rationale for its position that the material should be forfeited.

It is allowed for the police, the magistrate, and the armed forces to use force, if necessary, to disperse an unlawful public assembly and to restore public order under the provisions of Chapter X of the Criminal Procedure Code, which deals with the maintenance

[206] *Om Kumar* v. *Union of India*, AIR 2000 3689.
[207] The Indian Penal Code, 1860, s.121.

of public order. These pre-emptive activities have the potential to avert the occurrence of acts that might be construed as subversive.

4.6.2 The Prevention of Seditious Meetings Act, 1911

The Seditious Meetings Legislation, which was adopted by the British to restrict dissent by criminalising seditious meetings, is unfortunately still on our law books today. This Act was enacted to criminalise seditious meetings. According to Section 5 of the Act, a District Magistrate or Commissioner of Police has the authority to forbid a public gathering in a proclaimed area if the official believes that the gathering is likely to promote sedition or an unlawful assembly.

Dissatisfaction with the administration or the intention to cause a disruption in the peace and quiet of the public The maintenance of this regulation, which was particularly enacted to curtail gatherings held by nationalists and people hostile to the British Government, is entirely needless and undemocratic. This legislation was specifically enacted to curb meetings conducted by nationalists.

4.6.3 Unlawful Activities (Prevention) Act, 1967

Supporting claims of secession, challenging territorial integrity, and inciting or intending to induce disaffection against India are all considered to be an unlawful activity under the purview of the provisions of Section 2(o) of the aforementioned Act. Into the realm of illegal activities under Section 13, engaging in illegal behaviour can result in a prison sentence that lasts up to seven years and a fine.

4.6.4 Insult to Indian National Flag and Constitution of India, 1971

According to Section 2 of the aforementioned Act, anyone who commits an offence in a public place or any other place within the A thing that is exposed to public view can be torched, mutilated, defaced, defiled, disfigured, destroyed, trampled upon, or treated in another manner displays disrespect toward or lowers in one's estimation (whether by words, whether spoken or written, or through actions) the Indian National Flag or the Constitution of India, or any part thereof, shall be penalized, and those who do so shall face

appropriate legal action. With imprisonment for a period that could go up to three years, or a fine, or with both depending on the circumstances.

4.7 CURRENT POSITION OF LAW OF SEDITION: S.G. VOMBATKERE v. UNION OF INDIA[208]

Kishore Wangkhemcha and *Kanhaiya Lal Shukla*, two journalists, submitted a petition to the Supreme Court on February 17, 2021, questioning the legality of the sedition legislation. The petition was filed on the same day. This provision of the law, which dates back to when India was still a British colony, is still in effect today thanks to Section 124A of the Indian Penal Code, which was enacted in 1860. Sedition is defined as "attempts to inspire disaffection towards the Government established by law in India" in Section 124A of the Indian Penal Code.

Manipur-based journalist and anchor for the local news channel ISTV Mr. Wangkhemcha was arrested for his criticism of the Manipur Government and its relationship with the ruling NDA government. In a video that he uploaded to social media, Mr. Wangkhemcha referred to the Chief Minister as a "puppet of Hindutva." This led to Mr. Wangkhemcha's arrest. A journalist from Chattisgarh named Mr. Shukla took part in a different kind of political commentary by publishing cartoons on social media that made fun of the fake encounters that the Gujarat police reportedly staged between the years 2002 and 2006.

In April of 2018, Mr. Shukla was charged with sedition, and in August of the same year, Mr. Wangkhemcha was also charged with the same offence. Following that, they submitted a petition to the Supreme Court in 2021 challenging the law and calling into question both its origins and its current application. The expansive scope of the law has a long history of being criticised as a mechanism that stifles free speech. This critique has been mirrored in the petition that was submitted by Mr. Wangkhemcha and Mr. Shukla. They say that the provision's vagueness allows for the arbitrary application of sedition law to silence opposition, and they claim that this is a problem.

[208] *Supra* note 1.

Along with the petition that Mr. Wangkhemcha and Mr. Shukla submitted, nine additional petitions contesting the legislation on sedition have been tagged with it, which amplifies the increased traction around the constitutionality of sedition. Those who have signed the petition are:

The People's Union for Civil Liberties; Ms. Mahua Moitra, Member of Parliament from the Trinamool Congress; Ms. Patricia Mukhim, the Editor of the Shillong Times; Mr. Anil Chamadia, Chairman of the Media Studies Group; Major General S.G. Vombatkere; The Editors Guild of India; The Journalists Association of Assam; Mr. Arun Shourie, former Minister of Communications and Editor of the Times of India and The Indian Express.[209]

Along with this growing list of petitioners are fresh arguments challenging the validity of the sedition law. In addition to the impact it has on the right to free speech, questions have been raised about the proportionality of the law and whether it still has a place in modern-day India. This is especially the case considering that the nation from which India borrowed the law, the United Kingdom, has since done away with it. When evaluating whether actions or speech are seditious, the precedent that is currently followed is the decision that was handed down by the Supreme Court in the case of *Kedar Nath* v. *Union of India*. For an act or utterance to be proven to be seditious, the Supreme Court has decided that there must be evidence of either "incitement to violence" or a "tendency or intention to provoke public disorder." On the other hand, this Judgment has been criticised for allegedly being internally inconsistent.

Since the 5th of May 2022, the Supreme Court has been deliberating over whether or not to refer the case to a bench consisting of seven judges. On the other hand, the government of the Union announced on May 9th, 2022, its desire to reexamine the law on sedition. In the meantime, on May 11th, 2022, the Supreme Court decided to exercise an additional layer of caution by issuing an order that "no coercive action" be taken in sedition

[209] Available at: https://www.livelaw.in/tags/sedition-law (last visited on September 23, 2022)

cases that remain pending while the Union reexamines the law. This order was issued in light of the fact that the Union is currently in the process of reexamining the law.[210]

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[210] *Ibid.*

CHAPTER- 5

SEDITION VIS-À-VIS FREEDOM OF SPEECH AND EXPRESSION: JUDICIAL INTERPRETATION

This chapter traces the evolution of the sedition statute via a number of significant cases that occurred both before and after the country's independence. It is clear that the Federal Court and the Privy Council have quite different interpretations of the sedition legislation, and subsequent cases highlights that discrepancy.

The researcher makes an effort to demonstrate how the sedition law was exploited during the time period before independence in order to suppress nationalist movements led by individuals such as *Mahatma Gandhi* and *Bal Gangadhar Tilak*. In the present day, it continues to be a spectre that haunts the media, intellectuals, regular citizens, advocates for human rights, and political opponents. When citizens are wrongfully convicted of sedition offences, this immediately infringes upon their fundamental right to freedom of expression and inhibits their ability to openly express their opinions. Famous people who have a large following, such as *Arundhati Roy*, *Dr. Binayak Sen*, *Bharat Desai*, and many more, have taken the brunt of criticism for opposing the policies of the government or voicing their opinions on controversial topics. The failure of the lower courts to interpret the law in accordance with the directive that was issued by the Supreme Court in regard to Section 124A is made abundantly obvious by the names that are included on the list. This inadequate interpretation on the part of the trial has been brought to light by a number of cases in which the High Court has granted bail or acquitted the defendant.

5.1PRE-INDEPENDENCE

The evolution of law of sedition in pre independence period can be traced from the following cases:

5.1.1 The Bangobasi Case 1891[211]

[211] *Supra* note 62.

The first landmark trial for sedition can be traced back to 1891 that dealt with the scope of sedition law in colonial India. In *Queen Empress* v. *Jogendur Chandra Bose*[212] the court had to adjudicate the limits of reasonable criticism against the Government. The court was tasked with determining the boundaries of what constitutes fair criticism directed towards the actions of the government. This trial took place against the backdrop of growing Indian nationalism and the increasing influence of the vernacular press. The publication *'The Bangobasi*,' which was edited by Jogendra Chandra, accused the British administration of putting "religion in jeopardy" by Europeanizing India through coercion and held the government accountable for the poor living conditions of Indians. The first of five articles criticizing the Age of Consent Act, which raised the age of consent from ten to twelve years for any form of sexual intercourse with a girl regardless of whether or not she consented, was published in the newspaper on March 26, 1891. This was the first day of the Age of Consent Act's implementation. In spite of the fact that it was an attempt at social reform on the part of the British Government, it was fiercely opposed by the activists of that time period on the grounds that it expressed anti-Hindu traditional attitudes. The issue that was being debated in the courtroom was whether or not the publication in question went beyond the bounds of lawful criticism and was instead published with the aim to incite violence or other illegal activity. The prosecution contended that the publication was written with the intention of inciting individuals to rebel and causing disruption to public tranquilly. After hearing the prosecution's case and the defense's closing argument, the jury reported to the judge that it was impossible to reach a decision that was agreed upon by all members. In light of this, **Justice Petheram** declared that the case will be retried at a later date before a new jury. However, the case was dismissed after the accused sent an apology letter to the government. This landmark case makes it abundantly evident that the British government is intolerable toward any dissent or criticism with the measures that the government has taken.

5.1.2 The Pratod Case 1897[213]

An article with the title "*Preparation for becoming independent*" was published in a vernacular publication called **Pratod** on May 17, 1897. The article highlighted the

[212] *Ibid.*
[213] *Queen Empress* v. *Ramchandra Narayan* (1897) ILR 22 Bom 152.

Canadian nationalist resistance to colonial exploitation as well as the resistance movement by Canadians to acquire political democratic rights. In addition to this, the piece supported the idea of a rebellion on the part of Indians against the current British authority. The court ordered the publisher to serve a life sentence in transportation, and the printer was handed a seven-year sentence in a maximum security facility. The Bombay High Court affirmed the publisher's and printer's convictions for their roles in the crime. The court came to the conclusion that the article was founded on untrue representations and ambitions on the part of Canadian subjects of the British sovereign. In addition, the pieces were written with the intention of provoking feelings of hostility and hatred towards the government. In spite of the fact that the piece did not single out any specific actions or policies of the government for criticism, it did indicate a general dissatisfaction with the current political system.

The court of appeals gave its interpretation of the phrases "disaffection" and "disapprobation" by coming to the conclusion that the term "disaffection," as it is used in Section 124A, cannot be understood to signify the lack of or the opposing of attachment or love, which would mean dislike or hatred. It is an endeavour that is being made to stoke political discontent and animosity towards the government.

The term "disaffection" was defined by **Justice Ranade** as follows:

> *"A positive political temperament, rather than a simple lack of or a negation of love or good will. It is a positive feeling of aversion which is comparable to "disloyalty," a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people, and weaken the bond of allegiance, and presupposes the minds of the people with avowed or secret animosity to government, a feeling which tends to bring the government into hatred or contempt by imputing base or corrupt".*[214]

5.1.3 Bal Gangadhar Tilak Case 1997[215]

On July 27, 1897, Bal Gangadhar Tilak was charged with committing the first act of sedition in Indian history. He was accused of publishing an article in his weekly periodical called *Kesari* that defended *Shivaji Maharaj* for killing Afzal Khan and, as a result, instigating the murder of commissioner Rand and a British army officer who was

[214] *Supra* note 55 at 35.
[215] *Emperor* v. *Bal Gangadhar Tilak,* (1897) ILR 22 Bom. 112.

accompanying him. The article was published in his weekly periodical called Kesari. After then, Bal Gangadhar Tilak is said to have given a speech in which he justifies the slaughter that took place. He was taken into custody and accused with inciting a riot.

During the course of the trial, the court adhered to the definition of "disaffection" that had been established in the Bangobasi case by Justice Petheram. In his opinion, **Justice Strachey** stated:

> *"This is what the law means when it says that a man must not excite or attempt to excite disaffection; he must not make or try to make other people feel animosity against the government of any kind... According to the section, a man is guilty of the crime "if he excites or attempts to excite feelings of disaffection, regardless of how strong such feelings may be."*[216]

Tilak was found guilty of the crime of sedition by the jury, which reached a decision that was in favour of the prosecution. He was given a sentence of one year and eighteen months in a secure facility. The special bench did not grant the authorization for leave to appeal against the verdict on September 24th, 1897. This decision was made by the special bench. Tilak, who was left with no other option, submitted a petition to the Privy Council in England, requesting permission to appeal the order that had been issued by the Bombay High Court. This plea was also rejected in England on November 19, 1987, and as a result, Tilak was sentenced to a term of imprisonment that was particularly harsh. On the other hand, his detention resulted in significant outcry from the international community, which led to his release on September 3rd, 1898, on the condition that he would accept public welcome upon release. This was the condition under which he was released.

Along with disaffection, the legal definition of sedition in the Indian Penal Code was expanded in 1898 to include the phrases "hatred" and "contempt." The concept of "disaffection" included "disloyalty and all feelings of animosity," as its definition states. In addition, sections 153-A and 505 of the IPC were added as a result of these revisions. It resulted in the colonial government taking sweeping steps to prosecute native newspapers across the country. Following the partition of Bengal, the British government passed the Newspaper (Incitement to Offences) Act, 1908, which gave district magistrates the

[216] *Ibid.*

authority to seize control of publication houses that were thought to be publishing content that could be construed as being subversive. This law was passed in 1908. In addition, the government in 1907 passed a law called the Seditious Meetings Act, which made it illegal for groups of more than 20 persons to get together.

The article titled "*The country's misfortune*" was published by Kesari on the 12th of May 1908, and it was followed by another item titled "These treatments are not lasting" which was published on the 9th of June 1908. The article titled "The Country's misfortune" was written about the Muzaffarpur affair, which involved an attempt to kill Douglas Kingsford, the Chief Presidency Magistrate of Calcutta. The murder attempt was unsuccessful. The author of the essay suggested that the tragedy was caused by the authoritarian policies of the British government. The second piece discussed the practise of tossing bombs and how people in other countries have been successful in accomplishing their goals via the use of this sneaky method. Another attempt was made to prosecute Bal Gangadhar Tilak for treason. The judge found him guilty and handed him a sentence of six years of imprisonment with transportation as part of his punishment. He was unsuccessful in his attempt to have his case heard by the full bench of the Bombay High Court and the Privy Council in England.

In 1916, Bal Gangadhar Tilak was accused, once again, of verbally disseminating information that was considered to be subversive. In 1916, three of his speeches were used as evidence against him in the case that was brought against him. The first battle took place in Belgaum on May 1, 1916, and the second and third battles took place in Ahmednagar on May 31 and June 1, respectively. This time, he was not prosecuted under section 124A of the Criminal Procedure Code 1898; rather, he was prosecuted under section 108 of that code. On behalf of Tilak, it was argued that he could not be charged with sedition because the target of his criticism in his remarks was the bureaucracy and not the government. Disaffection is a feeling akin to disloyalty, which is a defiant revolt against the authority, or when it is not rebellious, it makes one reluctant to obey the laws, which in turn fosters discontent and public disorder, according to the observations of the district magistrate. Tilak was given the instruction to provide a bond in the amount of Rs. 20,000 along with two sureties in the amount of Rs 10,000 each. This ruling was appealed in front of the

Bombay High Court, which ultimately overturned the order and came to the conclusion that the overall effect of the speeches was not seditious.

5.1.4 Amba Prasad Case 1897[217]

Jami Ul Ulam was a vernacular newspaper, and Amba Prasad served as both the editor and publisher of the publication. He wrote an article that was titled "*Azadi band hone se Kabal Namuna*" and it was published on July 14th, 1897. He was accused of aiming to incite feelings of animosity toward the colonial authorities in order to further his own political agenda. Amba Prasad entered a guilty plea to the charge of inciting feelings of hostility, betrayal, and insurrection against the government. In accordance with the provisions of Section 124-A of the Indian Penal Code, the session court found him guilty and handed down a sentence of eighteen months of solitary confinement. He filed an appeal against the order, arguing that the sentence was excessively harsh and unjust. His appeal was rejected by the Allahabad High Court, which reasoned that the article in question made an attempt to incite treason and revolt against the colonial administration that was governing India at the time.

5.1.5 Ganesh Damodar Savarkar Case 1909[218]

Abhinav Bharat was a group of young revolutionaries that was created in the state of Maharashtra, and Ganesh Sarvarkar was one of the founders of the organisation. He was also a close ally of Bal Gangadhar Tilak and was arrested in Bombay on February 28, 1909 for abetting the waging of war against the emperor and for sedition. These charges were brought against him because of his association with Tilak. The publication of these four poems in Laghu Abhinava Bharat Mala was what led to the commission of the offence. The court decided that the poems should be banned because they urged native people to rebel against the colonial administration by employing violence. The session's court found Sarvarkar guilty of sedition and aiding in the waging of war against the emperor, and they sentenced him to death. In accordance with section 121, he was given a sentence of life in prison without the possibility of parole, in addition to a two-year prison term for the crime of sedition. A challenge to the decision made by the session court was presented to the

[217] *Queen-Empress* v. *Amba Prasad* ILR (1897) 20 All 55.
[218] *Emperor* v. *Ganesh Damodar Savarkar* (1910) 12 BOMLR 105.

Bombay High Court in the form of an appeal. The following is the language that was used when the high court sustained Ganesh Sarvarkar's conviction on November 8th, 1909:

> *"There is no question that the author has used a number of words, each of which can be interpreted in more than one way; however, this interpretation serves only to highlight the fact that the author's primary objective is to preach war against the current government, in the names of certain Hindu deities and certain warriors such as Shivaji. These labels are little more than a smokescreen to hide the true message of the texts, which is to "take up the sword and destroy the government because it is foreign and oppressive. It is unnecessary to bring into the understanding of the poems any thoughts or concepts acquired from the Bhagwad Gita in order to find the motive and aim of the writer. This may be accomplished by looking at the poems themselves. The poems are open to a variety of interpretations; nonetheless, no one who is conversant in Marathi could or would mistake their message to be anything other than a call to arms against the British government. Mr. Baptista has admitted that if the poems are understood to be making references to the British government, then they can be considered acts of sedition in accordance with the provisions of section 124A of the Indian Penal Code. That they are of a nature to inspire resentment is something that goes without saying... This book teaches, in a nutshell, that India needs to be independent; that if she is not, she will not be worthy of herself; that independence cannot be achieved without violent insurrection; and that, as a result, Indians should pick up guns and rebel against their government. Despite the fact that the instruction is only somewhat obscured by references to history and mythology, this is extremely obvious. It is an extreme form of sedition, and very little effort was made to demonstrate that the conviction under section 124A of the Indian Penal Code was not warranted"*[219].

5.1.6 Annie Besant Case 1916[220]

This well-known case concerns the right to free speech in the media. Annie Besant was the first person to begin publishing after purchasing a printing machine and establishing a

[219] *Ibid.*

[220] *Annie Besant* v. *Advocate General of Madras* (1919) 21 BOMLR 867.

publishing house under the name New India in 1914. In the beginning, the Chief Magistrate of the Presidency gave her permission to begin the press without requiring any kind of security deposit from her. This ruling, however, was reversed, and a new order was issued asking a deposit of 2,000 rupees as security, which she complied with. A number of pieces were written and published by the press that levelled criticism at the approach and policies of the colonial authority in India. On May 22, 1916, the Chief Presidency Magistrate of Chennai issued an order that ordered the publication house to forfeit the security sum that had been deposited for printing literature that was considered to be subversive. The British government asserted that the articles violated section 4(1) of the Press Act 1910 and incited murder, violence, and other offences in violation of the Explosive Substances Act, which was passed in 1908. Annie Besant filed an appeal with the Madras High Court, arguing that the order of confiscation should be overturned. The judge ruled that certain of the items in question looked to have violated the terms of the Press Act and were of a seditious nature. The court has consequently rejected the petition and affirmed the measures that the government has taken. On June 16, 1917, Annie Besant and a few of her colleagues were vindictively incarcerated by the government without any indictment or trial despite the fact that they had committed no crime.

5.1.7 Mahatma Gandhi Case 1922[221]

The legendary trial of Mahatma Gandhi in 1922 is considered a watershed moment in the development of the law of sedition. Gandhi was the editor and publisher of a weekly publication titled Young India during his time in India. Together with the magazine's owner, Shanker Banker, he was held accountable for three of the four pieces that were published in the Young India magazine. Before the sessions court in Ahmedabad, both Gandhi and Bankar entered guilty pleas to the charge of inciting sedition. During the trial, Gandhi expressed his viewpoint, which was that he had an unyielding "disaffection" with the colonial administration and laws, and that he would not cooperate with them. He stated his wish to be tried for seditious speech and urged that the judge give him the harshest possible sentence. Gandhi voiced his displeasure by referring to Part 124-A of the Indian Penal Code as the "prince" of all the political sections. This section had been included by

[221] *In re Mohandas Karamchand Gandhi*, 58 Ind Cas 915.

the British administration in order to restrict the freedom of the Indian citizenry. Gandhi's words were an expression of his disdain. Gandhi maintained that a feeling of affection is not something that can be compelled or regulated by law. As long as they do not advocate or inspire acts of physical violence, individuals should be able to freely express their feelings of both attachment and disaffection in the same manner.

In the words of Gandhi:

> *"Provision 124A, under which I am charged, is possibly the prince among the political parts of the Indian Penal Code designed to repress the freedoms of the citizen. I am happy to be prosecuted under this section. Affection is not something that can be quantified or controlled by law. If one does not like a certain person or system, they should have the right to express their dislike in any way they see fit, so long as they do not plan, encourage, or instigate acts of physical violence. This is provided that they do not think about, promote, or incite acts of physical violence. However, the statute that Mr. Banker and I are accused of violating is one that makes it a criminal to merely encourage dissatisfaction in another person. I have looked into some of the cases that were tried under it, and I am aware that many of India's most revered and respected patriots have been found guilty of crimes under it. As a result, I regard the fact that I am charged with violating that law as a privilege. I have done my best to summarise, in the most condensed form possible, the factors that contribute to my annoyance. It is impossible for me to harbour any animosity toward the King's person because I harbour no personal ill will toward any of the administrators here. However, I believe that maintaining a neutral attitude toward a government that, taken as a whole, is responsible for more damage to India than any other regime in its history is a commendable quality. Since the British took over, India has become far less masculine than it ever was before. Due to the fact that I hold this belief, I consider it a sin to have any fondness for the system. And the opportunity to write what I have in the numerous pieces that have been submitted as evidence against me has been a priceless honour for me"*[222]

[222] Chitranshul Sinha, *The Great Repression: The Story of Sedition in India* 141 (Penguin Random House India, 2019).

Both Shankarlal Bankar and Gandhi were found guilty of sedition by the court and received respective sentences of one year of simple jail for Bankar and six years of imprisonment for Gandhi.

5.1.8 Sadashiva Narayan Bhalerao Case 1943[223]

On January 23, 1943, it was said that the accused had published and disseminated a pamphlet in Jalgaon that highlighted the widespread poverty-stricken state of the people. This allegation was made in connection with this particular case. The opinion expressed by the court in the case of *Niharendu Dutt Majumdar*, which ruled that the absence of any provocation to violence or disturbance is sufficient grounds for acquittal, was upheld by the judge presiding over the trial. The Privy Council, on the other hand, did not agree with the order issued by the lower court. In addition, the Privy Council reached the conclusion that the federal court made an error in the Niharendu Dutt case when it interpreted the interpretation of the sedition statute. The conclusion that the court had taken in the case of *Bal Gangadhar Tilak* was upheld in this instance, with particular emphasis placed on the fact that incitement to violence was not required in order to make a case under the sedition legislation. On the 18th of February, 1947, the Privy Council delivered its judgment and overturned the decision that had been made by the Federal Court in the Niharendu Dutt case. The Privy Council did this by reiterating that incitement to violence was not required in order to charge a person under the sedition law as defined by section 124A.

5.2 POST INDEPENDENCE

A quick perusal of Section 124A brings to light the violation of the constitutionally protected right to freedom of speech and expression that occurs when a restriction is placed on the individual's ability to exercise that right. It is important to point out that the final draft of the Constitution did not contain sedition as a justification for imposing restrictions under Article 19 (2).

Pandit Jawaharlal Nehru was aware of the potentially negative effects that sedition laws could have on the newly formed India. The Constitution's First Amendment was the focal point of many discussions throughout its history. Jawaharlal Nehru came under fire for his lax adherence to the law and his willingness to make concessions regarding

[223] *King Emperor* v. *Sadashiv Narayan Bhalerao*, AIR 1947 PC 82.

individuals' rights to freedom of expression and speech. The right to freedom of speech and expression was upheld by two separate judicial decisions in the year 1949. Because of this, Jawaharlal Nehru decided to change the first paragraph of Article 19. (a).

After independence, there were only a few examples that prompted Jawaharlal Nehru, who was the Prime Minister of India at the time, to take a stance on the constitutionality of Section 124A in independent India. The following are his statements regarding his views:

> *"I want you to look over Section 124A of the Indian Penal Code once more. Now, as far as my opinion is concerned, that specific Section is exceedingly disagreeable and offensive, and it should have no place, for both practical and historical reasons, if you want, in any body of laws that we might establish in the future. It is in our best interest to get rid of it as quickly as possible. We might deal with that issue in other ways, in ways that are more limited, just like every other country does; however, that particular thing, as it is, should have no place. This is due to the fact that all of us have had sufficient experience with it in a variety of ways, and in addition to the fact that the logic of the situation is against it, our urges are against it. My personal opinion is that these adjustments that we bring about do not validate the situation to a significant degree in any way. My opinion is that this is not the case due to the fact that the entirety of the situation needs to be interpreted by a legal tribunal in the larger context of not just this situation but also of other situations. Suppose a proposed amendment to a certain article of the Constitution is approved by the people. Even if the amendment is put into effect, it is quite unlikely that the passage of the amendment will render the remaining provisions of the Constitution null and void. In relation to that particular piece, it merely sheds light on one particular aspect.*[224]

Article 19(2) of the Constitution was altered by the government to include the phrases "public order" and "relations with friendly states." Additionally, the term "reasonable" was inserted before the word "restrictions" in order to prevent the government from abusing the legislation in its own actions.

[224] Parliamentary Debates of India, Vol. XII, Part II (1951) p. 9621 Para 81.

It is quite regrettable that the sedition statute continues to have a place in our legal system and that people who come to power continue to utilize it on a regular basis in order to suppress political dissent. Almost immediately after the nation's attainment of its independence, the Supreme Court heard and determined a handful of cases that would go on to become landmarks.

In the case of *Tara Singh Gopi Chand* v. *The State*[225] the court held that:

"Today, India is a fully independent and democratic state. It is possible for governments to fail or be forced to fail without the structural foundations of the state being adversely affected. The very nature of the shift that has taken place makes it no longer suitable to have a statute of sedition, which was deemed to be required during a period of foreign rule but is now improper. It is true that the founders of the Constitution did not accept the constraints that the Federal Court desired to lay down, but this does not change the fact that they did not adopt these limitations. It's possible that they did not feel it was appropriate to go to such lengths. However, the restriction that Clause (2) of Article 19 places on the ability of anyone to interfere with a person's right to freedom of speech is genuine and significant. An offence that falls under the purview of Section 124A is making an unsuccessful endeavour to arouse ill will toward someone. Even if the attempt is unsuccessful, there is still a possibility that it will not destabilise the state or lead to its overthrow. Even if only one instance of the conceivable application of the section to a restriction of one's right to freedom of speech and expression in a manner that is not permitted by the constitution can be shown, this will be enough to warrant a constitutional challenge. Therefore, it must be determined that the section has lost its validity."[226]

In *Ram Nandan's*[227] case, when the Allahabad High Court was presented with the question of whether or not section 124A should be considered legitimate. The following are the exact terms that the court used when it found section 124A to be unconstitutional:

[225] A.I.R. 1951 Punjab 27.
[226] *Ibid.*
[227] *Ram Nandan* v. *State* AIR 1959 All 101.

"As a result of the norms of parliamentary government, as has been stated, there is a concentration of influence over both legislative and executive functions in the small body of men known as the Ministers, and these are the men who decide critical problems of policy." The existence of a formidable and well-organized parliamentary opposition is unavoidably required to serve as the most essential check on their powers. But on top of this, there is also the fear that the government may be subject to popular disapproval not only expressed in the legislative chambers but also in the market place, which is, after all, the forum where individual citizens air their points of view. This fear is at the forefront of the situation. If there is a possibility in the functioning of our democratic system which I believe there is of criticism of the policy of Ministers and of the execution of their policy by individuals who have not been trained in public speech becoming criticism of the Government as such, and if such criticism, without having any tendency in it to bring about public disorder, can be caught within the mischief of Section 124-A of the Indian Penal Code, then that Section must be invalidated because it restricts free speech. If there is a possibility that criticism"[228]

In 1962, the Supreme Court took a final stand on the constitutional validity of section 124A. In *Kedar Nath Singh v. State of Bihar*,[229] The constitutionality of the sedition statute was confirmed by the court in the following words:

"The phrase "Government constituted by law" is the outward manifestation of what constitutes a state. If the government that has been formed by the law is overthrown, the entire existence of the state will be in peril. As a result, one of the necessary prerequisites for the security of the state is the maintenance of the legal government that was initially put into place. Because of this, the crime described in section 124A as "sedition," which falls under the purview of Chapter VI, which covers offences committed against the state, has been placed there. Therefore, any acts that fall under the ambit of section 124A and have the effect of subverting the government by bringing that government into contempt or hatred, or creating disaffection against it, would fall under the purview of the penal statute. This is due to the fact

[228] *Ibid.*
[229] *Kedar Nath Singh* v. *State of Bihar* *1962 AIR 955.*

that the sentiment of disloyalty to the government that has been established by law or enmity toward it connotes a tendency toward public disorder through the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., that have implicit in them the idea of subverting the government by violent means, which are compendiously included in the term 'revolution,' have been made criminal by the section that is in question. This is because the term 'revolution' includes compendiously all of these things. However, the section has made it plain that harsh language that is used to express disapproval of the actions done by the government with the intention of advocating for their modification or improvement through authorized means does not fall under the purview of the section. In a similar vein, comments expressing disapproval of measures taken by the government, regardless of how forcefully they are written, but which do not excite the feelings that inspire the desire to cause public disorder through acts of violence, would not be subject to criminal punishment. Disloyalty to a government that was established by law is not the same thing as commenting in strong terms upon the measures or acts of the government, or its agencies, in order to improve the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty that imply excitement to public disorder or the use of violence. In other words, commenting in strong terms upon the measures"[230]

In addition, the court offered this opinion:

"Because this Court is the guardian and guarantee of the fundamental rights of the people, it is tasked with the responsibility of striking down any statute that unreasonably restricts the freedom of speech and expression, which is at issue in this particular instance. However, this liberty must be protected lest it become a licence for the defamation and condemnation of a lawfully constituted government through the use of language that either incites violence or has the potential to bring about public unrest. A citizen has the right to say or write whatever he wants about the government or its policies in the form of criticism or comment, so long as he

[230] *Ibid.*

does not incite people to violence against the government that is established by law or with the intention of creating public disorder. This right does not extend to the citizen's ability to criticise or comment on the policies of the government. The Supreme Court is tasked with "drawing a clear line of demarcation between the ambits of a citizen's fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order." In other words, "the Court has the duty cast upon it of drawing a clear line of demarcation between the ambits of a citizen's fundamental right guaranteed"[231]

The Supreme Court outlined the scope of sedition law and stated that the sedition law should be applied to those acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence therefore implying that those speeches which do not have the tendency to create disorder even though they could excite disaffection, cannot be interpreted as seditious.

The Supreme Court in the Kedar Nath case[232] unambiguously defined the scope of section 124A reiterating that existence of the likelihood to public disorder by use of violence or incitement to violence is an essential ingredient to constitute sedition. Therefore reliance on any other view or the previous views held by Privy Council in several cases before independence would conflict with the fundamental right under Art 19(1) (a).

5.3 RECENT CASES OF SEDITION

Following are the cases to understand the position of law of sedition in the recent time:

5.3.1 Sanskar Marathe v. *State of Maharashtra case*[233]

A cartoonist named *Aseem Trivedi* was taken into custody in September 2012 and charged with violating Section 124A of the Indian Penal Code for allegedly inciting violence and disrespect toward the government through the drawings he had published on the website *'India against Corruption*.' As part of Anna Hazare's nationwide anti-corruption campaign, which was inaugurated at the MMRDA field in Mumbai, the cartoons were also screened there. Anna Hazare is a social activist. Because of his cartoons, Trivedi

[231] *Ibid.*
[232] *Ibid.*
[233] 2015 Cri. L.J. 3561.

was accused of spreading false information about Parliament, the Constitution of India, and the national emblem.

Aseem's cartoons were attacked by the Bombay High Court for lacking "wit or humour" and being full of "anger and contempt towards corruption reigning in the political system." Despite the fact that the sedition charges against Trivedi were dismissed, Aseem's cartoons were criticised. The court was particularly critical of the state for interfering upon his right to free expression even though there was no obvious evidence of incitement to violence or the inclination or intention to cause public disruption. In addition, the court ordered the state administration to publish guidelines that can be used as a reference for dealing with sedition charges brought under Section 124A. Such as:

i. *"The words, signs or representations must bring the Government (Central or State) into hatred or contempt or must cause or attempt to cause disaffection, enmity or disloyalty to the Government and the words/signs/representation must also be an incitement to violence or must be intended or tend to create public disorder or a reasonable apprehension of public disorder";*
ii. *"words, signs or representations against politicians or public servants by themselves do not fall in this category unless the words/signs/representations show them as representative of the Government";*
iii. *"Comments expressing disapproval or criticism of the Government with a view to obtaining a change of government by lawful means without any of the above are not seditious under Section 124A";*
iv. *"Obscenity or vulgarity by itself should not be taken into account as a factor or consideration for deciding whether a case falls within the purview of Section 124A of IPC, for they are covered under other section of law";*
v. *"A legal opinion in writing which gives reasons addressing the aforesaid must be obtained from Law Officer of the District followed within two weeks by a legal opinion in writing from public prosecutor of the State".*[234]

In addition, the court mandated that in order to initiate a prosecution for sedition, the parties must first seek grounds and a legal opinion. This need was enforced as a prerequisite.

[234] *Ibid.*

According to the law as it stands right now, in order for an offence to be taken into consideration for prosecution under Section 124A, there must first be prior sanction to do so under Section 196 of the Code of Criminal Procedure, 1973. Therefore, although charges cannot be prepared against those accused of sedition until the government agrees and sanctions the charge sheet presented by the prosecution, there is no obligation to get sanction before detaining a person for sedition. This is because there is no such requirement.

At the instance of Trivedi, the court made an attempt to enforce some sort of guideline as a prerequisite to making an arrest under sedition in the state of Maharashtra. In India as a whole, the manner in which cases of sedition are investigated and prosecuted needs to become more standardized.

Together with Mr. S.P. Udayakumar, a non-governmental organization known as Common Cause brought a petition to the Supreme Court of India in 2016 with the intention of bringing to the Court's attention the misuse of the provisions of the sedition legislation. The petition was founded on the ratification of the ICCPR in 1979, which establishes the standards for the protection of individuals' rights to freedom of expression on a global scale. In addition, the purpose of the amendment was to prevent the exploitation of Section 124A beyond the limit that was established in the *Kedar Nath case* and to shield activists from being unlawfully arrested. The petition brought attention to the fact that there was no previous sanction before arrest, which the authorities and the administration were using as an excuse to silence opposition. The arresting of a person without the requirement of a prior sanction is the first step in the process of meting out the punishment for the crime of sedition. The petition's purpose was to ask the Supreme Court for directions on how to make it a prerequisite to obtain a prior order from the concerned director general of police in the state or the commissioner of police, attesting that the act either directly led to violence or had the potential to incite violence. This was the goal of the petition. However, the Supreme Court limited its involvement in the matter to only issuing an order stating that authorities are required to deal with instances involving Section 124A in accordance with the principles established in the *Kedar Nath case*. It did not address any of the more widespread concerns that were brought up in the petition. The fact that the Kedar Nath case

did not provide for pre-arrest formalities and compliances is something that continues to be a problem even to this day.

5.3.2 Kanhaiya Kumar v. State of NCT of Delhi[235]

The sedition case that took place at Jawaharlal Nehru University (JNU) is a prominent example of the misuse of sedition law. The JNU Students Union was in charge of organising a poetry reading event that was given the title "*The country without a post office.*" Posters that were displayed at the event carried a message that read, "Against the Brahmanical collective conscience against the judicial killing of Afzal Guru and Maqbool Bhat, in solidarity with the struggle of Kashmiri people of their democratic right to self-determination, we invite you for a cultural evening of protests with poets, artists, singers, writers, students, intellectuals, and cultural activists." The event was held in response to the killings of Afzal Guru and Maqbool on Thursday, February 9, at 5:00 p.m., in the Sabarmati Dhaba. In addition, there will be a photo exhibition and an art exhibition that will be held to show sympathy with the courageous people of Kashmir and to reflect the history of the occupation of Kashimir."[236]

On the basis of this poster, a complaint was lodged alleging "anti-national" activities as well as "anti-constitutional" slogans and language. Kanhaiya Kumar, Umar Khalid, and Anirban Bhattacharya are the three students who have been detained after being accused of inciting sedition. It was reported that these students had participated in the event by chanting anti-Indian sentiments during it.

On March 2, 2016, the High Court of Delhi issued a cautionary order along with an interim bail order for Kanhaiya Kumar. The court determined that:

> *"Students at the Jawaharlal Nehru University (JNU) voiced anti-national sentiments and shouted slogans on the one-year anniversary of Afzal Guru's death. Guru was convicted of an attack on our Parliament and died as a result of his crimes. Not only do the students themselves need to determine what caused their anti-national sentiments, but those in charge of the JNU's administration must also take corrective action in this area to ensure that such an incident does not happen again The investigation into what happened in this case is only getting started. It is*

[235] Writ Petition (Crl) 558/2016.
[236] *Ibid.*

not possible to argue that the ideas expressed in the slogans that were raised by some of the students of JNU who had organised and participated in that programme should be protected as a fundamental right to freedom of speech and expression due to the fact that they were expressed in a public forum. In my opinion, the situation these pupils are in is analogous to an infection, and in order to stop or treat it before it spreads to other schools, it needs to be managed properly. When an infection has spread to a limb, attempts are made to treat it by first administering antibiotics orally and, if that doesn't work, by moving on to the next treatment method in the treatment chain. It is possible that surgical intervention will also be required at times. On the other hand, if the infection spreads to the limb to such a degree that it causes gangrene, the only therapeutic option is amputation. During the time that the petitioner was held in judicial custody, he may have had the opportunity to reflect on the previous events that had transpired. At this point in time, I am leaning toward providing a conservative approach of treatment for him so that he can continue to participate in mainstream activities."[237]

In addition, the judge cautioned Kanhaiya Kumar not to take part in any actions that could be considered "anti-national." Because it is not defined in any law that is applicable in India, the idea of something being "anti-national" or "antinationalism" is itself an ambiguous concept.

M. Salman, a young man from Kerala who was only twenty years old at the time of his detention, was charged with sedition in 2014 for not standing up during the playing of the national anthem.[238]

Following the Kedar Nath judgment, it is a settled law that such an act cannot be considered sedition as there is no incitement of, or tendency to cause, violence.

5.3.3 Vinod Dua v. *Union Of India*[239]

[237] *Ibid.*
[238] India Today, *Student faces life imprisonments for not standing during national anthem*, 8th October 2014, available at https://www.indiatoday.in/india/story/kerala-student-life-in-jail-for-not-standingduring-national-anthem-209076-2014-10-08 (last accessed on October 01, 2022).
[239] Writ Petition (Criminal) No.154 of 2020.

A YouTube video about COVID mismanagement that was released by Mr. Dua was the subject of a complaint of sedition that was brought by a member of the BJP named Ajay Shyam. Mr. Dua had petitioned the court under its writ power with two requests: first, that the FIR be quashed, and second, that a direction be issued requiring that any sedition FIR launched against a journalist with at least ten years of experience be reviewed by a special committee.

The Court led by honourable Justice UU Lalit and Vineet Saran came to the conclusion that the comments made by Mr. Dua constituted censure of the policies being implemented by the government and hence could not be considered seditious. The court, however, turned down the request of a committee to examine First Information Reports (FIRs) filed against journalists, stating that doing so would constitute interference in the legislative realm. The Supreme Court reaffirmed the principles that were established in the case of *Kedar Nath Singh* v. *State of Bihar* which held that a sedition charge can only be brought when it can be shown that the accused person incited violence, had a tendency to cause public disorder, or had the intention to do so.

5.3.4 Arun Jaitley v. *State of Uttar Pradesh*[240]

An eminent lawyer and politician named *Arun Jaitley* published an article in October 2015 under the title "*NJAC Judgment – an Alternative View.*" This article was critical of a Supreme Court judgment that invalidated the National Judicial Appointments Commission Act, 2014, as well as the Ninety-ninth Amendment to the Constitution. Jaitley's article was published on Medium.com. he opined therein that:

> *"The verdict does not take into consideration India's larger constitutional framework. There is no doubt that judicial independence is a fundamental component of the basic framework of the Constitution, and that this fundamental component is the independence of the judicial system. It is essential that it be protected... The majority opinion was understandably concerned with one basic structure, which was the independence of the judiciary; however, to rubbish all other basic structures by referring to them as "politicians" and passing the*

[240] Application u/s 482 No. 32703 of 2015.

judgment based on the rationale that India's democracy needs to be saved from its elected representatives was not acceptable. If those who have been elected in India are weakened, then democracy itself is in jeopardy. The Indian democracy cannot be a tyranny of those who have not been elected. No matter where in the world you go, you won't find a theory of legal interpretation that gives judicial institutions the authority to read a constitutional provision in a way that contradicts what the Constituent Assembly had stated. This constitutes the second significant blunder in the judgment. The court is only able to interpret the law; it cannot act as the third chamber of the legislature and amend a statute... I am of the opinion that the two can and must co-exist in our world. The Constitution places a significant emphasis on maintaining the separation of powers within the judicial system. It is not necessary to undermine parliamentary sovereignty in order to make it stronger; this is because parliamentary sovereignty is not only an essential core framework, but also the very essence of our democracy".[241]

Because of the opinions that Arun Jaitley expressed, a magistrate in the Mahoba district of Uttar Pradesh initiated a sedition case against him. The complaint was dismissed by the Allahabad High Court on the grounds that none of the prerequisites for the application of Section 124A were met and that the magistrate had acted irresponsibly in registering such a baseless case on their own initiative. The High Court determined that:

"The decision to pursue a criminal prosecution might have significant repercussions. It has serious repercussions, as it relates to the lives and liberty of citizens, and it poses a threat to such things. When considered in this context, it is self-evident that the use of power by the Magistrate must be preceded by the proper application of mind and the exercise of reasonable circumspection".[242]

Thus, even after *the Kedar Nath verdict*, in which the Supreme Court explained the law of sedition, the executive branch has failed to interpret the law in the correct way. This is despite the fact that the judgment was issued. The current circumstance demonstrates that the police have operated as puppets in the hand of the administration by initiating accusations against a person without applying their minds to the problem. There has not

[241] *Ibid.*
[242] *Ibid.*

been any significant accountability for the irresponsible arrests and detentions that have taken place. The guidelines that were established in the Kedar Nath case have not been followed in the most recent string of incidents that have taken place. The action taken by the authorities in charge of law enforcement is extremely discouraging and constitutes a significant danger to individuals' rights to freedom of speech and expression. In addition, it is clear that members of the executive branch do not have a proper knowledge of the sedition legislation.

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CHAPTER- 6

CONCLUSION AND SUGGESTIONS

As sedition restricts a constitutional right to free speech and expression, it is considered a constitutional issue instead of a Criminal Law one. Both in the past and in the present day, sedition laws are and always have been viewed as being in direct opposition to the principles of free speech and expression. The structure of sedition legislation was drafted by **Sir James Stephen**, who held the opinion that:

> "*it was obvious that the practical enforcement of this doctrine was wholly inconsistent with any serious discussion of political affairs and so long as it was recognized as the law of the land all such discussion existed only on sufferance*".[243]

The widespread violation of the law against sedition that has taken place in the nation in recent years is the focus of the research being conducted on this subject. The right to free speech and expression has been elevated to the position of utmost importance since it is seen as the primary and most important right in the process of an individual's growth toward their full potential. It's almost like an asset that lasts forever that no one wants to give up, even if they could. The tension between the law of sedition and the freedom to speak one's mind is only growing, to the point where it has forced our governments to reconsider the law of sedition in light of the twenty-first century. As was covered in the preceding chapters, on a global scale, a country like the United Kingdom had discovered a solution to the problem of a breach of freedom of speech and expression by repealing the statute of sedition. This was done in order to prevent other violations of human rights. There have been no prosecutions for sedition in the twenty first century, and the United States of America has maintained these rules. However, they have expanded the breadth of freedom of speech and expression by decreasing the scope of prohibitions on free speech. On the other hand, India is still carrying on the tradition begun by the British of repressing any and all forms of dissent through the application of sedition laws. The country's Law Commission has suggested that the law of sedition be reviewed more extensively. Since

[243] James F. Stephen, *A History of the Criminal Law of England* 348 (Macmillan & Co., London, 1883).

the beginning of this decade, one of the most contentious issues in relation to freedom of speech and expression has been whether or not the Sedition Law violates the Constitution. This discussion has picked up steam during the past several years.

The traditional ideology of the authorities is reflected in the chapter that discusses the history of the law of sedition as well as its conceptual dimensions. This chapter discusses the controversial history that led to the incorporation of this law into the criminal code of the countries that were previously mentioned. One may say that the concept that the "ruler" and the "ruled" do not stand on the same footing was the basis for the formation of the law of sedition, and this is something that can be asserted. As a result, some are starting to question whether or not a legislation like this can still be considered relevant in today's world, which has seen a significant shift in the power dynamic between those who "rule" and those who are "ruled." After conducting research into the legal systems of the countries mentioned above, one can reach the conclusion that the inclusion of a legislation criminalizing sedition has always been driven by political considerations. The purpose of this law is not to prevent any wrongdoing that may be widespread in the society; rather, it is to stifle the development of "dissent" against the authority that has been established. There is no question that those in positions of leadership have come and gone, but the philosophy has remained the same. Through the course of history, we have seen that the number of prosecutions for sedition surged during times of political unrest inside the country. It has been seen that the authorities have responded in a panic and have tried several times to ward off genuine political disagreement within the confines of free speech. This has been done despite the fact that free speech is guaranteed. Sedition as a notion has been plagued with infirmities due to the absence of a definitive definition and the various interpretations offered by the judicial system. Its conceptual aspects have not been determined definitively, and they appear to be largely dependent on the context of the country. Given that there is room for subjectivity within the definition of sedition, determining its boundaries can be a challenging and time-consuming endeavor. The effect that a statement has on its audience is the primary factor that is used to determine whether or not the statement is seditious. Additionally, there is a distinct possibility that the effect that a statement has on a particular person will vary depending on the person's personality, history, and ideology. The study of the history of the law of sedition demonstrates that the

implementation of this law has been resorted to at its maximum during two events of world war, freedom movements, political revolutions, or in order to control the press.

Because of the inherited ambiguities in the language employed in Section 124A of the Indian Penal Code, it is a challenging task to interpret terminology such as "disaffection," "hate," or "contempt" in the context of the provision when the law of sedition is considered from the perspective of the national legal system. The provision does not define the word "sedition" on its own, and while it does clarify what constitutes sedition, it does so by making use of ambiguous terminology. Acts that promote class enmity have been maintained outside of the jurisdiction of India's sedition offence, and the Indian Penal Code contains particular provisions for this reason. The main point to take away from this is that in India, disloyalty to the government is considered to be equivalent to sedition. In a nutshell, it is considered to be an act of rebellion against the legal authority that has been set up. The explanation merely states that it is not considered to be sedition to criticize the actions of the government in order to achieve a change in those actions through the use of peaceful means. However, it is extremely challenging to differentiate between criticism of the government and criticism of the measures taken by the government, and even if one were to succeed in doing so, the line would be a shaky one at best. In India, the law of sedition has been abused as a result of the various ways in which it might be interpreted. The highest court in India has decided that the phrase "likely to incite violence" should be inserted into section 124A of the Indian Penal Code. This decision was made after the court maintained the constitutional legitimacy of sedition in relation to freedom of speech and expression. In 1962, an attempt was made to harmonize the two sections; however, the interpretation of the Supreme Court was not followed in the subsequent cases in its literal sense. This resulted in a conflict between the two provisions. If we examine the history of crimes committed against the state, it becomes clear that there is a requirement for a new strategy that is in line with the prevalent legal doctrines and the socio-economic climate of the contemporary environment. This analysis is significant because it has been demonstrated that laws such as sedition have been resorted to in situations characterized by social, economic, and political difficulties.

Through the passage of the Coroners and Justice Act in 2009, sedition was decriminalized in England. As a criminal offence, sedition was done away with on the

grounds that its continued existence in the law books constituted a constraint on people's rights to free speech and expression. The United States of America had maintained a legislation criminalizing sedition, despite the fact that no one had been prosecuted for sedition in the twenty first century.

Following the decision of the Supreme Court of India to strike down Section 66A of the Information Technology Act, 2000, which restricted free speech on social media, there has been a greater tendency in India for the provision to be repealed.[244]

It is not a valid stance to argue for the repeal of the sedition statute on the grounds that Section 66A of the Information Technology Act, 2000 has also been repealed. The removal of the sedition provision will leave a vacuum, which will make it more difficult to address the issue of insurgency. India does not yet possess a comprehensive law that may be used to deal with insurgency or the danger for rebellion. The argument that England has also done away with its sedition statute and that India ought to follow England's lead in doing the same thing is not valid either. Because the political, social, and economic systems of each nation are distinct, the actions of one nation could not be considered appropriate in the context of another nation. The freedom to speak one's mind and express oneself is, without any doubt, an essential right; but, it is not an inalienable right. In the larger interest of maintaining public order, which is the principal primary objective of every nation, restrictions may be imposed on individuals or groups.

At this point in history, the ideas of democracy and unrestricted freedom of speech and expression have essentially become interchangeable terms. As a result, the law of sedition needs to be adjusted and its scope needs to be determined so that it covers the appropriate ground. Within the context of a new political, social, and democratic order, the law of sedition is in serious need of a revision. In light of the fact that the nation is currently struggling with the problem of insurgency and elements of separatism, the possibility of abolishing the statute of sedition has significant repercussions. At this time, there is no law that is both sufficient on its own and all-encompassing to cope with such a threat. In light of the current circumstances, doing away with the statute of sedition does not appear to be a prudent course of action. The continued application of the law of sedition, which uses language that dates back to colonial times, has resulted in its being abused to the point that

[244] *Supra* note 7.

it violates fundamental rights to freedom of speech and expression. As a result, it is strongly recommended that the law of sedition be brought up to date.

Therefore, going by the hypothesis on which this dissertation is based. The first hypothesis that whether the law of sedition is violative of freedom of speech and expression. It is answered in negative. That is to say law of sedition is not violative of freedom of speech and expression. It is saved by the reasonable restrictions enlisted in article 19(2) of the Constitution. As though everyone has freedom of speech and expression but it does not mean the right to say whatever, whenever and wherever one likes. The freedom of expression means the right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or any other mode. Now, coming to the second hypothesis, it can be said that the repeal of law of sedition all together is not a practical proposition. As it will lead to many issues unresolved. The repeal of sedition law will create a vacuum to tackle the problem of insurgency. Thus, it can be concluded that there is need to reform the law of sedition. For which some suggestions are listed below on the basis of present discourse.

6.1 SUGGESTIONS

Based on the foregoing discussion, the current study proposes the following changes to the law of sedition, to limit its misuse:

6.1.1 Reorganization of Offence of Sedition

It is recommended that the offence of sedition be relocated from Chapter VI, which is named as "Offences against the State," to Chapter VIII, which is named as "Offences against Public Tranquility." A new section in the form of section 153C to be inducted under the chapter VIII dealing with 'offences against public tranquility'. To incorporate the change following provision should be inserted in the Indian Penal Code. There is no question that sedition is regarded as a crime committed against the state; nonetheless, the Supreme Court has decided that simple political disagreement does not constitute an offence of sedition unless it is accompanied with a tendency to provoke violence and disrupt public peace. The use of seditious activity as a basis for restricting people's rights to free speech and expression is only ever justified when the limitation in question is applied with the intention of preventing public unrest or endangering state security. Criticizing the government is an essential component of a democratic society, and it is

something that should be actively promoted for the purposes of holding the government accountable and increasing public participation. Reading the offence of sedition as part of the category of offences that affect public order would also influence its interpretation, and critical expressions against the government would only be stifled in the event that there was a threat to public peace, thereby implementing the rule that was laid down by the Supreme Court in *Kedar Nath's case*.

6.1.2 Incorporation of element of *mens rea*

It is also advised to include a component of *mens rea*, which is a crucial component in deciding guilt in the majority of criminal offences. This is because *mens rea* is a key part in assessing guilt. This was also advocated by the Law Commission of India in its 42nd Report titled "Indian Penal Code".[245]

6.1.3 Publication of Seditious Matter

It is recommended that the Indian Penal Code be updated to include a new section that particularly addresses the publication of seditious material and that also includes an express exemption for publications that are considered to be innocent. There is no difference in the nature of the "seditious act" of the maker of the statement and the publisher of the seditious matter as the same intention can be attributed to both as the main thrust of the offence of sedition lies in the "dissemination" of seditious thoughts, ideas, or opinions. For this reason, a separate provision has been provided for the publication of seditious matter in order to account for the fact that there is no difference in the nature of the "seditious act. Consequently, in order to avoid confusion, a separate provision relating to the dissemination of seditious material is required to be included in the Code.

6.1.4 Lay down the definition of sedition

The term "sedition" will need to be defined in the Indian Penal Code, hence a new provision will need to be added to the law. It has been pointed out in the preceeding chapters that the absence of a definition for the word "sedition" was one of the factors that had a significant role in the erroneous interpretation of the law governing sedition. In Indian Penal Code section 124A, the word "Sedition" appears only in a

[245] Law Commission of India, "42nd Report on Indian Penal Code" (1971).

marginal note; the actual provision does not use the phrase elsewhere. As a result, it is essential to provide a definition for the term "sedition."

6.1.5 Amendment to the First Schedule of Criminal Procedure Code

One thing that can be reliably determined after conducting an investigation into the magnitude of the sedition offence as well as doing an in-depth investigation into its history is that the sedition is an offence that can be committed in varying degrees. Therefore, the punishment, as well as its classification as bailable, non-bailable, cognizable, or non-cognizable, should be decided upon in accordance with the seriousness of the "act" that constitutes sedition. The First Schedule of the Code of Criminal Procedure has to be amended as a result of this necessity. Thus, it should be made bailable and non-cognizable when no violence is caused as a result of offence while when violence is caused, it should be made bailable and cognizable and if death is cuased as a result of offence it should be made non-bailable and cognizable offence.

6.1.6 Issuance of Uniform Guidelines

In order to prevent infringements on individuals' rights to freedom of speech and expression and to ensure that the law is applied consistently, it is important that judicial academies and lower courts have access to clear and consistent guidelines regarding the circumstances under which sedition charges should be brought. In order to raise awareness among the judges about the definition of sedition that was established by the Supreme Court in 1962 in the *case of Kedar Nath,* sensitization programmes should be carried out. Although the law of sedition has a stifling impact on the right to free expression, the current climate in India does not make it desirable to eliminate it entirely. The law of sedition needs to be reformed in order to protect the freedom of speech and expression of individuals who do not promote violence but instead merely communicate their opinion. Therefore, it is necessary to have an understanding that having the freedom of speech and expression also means having the freedom to express opinions that are contrary to the majority. In order to draw a conclusion about the present research work, the researcher restates the opinion of **Justice Deepak Gupta** of the Supreme Court. Justice Gupta gave a lecture with the title

'Law of Sedition in India and Freedom of Expression.' In that speech, Justice Gupta claimed that:

> "*The right to dissent is one of the most important rights guaranteed by our Constitution. As long as a person does not break the law or encourage strife, he has a right to differ from every other citizen and those in power and propagate what he believes in his belief. A very important aspect of a democracy is that the citizens should have no fear of the government. No doubt, the views must be expressed in a civilized manner without inciting violence but mere expression of such views cannot be a crime and should not be held against the citizens*".[246]

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[246] Justice Deepak Gupta's speech on Sedition, *available at*: https://www.livelaw.in/top- stories/criticism-of-judiciary-armed-forces-executive-not-sedition-justice-deepak-gupta- 147874 (last accessed on October 7, 2022).

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