



**FROM COLONIAL ERA TO THE  
REPUBLICAN ERA: DRAMATIC  
JOURNEY OF SEDITION IN INDIA  
AND ITS CHILLING EFFECT ON  
FREEDOM OF SPEECH AND  
EXPRESSION**

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**Introduction**

Freedom of Speech and Expression is one of the basic liberties which are recognised as natural right inherent in any person. This freedom is a precondition for robust and vibrant democracy; it occupies preferred position in hierarchy of liberties and regarded as mother of all other liberties. It means freedom to express one's own convictions and opinions without any fear. This freedom allows an individual to attain self-fulfilment, help in discovery of truth, strengthen the capacity of person to take decisions and facilitate a balance between stability and social change.<sup>1</sup> Article 19(1) (a) of the Constitution of India guarantee every citizen the Freedom of Speech and Expression. This freedom is cherished and recognised internationally, the Universal Declaration of Human Rights, 1948, under Article 19 provides 'everyone has the right to freedom of opinion and expression'.<sup>2</sup>

However, freedom of speech and expression is not absolute or uncontrolled right. Clause 2 of Article 19 empowers the State to impose

'reasonable restrictions' in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The freedom of speech and expression was originally enshrined in Article 13 of the Draft Indian Constitution. During the Constituent Assembly debates, a proposal for an amendment to this freedom was moved to permit the impositions of restrictions on grounds of 'libel, slander, defamation, offences against decency or morality or sedition or other matters which undermine the security of the State'.<sup>3</sup> But, the Constituent Assembly unanimously and unambiguously was in favour of deletion of the term 'sedition' from Article 13 of the Draft Constitution as it was used by Colonial regime to suppress the political dissent and used against freedom fighters like Mahatma Gandhi, B. G. Tilak, Annie Besant etc. Thus, the word 'sedition' which occurred in Article 13(2) of the Draft Constitution was deleted by the Drafting Committee before the article was finally passed as Article 19(2) in 1950. 'Sedition' is not mentioned in Article 19(2) as one of the grounds for imposing restriction on the freedom of speech but it remained in IPC.

Justice Fazl Ali, in his dissenting opinion in *Brij Bhushan v. State of Delhi*<sup>4</sup>, gave reason why 'sedition' was not specifically mentioned in Article 19(2) of the Constitution that the framers of the

<sup>1</sup> Stephen Schmidt, Mack C. Shelly, *et. al.*, *American Government and politics Today* 11 (Cengage Learning, USA, 2014)

<sup>2</sup> See also Article 19 of International Covenant on Civil and Political Rights (ICCPR), 1966; Article 10 of European Convention for the Protection of Human

Rights, 1950; Article 13 of American Convention on Human Rights, 1969.

<sup>3</sup> Nivedita Saksena and Siddharta Srivastava, "An Analysis of the Modern Offence of Sedition" 7 *NUJS L. REV.* 130 (2014)

<sup>4</sup> AIR 1950 SC 129



Constitution must have found themselves in dilemma with regard to the use of word 'sedition' in article 19(2) and if it was to be used, then in what sense it should be used because there was divergence in the interpretation of the said term.<sup>5</sup> Thus, to avoid complications they decided not to use word 'sedition' Cl. 2 of Art. 19(2) but, they used more general terms with wider connotations which cover sedition and everything which makes sedition as serious offence. They used the term 'security of the State' which can be undermined by sedition through public disorder or disturbance of public tranquility.

In the case of *Kedar Nath Singh v. State of Bihar*<sup>6</sup>, the Court observed that Constitution (1<sup>st</sup> Amendment) Act, 1951 which added the phrase 'in the interest of public order' in Article 19(2) with the retrospective effect was made to validate the interpretation given by Fazl Ali, J., who pointed out that the 'security of the State' was allied to 'public order'. The insertion of expression 'in the interest of...public order' provided wide amplitude of powers to the State for restricting the freedom of speech.<sup>7</sup> With regard to the consistency of sedition under Section 124-A with freedom of speech in Article 19, the amendment was seen as validation of sedition. It was held that "though the section imposes restrictions on the fundamental freedom of speech and expression, the restrictions are in the interest of public order and are within the ambit of

permissible legislative interference with the fundamental right."<sup>8</sup>

### What is Sedition?

In England, sedition has been defined by Stephen as "conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society. The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused. This may be either:

1. to excite disaffection against the King, Government, or Constitution, or against Parliament or the administration of justice;
2. to promote, by unlawful means, any alteration in Church or State;
3. to incite a disturbance of the peace;
4. to raise discontent among the King's subjects;
5. to excite class hatred".<sup>9</sup>

Section 124-A of IPC defined 'Sedition' which is largely based on the lines of law of England. It reads as:

Whoever by words, either spoken or written, or by sign, 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

<sup>5</sup> As per Fazl Ali J., "On the one hand, they must have had before their mind the very widely accepted view supported by numerous authorities that the sedition was essentially an offence against public tranquility and was connected in some way or other with public disorder; and on the other hand, there was the pronouncement of Judicial Committee that sedition as

defined in Indian Penal Code did not necessarily imply any intention or tendency to incite public disorder."

<sup>6</sup> AIR 1962 SC 955

<sup>7</sup> See *Debi Saron v. State*, AIR 1954 Pat. 254

<sup>8</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955

<sup>9</sup> Stephen, VI *Commentaries on the Law of England* 141-142 (21<sup>st</sup> ed., 1950)



with imprisonment for life, to which fine may be added, or with imprisonment which may be extended to three years, to which may be fine may be added, or with fine.

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

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

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

Sedition is a cognisable, non-bailable and non-compoundable offence.<sup>10</sup>

#### History of Sedition law in India: Background

The origin of offence of sedition can be traced back to the Statute of Westminster, 1275 when king was considered as the holder of Divine right.<sup>11</sup> To prove sedition not only the truth of speech but also the intention was taken into consideration. Initially, offence of sedition was made to prevent the speeches 'inimical to a necessary respect to

government'.<sup>12</sup> The Star Chamber case of *De Libellis Famosis*<sup>13</sup> firmly established the offence of 'seditious libel' whether true or false was made punishable, in UK. This offence was made to curb the speeches which were critical of the King or against the person or government of the King. It was obvious when the penal code was being drafted in Colonial India; it was introduced into the territory of India to stifle the political dissent of Indians.

The law relating to the offence of sedition for the first time introduced in colonial India through Section 113 of Draft Penal Code, 1837 proposed by T. B. Macaulay that corresponded to the Section 124-A of IPC and the punishment proposed was life imprisonment.<sup>14</sup> Sir John Romilly, Chairman of second Pre-Independence Law Commission, commented upon the quantum of punishment proposed for sedition, he suggested that in India it should not be more than five years as in England the maximum punishment had been three years.<sup>15</sup> However, this section was omitted in the IPC when it was enacted in 1860. Sir James Fitzjames Stephen, the then Law Secretary to the Govt. of India attributed the omission to an 'unaccountable mistake'<sup>16</sup> and thereafter, he set out to rectify this omission. Consequently, sedition was incorporated as an offence under Section 124-A IPC through Special Act XVII of 1870. This section was structured in

<sup>10</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), sch. I

<sup>11</sup> English PEN, *A Briefing on the Abolition of Seditious Libel and Criminal Libel* (2009)

<sup>12</sup> William T. Mayton, "Seditious Libel and the Lost Guarantee of a Freedom of Speech" 84 *Column L. Rev.* 91 (1984)

<sup>13</sup> 77 Eng. Rep. 250 (K.B. 1606)

<sup>14</sup> Arvind Ganachari, *Evolution of the Law of Sedition in the Context of the Indian Freedom Struggle in*

*Nationalism and Social Reform in a Colonial Situation* 54 (2005)

<sup>15</sup> Dr. Hari Singh Gour, *II Penal Law of India*, 1232 (Law publishers India Pvt. Ltd. Allahabad, 11<sup>th</sup> edn., 2011)

<sup>16</sup> Walter Russel Donogh, *A Treatise on the Law of Sedition and Cognate offences in British India* (Thacker, Spink and Co., Calcutta, 1911)



consonance with the common law prevailing in England – The Treason Felony Act, 1848 that penalised seditious expressions.<sup>17</sup>

One of reasons cited by Mr. Stephen for introducing this section was that in absence of such provision, this offence would be penalised under more severe common law of England.<sup>18</sup> After included as an offence of sedition in 1870, it was allowed to remain unaltered for a period of 28 years. Section 124-A was amended in 1898 by the Indian Penal Code (Amendment) Act, 1898 providing of punishment of transportation for life or any shorter term and single explanation to the section was replaced by three separate explanations as they are presently. While the former section defined sedition as exciting or attempting to excite feelings of disaffection to the Government established by law, the amended section also made bringing or attempting to bring into hatred or contempt towards Government established by law, punishable.<sup>19</sup> Further, the provision was amended by (Act No. 26 of 1955)<sup>20</sup> replacing the punishment as ‘Imprisonment for life and/or with fine or imprisonment for three years and/or with fine that resulted in the law which stands now.

### Pre-Independence Rulings: Judicial Interpretation of ‘Disaffection’

The first recorded trial for sedition was of Jogendra Chandra Bose in *Bangobasi case*<sup>21</sup>, he was charged with sedition for criticising the Age of Consent Bill and negative impact of the British colonialism on economy. The

court distinguished between the Law of England on sedition at that time and sedition under Section 124-A of IPC. The court observed that offence under section 124-A was narrower, because in England every overt act in consequence of seditious feeling was penalised, but in India only those acts that were done with an ‘intention to resist by force or an attempt to excite resistance by force’ covered by this section. It was reasoned that Section 124-A penalised ‘disaffection’ and not ‘disapprobation’. The then C.J. of Calcutta High Court, Sir Comer Petheram explained the meaning of term ‘disaffection’ in the following words:

“Disaffection to mean a feeling contrary to affection; in other words dislike or hatred and disapprobation simply means disapproval. If a person uses either spoken or written words calculated to create in the minds of the person to whom they are addressed a disposition not to obey the lawful authority of the government, or to subvert or resist that authority, if and when the occasion should arise and if he does so with intention of creating such disposition, among his hearers or readers, he will be guilty under this section.”<sup>22</sup>

In *Queen Empress v. Bal Gangadhar Tilak*<sup>23</sup>, the defendant was accused of sedition for publishing detailed reports on the Shivaji Coronation Festival in newspaper ‘*Kesari*’, during celebration of which several patriotic speeches were delivered invoking the example of the Maratha warrior Shivaji to

<sup>17</sup> The Treason Felony Act, 1848, s. 3

<sup>18</sup> *Queen Empress v. Jogendra Chandra Bose*, (1892) 19 ILR Cal. 35

<sup>19</sup> K. I. Vibhute, *P.S.A. Pillai’s Criminal Law* 335 (Lexis Nexis Butterworths Wadhwa, Nagpur, 2012)

<sup>20</sup> The Code of Criminal Procedure (Amendment) Act, 1955 (Act no. 26 of 1955)

<sup>21</sup> *Queen Empress v. Jogendra Chandra Bose*, (1892) ILR 19 Cal. 35

<sup>22</sup> *Ibid.*

<sup>23</sup> (1898) ILR 22 Bom 112



incite overthrow of British rule and called for ‘*Swarajya*’. In this case, J. Strachey of Bombay High Court explained the law to the jury in these terms:

“It means hatred, enmity, dislike hostility, contempt and every form of ill-will to the Government. ‘Disloyalty’ is perhaps the best general term... a man must not make or try to make others feel enmity of any kind towards the Government. Amount and intensity of disaffection is absolutely immaterial except perhaps in dealing with the question of punishment.”<sup>24</sup>

The meaning of term ‘disaffection’ was further clarified by court in *Queen Empress v. Ramchandra Narayana*<sup>25</sup>, it was held that an attempt to excite feeling of disaffection amongst the masses was to be construed as “an attempt to produce hatred towards the Government established by law, to excite political discontent and alienate the people from their allegiance.”<sup>26</sup> Every act of disapprobation of measures of the government didn’t amount to disaffection, if accused person under Section 124-A is loyal and accept to obey the lawful authority of the government.

In *Queen Empress v. Amba Prasad*<sup>27</sup>, the Full Bench of Allahabad High Court interpreted ‘disaffection’ not merely as ‘absence’ or ‘negation’ of affection, but a ‘positive feeling of aversion akin to ill-will’ towards the government. However, the Federal Court of India in *Niharendu Dutta Majumdar v. King Emperor*<sup>28</sup> digressed from literal interpretation given in *Bal Gangadhar Tilak*

*case*; Sir Maurice Gwyer C.J. speaking for the court held that “mere use of abusive words is not enough to make speech seditious. The acts or words complained of must incite public disorder or must cause reasonable anticipation of public disorder to constitute disaffection.”<sup>29</sup>

Later, this decision was overruled in case of *King Emperor v. Sadashiv Narayan Bhalerao*<sup>30</sup>, the Judicial Committee of the Privy Council opined that Federal Court in case of *Niharendu* proceeded on wrong construction of Section 124-A and upheld the literal interpretation given to it in earlier cases. It was further held that ‘excite disaffection’ didn’t include ‘excite disorder’.

#### Constituent Assembly Debates: Opposition to ‘Sedition’

In Colonial regime the law of sedition was used against freedom fighters like Mahatma Gandhi, Bal Gangadhar Tilak, Annie Besant etc. in order to suppress political dissent to the British Raj. Thus, there had been serious opposition to sedition to be included as one of the grounds for restricting the most coveted freedom of speech and expression under Article 13 of the Draft Indian Constitution. There was clear consensus among the members of Constituent Assembly for deleting the word ‘sedition’ from Article 13 of Draft Constitution. Shri M. A. Ayyangar, during discussions said:

“If we find that government for the being has knack of entrenching itself, however bad its administration might be it must be the fundamental right of every citizen in the

<sup>24</sup> *Ibid.*

<sup>25</sup> (1898) ILR 22 Bom 152

<sup>26</sup> *Ibid.*

<sup>27</sup> (1897) ILR 20 All 55

<sup>28</sup> AIR 1942 FC 22

<sup>29</sup> *Ibid.*

<sup>30</sup> (1947) LR 74 IA 89



country to overthrow that government without violence... The word 'sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word sedition ought to be removed, except in cases where the entire state itself is sought to be overthrown by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law..."<sup>31</sup>

Thus, the term 'sedition' was dropped from the suggested amendment to Article 13 of Draft Constitution after its vehement opposition in the Constituent Assembly.

#### **Post-Independence Developments: Upholding Constitutional validity**

Although, 'sedition' didn't find a place in the Indian Constitution, but it remained as it is under Section 124-A of IPC. After Independence Section 124-A came up for consideration for the first time in case of *Romesh Thappar v. State of Madras*<sup>32</sup>, the Supreme Court held that unless the freedom of freedom of speech and expression jeopardise 'security of or tend to overthrow the State', any law imposing the limit upon the same would not fall within ambit of Article 19(2) of the Constitution. The Punjab High Court in *Tara Singh Gopi Chand v. State*<sup>33</sup>, struck down the Constitutional validity of Section 124-A as it curtailed the freedom of speech and expression and was of the opinion that "...law of sedition thought necessary during a period of foreign rule has

become inappropriate by the very nature of the change which has come about."<sup>34</sup>

Through, the Constitution (1<sup>st</sup> Amendment) Act, 1951 two additional restrictions namely 'Friendly relations with foreign State' and 'public order' were added to Article 19(2) as a result of decision in case of *Romesh Thappar*, in this case it was held that only serious and aggravated form of public disorder would be a ground for restricting freedom of Speech and expression like waging war, rebellion, insurrection etc. not ordinary breaches of public order. Also, by the same amendment, the word 'reasonable' was added before 'restrictions' to limit the possibility of misuse of the provision. In spite of above mentioned changes, in the case of *Ram Nandan v. State of Uttar Pradesh*<sup>35</sup>, the Allahabad High Court held that Section 124-A *ultra vires* to the Constitution as it cannot be saved by the expression 'in the interest of public order' under Article 19(2).

The First Constitutional Amendment with retrospective effect was seen as an attempt to ratify the dissenting opinion of Justice Fazl Ali in *Brij Bhushan v. State of Delhi*<sup>36</sup>, he gave reason for the absence of term 'sedition' from Article 19(2) that the framers of the Constitution had included the terms with wider connotations which included sedition along with other offences 'which are detrimental to the security of the State as sedition'.<sup>37</sup>

The constitutional validity of Section 124-A was challenged in case of *Kedar Nath v. State*

<sup>31</sup>VII Constituent Assembly Debates on December 2, 1948 available at: [https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/7/1948-12-02](https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-02) (last visited on July 25, 2021)

<sup>32</sup> AIR 1950 SC 124

<sup>33</sup> AIR 1951 Punj. 27

<sup>34</sup> *Ibid.*

<sup>35</sup> AIR 1959 All 101

<sup>36</sup> AIR 1950 SC 129

<sup>37</sup> See *Debi Saron v. State*, AIR 1954 Pat. 254



of Bihar<sup>38</sup>, the Constitutional Bench of Supreme Court upheld its validity and held that if any law enacted in ‘interest of public order’, it can be saved from the vice of Constitutional invalidity. The court referred to the contrary interpretation given to the term in earlier decisions, while delving into the interpretation given by Federal Court in *Niharendu Dutt Majumdar* case observed;

“If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression.”<sup>39</sup>

But, looking into the pronouncement of Privy Council in *Sadashiv Narayan Bhalerao* case it maintained;

“If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the section would make it unconstitutional in view of article 19(1) (a) read with clause (2).”<sup>40</sup>

The Court accepted view of Federal Court and held;

“It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them

unconstitutional, the Court would lean in favour of the former construction.”<sup>41</sup>

The Court further held and gave reason that; “The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress.”<sup>42</sup>

#### The right to Freedom of Speech v. Sedition: Debate

The relevance of Section 124-A in an independent and democratic nation has been

<sup>38</sup> AIR 1962 SC 955

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*



the subject of continuous debate. In democracy it is not necessary that everyone should sing same song, they should be at liberty to express their affection in their own way. When Mahatma Gandhi was charged for sedition, he said, “Affection cannot be manufactured or regulated by the law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence.”<sup>43</sup>

### No need of law of Colonial era in free India

Those who oppose this provision see it as a relic of Colonial legacy and thus, incompatible with modern democratic State like India. It was termed as shadow of colonial times that should not see light of the day in free India.<sup>44</sup>

Pt. Jawaharlal Nehru, while introducing Constitution (1st Amendment) Bill, 1951, referred to sedition and said: “Now so far I am concerned that particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in body of law that we might pass. The sooner we get rid of it the better...”<sup>45</sup>

### Misuse by Governments and Stand of Courts: Recent Developments

It is also argued that Section 124-A has potential of being misused by the hands of contemporary governments and it has become a tool to muzzle criticism or dissenting opinion against government. In the infamous ‘*Toolkit case*’, the Delhi HC granted bail to climate activist Disha Ravi charged with Section 124-A for sharing controversial ‘toolkit’ on the ongoing farmers’ protest against contentious farm laws on social media platforms.<sup>46</sup> ASJ Dharmender Rana said: “In my considered opinion, citizens are conscience keepers of the government in any democratic nation. They cannot be put behind bars simply because they choose to disagree with State policies...”<sup>47</sup>

In another significant move, the Supreme Court bench comprising Justices U U Lalit, Indira Banerjee and K M Joseph issued notice to the Central Government to respond to the petition filed by two Journalists Kishorechandra Wangkhemcha and Kanhaiya Lal Shukla from Manipur and Chhattisgarh respectively and agreed to examine the Constitutional validity of Section 124-A. They have been charged under this section for posting comments and cartoons on social media platforms against their respective State governments and the Union Government.<sup>48</sup>

<sup>43</sup> The Great Trial of 1922 (March 18, 1922) available at: <https://www.mkgandhi.org/speeches/gto1922.htm> (last visited on July 25, 2021).

<sup>44</sup> Law Commission of India, “Consultation Paper on Sedition” 15 (August 30, 2018).

<sup>45</sup> *Id.* at 16

<sup>46</sup> State v. Disha A. Ravi, Bail Application No. 420/2021, decided on 23-02-2021

<sup>47</sup> “Disha Ravi granted bail in Toolkit case”, *The Leaflet*, Feb. 23, 2021 available at:

<<https://www.theleaflet.in/disha-ravi-granted-bail-in-toolkit-case/>> (last visited on July 25, 2021).

<sup>48</sup> “SC agrees to examine constitutional validity of sedition law, seeks Centre’s response”, *Scroll.in*, May 01, 2021 available at: <<https://scroll.in/latest/993785/sc-agrees-to-examine-constitutional-validity-of-sedition-law-seeks-centres-response>> (last visited on July 25, 2021).



In *Aamoda Broadcasting Com. Pvt. Ltd. & Anr. v. State of Andhra Pradesh*<sup>49</sup>, the Supreme Court under Article 32 stayed coercive actions against TV news channels namely TV5 and ABN charged with sedition by the Andhra Pradesh Police for broadcasting programmes which were critical of the Chief Minister and the State Government. The Court observed:

“[W]e are of the view that the ambit and parameters of the provisions of Sections 124A, 153A and 505 of the Indian Penal Code 1860 would require interpretation, particularly in the context of the right of the electronic and print media to communicate news, information and the rights, even those that may be critical of the prevailing regime in any part of the nation”.<sup>50</sup>

In *Vinod Dua v. Union of India*<sup>51</sup>, the Supreme Court quashed the FIR registered by Himachal Pradesh Police against journalist Vinod Dua for sedition (S. 124a) and public mischief (S. 505) over the contents of a talk show broadcast on YouTube last year. Dua asserted that “the Prime Minister used deaths and terror attacks to garner votes and that the Prime Minister garnered votes through acts of terrorism” in the Hindi talk show uploaded on March 30, 2020. A bench of Justices U U Lalit and Vineet Saran said “every journalist is entitled to protection specified under the

Supreme Court’s judgment in the *Kedar Nath Singh*”.<sup>52</sup> That judgment upheld the Constitutional validity of Section 124-A of IPC but made it clear that its operation be limited to “only to such activities...involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace”.<sup>53</sup>

The Courts in number of cases have given narrow interpretation to the provision and persistent on harping the importance of the Supreme Court’s judgment in *Kedar Nath Singh*, which limited its application to the conduct that cause ‘incitement to violence or had tendency or intention to create public disorder’ as pre-condition to invoke sedition. Unfortunately, this has not stopped the misuse by the lawful authorities from branding any act as seditious that in no manner jeopardise the security of the nation. In *S. G. Vombatkere v. Union of India*<sup>54</sup>, the Supreme Court heard plea challenging the Constitutional validity of sedition under Section 124-A of IPC, contending that it is “based on unconstitutionally vague definitions of ‘disaffection towards Government’ etc. is an unreasonable restriction on the fundamental right to free expression guaranteed under Article 19 (1) (a) and causes constitutionally impermissible ‘Chilling Effect’ on speech”.<sup>55</sup> CJI-led Bench

<sup>49</sup> Writ Petition(s) (Criminal) No(s). 217/2021

<sup>50</sup> “Why the Supreme Court must declare Sedition law unconstitutional”, *The Leaflet*, June 10, 2021 available at: <<https://www.theleaflet.in/why-the-supreme-court-must-declare-sedition-law-unconstitutional/>> (last visited on July 26, 2021).

<sup>51</sup> 2021 SCC OnLine SC 414, decided on 03.06.2021

<sup>52</sup> “Supreme Court underlines its ruling to protect journalist against sedition law abuse”, *The Indian Express*, June 4, 2021 available at: <[https://indianexpress.com/article/india/supreme-](https://indianexpress.com/article/india/supreme-court-underlines-its-ruling-to-protect-journalists-against-sedition-law-abuse-vinod-dua-case-7343135/)

[court-underlines-its-ruling-to-protect-journalists-against-sedition-law-abuse-vinod-dua-case-7343135/](https://indianexpress.com/article/india/supreme-court-underlines-its-ruling-to-protect-journalists-against-sedition-law-abuse-vinod-dua-case-7343135/)> (last visited on July 26, 2021).

<sup>53</sup> *Ibid*.

<sup>54</sup> Writ Petition(s) (Civil) No(s). 682/2021

<sup>55</sup> “Sedition law colonial, is it still needed...concerned over misuse: Supreme Court”, *The Indian Express*, July 16, 2021 available at: <<https://indianexpress.com/article/india/sedition-law-colonial-independence-supreme-court-centre-7405793/>> (last visited July 26, 2021).



while hearing petition issued notice to Central Government and asked:

“Dispute is that it is a colonial law and was used by British to suppress freedoms and used against Mahatma Gandhi and Bal Gangadhar Tilak. Is this law still needed after 75 years of Independence?”<sup>56</sup>

Pointing towards its misuse, the CJI N.V. Ramana said,

“If you see the history of charging under this section, the conviction rate is very low. The enormous power of this section can be compared to a carpenter being given a saw to make an item, (but) uses it to cut the entire forest instead of a tree. That’s the effect of this provision.” He added “these are all issues which need to be looked into.”<sup>57</sup>

Notably, according to the National Crime Records Bureau Reports of 2019<sup>58</sup>, in all over India 93 cases were registered under sedition out of which 40 cases were chargesheeted and in 30 cases trials were completed leading to only 1 case for conviction. This shows a mere 3.3% conviction rate of cases under sedition.

CJI Ramana also cited the example of Section 66-A of Information Technology Act, 2002 under which people were arrested even after declared as unconstitutional in *Shreya Singhal v. Union of India*<sup>59</sup>, in this case it was

that Section 66-A has a ‘chilling effect’ on freedom of speech and expression under Article 19(1) (a) and observed:

“A provision of law that forces people to self-censor their views for fear of criminal sanction violates the constitutional guarantee of free speech and as such it is unconstitutional...”<sup>60</sup>

Another contention is that there are enough safeguards available under various statutes to counter internal and external threats to the nation. Justice A P Shah and Dr. Subramaniam Swamy suggested that even without Section 124-A, there are sufficient safeguards to prevent the disturbance of public order.<sup>61</sup> Constitutional provisions under Articles 19(2), 51-A, 129, 215, Penal provisions under Sections 121, 122, 123, 131, 132, 141, 143, 153-A, other Statutory provisions like Unlawful Activities (Prevention) Act, 1967, Contempt of Court Act, 1971, Prevention of Insults to National Honour Act, 1971 are some of the safeguards which are covering any seditious activity intended to incite public disorder. Justice A P Shah, in one of his lectures, compared the very idea of sedition with ‘parochial, selfish and narrow minded nationalism’ which has caused so much damage.<sup>62</sup>

#### Recommendations and Need for Reform

A private member bill titled ‘the Indian Penal Code (Amendment) Bill, 2011’ was

<sup>56</sup> “Is it still necessary to... after 75 years of Independence: CJI Raman to Centre”, *Live law.in*, July 15, 2021 available at: <<https://www.livelaw.in/top-stories/supreme-court-sedition-law-section-124-constitutional-validity-misuse-british-177494>> (last visited on July 26, 2021).

<sup>57</sup> *Ibid*.

<sup>58</sup> Crime in India-Statistics, National Crime Records Bureau, Ministry of Home Affairs (2019) available at: <https://www.mha.gov.in/MHA1/Par2017/pdfs/par202>

1-pdfs/LS-16032021/281.pdf (last visited on July 26, 2021).

<sup>59</sup> AIR 2015 SC 1523

<sup>60</sup> *Ibid*.

<sup>61</sup> A P Shah, *Freedom of Speech and Expression*, CLEA Regional Conference, held on (Nov. 5-6, 2016 at Lloyd Law College, Greater Noida)

<sup>62</sup> A P Shah, “Free Speech, Nationalism and Sedition” *52 Economic & Political Weekly* (April 22, 2017).



introduced in Rajya Sabha by Mr. D. Raja, proposed to omit Section 124-A. Another private member bill in 2015 was introduced in Lok Sabha by Mr. Shashi Tharoor to amend Section 124-A.<sup>63</sup>

In its 267<sup>th</sup> report, Law Commission of India sought to narrow down the scope of sedition by distinguishing between ‘sedition’ and ‘hate speech’.<sup>64</sup> Law Commission of India, in its Consultation Paper on ‘sedition’, called for the revision of Section 124-A observing that, “every irresponsible exercise of right to free speech and expression cannot be termed as seditious. For merely expressing a thought that is not in consonance with the policy of the Government of the day, a person should not be charged under the section”<sup>65</sup>

It is contended that the even United Kingdom from we have inherited sedition law abolished it through Coroners and Justice Act, 2009.<sup>66</sup> With regard to abolish the archaic offence, the then UK Justice Minister Claire Ward remarked;

“Sedition and seditious and seditious libel are arcane offences – from a bygone era when freedom of expression wasn’t seen as the right it is today... The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom...

<sup>63</sup>The Indian Penal Code (Amendment) Bill, 2015, available at: <http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/2535LS.pdf> (last visited on July 26, 2021).

<sup>64</sup> Law Commission of India, 267<sup>th</sup> Report on ‘Hate Speech’, (March 2017)

<sup>65</sup> Law Commission of India, Consultation Paper on ‘Sedition’ 30 (August 30, 2018).

Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech.”<sup>67</sup>

Then, how far India is justified to retain Section 124-A of IPC which was used by Colonial rule to muzzle the voices of Indians?

### Conclusion

Sedition law provides an instrument to prevent any conduct which brings or attempts to bring contempt, hatred or disaffection against the government established by law. But, such Colonial era law has become harsh and draconian in today’s world because of the rampant misuse. Instead of providing shield it has become a weapon by the governments to stifle criticism or dissent pointing out the loopholes in the policies.

Freedom of speech is the natural right possessed by a person and every viewpoint, speech, comment or opinion whether in favour or against are necessary ingredients of healthy public debate and for vibrant democracy. However, liberty has to be limited in order to be effectively possessed.<sup>68</sup>

Therefore, each of the restrictions upon the freedom of speech and expression should be scrutinised in order to avoid unnecessary restriction.

There is a need to strike a balance between the right to free speech and sedition because

<sup>66</sup> Section 73: Abolition of common law libel offences etc.—the following offences under the common law of England and Wales and the common law of Northern Ireland are abolished – (a) the offences of sedition and seditious libel; (b) the offence of defamatory libel; and (c) the offence of obscene libel.

<sup>67</sup> “Criminal Libel and Sedition Offences Abolished”, *Press Gazette* (Jan. 13, 2010).

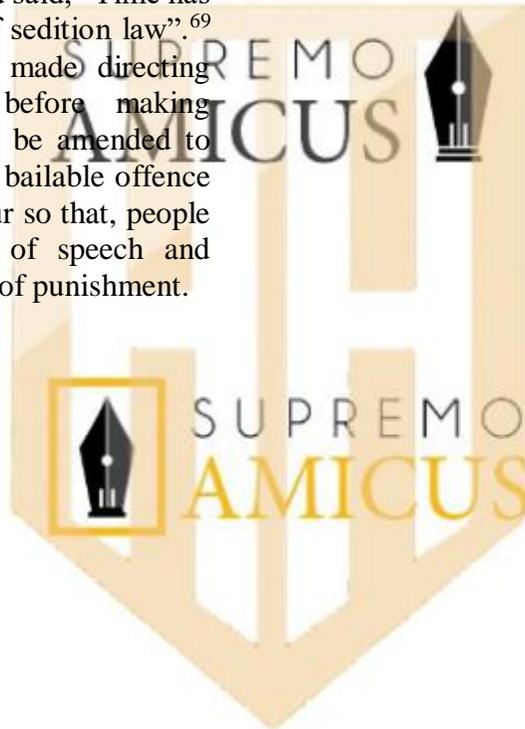
<sup>68</sup> A. K. Gopalan v. State of Madras, AIR 1951 SC 21



every dissenting voice cannot be dubbed as seditious. The enforcement or the fear of invocation of sedition compels the people to self-censor their views by producing a ‘chilling effect’ on the exercise of one’s fundamental right to free speech and expression. That is why the law needs to be either amended or repealed.

Thus, Judiciary has to come into picture and to relook into sedition law. It needs to be examined under changed conditions and circumstances that have come with the time. As Justice D Y Chandrachud said, “Time has come to define the limits of sedition law”.<sup>69</sup> Some guidelines must be made directing Police to be followed before making unnecessary arrests. It may be amended to make it non cognisable and bailable offence in order to mitigate its rigour so that, people may enjoy their freedom of speech and expression without any fear of punishment.

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<sup>69</sup> “Time has come to define limits of sedition law: Supreme Court”, *The Economic Times*, May 31, 2021 available at: <<https://m.economictimes.com/news/india/time-has->

[come-to-define-limits-of-sedition-law-supreme-court/articleshow/83125219.cms](https://m.economictimes.com/news/india/time-has-come-to-define-limits-of-sedition-law-supreme-court/articleshow/83125219.cms)> (last visited on July 26, 2021).