IJNRD.ORG ISSN : 2456-4184
INTERNATIONAL JOURNAL OF NOVEL RESEARCH AND DEVELOPMENT (IJNRD) | IJNRD.ORG
An International Open Access, Peer-reviewed, Refereed Journal

LAW OF SEDITION AND THE STATUS OF FREE SPEECH IN INDIA: A CRITICAL ANALYSIS

SUBMITTED BY:
Ms. Megha Chaturvedi
Xth Sem., B.A.LL.B. (H)
04651103816

SUPERVISED BY:
Mr. Karan Sharma
Assistant Professor
School of Law

CHAPTER I

INTRODUCTION

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."[1]

India is not only a republic nation, but it is rather a democratic republic nation. These two terms have distinctive approach. A Republic Nation is "a form of government in which the people or their elected representatives possess the supreme power"[2] i.e. the Parliament elected by the people is the supreme authority and the law made by the Parliament is 'mandatum' i.e. mandate whereas democracy is understood as "Government of the

[1] Preamble of Constitution of India,1950
[2] Dictionary meaning of word 'Republic' at https://www.dictionary.com/browse/republic , retrieved at 20.08 hours on 09.04.2021.

people, by the people, for the people"[3]. Thereby in a democratic republic the Constitution of the nation is supreme, founding pillars of which are the people of the nation.

Thereby, in such a nation it is imperative that the face of the nation too is a reflection of the decision of the citizens. It has to be realized that only when there is enough room for discussion, disagreement and dialogue in a democracy, we can arrive at better ways to run the country. Thereby, to achieve such state, the voices of the masses/people of the democracy, shall be free and not to be shut by the oppression or tyranny of the elected government which raises concern over various laws misused to silence the voices of the people including the law of sedition.

At this instance there is need of understanding and recollecting the basic principles by which a society is governed. Every society has its own structure and is run by its own rules and conventions and the society tends to degenerate if people of that society only stick to such old rules and regulations. Thereby change is the law of universe and with changing times and mindset of the people, the laws governing the society shall also change. In every society, revolutionaries are born, when they disagree with well accepted norms of society and become a leader, taking it forward. For instance, Raja Ram Mohan Roy led to the abolition of the infamous 'Sati Pratha', and also condemned polygamy and protested against the freedom of press in British India and his social reforms gave him the title of 'First Modern Man of India'. Looking at our glorious past, we can recollect various such instances which makes us understand that if everyone follows the well-trodden path, then no new paths shall be created, no new explorations will be done, and no new vistas will be found. If a person is restricted from asking questions or dissenting with current old-aged systems and opinions, no new systems would foster, and the horizons of the mind and society will not expand. Whether it be Buddha, Mahavira, Jesus Christ, Prophet Mohammad, Guru Nanak Dev, Martin Luther, Kabir, Raja Ram Mohan Roy, Swami Dayanand Saraswati, Karl Marx or Mahatma Gandhi, new thoughts and practices would not have been established, if they had quietly submitted to the views of their forefathers and had not questioned the existing practices, beliefs and rituals.

Therefore, here are we, discussing and deliberating upon the status of freedom of speech in India which has been earnt after decades of struggles by the freedom fighters and revolutionaries of this nation with their blood and sweat, so that they don't pass on a society of oppression and tyranny to their future generation.

Today, right to freedom of speech is not absolute and is subject to certain restrictions which gives space for Law of Sedition but here it is pertinent to mention that Law of Sedition is a colonial law and was envisaged to suppress the voices of freedom fighters who opposed the British rule. This law of sedition was inserted as Section 113 of Macaulay's draft of the Penal Code but was later inserted as Section 124-A of the Indian Penal Code. The drafters of the Penal Code carefully placed it in the middle of Chapter VI of the Indian Penal Code that categorically talks about 'Offences against the State', a part that also contains offences like Waging war against the State. The punishment carried by this section extends till life imprisonment, depending on the

[3] Definition of word 'Democracy' coined by U.S. president Abraham Lincoln (1809-1865) on August 1, 1858) in Lincoln's Writings

nature of the crime, and is both cognizable and non-bailable. The law in its wording deals with the technicality of distinguishing between bringing hatred and contempt, or exciting or attempting to excite disaffection towards the government established by law.

Ironically, some of the most famous sedition trials of the late 19th century and early 20th century have been of Indian nationalist leaders for committing acts against the State and the Crown. Among them was also Bal Gangadhar Tilak, who raised a point that resonated even more than a century later, that whether his acts constituted sedition of the people against the British Indian government (Rajdroha) or of the government against the Indian people (Deshdroha). In what can only be seen as rising, unprecedented Indian nationalism, this is the fundamental question before the world's largest democracy- Whether sedition is an act against the government (elected by the people) or The Nation?

It is also crucial to clarify that our ancestors fought for the freedom of this mother land 'Bharata' and the integrity of this nation, thereby the laws protecting the unity, integrity and respect of this nation are not interrogated, rather a critical analysis of the section 124A IPC is made to determine whether such restriction to freedom of speech and expression is reasonable in Free India or is merely used as a tool to oppress the voices of dissent. And even if the requirement of such sedition law is felt for maintenance of public order and security, considering the presence of other statutes for protection of national security, then whether the scope and meaning of act of sedition be extended against 'government' as elected by people in a democracy, as termed by the Britishers for their own benefits.

1.1 RIGHT TO FREEDOM OF SPEECH AND LAW ON SEDITION

The Right to Freedom of Speech and expression has been guaranteed to the citizens of India by the constitution. The Constitution of India makes it a Fundamental Right engraved in Part III, Article 19(1)(a), which provides that "All citizens shall have the right- to freedom of speech and expression" but on a complete reading of Article 19, the great lawmakers have made it very clear that the right is not absolute in nature and comes with certain restriction provided in clause (2) of Article 19 which includes "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."[4]

Thereby, the law has imposed certain reasonable restrictions on the exercise of right to freedom of speech and expression, which itself validates the Law on Sedition embodied under section 124A of the Indian Penal Code, 1860 which reads as under: -

"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 shall be punished with [imprisonment for life], to which

[4] "Article 19(2) of the Constitution of India, 1950"

fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."[5]

The makers of the Lengthiest Constitution of the world were some of the great lawmakers who decided to keep a check on the people thereby exercising such a right with reasonable restrictions thereby validating the law of sedition as interpreted by Hon'ble Supreme Court on various occasions. But emphasis to given upon the fact that the word "sedition" occurred as Article 13(2) of the Draft Constitution which was prepared by the Drafting Committee but it was deleted before the article was finally passed as article 19(2). In connection to this, we may recall the definition of Sedition given by the Federal Court which held that "the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency"[6], but the Privy Council had dissented from the aforesaid definition and overruled that judgement, whereby emphatically reaffirming the view expressed in Bal Gangadhar Tilak's case to the effect that "the offence consisted in exciting or attempting to excite in others certain bad feelings towards the Government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small"[7]. Thereby, "Deletion of the word 'sedition' from the draft article 13(2), therefore, shows that criticism of Government exciting disaffection or bad feelings toward it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the State."[8]

It can be inferred that the great makers of the Constitution might have found themselves in great dilemma as whether to incorporate the word "sedition" in article 19(2) or not and if yes then in what sense and to what extent. "On the one hand, they must have had before their mind the very widely accepted view supported by numerous authorities that 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 the Judicial Committee that sedition as defined in the Indian Penal Code did not necessarily imply any intention or tendency to incite disorder. In these circumstances, it is not surprising that they decided not to use the word 'sedition' in clause (2) but used the more general words which cover sedition and everything else which makes sedition such a serious offence. That sedition does undermine the security of the State is a matter which cannot admit of much doubt. That it undermines the security of the state usually through the medium of public disorder is also a matter on which eminent Judges and jurists are agreed. Therefore, it is difficult to hold that public disorder or disturbance of public tranquility are not matters which undermine the security of the State."[9]

The Law on Sedition primarily was implemented as Colonial Law which was used arbitrarily by the Britishers to punish the revolutionaries and to suppress the voices of dissent that arose against their rule. The various

[5] "Section 124A of the Indian Penal Code, 1860"
[6] "Niharendu Dutt Majumdar v. The King Emperor (1942) F.C.R. 38"
[7] "King Emperor v. Sadashiv Narayan Bhalerao 1947) AIR(PC) 82"
[8] "Kedar Nath Singh vs State of Bihar on 20 January, 1962, 1962 AIR 955, 1962 SCR Supl. (2) 769"
[9] Ibid.

modern political leaders believe that in a democracy, an adequate amount of freedom of press and freedom to evaluate, dissent and critically analyze the actions / inactions of Government shall be present. The mere existence of these laws is tarnishing the image of democracy in the country and have created a notion that anything that the government might find to be against its political ideology or area of thinking might be termed as sedition and those accused even if for a very short period of time will find themselves in the crosshairs of the law.

It has been recorded that many false allegations and charges of sedition are made and further F.I.R is lodged but such cases don't stand in court and the rate of conviction is very less. Thereby, such allegations and cases are reported only to harass the accused. According to the survey conducted by The National Crime Records Bureau (NCRB) published its annual report named 'CRIME IN INDIA' showed that in 2018[10], 75 sedition cases were filed, trial was completed only in 13 cases and only 2 were convicted in the year 2018 and in the year 2019[11], 96 suspects were arrested under the charges of sedition, out of which only two persons have been convicted.

Therefore, the recent spike in the number of cases wherein people have been accused of making seditious claims but have failed to be put up as actual charges when the people so accused are put on trial, has made the public question the fact that whether the law of sedition is even required at modern age at the first place or not. And if yes, does it need amendment with changing times? The main aim of the author to find out through this research and figure out whether the law of sedition has become irrelevant in the modern times or does it hold significant value and is needed to curb the problems of anti- nationalism that have been on the rise in recent times and the parameters that has to be set defining the law of sedition to ensure reasonable freedom of press and freedom to evaluate, dissent and critically analyze the actions / inactions of Government in a democracy.

1.2 MEANING AND DEFINITION OF SEDITION

The word sedition has been taken from the Latin term ***Seditio*** meaning "civil disorder, strife; rebellion, mutiny, a going apart".[12] When taken according to the English meaning of theterm it is said to be "rebellion, revolt concerted effort to overthrow civil authority".

Duhaime's Legal Dictionary defines sedition as -

"The speaking or publishing of words which excite public disorder or defiance of lawful authority."[13]

[10] "According to data available in the Crime in India 2018 report by the National Crime Records Bureau (NCRB available at https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf , retrieved at 22.10 hours on 09.04.2021)"

[11] "According to data available in the Crime in India 2019 report by the National Crime Records Bureau (NCRB available at https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf , retrieved at 22.10 hours on 09.04.2021)"

[12] Definition of Sedition "Retrieved from www.etymonline.com/word/sedition , retrieved at 12.14 hours on 10th April 2021".

[13] Duhaime's Law Dictionary- "Sedition Definition- Retrieved from http://www.duhaime.org/LegalDictionary/S/Sedition.aspx retrieved at 12.30 hours on 10th April 2021"

Black's Law Dictionary gives out a very detailed definition of the word sedition. It defines Sedition as –

> *"An insurrectionary movement tending towards treason but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquility of the state. The distinction between 'sedition' and 'treason' consists in this: that though the ultimate object of sedition is a violation of the public peace, or at leastsuch a course of measures as evidently engenders it. Yet it does not aim at direct and open violence against the laws or the subversion of the constitution; the raising commotions or disturbances in the state; it is a revolt against legitimate authority. Sedition is the offense of publishing, verbally or otherwise, any words or document with the intention of exciting disaffection, hatred, or contempt against the sovereign, or the government and constitution of the kingdom, or either house of parliament, or the administration of justice. or of exciting his majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in church or state, or of exciting feelings of ill will and hostility between different classes of his majesty's subjects."*[14]

Oxford English Dictionary defines sedition as –

> *"Conduct or speech inciting people to rebel against the authority of a state or monarch."*[15]

Sedition as an offence means rousing up people by creating a feeling of *'disaffection'* and includes the creation of feelings of enmity towards the government of the state. Under Section 124A IPC there seems to be no need for the person to carry out mutiny or rebellion against the government but mere creation of hatred or contempt or exciting the feeling of disaffection is enough to constitute the offence. The Apex Court on various occasions has defined the act and elaborated its meaning. Recalling from the year 1897, when "both successful and unsuccessful attempts to excite disaffection were placed on the same footing. So even if person had only tried to excite the feelings he could be convicted. Whether any disturbance or outbreak was actually caused by such attempt was absolutely immaterial"[16].

Then in 1942, in the case of *Niharendu v. Emperor*[17] the court held a view that "the essence of the offence of sedition is incitement to violence mere abusive words are not enough and that Public disorder or the reasonable anticipation or likelihood of Public disorder is the gist of the offence". Later after independence, the law on sedition was seen as futile because it was seen as a Colonial law by public at large, thereby the validity of the law on Sedition was challenged in case of *Kedar Nath v. State of Bihar*[18] wherein, the Supreme Court upheld the validity of Section 124A ofthe IPC and "it was held that only acts which constitute

[14] BLACK'S LAW DICTIONARY – "Sedition Defined- Retrieved from https://thelawdictionary.org/sedition/ retrieved at 12.35 hours on 10th April 2021"
[15] OXFORD ENGLISH DICTIONARY – "Sedition (n)- Retrieved from https://en.oxforddictionaries.com/definition/sedition at 12.45 hours on 11th April 2021"
[16] "Queen Empress v. Bal Gangadhar Tilak (1897) 22 BOM 112"
[17] (1942) F.C.R. 38
[18] 1962 AIR 955, 1962 SCR Supl. (2) 769

incitement to violence or disorder would be punishable under this section and acts not having such tendency are not punishable. Therefore it does not violate Art.19 (1 (a)".

Thus, the basic ingredients for constituting the offence of sedition are:

A. To disobey the lawful authority setup by the government and doing any act or omission that amounts to **disaffection**.

B. Urging people to go up **against the government established by law**.

C. Disaffection among people can be aroused by **any form of written words, through poems, story etc. and any sort of actio**n that incites people to defy the Government that has been setup at the centre. This **publication** can be made in any manner even through the system of post.

D. **Intention** of the accused should also be taken into account while framing charges of sedition against him. The place, the occasion and that of publication are all important while calculating the level of offence. The effect of such publication has to be kept in mind while calculating the gravity of the offence.

1.2.1 DISAFFECTION

Disaffection generally defined is opposite to the feeling of affection.in the literal sense disaffection is defined as a state or feeling of being dissatisfied, especially with people in authority or a system of control. If synonyms are to be figured out, then hatred and dislike are the ones that are closely related to the thought.

It is very much possible that a person may feel a sense of disaffection towards the government established by law without actually being hostile towards it or any other authority that it has subsequently established by law. "It is always to be kept in mind that just a hostile feeling towards a specific government or a general dislike by a class or community of individuals towards the same does not specifically amount to sedition or any other such offence. There must be a significant move on the part of such perpetrators to willfully disobey and cause disaffection leading to violence against the established authorities. It will besufficient to prosecute a person under this section if and only if the words so used are calculated to excite feelings of ill will against the government."[19]

Under the relevant section of the code, it is difficult to make out as to what amounts to exciting disaffection. According to Parsons, J. held that the word 'disaffection' could not beconstrued as meaning "absence of or contrary of affection or love". Ranade J., interpreted the word 'disaffection' not as meaning "mere absence or negation of love or good will but a positive feeling of aversion, which is akin to ill will, a definite insubordination of authority or seeking to alienate the people and weaken the bond of allegiance, a feeling which tends to bring the Government into hatred and discontent, by imputing base and corrupt motives to it."[20]

[19] "Queen Empress v. Jogendra Chander Bose (1892) ILR 19 Cal 35"
[20] "Kedarnath Singh v. State of Bihar 1962 AIR 955; 1962 SCR Supl. (2) 769"

The disaffection that the author describes here does not signify the disaffection amongst individuals or any certain individual who runs the government. That scenario would not fall under the offence so mentioned. The disaffection so mentioned has to be amongst the rulers and the ruled. The main point to be noted in this situation is that the personal hatred on contempt of aperson is immaterial when calculating the offence under the concept of sedition. The hate so mentioned or rather the disaffection that is meant by the framers of the law, has to involve thegovernment which is there otherwise no offence is made. Another important thing that has to be kept in mind while analyzing this context is that there has to exist the implied recognition of the government by the people.

Thus, the word disaffection not just amounts to the creation of hate or loss of goodwill in the mind of the person, it shall be noted when the person decides to act upon that disaffection through his writings or poems etc. to incite popular belief against the government for him to commit the offence of sedition. Action upon his intention is the main driving force for conviction under the section.

1.2.2 AGAINST GOVERNMENT ESTABLISHED BY LAW

When the law was established by the British revolt against the authority meant only the British political system that had been setup. The concept that relates with the same lies in the fact that the offence of sedition attracts outrage or disaffection so shown against the government and not the administrator. The doctrine relies on the fact that it is being called a revolt against the government and not a form of government.

"The government setup thus includes local government as well as central government[21]. To fight against the principle or doctrine is not the same as to fight against a government established by law.[22] A government in connection with the offence of sedition denotes the person or persons authorized by law to administer executive Government in the state. The expression Government established by law means ruling authority and its representatives as such the existing political system as distinguished from any particular set of administrators.[23]"

"Section 124-A of the IPC comes under the offence should be directly against Government established by law. Any form of speech urging strike directed against mill owners and not a Governmental body does not contravene Section124-A of the IPC."[24] Exhortation to the peopleto not pay land revenue or discouraging any recruitment may be punishable under any other section but not under the offence of sedition.

Section 17 of the Indian Penal Code defines Government as denoting the "Central Governmentor the State Government established by law has to be understood as being distinct from the Government formed by a particular ruling party or the bureaucracy running the Government. Criticism of a particular Government or campaigning to bring down a particular Government by a particular ruling party will not amount to exciting

[21] "Kshiteesh Chandra Ray Chaudhari (1932) 59 CAL 1197."
[22] "Kamal Krishna v. Emperor AIR 1935 CAL 636."
[23] "Queen Empress v. Bal Ganga Dhar Tilak (1897) 22 BOM 112, 135."
[24] "Arjuna Arora v. Emperor AIR 1937 ALL 295:38 CRLJ 662: 168 IC 947."

disaffection towards the Government established by law."[25]

1.2.3 PUBLICATION- BY SIGNS OR VISIBLE REPRESENTATION

Section 124-A clearly lays down the fact that a person can be booked under sedition if, he makes such signs or visual representations which can easily be understood by people and casea revolt or rebellion against the government. Sedition does not necessarily mean or has to consist of written matter it may be forwarded or evidenced by wood cut or any kind of engraving as well.

Thus, with a careful reading of Section124-A it can be inferred that conceptually it is very close to the English concept of Treason[26] evolved in 1351, the English statute of Treason defined many include types of offences against the king as treasonable, including compassing or imagining the death of the king, waging a war against the King or giving or lending support to the King's enemies.

Therefore, the same concept slowly with the development of time gradually became the law of sedition. The whole historical part of the same will be dealt with in the upcoming chaptersand thus much of the development of the law will be dealt with in those chapters.

1.2.4 INTENTION- HOW ESSENTIAL IT IS TO CONSTITUTE THE OFFENCE OF SEDITION?

A general reading of the section and the corresponding cases to the same give a general idea that intention plays a crucial role in determining whether a person commits the offence of sedition or not. The intention will be judged from the language itself. The speech that the person makes written or spoken will determine that his words are seditious in nature or not. Once the language is used and it falls under the said offence the author of such words or writings cannot claim that he did not meant it in the way it was perceived by the public at large until and unless the words so said were actually taken out of context and they in no way can be called seditious.

When certain speech forms part of a series of speeches or lectures on one topic delivered within a short period of time, any of such speeches or lectures is admissible under Section 14.A person can also be booked for sedition if portions or parts of his speech were of a seditious nature and can be convicted of the same.

[25] "Section 17 of the Indian Penal Code, 1860"
[26] "Stephen F. James, 'History of the Criminal Law of England', (London 1883) vol.2, Chapter. 24 & Australian Law Reform Commission Review of Sedition Laws Issues Paper 30, (Sydney, 2006), 29."

1.3 STATUS OF FREE SPEECH IN INDIA

Article 19(1)(a)[27] definitely grants right to freedom of speech and expression to the citizens, but it comes with certain reasonable restrictions as discussed above. But the regularly used statutes such as UAPA[28], NSA[29] etc. which were passed to prevent the integrity and security of the Nation, are often used as tools to crush dissent.

Free Speech is not only restricted by Sedition but also some other sections of the penal code such as Section 153A which criminalizes "promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony by words, either spoken or written, or by signs or by visible representations or otherwise", Section 292 which criminalizes obscenity, Section 295A criminalizes "deliberate and malicious acts intended to outrage religious feelings of any class" of citizens and Section 298 which criminalizes "uttering any word or making any sound" with "the deliberate intention of wounding the religious feelings of any person."

These laws have been used to silent the ideas and expressions of various authors from time to time such as banning books like Salman Rushdie's novel The Satanic Verses, and cinematography such as India's Daughter, and a 2015 documented film on the 2012 gang rape case made by Leslee Udwin for the BBC.

The charge of defamation u/s 499 and 500 of the penal code are also used to silence the freedom of speech and many comedians & journalists are time and again caught in this web of criminal litigation. "According to the Index on Censorship, in 2014, seven legal notices of defamation were served in India: five to media companies, including publishing houses; one to a marketing federation; and one to journalists Subir Ghosh."[30]

Not only the government, but the masses have also contributed to threatening the freedom of speech and expression of authors. Recalling the literary suicide of Tamil author Perumal Murugan, who received threats from locals who burnt his novel and objected the story of "One Part Woman," which narrates the tale of a lady who decides to take part in a local religious ritual in which childless women have intercourse with strangers in order to conceive. This was said to be religiously offensive and pleaded to be censored. The plea was dismissed, and it was observed that "All writings, unpalatable for one section of the society, cannot be labeled as obscene, vulgar, depraving, prurient and immoral. One of the most cherished rights under our Constitution is to speak one's mind and write what one thinks."[31] Further, Justice Sanjay Kaul of Madras High Court gave a simple advice to the book's detractors that "If you do not like a book, throw it away. There is no compulsion to read a book. Literary tastes may vary — what is right and acceptable to one may not be so to others. Yet, the right to write is unhindered."[32] Only if it could be understood by the people with open minds, dissent would never be a problem in a democracy.

[27] "Article 19(1)(a) of the Constitution of India,1950- (1) All citizens have right to- (a) to freedom of speech and expression."
[28] Unlawful Activities Prevention Act, 1967
[29] The National Security Act, 1980
[30] "Pacific Council on International Policy by Mira Kamdar in Central & South Asia Culture on 23 April 2018, Retrieved at- https://www.pacificcouncil.org/newsroom/do-indians-have-freedom-speech on 26 March 2021."
[31] "Tamilselvan v. Government of T. N., 2016 SCC OnLine Mad 5960"
[32] Ibid.

Therefore, in a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable.[33] The reasonableness of the restrictions imposed under Article 19(2) has been in question several times and it has to be realized that "the restriction must be justified on the anvil of necessity and not the quicks and of convenience and expediency. Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself."[34]

1.3.1 RIGHT TO DISSENT

"What distinguishes India is the adoption of a democratic way of life, founded on the Rule of law. Democracy accepts differences of perception, acknowledges divergences in ways of life, and respects dissent."[35]

Right to Dissent is nowhere categorically mentioned nor recognized in the Constitution or any other Statute in India but it derives its force and meaning from the Preamble of the Constitution which provides for "LIBERTY of thought, expression, belief " and from Article 19(1)(a), (b) and (c) which provides for "freedom of speech and expression, freedom to assemble peacefully without arms, and freedom to form association and union", subject to reasonable restrictions as provided in Article 19(2) to (6).

The prominent jurists and great judges in remarkable Judgements passed by Hon'ble Supreme of India have identified this concept observing that "Above all, it must be realized that it is the right to question, the right to scrutinize and the right to dissent which enables an informed citizenry to scrutinize the actions of the government. Those who are governed are entitled to question those who govern, about the discharge of their constitutional duties including in the provision of socio-economic welfare benefits. The power to scrutinize and to reason enables the citizens of a democratic polity to make informed decisions on basic issues which govern their rights."[36]

Therefore, the importance of right to dissent is quite clear. In order to make a country grow in a holistic manner, especially when ours being a socialistic nation where not only the economic rights but the civil rights of the citizens are also protected equally, the dissent and disagreement has to be fortified and encouraged. It has to be realized that only when there is enough room for discussion, disagreement and dialogue in a democracy, we can arrive at better ways to run the country.

Recently in 2021, the news got viral about the arrest of Disha Ravi, a 22-year old activist who was charged for the offence of Sedition in famous 'Toolkit' case, where she was illegally arrested from Bengaluru and directly produced before Patiala House Court in Delhi, much after 24 hours of illegal detention and was further sent to 5 days Police Custody by the Magistrate arbitrarily. Not only Sedition law has been misused on various occasions to silence the speech of citizens but also the journalists of this nation. So many high-profile

[33] "Amit Sahni v. Commissioner of Police, 2020 SCC OnLine SC 808"
[34] "S. Rangarajan Etc vs P. Jagjivan Ram 1989 SCR (2) 204, 1989 SCC (2) 574"
[35] "Keshvananda Bharti v. the State of Kerela MANU/SC/0445/1973"
[36] "Justice K.S. Puttaswamy and Ors. v. Union of India (UOI) and Ors., MANU/SC/1044/2017"

journalists whose views do not fall in line with the standards drawn by the government and powerful corporations, are forced to quit their jobs. The ones who speak against the odds often become subjects of harassment. Censorship on media and press has become a major problem. India has been ranked in 142nd place out of 180 countries by the Reporters Without Borders in its 2020 World Press Freedom Index[37]. This raises an important concern of freedom of press in country which needs to be addressed.

1.3.2 RIGHT TO FREEDOM OF PRESS

The contemporary proliferation in the uncontrolled misuse of the laws of sedition against reporters/journalists of this nation has triggered a genuine concern. The concern stipulates a question as to whether the freedom of press can be exercised fearlessly under the shadows of laws of sedition?

In a democracy, when the fate of the nation rests in the hands of its citizens then it is important that the common people are armed with weapons such as education and awareness. The press is one such armory which enables the citizens to be equipped with not only the daily affairs of the Country but connects them to the world affairs and the gives the global as well as national insights.

Thereby the freedom of press is now understood as the heart of social and political intercourse. "The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate i.e., the Government cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities."[38]

The right to freedom of press is not explicitly propounded in the Constitution of India but it has been well developed and founded within the scope of Article 19(1)(a) and Article 21 of the Constitution. The Hon'ble Supreme Court of India has opined that "the freedom of the press was an essential part of the right to freedom of speech and expression"[39] and it has further "expanded the domain of freedom of speech and expression by inculcating in it the right to impart and receive information including the freedom to hold opinions."[40]

Even at the outset of Covid-19 pandemic, the role of press and its impact on media has been praised and honored. Further, it has been observed that "journalism is not a mere profession but a pious mission and press has always played an outstanding role in empowering the people and furthering national interest. A robust, free and vibrant media is as important as an independent judiciary in consolidating democracy and strengthening constitutional rule of law. Democracy cannot survive without a free and fearless press. Therefore, any attack on the freedom of the press is detrimental to national interests and should be opposed by

[37] "World Press Freedom Index 2020 at https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus , retrieved at 22.40 on 08.04.2021."
[38] Observations made by Hon'ble Justice Venkataramiah in the case of Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641.
[39] "Romesh Thaper v. State of Madras AIR 1950 SC 124."
[40] "Union of India v. Association for Democratic Reforms (2002) 10 SCC 111."

one and all."[41]

Yet the factual position shows a different angle where "at least 55 journalists faced arrest, registration of FIRs, summons or show-cause notices, physical assaults, alleged destruction of properties and threats for reportage on COVID-19 or exercising freedom of opinion and expression during the national lockdown from March 25 to May 31, 2020."[42] Furthermore, "at least 154 journalists were either arrested, detained, interrogated or served show cause notices for their professional work and notably more than 40% of these instances were in the year 2020 where at least three journalists were killed due to their professional work."[43]

Not only freedom of press is compromised but the censorship imposed on freedom of speech has also given rise to other contemporary issues in India which shall be addressed later in detail. The upcoming chapters deal with the concepts of development of the law as it is today, understanding whether the law today is even required or not at the first place. This dissertation will also deal with the idea that whether the laws of sedition are a necessary evil which the nation cannot do without. It will also draw comparison with the laws of the other nations with regards to sedition and whether they believe that such kind of a draconian law is required today or not. And by the end the author will try and analyze whether there is a way going forward with thelaw of sedition or whether it can be scrapped, and the nation can do without such a law. To figure out if there is, if possible better methods to deal with situations that today amount to sedition.

CHAPTER II

SEDITION, A COLONIAL LAW - HISTORICAL ASPECTS OF LAW OF SEDITION CURBING FREE SPEECH

"The law of 'Sedition' was an import from English law into the Indian Penal Code in the colonial period. During the freedom struggle, on the one hand the British Indian administration under changing political exigencies, sought to repress any hostile criticism of its rule by ever widening the legal scope of the term 'Sedition' and one the other the Nationalists questioned the very basis of it. Was it Sedition of the people against the colonial Government (Rajdroh) or of the government against the Indian people (Deshdroha)[44]."

[41] "Speech by Vice President of India Sh. M Venkaiah Naidu on November 16,2020 in a video message at a webinar on 'Role of media during the COVID-19 pandemic and its impact on media" organized by the Press Council of India to mark the National Press Day. Retrieved from- https://economictimes.indiatimes.com/news/politics-and-nation/any-attack-on-freedom-of-press-is-detrimental-to-national-interests-vice-president/articleshow/79244597.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst , at 16.20 hours on 09.04.2021."

[42] "As per Report prepared by the Rights and Risks Analysis Group (RRAG) dated 15th June 2020, retrieved from- http://www.rightsrisks.org/wp-content/uploads/2020/06/MediaCrackdown.pdf , at 16.30 hours on 09.04.2021."

[43] "Report named as Behind Bars: Arrests and Detentions of Journalists in India 2010-2020 published by Free Speech Collective, retrieved from- https://freespeechcollectivedotin.files.wordpress.com/2020/12/behind-bars-arrests-of-journalists-in-india-2010-20.pdf , at 16.45 hours on 09.04.2021."

[44] "Kumar Ashwani (2017, March 29) Introduction to Sedition Retrieved from http://shodhganga.inflibnet.ac.in/bitstream/10603/143397/7/07_chapter%201.pdf" on 12.04.2021 at 23.00 hours.

It is a well-known fact that the draconian law of sedition was used by Britishers to tame the fire of independence amongst the freedom fighters of India. The law of sedition came into existence after passing of Indian Penal Code 1862, which was well drafted by the British government for Indian citizens. The first revolt of Independence in 1857 brought worries to the Colonial rule which led to the drafting of Indian Penal Code to formulate the definition of crime and offences in India, acting as legitimate tool for government to suppress civil movements. Before IPC came into effect in 1862, the Code underwent careful scrutiny as the drafters had the clear motive of eliminating any further revolt and grant statutory authority to the government to curb dissent and disagreements.

The Indian Penal Code has undergone various amendments post-independence but the law of Sedition in India remain same as since 1898, yet being a legal tool to curb dissent. Thereby it is important to evaluate whether the law of sedition introduced by the British government as draconian law to curb speech and expression, continues to fulfill its colonial objectives even after 74 years of independence. To have any further discussion, it is imperative to analyze the historical aspects of the law of sedition.

2.1 SEDITION AND ITS ORIGIN

To find the origin of the term of sedition one has to go before the period of the French revolution. The very important precedent of the time appears to be '*De Libellis Famosis'* which came to be known as Sedition in the 16th century. In England, it operated under the aforesaid maxim and further regarded under the maxim of '*Scandalum Magnatum'* if it in any way involved the peers of the high crown officials or ministers of regard.

> "*A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of his majesty, his heirs or successors, or the Government and Constitution of the United kingdom, as by law established, or either house of Parliament, or the administration of justice or to excite his majesty's subjects to attempt otherwise than by lawful means, the alteration of any matter in church or State by law established or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection among his majesty subjects, or to promote feelings of ill-will and hostility between different classes of such subjects".*[45]

2.1.1 WILLIAM SANCROFT INCIDENT

The first ever incident of sedition or an offence of like nature was recorded in 1651 which is known as 'Willian Sancroft Incident'. Willian Sancroft was dismissed as a fellow from the University of Cambridge as he refused to take the Oath of Engagement. The Oath was to declare and uphold the government of the Commonwealth. He, however was restored and made the Royal Chaplain from 1664-77 wherein he also became the archbishop of Canterbury.[46] King James II gave out the Declaration of Indulgence (April 1688) which had the norms that

[45] "Sakal Paper (P) Ltd. v. Union of India AIR 1962 SC 305 (315) 4"
[46] "The Editors of Encyclopedia Britannica 'William Sancroft' Retrieved from https://www.britannica.com/biography/William-

to give out civil restrictions against Roman Catholics and Protestant dissenters.

Sancroft became the voice of dissent that came up against such practices of the King and alleged that the declarations were unconstitutional as they had been imposed by the parliamentary statutes. King James II responded by often imprisoning the bishops. Sancroft refused to take the Oath of allegiance and was consequently deprived of his bishopric in1690.

Thus this incident though not directly under the umbrella offence of sedition was the firstever incident known to man that was somewhat representative of the offence of sedition. Though all these types of offences were closely related to that of sedition none were deemed to be so since there was never any proper enactment against the same idea.

2.1.2 UNITED STATES SEDITION LAWS

In 1797 the United States of America was anticipating a war like situation that might bebrewing up between them and France. The United States passed four internal security laws which inherently restricted and curtailed the excesses of an unrestrained press. The three agents were approached by three French Agents who had suggested a bribe to Talleyrand and another loan to the French ministry to prelude negotiations. There was a great outcry that hadensued after the bribes somehow were made public and there existed a period of undeclared naval warfare between the two countries.

"One of the famous incidents that had led to such a war like situation was the XYZ Affair which became public in 1798. The then President John Adams dispatched three ministers to France in 1797 on a trip to negotiate a commercial agreement to protect U.S. Shipping. Thus when the war with France appeared to be an inevitable outcome of such interactions, theFederalists who were aware of the French Naval success in Europe had also been greatly facilitated by political dissidents in invaded countries. The U.S. thought of preventing such acts and thus they adopted the Alien and Sedition Acts.[47] "

The **Alien Act** laws were majorly aimed at French and the Irish immigrants who were mostly pro-French. The act had following implications:

a. *It raised the waiting period of naturalization from 5 years to 14 years.*

b. *The law also permitted the detention of subjects of an enemy nation.*

c. *The chief executive was also authorized to expel any alien he considereddangerous.*

The **Sedition Act** had the following implications:

a. *Banned the publishing of false or malicious writings against the government*

Sancroft" on 13th April 2021 at 00.03 hours.

[47] "The Editors of Encyclopedia Britannica- *Alien and Sedition Acts*, Retrieved from https://www.britannica.com/event/Alien-and-Sedition-Acts", on 13.04.2021 at 00.11 hours.

b. *Inciting of offence against the Congress was also termed to be of seditious nature.*

c. *Practices that were already forbidden under the head of state libel statutes andthe common law.*

The third act was the **Federal Act** reduced the oppressiveness of procedures in prosecuting such offences but provided for federal enforcement. However, it must be noted that there were no aliens that were found and deported but there had been 25 prosecutions out of which only 10 resulted in convictions under the Sedition Acts. With the end of the war phase and the threat of war passing the Seditions acts either expired or were expressly repealed by the law makers except the Alien Enemies Act and was amended in 1918 to include women in the category.

2.2 COLONIAL RULE AND LAW OF SEDITION

The first ever thought about the law of sedition came up in the mind of Thomas Babington Macaulay, who was one of the framers of the Indian Penal Code which was formed by the First Law Commission[48] that was setup in 1837. The initial draft had a similar wording to the idea that stands today as the law of sedition and was much similar to Section 113 of the draft law of that time. However, after many deliberations and ideas amongst the minds of the framers of the law Section 113 was deleted and was not added to the final draft.

The law thus was for large periods of time remained outside the purview of the law and was more or less non-existent throughout large parts of our history until the early 1860's and the 1870's. The law was first brought into the Indian subcontinent by the British to suppress the *Wahhabi Movement.*[23] The Wahhabi's were a group of people who were accused of conspiring against the Imperial security and thus as they were considered to be a threat to the same were put under the offence of sedition which was then brought under Chapter VI of the Indian Penal Code under section 124-A. It was known as the Great Wahhabi Case wherein two brothers or the propagators of the Wahhabi movement Amir and Hashmadad Khan.

2.2.1 WAHHABI MOVEMENT AND SEDITION

"The Wahhabi movement aimed at establishing the idea that there was only one god and noone else and that there is no other entity who can act as a being that associates him to be related to god."[49] This idea was in direct contradiction to the imperial idea that had been established in the colonies. The British wherever it established its colonies throughout the subcontinent first went through the rule of law and later was replaced by the Crown when the Company failed at the task. Whereas the Wahhabi idea always established the thought that there was no greater power than god himself and there was certainly no person, agent or envoy who could

[48] "Law Commission of India: 'Law Reform after Independence – Early Beginnings' Retrieved from http://www.lawcommissionofindia.nic.in/main.html" , on 13.04.2021 at 00.48 hours.
[49] "Bas Natana DeLong (2009) 'Wahhabism' Retrieved from http://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0091.xml" , on 14th April 2021 at 12.53 hours.

act as the representative of god and carry out any task in his name.

This idea was entirely opposed to the English thought wherein the Crown identified itself as the authority acting on behalf of god on earth. Thus, there was constant amount of friction that had developed amongst the followers of the movement and the English elite. Therefore, to crush the development of such ideas and to bring about a single law over their dominions they initiated laws like that of sedition so as to prosecute all those people who spoke against the government.

Thus, the British with the aim to crush the Wahhabi movement, enacted laws like that of sedition which had a much wider scope than it has today as at that point in time professing or promulgating the idea that there was no supremacy of the Crown but the existence of one godaccording to the Wahhabis got them convicted under the laws of sedition.

"The trial of the suspected Wahhabi's was filled with controversy around that time. The government tried to justify their extra-judicial arrests and detentions as being crucial to protect the empire from anti-colonial rebels who were inspired by fanatical religious beliefs. However, the case so initiated against the Khan Brothers was exceptionally weak as had been pointed out by the newspapers and pamphlets of the time."[50] Indian journalists and Anglo-Indian lawyers argued that the British had started using arbitrarypowers that had been vested in them and thus the situation had worsened. They the lawyers and journalists argued that the role of the police posed a greater threat to the public than the religious fanatics.

2.2.2 DRAFT OF INDIAN PENAL CODE AND LAW OF SEDITION

Before the rough draft of IPC 1837, a similar term *'seditious libels'* was mentioned in the Penal Code for the first time having a wide interpretation - "An ordinary person could have been convicted for sedition for saying anything that criticized the government or brought about contempt. When the idea was brought in exciting people to take up arms against the government was not even a requirement to draw the attention of the offence of sedition."[51]

A stark change came in the history of English Criminal Law in 1832, when Sir James Fitzjames Stephen claimed that prosecutions in England under the offence of sedition wereso low and so rare it ultimately gave a feeling that the offence had ceased to exist altogether. The irony of the whole situation was that Stephen was the Law Member of the Viceroy's council who had initiated the law of sedition at the first place. As stated, T.B. Macaulay had introduced the law of sedition in the first rough draft of the Indian Penal Code, but the law was subsequently not present in the final draft of the Code.

[50] Stephens Julia (2012) "The Phantom Wahhabi: Liberalism and the Muslim fanatic in mid-Victorian India", Volume 47 (Issue 1) Retrieved from https://www.cambridge.org/core/journals/modern-asian-studies/article/phantom-wahhabi-liberalism-and-the-muslim-fanatic-in-midvictorian-india/760D31A3110BE5E09620DF51D4A7B72F , on 14th April 2021 at 13.04 hours.

[51] "Chandrachud Abhinav (2016, September) 'History of sedition' Retrieved from https://frontline.thehindu.com/the-nation/history-of-sedition/article9049848.ece" on 14th April 2021 at 13.30 hours.

Though it was claimed by many authorities that it was due to a clerical mistake that the law did not get published under the first official draft of IPC but, many theorists have given the view that the law was removed by the authorities as the law that had been given in the rough draft did not match with that of the law that had been existing in England at that point in time. "An amendment was introduced to the IPC in 1870, and Section 113 of Macaulay's draft was inserted into the code as Section 124-A. There is some evidence to suggest that sedition was finally made an offence in British India because the colonial government feared a Wahhabi uprising."[52] The framework of this section was 'borrowed' from various sources–"the *TREASON FELONY ACT, COMMON LAW OF SEDITIOUS LIBEL* (Libel defamation in Permanent form), and the *ENGLISH LAW* relating to seditious words."

Further, the law of sedition was subject to amendment in the year 1898, when Section 124A IPC was amended substituting the scope of punishment of transportation for life or any shorter term. "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 in hatred or contempt towards the Government established by law, punishable."[53] The punishment prescribed in the section was further amended by Act No.26 of 1955, which substituted the punishment to imprisonment for life and/or with fine or imprisonment for 3 years and / or with fine.

Stephen being the law member of the Viceroy's council specifically pointed out that the law of sedition was inserted for the people who had preached *'jihad'* or the holy war against the Christians. Though it was the terror of Wahhabi movement or a religious Islamic uprising which led to the upsurge to the offence of sedition in British India, yet the first person who was convicted under Section 124-A of the Penal Code was a prominent Hindu Freedom Fighter /Nationalist, Bal Gangadhar Tilak which was followed by various prominent Hindu Nationalists/ Freedom Fighters. An analysis of all such cases is made out in the next part of this chapter.

2.3 LANDMARK CASES OF SEDITION DURING BRITISH INDIA

After the revolt of 1857, the reigns of the Colonial empire in India was handed over to the British crown, then the empire realized that there is need for stringent laws to be put in place so as to curb the problem of such revolts occurring ever again. The law of sedition was then thought to be the only solution to put a stop to the '*Swadeshi'* movement that was rampant during those times. As a result, various prominent faces of Indian Nationalism such as Bal Gangadhar Tilak, Jogendra Chander Bose, Mahatma Gandhi, Shankerlal Banker and Niharendu Dutt Mazumdar were arrested and tried for the offence of Sedition. Though many of these landmark judgements were overruled after the establishment of Federal Court of India in 1935 which became the founding stone for institution of Hon'ble Supreme Court of India post-independence. The development of Federal Court of India marked a change of Era and a step towards freedom from British Draconian rule and law.

[52] Ibid.

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

2.3.1 THE BANGOBASI CASE 1891

The case of "Queen Empress v. Jogendra Chander Bose and others"[54] which is also popularly known as the Bangobasi case of 1891, is the first ever recorded case of sedition in the history of British India. It raised genuine concerns and questioned the limits of reasonable criticism against the officers and the decisions of the officials of British Governemnt. "The 'Bangobasi', is a newspaper whose Editor Jogendra Chandra, gave a response to the age of Consent bill (1891) under the headline of 'religion in danger' while putting allegations on British government for Europeanizing India using coercive strategies leading to the economic deprivation of Indians. However, it also stated that Hindu neither believed in rebellion nor were they capable of it."[55]

The accused was charged for sedition as to causing disaffection among people against the government and causing the religious sentiments of people to spike to a point where people could rebel resulting to disruption of public peace. Though the defense lawyer argued that there was no intention nor provocation to cause rebellion or disaffection and the passage only differentiated between "European and native method of thought". Though, the Court here took the view that whiledefining the words of the Section as-

> *"If a person uses either spoken or written words calculated to create in the minds of persons to whom they are addressed a disposition not to obey the lawful authority of the government, or to subvert or resist that authority if and when occasion should arise, and if he does so with the intention of creating such a disposition in his bearers or readers mind, he will be guilty of the offence of attempt to excite disaffection withinthe section."*[56]

Though the proceedings were dropped in the meanwhile as the accused offered an unconditional apology. "In 1891 unlike the earlier period, the official attitude showed that it was increasingly becoming intolerant of the slightest criticism not just of British rule but of minor measures as well. The observation of the judge was noteworthy, for it related to legislation that came after the Bal Gangadhar Tilak case."[57]

2.3.2 TRIAL OF BAL GANGADHAR TILAK

The case of "*Queen Empress v Bal Gangadhar Tilak"*[58] became a landmark case of sedition in the history of Colonial rule in India. He was a prominent figure in the in the freedom movement of India. He was a law graduate and ran legal classes for those who could not afford quality education. Tilak was the writer of a Marathi Vernacular weekly named '*KESARI'* and an English weekly named "*MAHRATTA*". Both of the papers were launched from Poona (now Pune) in 1881 along with another of his partners named Vishushashi Chiplunkar and CG Agarkar.

[54] (1892) ILR 19 Cal 35
[55] Donough .OP. CIT. PP. 38-39.
[56] Sijoria Siddharth (2016, March) "Understanding the Law of Sedition" Retrieved from http://onelawstreet.com/opinion-understanding-law-sedition/ on 15th April 2021 at 16.32 hours.
[57] Author Ganachari Arvind, Book- "Nationalism and Social Reform in (SC) Colonial Situation", published by Kalpaz Publications (15 November 2004), ISBN No.- 8178353512
[58] (1892) ILR. 22 Bom. 112, 528

In 1897, *KESARI* was being published and the main proprietary owner of the weekly was Tilak himself. "He published an article named *SHIVAJI's UTTERANCES.* The paper had referred to the 17th century Maratha warrior and had recorded his putative statements aimed at the existing state of affairs in colonial India of that time."[59].

Maharashtra suffered from a great epidemic of plague in 1897 soon after a famine that had ravaged the state in 1896. The Shivaji festival was being celebrated in June of 1897 wherein the Utterances of Shivaji were spoken by some of the people which had poems and speeches. Tilak presided over all the events that took place in the festival. A week after the festival a high-ranking British official was and his lieutenant were found murdered while returning home from their respective duties. The media present at the time which was heavily biased used the poems and speeches given during the festival which addedfuel to the fire. Within a month, the government gave sanction to Tilak's prosecution.

The place of the trial was selected as Bombay as the weekly was published from there. The case was committed to the Bombay High Court wherein the Justice Arthur Strachey deliveredthe charge to the jury. The jury and the Justice discussed the scope and meaning of S.124-Aso as to make sure whether the offence of sedition was made out against Tilak or not. The majority of the jury voted against the acquittal of Tilak and thus he was adjudged guilty. Ironically it must be noted that some of the cases including that of Tilak were decided by special juries at that time if the Court wanted to do so. Interestingly enough the special jury hardly ever consisted of any Indian jurors in it.

Thus, Tilak was sentenced by the judge to about 18 months of rigorous imprisonment and a few of the grounds that had been presumed intent, bad feelings, incitement, speech as a wholeetc. The publisher was discharged not guilty by the same court.[60]

Unfortunately, Bal Gangadhar Tilak was once again booked under the offence of sedition in 1907; it coincided within the same timeframe as that of the Surat session of Congress. It marked the split of the Congress amongst the moderates and the extremists. Tilak became one of the prominent leaders of the extremists. "On 24th June 1908 Tilak was arrested from Bombay on the charges of sedition as well as S.153A IPC in respect of two articles carried in *KESARI titled The Country's Misfortune* and *These Remedies Are Not Lasting.* The house he had in Poona was searched and two books were found which suggested ways to make explosives were found which were found to be incriminating evidence against him."[61]

Tilak had argued that both the article so written were against the bad bureaucracy and tyranny of the bureaucrats and were not against the British rule. There was the creation of another special jury that consisted of 6 Europeans and 2 Indians thus outvoting them once again and "thus Tilak was sentenced to six years of imprisonment in

[59] "Chandra Bipan (2016)- India's Struggle for Independence p.110 Retrieved from http://www.pustaka.co.in/eng/book/others/india's-struggle-for-independence/files/basic-html/page110.html" on 16th April 2021 at 11.15 hours

[60] (1892) ILR. 22 Bom. 112, 528

[61] "31Vikas, (2018, August) Independence Day: Bal Gangadhar Tilak's Sedition Trial And How British Strangled Freedom Of Speech, Retrieved from https://www.oneindia.com/india/bal-gangadhar-tilak-s-sedition-trial- when-the-british-strangled-freedom-of-speech-2754930.html" on 16th April 2021 at 11.50 hours.

Burma but were later commuted to simple imprisonment and was later returned to India. When given an opportunity to say something in his defense"[62], Tilak said-

> *"All I wish to say is that, in spite of the verdict of the jury, I maintain that I am innocent. Here are higher powers that rule the destiny of things and it may be the will of Providence that the cause which I represent may prosper more by my sufferingthan by my remaining free."*[63]

Thus, Tilak when released back again became a key player in the freedom of India from the tyrannical British rule that had been in India for the last two centuries. However, Tilak's trials will always be remembered as the first times ever when the law of sedition was used by the British to quash the freedom of speech in the country.

2.3.3 QUEEN EMPRESS V. RAMCHANDRA NARAYAN

The case of Ramchandra Narayan came after the tilak judgement and have the same outlook, following the steps of Tilak's decision where "attempt to excite feelings of disaffection to the Government was defined as, equivalent to an attempt to produce hatred towards the Government as established by law, to excite political discontent, and alienate the people from their allegiance."[64] Nonetheless, it was elucidated that "every act of disapprobation of Government did not amount to disaffection under section 124A IPC, provided the person accused under this section is loyal at heart and is ready to obey and support Government."[65]

2.3.4 QUEEN EMPRESS V. AMBA PRASAD

Amba Prasad was also charged for the offence of sedition for publishing a controversial article in 'Jami-ul-ulam' newspaper. The court analyzed the meaning of disaffection and observed that disapprobation will not lead to disaffection only when it does not cause treachery or attempt to overthrow the Government. The court remarked that:

> "… the disapprobation must be '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."[66]

A similar interpretation was given in this case as that of Tilak and Ramchandra Narayana, the court followed the literal understanding of section 124A IPC and "categorically held that it is not necessary that an actual rebellion or mutiny or forcible resistance to the Government or any sort of actual disturbance was caused by the act in question."[67] Stressing on this point, the Court remarked that:

[62] "Acharya Bhairav (2016 February 16)-The Second Coming of Sedition, Retrieved from https://thewire.in/law/the-second-coming-of-sedition" on 16th April 2021 at 13.15 hours.
[63] "Trial of Tilak (1986) Publications Division, Ministry of Information & Broadcasting, Govt. of India, NewDelhi"
[64] ILR (1898) 22 Bom 152
[65] Ibid.
[66] ILR (1897) 20 All 55.
[67] Ibid.

"(Sedition) makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action, such as rebellion or forcible resistance, the test of guilt."[68]

These cases highlighted the uncertainty and gap created in interpretation of the term disaffection and only in order to eliminate any such ambiguity in interpretation of section 124A, Explanation III to this section was introduced by the Legislature in order to make law clearer and more precise.

2.3.5 BENI BHUSHAN ROY v. EMPEROR CASE 1907[69]

Beni Roy Bhushan was president of the reception committee of a meeting related to inauguration of 50th anniversary of the Indian mutiny which was held at the Hindu Dharma Sabha near Khulna town. On 25th May 1907, Beni Bhushan Roy addressed the members of the meeting, reading out a written speech, for which she was charged under the offence of sedition u/s 124-A IPC, for allegedly inciting the members of aforesaid meeting to secure an independent Government.

The deputy legal commemoration, on behalf of the crown, had acknowledged that there is nothing seditious in the words quoting- "that the present year is very auspicious for the inauguration of the meeting as it is the fiftieth anniversary of the Indian mutiny" but the use of the word 'Independent Government' in the next clause, cannot be forsaken. As the speech was in Hindi language, thereby the actual word used is was "Hansraj" (i.e. Swaraj). Thereby, the words "Independent Government" could be inappropriate translation and the exact words were notused, therefore, it cannot be made out from the evidence of the witness Fazlur that petitioner in his speech explicitly mentioned that people should have 'Independent Government'. The courts observed that the offence of sedition is not made out, therefore the charges against Beni Bhushan Roy were dropped.

2.3.6 TRIAL OF GANDHI 1922

Any aspect of Indian history would remain incomplete without drawing a reference to Mohandas Karamchand Gandhi. One of the famous cases that Gandhi was involved was in reference to four articles that were published in his paper journal namely Young India, titled as *Disaffection a Virtue* dated the 15th June 1921, *Tampering with Loyalty* dated the 29th September, *The Puzzle and Its Solution* dated the 15th December and *Shaking the Manes* dated the 23rd February 1922."[70] The charges framed against him were one of exciting incitement and hatred against the British government. "Gandhi was the editor and proprietor, who was charged under the said offence along with Shankarlal Ghelabhai Banker, Editor, Printer and publisher of Young India and Pandit Madan Mohan Malaviya."[71]

[68] Ibid.
[69] (1907) ILR 34 Cal 991
[70] "Gandhi Research Foundation- The Trials of Gandhiji, Retrieved from https://www.mkgandhi.org/law_lawyers/25great_trial.html" on 16th April 2021 at 14.20 hours.
[71] Ibid.

"The Chauri Chaura incident, which took place on February 5, 1922, in the Gorakhpur district of British India, is considered as one of the most prominent incidents of pre-independent India. During the non-cooperation movement, a group of protestors clashed with police andas a result of this, policemen opened fired on the protestors. Provoked by this shooting incident, the demonstrators burnt down a police station, killing all its occupants. Resulting in the death of 22 or 23 policemen and three civilians, the incident also turned many against Mahatma Gandhi as he called off the *Non-cooperation Movement* after the incident."[72] This incident had resulted in the British becoming hasty and charging Gandhi and the other editors who were part of printing of the said articles on those particular days to be charged under the offence of Sedition under the Indian Penal Code.

Thus, the offenders were said to have incited such acts to be done by the Indian public and thus were charged with the view that they would try and prevent such types of deterrence amongst the other fellow Indians so as to not go against the government. With the operation of the Rowlatt Act and the subsequent Jalianwala Bagh incident, Gandhi had launched the Non-Cooperation Movement against the British which became one of the first organized mass movements against the British in India. Angered by such opposition the British decided to implement the Rowlatt act and in that process had the power to keep people in detention without proper trials and coupling thatwith the offence of sedition, it became a very dark prospect for the people who were involvedin the freedom struggle movement.

Both Gandhi and Banker were pleaded guilty of their offences that they had been charged with and said that they did not feel guilty of any of the crimes that they had been charged with as, if they had not stood up for something that was already bad at the first place then they would have been committing grave errors on their parts and against their motherland. Here are a few excerpts from the speech so given by Gandhi:

> *"The section under which Mr Banker and I are charged is one under which mere promotion of disaffection is a crime…I have studied some of the cases tried under it (section 124A) and I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. Affection cannot be manufactured or regulated by law. After the charges were read out, he replied, I plead guilty to all the charges. Gandhi pointed out that he had no disaffection towards any particular person or administrator, but he emphasized that he was disaffected towards a government which has done more harmthan good in India. He said I had either to submit to a system which I consideredhad done an irreparable harm to my country or incur the risk of the mad fury of my people bursting forth, when they understood the truth from my lips."*[73]

Gandhi then made an extraordinary plea,

> "*The only course open, Gandhi said to the judge, is to, resign your post which I know is impossible*

[72] "Chauri-Chaura Incident (2015) Retrieved from https://learn.culturalindia.net/chauri-chaura-incident.html" 16th April 2021 at 15.00 hours.
[73] "Republic of Dissent: Gandhi's Sedition Trial (2019, Jan 25) Retrieved from https://www.livemint.com/politics/news/republic-of-dissent-gandhi-s-sedition-trial-1548352744498.html" on 16th April 2021 at 1600 hours.

for you to do and dissociate yourself from evil if you feel that the law you are called upon to administer is an evil thing and that in reality, I am innocent. He told the Judge that he was not asking for mercy. He said that which, according to the law is a deliberate crime, is what appears to him to be the highest duty of a citizen. No sophistry, no jugglery in figures can explain away the evidence the skeletons in many villages present to the naked eye. I have no doubt whatsoever that both England and the town-dwellers of India will have to answer, if there is a God above, for this crime against humanity which is perhaps unequalled in history."[74]

M.K. Gandhi, of course with his extraordinary eloquence sensitized the whole courtroom yet it was not enough to get an acquittal but forced the judge to award a punishment sentencing both Gandhi and Banker to a simple imprisonment for six months at Sabarmati Jail.

2.3.7 SEDITION TRIAL OF SHEIKH ABDULLAH 1946

The sedition trial of Sheikh Abdullah in 1946 can be studied as a perfect example misusing laws for taking political advantage and suppressing rebel. On 15th May 1946, approximately after four years of Congress starting the Quit India movement against years of oppression by Colonial rule, Sheikh Abdullah also launched Quit Kashmir Movement, challenging the validity of draconian British rule in Kashmir. Particularly, he suspected the means by which Kashmir was bought "from the British by Raja Gulab Singh through the infamous treaty of Amritsar of 1846."[75] Abdullah also in support of 'Quit India movement' delivered a series of speeches to which the then ruler of Kashmir, Maharaja Hari Singh got Abdullah arrested while he was making his way to New Delhi.

Jawaharlal Nehru stood up in support of Abdullah and came to Kashmir to defend him, as a result he was also detained. Abdullah gained popular public support and the trail came to known as infamous 'Quit Kashmir Trail'. During the trial, Abdullah expressed his reasons for challenging the draconian British rule-

"Where law is not based on the will of the people, it can lead to the suppression of their aspirations. Such law has no moral validity even though it may be enforced for a while. There is a law higher than that, the law that represents the people's will and secures their well-being; and there is the tribute of the human conscience, which judges the ruler and the ruled alike by standards that do not change by the arbitrary will of the most powerful. To this law I gladly submit and that tribunal I shall face with confidence and without fear, leaving it to history and posterity to pronounce their verdict on the claims that I and my colleagues have made not merely on behalf of the four million people of Jammu and Kashmir but also of the ninety-three million people of all the States of India [under princely rule]. This claim has not been confined to a particular race or religion or color…I hold that sovereignty resides in the people, all relationships political, social and economic, derive authority from the collective will

[74] Iftikhar Rehna, (2015, Jan 18) "The Great Trial of Mahatma Gandhi-1922" Retrieved from https://qrius.com/the-great-trial-of-mahatma-gandhi-1922/ on 16th April 2021 at 1700 hours.
[75] "The Origins of the Quit Kashmir Movement, 1931–1947, retrieved at- http://www.oxfordislamicstudies.com/Public/focus/essay1009_quit_kashmir.html" on 19th April 2021 at 0030 hours.

of the people."[76]

Even after steady efforts, Abdullah was sentenced to imprisonment of nine years for leading the rebellious Quit Kashmir movement against the Maharaja's regime.

2.3.8 DEVELOPMENT OF FEDERAL COURT

The evolution of Federal Court can be traced from Sir Hari's Singh Gour's first resolution urging the creation of all-India judicial tribunal in 1921. "He sought the establishment in India of a court which would be empowered to decide civil and criminal appeals from the High Courts of British India, and a reduction in the number of such appeals which for decades had gone directly from the High Courts to the Judicial Committee of the Privy Council in London."[77] The embodiment of Government of India Act 1935 paved path for development of Federal Court in India as it consisted of provisions for establishment of the Federal Court which later became the founding stone for institution of Supreme Court of India.

The existence of Federal Court remained unnoticed for a few years, as it only delivered 27 decisions and 2 advisory opinions for the first five years. "But in April of 1942 the Federal Court handed down the first of a series of decisions in which it either boldly struck down provisions of the infamous sedition, preventive detention and special criminal court ordinances and legislation, or declared that the executive had not acted within the limits of its authority. All but one of these decisions were unanimous, with the British Chief Justice joining his Indian colleagues in restraining the alien executive from interfering arbitrarily with individual liberties. These decisions were proof of the resoluteness, impartiality and independence of the Federal Court, and they served to inspire a high degree of confidence in the Court." [78] A few of such landmark judgements pertaining to law of sedition are analyzed below:-

A. NIHARENDU DUTT MAJUMDAR VS. KING EMPEROR[79]

"The case was decided in appeal from the Calcutta high court. The accused (a memberof the legislature) had made a certain speech against the ministry and the governor ofBengal against their acts and omissions in riots that had taken place in Dhaka."[80]

The alleged speech made by the accused against the ministry and the governor for running away from his responsibilities, also chastised the Government for wrongfully using the police forces for their own benefit. The audience was allegedly conveyed that the increasing communal disturbances was encouraged by the Government and the Government has to be made responsible for the sufferings of the victims. Thereby, the accused was detained and sent for trial for the violation of rules 34(6) (e) and (k) under the Defense of India Act, 1939. The Judge, Gwyer opined the following view while deciding as to whether the speech was seditious

[76] Quoted in Bhattacharjea 2008: 237–38, "Bhattacharjea, Ajit. Kashmir: The Wounded Valley, New Delhi: UBS, 1994."
[77] George H. Gadbois, Jr- "The birth of India's powerful Supreme Court", retrived at- https://www.livemint.com/Opinion/Sso9kkvJY2HDjqDVragv8K/The-birth-of-Indias-powerful-Supreme-Court.html on 18th April 2021 at 14.30 hours.
[78] Ibid.
[79] (1942) F.C.R. 38
[80] Ibid.

or not -

> *"It is true that in the course of his observation the appellant indulged in a good deal of violent language and had worked himself up to such a stage of excitement. The speech was we feel bound to observe, a frothy and irresponsible performance, such as one would not have expected from a member of the Bengal legislature, but in our opinion to describean act of Sedition is do it too great an honour."*[81]

According to the judgement of the court, the essence of the offence of sedition was public disorder, or the reasonable anticipation, or likelihood of public disorder,or must be such intensity as to satisfy a reasonable man that there was the 'mens rea' (intent) or predisposition.

Though no decision of the Privy Council has been referred by the court while allowing the present appeal of the accused. There is sufficient justification in the judgement that the decision was based on the grounds that the code must be interpreted in the light of changing circumstances, realizing that – *"what was once seditious may not be considered to be seditious now."*

The preservation of order has to be regarded as the most fundamental duty of every Government because order is seen as the condition precedent to all civilization which leads to advancement of human happiness. This duty shall not be performed in a manner that it makes the remedy crueler than the ailment, but the matter of obligation cannot be ceased to exist only because the duty has not been performed properly. It is to this aspect of the functions of Government that in our opinion the offence of Sedition stands related. It is the answer of the state to those who for the purpose of disturbance and to promote disorder, or who incite others to do so.

Therefore, the then Chief Justice of the Federal Court, Sir Maurice Gwyer held the following:-

> *"—Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Governments, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must, either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."*[82]

B. KESHAV TALPADE V. KING EMPEROR[83]

In present case, an appeal was made by the Bombay High Court to the Federal Court where the Bombay HC was directed to issue a writ of Habeas Corpus to the petitioner who was arrested under Rule 26 of the Defense of India rules procuring grounds that the aforesaid rule was invalid for being ultra vires the Defense of India Act. As the Section 2 (2) of the Defense Act had empowered the government to make rules for the arrest of

[81] Ibid.
[82] "Niharendu Dutt Majumdar v. The King Emperor, (1942) FCR 38"
[83] "Kesahv Talpade v. king Emperor 30 AIR 1943 Federal Court."

any person reasonably alleged of being of hostile origin or acting in a manner detrimental to the security and interest of the empire. The rule that may be framed under this provision of the act made it a prerequisite for the Provincial Government to be satisfied about the necessity of the detention of that person.

The rule 26 of the Defense Act was struck down by the court on the grounds that the rule merely required the satisfaction ofthe provincial authorities, whereas the language of the enabling legislation provided for an 'evidently reasonable ground for suspicion'.

2.3.9 ANALYSIS OF LAW OF SEDITION BEFORE INDEPENDENCE- DECISION OF PRIVY COUNCIL

The case of King-Emperor v. Sadasiv Narayan Bhalerao[84] came as an appeal to Privy Council in order to question the interpretation given by Federal Court in case of Niharendu Dutt Majumdar vs. King Emperor[85] which led to several acquittals following the interpretation made by Federal Court.

In case of Sadashiv Narayan Bhalerao, the accused was acquitted following the aforementioned decision of Federal Court for publishing and distributing the copies of a leaflet which contained prejudicial reports as on perusal of the leaflet, the Court was satisfied that there was nothing which would cause public disorder. Thereby, appeal was made to challenge the soundness of the decision in Niharendu's case.

The Lordships in the case of Sadashiv Narayan Bhalerao relied upon the decision in case of Bal Gangadhar Tilak and the definition in case of Niharendu Dutt Majumdar was overruled by the Privy Council. Thereby, the reading of 'public order' in section 124 A IPC in Niharendu's case, and the literal interpretation in Bal Gangadhar Tilak, and later in Ramchandra Narayan and Amban Prasad, was upheld.

Thus, throughout the course of time until the time of independence the law of sedition has been used to suppress the voices of the people who used to show dissent against the government. The British had tried to use the law of Sedition extensively so as to make sure that they could keep the people in check and not allow extremists fighting for independence win under any scenario. These clashes amongst the British and the nationalists often led to violent ends and with the passing of Acts like that of Rowlatt Act, gave the British a free hand to deal with the freedom fighters. Sedition has been again used extensively even after independence so as to suppress the voice of dissent if ever shown against the government in force which will be further discussed in the upcoming chapter.

[84] AIR 1947 PC 84.
[85] (1942) F.C.R. 38

CHAPTER III

FREE INDIA- SWORD OF SEDITION ON FREE SPEECH

With India gaining freedom in 1947 and starting off with a democratic system of governance, the aspect of sedition needs to be looked into and whether there were any more incidences of sedition occurring in free India or not and whether the law still persists in the Indian law system and is there a need for the same or not. The law of sedition was a gift from the British to free India. Mohammad Ali Jinnah before becoming the first ever Prime Minister of Independent Pakistan was a very famous advocate and was coincidentally the advocate for Tilak in his great trial of 1916.

To quote a very famous saying which he had put forward to the court during his trial was,

> *"What exactly is disaffection?" "Absence of Affection". This means that if you do not love the Government you could be put in jail. Shameless twister of the truth often claims that the Sedition law has not changed since 1898, but it this is not true".*[86]

Shortly after India gained its independence it had proclaimed that it will be a sovereign, democratic, republic. Thus, it had also claimed that the Constitution would be the Supreme Law of the land and thus a constituent assembly was setup thereinafter and it was in this very assembly that the law of sedition was also discussed.

3.1. CONSTITUENT ASSEMBLY DEBATES

Reviewing the Debates of Constituent Assembly, it can be comprehended that for the inclusion of law of sedition as a restriction on freedom of speech and expression in the then Article 13 of the draft of Indian Constitution, there had been serious oppositions and debates between the drafters of Indian Constitution.

During the discussions, Shri M. Ananthasayanam Ayyangar said:

> *"If we find that the government for the time being has a knack of entrenching itself, however bad its administration might be it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word 'sedition' has become obnoxious in the previous regime.*
>
> *We had therefore approved of the amendment that the word 'sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law.*

[86] Queen Empress v. Bal Gangadhar Tilak (1892) ILR. 22 Bom. 112, 528

We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether."[87]

Shri K M Munshi quoted the words of the then Chief Justice of India, in the landmark precedent of "*Niharendu Dutt Mazumdar v. King"*[88], while giving a dialogue on his motion to delete the word sedition from Article 13 of the draft Constitution, wherein a distinction between *"what sedition meant when the Indian Penal Code was enacted, and Sedition as understood in 1942"*.[89]

"This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."[90]

This provision was thereby termed as a "shadow of colonial times" that shall not be a curse to Free India. After continuous deliberation, the Constituent Assembly unanimously deleted the word "sedition" from Article 13 of the draft Constitution.

3.2. DOCTRINAL DEVELOPMENTS IN THE LAW

There are two ways by which a person can be said to commit the offence of sedition. First, being that person actually inciting the disaffection among people or have made such attempt to incite disaffection. Any of them is enough to establish guilt of the person.

Pre-independent sedition remained the same as the law that was made during its inception with very little or minor changes that had been made with the general idea of keeping it in consonance with the common laws of the land.

In the case of Bose, the judges had interpreted the law merely as "the opposite of affection, but later it was held to be positive feeling, and not just the absence of affection."[91] Justice Strachey exceptionally took an extensive approach in his definition of disaffection as "hatred, enmity, dislike, hostility, contempt and every form of ill-will to the government."[92]

Whereas in the case of "*Emperor v. Bhaskar Balavant Bhopatkar*[93], disaffection was interpreted not as a feeling

[87] "Constituent Assembly of India, 2nd December 1948; Constituent Assembly Debates Official Report, Vol. VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014."
[88] AIR 1942 FC 22.
[89] "Constituent Assembly of India discussions held on 1st December 1948 Constituent Assembly Debates Official Report, Vol. VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014."
[90] "Niharendu Dutt Mazumdar v. King AIR 1942 FC 22."
[91] "Emperor v. Bal Gangadhar Tilak (1908) 10 BOMLR 848."
[92] "W R Donough, A Treatise on the Law of Sedition and Cognate Offences in British India, Penal and Preventative, Thakker, Spink and Co. Calcutta, 1911, p 47."
[93] (1906) 8 BOMLR 421

for another individual, but a feeling one had for a ruler."[94]

Therefore, Disaffection can be differentiated from disapprobation. It can be understood from a plain reading of the second and third explanation of Section 124 A IPC which says that comments expressing disapprobation of the measure of Government or of the administrative or other action of Government, without exciting hatred, disaffection or contempt, are not seditious under the act.

3.3 POST CONSTITUTIONAL DEVELOPMENTS

The law of Sedition was seen as a thorn in the eyes of the Constitution makers from the very start, but it still remained a part of the law as a reasonable restriction on the freedom of speech and expression.

The section after independence for the first time ever came up in the case of *Romesh Thapar V. State of Madras*, where-

> *"The Supreme Court declared that unless the freedom of speech and expression threaten the security of or tends to overthrow the 'State'; any law imposing restriction upon the same would not fall within the purview of Article 19(2) of the Constitution."*[95]

A year later, the validity of section 124A IPC was questioned in the case of *Tara Singh Gopi Chand v. The State*, where the Punjab High Court declared the section as unconstitutional for it is violative of Article 19(1)(a) of the Constitution of India observing that-

> *"a law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about".*[96]

Although, the first Constitutional Amendment came up in the year 1951, which led to amendment of Article 19(2) implicitly including law of sedition as a restriction to freedom of speech and expression. In June 1951, the Constitutional Assembly amended Article 19(2) to bring three additional restrictions to freedom of speech and expression which are- "friendly relations with foreign State, incitement to an offence and public order"[97]. Further by 16th amendment act of 1963, article 19(2) was amended to add 'reasonable restrictions in the interest of the sovereignty and integrity of India' in the provision.

While introducing the first Constitution of India (Amendment) Bill 1951 to the parliament, Pandit Jawaharlal Nehru, the then Prime Minister of India referred to sedition and stated as follows: -

> *"Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we*

[94] Ibid.
[95] "Romesh Thapar V. State of Madras AIR 1950 SC 124."
[96] Tara Singh Gopi Chand v. The State AIR 1951 PUNJ 27.
[97] Article 19(2) of the Constitution of India 1950.

might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it".[98]

This amendment has been challenged on several occasions in Supreme Court of India but was never repealed. Though all the people in the country did not carry the same view, many believed that the law of sedition was indeed required in our country. This amendment resonated the logic in dissenting opinion of Justice Saiyid Fazl Ali, in *Brij Bhusan v. State of Delhi*[99] who opined that disruption of public tranquility and grave instances of public disorder could breach the security of public and distress the peace of State. This is the reason, sedition was explicitly absent from Article 19(2) as such terms having broader meanings and already including the act of sedition and other acts against national interest are included by the makers of the Constitution, for it being detrimental to the security of the State.

Till the year 1955, the offence of sedition prescribed for the punishment for "transportation for life or any shorter term" which was amended by the act 26 of 1955 which substituted the punishment as "imprisonment for life and/or with fine or imprisonment for 3 years and / or with fine."[100] Also, till the year 1973, the offence of sedition was non-cognizable but after new Code of Criminal Procedure came into force in the year 1974, for the first time in India, the offence of Sedition was made cognizable offence.

The constitutional validity of section 124A IPC was challenged in landmark case of Kedar Nath Singh v. State of Bihar[101] which elucidated the ambiguities with the law of sedition in the nation. This case is analyzed further in detail.

3.3.1 LAW COMMISSION OF INDIA

After the landmark precedent of Kedar Nath, the Law Commission of India in the year 1968 published its 39th Report which was titled as "The Punishment of Imprisonment for Life under the Indian Penal Code". "The report recommended that there are certain extremely anomalous situations where certain offences have been made punishable with severe punishment and it was suggested that ―offences like sedition should be punishable either with imprisonment for life or with rigorous or simple imprisonment which may extend to three years, but not more."[102]

Then later in 1971, Law Commission published its 42nd report where for the first time they made certain recommendations for incorporation in section 124A IPC, but only to interpret the section in more stricter sense, which included incorporation of intention i.e. 'mens rea' in the wordings of the section, widening the scope of section by including the terms "Constitution of India, Legislature, Judiciary, along with executive government,

[98] "Ram Nandan v. State of Uttar Pradesh AIR 1959 ALL 101"
[99] AIR 1950 SC 129
[100] "Section 124A Indian Penal Code, 1860 (Amendment Act 26 of 1955)"
[101] 1962 AIR 955, 1962 SCR Supl. (2) 769
[102] "Consultation Paper on 'Sedition' by Law Commission published on 30 August 2018."

against whom disaffection shall not be tolerated"[103] and further suggesting to fix the maximum punishment for the offence as rigorous imprisonment of seven years and fine, with a view to bridge the gap between sentence for imprisonment which may extend to 3 years and imprisonment for life. However, the aforementioned recommendations were not accepted by the Legislature.

Thereafter, the 43rd report of Law Commission published in the year 1971 also dealt with the offence of sedition as part of National Security Bill 1971, wherein the offence of sedition was dealt in section 39 which was nothing more than reproduction of revised section as recommended in the 42th report.

For a long period of time, Law Commission did not include the offence of sedition its recommendations/report till 2017, when in its 267th Report published on 'Hate Speech' which provided for a differentiation between sedition and hate speech "providing that the offence of hate speech affects the State indirectly by disturbing public tranquility, while the sedition is directly an offence against the State. Further, to qualify as sedition, the impugned expression must threaten the sovereignty and integrity of India and the security of the State."[104]

Finally in the year 2018, Law Commission was asked to analyze and examine various pros and cons of section 124A IPC as a result of which a Consultation Paper was published which recommended the following:-

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

B. Every irresponsible exercise of right to free speech and expression cannot be termed seditious. For merely expressing a thought that is not in consonance with the policy of the Government of the day, a person should not be charged under the section. If the country is not open to positive criticism, there lies little difference between the pre- and post-independence eras. Right to criticize one's own history and the right to offend are rights protected under free speech.

C. While it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy. Therefore, every restriction on free speech and expression must be carefully scrutinized to avoid unwarranted restrictions."[105]

The above recommendations surely need discussion and deliberation by the Parliament and must be incorporated in near future to strengthen the spirit of democracy.

[103] Ibid.
[104] Ibid.
[105] "Consultation Paper on 'Sedition' by Law Commission published on 30 August 2018."

3.3.2 INDIAN PENAL CODE AMENDMENT BILL 2012

The IPC Amendment Bill 2012 aimed to substitute the section 124A with a new section which narrows down the scope, meaning and punishment prescribed under the section. This was done in order to allow exchange of ideas being in consonance with Article 19(1)(a) excluding criticism of the Government and granting right to dissent and criticism to the people of a democracy.

"However, it imposes some reasonable restrictions on the exercise of this freedom by penalizing people who advocate the overthrow of Government by force or violence or by the assassination or kidnapping of Government employees or public representatives. The maximum punishment is also reduced from life imprisonment to seven years. These changes are aimed at safeguarding the right of the citizens to freedom of expression, while at the same time ensuring that unfettered freedom of some does not lead to violence or disorder for others."[106]

The substituted section as per IPC (Amendment) Bill, 2012 is reproduced as under:-

> "124A. Whoever, knowingly or wilfully, by words, either spoken or written, or by signs, or by visible representation or otherwise, advocates the overthrow of the Government or an institution established by law, by the use of force or violence or by assassinating or kidnapping any employee of such Government or institution or any public representative or provokes another person to do such acts shall be punished with imprisonment which may extend to seven years, or with fine or with both.
>
> Explanation.—Mere criticism or comments expressing disapproval of the Government or any act of the Government shall not constitute an offence under this section."[107]

The most liberal democracies of the world, look at the offence of sedition as superfluous and unfortunate for the citizens of any modern democracy, whereas the right to dissent, to criticize Government structures and challenge its processes is well accepted. Thereby, only if such bill has been passed by the parliament, the present situation with regard to law of sedition has been much improvised.

3.4 VALIDITY OF SECTION 124-A IPC

According to the Indian Penal Code section 124-A basically involves spreading and disseminating disaffection as a crime and it has even remained the same even after the independence of the country for the very simple idea that the IPC was formed in 1860 and there have been hardly any changes that were made to that document even by the Indian lawmakers after the independence of India.

[106] "The Indian Penal Code (AMENDMENT) Bill, 2012, Bill No. 129 of 2012 as introduced in the Lok Sabha by SHRI BAIJAYANT PANDA, M.P."
[107] Ibid.

After the independence the term "his majesty Government" in the law books was replaced with the term "Government established by law in India". According to the opinion of Mahatma Gandhi Sedition is a law that is against the notion of liberty and hence, anti-justice and anti-truth.

Post-independence, the law of sedition being a colonial law has been challenged for being unconstitutional and violative of article 19(1)(a) on various occasions. An analysis of such decisions has been done in order to examine the fluctuating view of judiciary on validity of section 124A IPC.

3.4.1 ROMESH THAPPAR V. STATE OF MADRAS

The case of Romesh Thappar was the first ever case after independence in which the law of sedition ever came into question and consideration. In present case, Romesh Thapar is the publisher and editor of recently introduced English journal 'Cross Road' which was published in Bombay whose entry and circulation, was banned by the Government of Madras on the justification of preserving public order as the writings in the journal were seen to be seditious in nature. This act was contended to be violative of fundamental rights.

The Supreme Court observed that the word 'public order' is a very broad term and restriction on freedom of speech and expression can only be justified on the grounds of "threat to national security and for serious aggravated forms of public disorder that endanger national security and not relatively minor breaches of peace of a purely local significance."[108] The Court further declared that "unless the freedom of speech and expression 'threaten the security of or tend to overthrow the State', any law imposing restriction upon the same would not fall within the purview of Article 19(2) of the Constitution."[109]

3.4.2 BRIJ BHUSHAN AND ANOTHER VS THE STATE OF DELHI

The decision of Romesh Thappar's case was followed in present case by majority judgement whereas Justice Fazl Ali delivered a dissenting decision, wherein censorship was imposed by Chief Commissioner on English weekly of Delhi for publishing objectionable matter which constituted threat to public order. Such action was challenged before Hon'ble Supreme Court of India for being violative of Article 19(1)(a).

The Supreme Court in its majority decision followed the judgement of Romesh Thappar and held that the restrictions to fundamental rights can be imposed for the purpose of maintenance of public safety and order only in "a matter which undermines the security of or tends to overthrow the State"[110]. The above act was not considered one of them and such censorship order/notification was considered unconstitutional and void. The court further held that-

"The imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by art. 19 (1)(a)."[111]

[108] AIR 1950 SC 124.
[109] Ibid.
[110] 1950 AIR 129, 1950 SCR 605
[111] Ibid.

3.4.3 TARA SINGH GOPI CHAND V. THE STATE

In present case, the validity of section 124A IPC was challenged before Punjab High Court as the petitioner was charged u/s 124A IPC for delivering a speech which was alleged to be seditious in nature, thereby the petitioner challenged the validity of the law itself for being violative of article 19(1)(a).

The Punjab High Court declared "section 124A IPC unconstitutional as it contravenes the right to freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution observing that a law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about."[112]

Thereafter, came the first Constitutional Amendment Act of 1951 which added three additional restrictions to Article 19(2) namely- "friendly relations with foreign State, incitement to an offence and public order"[113].

3.4.4 RAM NANDAN V. STATE OF UTTAR PRADESH

In present case, Ram Nandan, was allegedly charged for the offence of sedition for a seditious speech while fighting for the cause of farmers and agricultural labour in UP, he alleged the Congress rule for their failure in addressing extreme poverty and over-exploitation of cultivators and further encouraged them to rebel and overthrow the government when needed.

Even eight years later of the decision in Tara Singh case, it was followed by the Allahabad High Court as well and it declared the provisions of section 124A IPC violative of fundamental rights of the Constitution and null and void with the enforcement of constitution. The Court further stated-

> *"It would further be necessary even for the good of the government itself, for it is then only that it would be able to mend itself so as to be able to truly reflect the people's will, thereby gaining the people's confidence and adding to its own strength and security. The fact that these exceptions are conspicuous by their absence in the very Section in which they are most needed, would itself constitute a sufficient condemnation of the Section and would bring it within the ban of unreasonable restrictions. Under the circumstances, it might well' be argued that the law in this regard is discriminatory, and the discrimination made in favour of the government appear to be arbitrary and unwarranted."*[114]

3.4.5 KEDAR NATH SINGH V. STATE OF BIHAR 1962

This case is considered a landmark case in history of sedition law. The Supreme Court of India while considering the validity of sedition law overruled the previous judgements of High Courts holding section 124A to be unconstitutional and void.

[112] AIR 1951 Punj. 27.
[113] "Article 19(2) of the Constitution of India,1950"
[114] AIR 1959 All 101, 1959 CriLJ 1

In present case, the petitioner being a member of the communist party delivered an aggressive speech against the Government in vicious language. Thereby this along with three other appeals were decided by the Hon'ble Supreme Court while deciding the Constitutionality of Section 124A IPC.

The Supreme Court of India decided the constitutionality of section 124A IPC in affirmative, declaring the provisions of the section as valid and further the restrictions on fundamental speech and expression are held in the interest of public order and within the ambit of permissible legislative interference with the fundamental right. The Court stated that-

> *"There is a conflict on the question of the ambit of s. 124A between decision of the federal Court and of the Privy Council. The Federal Court has held that words, deeds, or writings constituted an offence under s. 124A only when they had the intention or tendency to disturb public tranquility to create public disturbance or to promote disorder, whilst the Privy Council has taken the view that it was not an essential ingredient of the offence of sedition under s. 124A that the words etc, should be intended to or be likely to incite public disorder. Either view can be taken and supported on good reasons. If the view taken by the Federal Court was accepted s.124A would be use constitutional but if the view of the Privy Council was accepted, it would be unconstitutional. It is well settled that if certain provisions of law construed in one way would make them consistent with the constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. Keeping in mind the reasons for the introduction of s. 124A and the history of sedition the section must be so construed as to limit its application to acts involving intention or tendency to create disorder, or disturbance of law and order; or incitement to violence."*[115]

Till the year 1973, no change came in the law of sedition and it was a non-cognizable offence since the time it was inserted in the Indian Penal Code but only after enforcement of new Code of Criminal Procedure in the year 1974, for the first time in India, the offence of Sedition was made cognizable offence.

3.4.6 BALWANT SINGH V STATE OF PUNJAB

In the year 1995, Balwant Singh was convicted by lower court and High Court. u/s 124A IPC and 153A IPC for shouting slogans like 'Khalistan Zindabad' and 'Raj Karega Khalsa', soon after assassination of Indira Gandhi. The Supreme Court following the ruling in Kedar Nath's case, overturned the convictions holding that-

> *"Raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established not could the same give rise to feelings of enmity or hatred among different communities or religious or other groups."*[116]

[115] 1962 AIR 955, 1962 SCR Supl. (2) 769
[116] "Balwant Singh and Ors. vs. State of Punjab (1995) 3 SCC 214"

3.4.7 COMMON CAUSE & ANR. V. UNION OF INDIA

A writ was filed before Supreme Court of India for issue of appropriate directions "for review of pending cases of sedition in various courts, where a superior police officer may certify that the seditious act either led to the incitement of violence or had the tendency or the intention to create public disorder."[117] Further prayers were made in the writ for producing reasoned order and dropping of investigations and trial in cases where such reasoned order is not passed.

The Hon'ble Supreme Court issued directions to the authorities that "while dealing with the offences under Section 124A of the Indian Penal Code shall be guided by the principles laid down by the Constitution Bench in Kedar Nath Singh vs. State of Bihar [1962 (Suppl.) 3 SCR 769]."[118]

3.4.8 RAJAT SHARMA & ANR. V. UNION OF INDIA

This petition was filed against the former CM of Jammu & Kashmir, Farooq Abdullah for his comments on live telecast against revocation of Article 370 of Constitution where he stated that for the purpose of restoration Article 370, he would take help of China, which allegedly amounts to sedition and petition contends to prosecute Farooq Abdullah for the same.

The Supreme Court dismissed the petition imposing cost of Rs.50,000/- stating-

> *"The expression of a view which is a dissent from a decision taken by the Central Government itself cannot be said to be seditious. There is nothing in the statement which we find so offensive as to give a cause of action for a Court to initiate proceedings. Not only that, the petitioners have nothing to do with the subject matter and this is clearly a case of publicity interest litigation for the petitioners only to get their names in press. We must discourage such endeavours."*[119]

3.4.9 ADITYA RANJAN & ORS. V. UNION OF INDIA[120]

The petitioner and a group of lawyers filed a PIL challenging the constitutionality of section 124A IPC calling it a draconian colonial law and a tool to supress dissent and contending it to be violative of Article 19(1)(a) of the Constitution. The petitioned mentioned all the landmark rulings from Tara Singh Gopi Chand, Kedar Nath to Common Cause judgement.

Though the Supreme Court of India dismissed the petition without even dealing with the merits of the case by referring to the Kusum Ingots case where "it is laid down that a law cannot be challenged without a cause of action and further stated that there is no cause of action and we don't have a case before us of persons rotting in jail."[121]

---

[117] (2016) 15 SCC 269
[118] Ibid.
[119] LL 2021 SC 129, Writ Petition(s)(Civil) No(s). 80/2021
[120] Writ Petition (Civil) No.71/2021
[121] "Article at Live Law- Retrieved from- https://www.livelaw.in/top-stories/supreme-court-dismisses-advocates-pil-challenging-sedition-law-sec-124a-ipc-169599?infinitescroll=1 at 22.50 hours on 29th April 2021."

3.5 PROMINENT CASES OF SEDITION

A critical analysis of all the cases and the judgements given out in each of the case gives the reader a typical idea that the laws of sedition were introduced by the British to silence the voices of dissent. However, in a free India where the law still exists even after facing much criticism from one section the law still applies to all sections of the society.

However, in the recent times there have been the existence of frivolous litigation that have taken place in the name of sedition. These charges have never been held up eventually against those persons against whom they have been levelled against making it obvious that the state actors have been using it as their very own leashed hound which they then release on people who do not fit amongst their decided notions of patriotism.

Some instances of the cases that have been to such effect have been mentioned below which have been happening over the past decade resulting in many litigations in the name of Sedition but eventually very few people have actually been convicted of the offence of sedition.

3.5.1 BINAYAK SEN'S SEDITION TRIAL 2007

In the year 2007, a renowned human rights activist working for People's Union for Civil Liberties was detained and later convicted with life imprisonment by the sessions court of Raipur, Chhattisgarh and further the appeal u/s 374(2) and applications under section 389 Cr.P.C. were made to the High Court of Chhattisgarh which were dismissed[122] for having close links with Maoists and allegedly associating with a banned organisation like Naxalites, thereby violating the provisions of the Chhattisgarh Special Public Security Act 2005 (CSPSA) and the Unlawful Activities (Prevention) Act 1967. Further, charges for committing sedition and waging war against the nation were added. An appeal was made to the Supreme Court along with a bail application.

A letter from Maoists group was seized from Binayak's house where "the Maoists thank Sen for his work and ask him to take a fact-finding team to Sarguja to probe police atrocities."[123] Further, he allegedly met extremists and offenders in prison and other suspicious places establishing a network and working closely with such outlawed persons and their organisations.

Binayak Sen in his defence clearly denied the allegation stating "he was an activist working with the organization Peoples' Union for Civil Liberties (PUCL) in remote rural and forest areas and exposing atrocities of police and armed forces."[124] Further, he clarified that he was not involved in any illegal act and was only working towards protection of human rights of individuals.

[122] "Dr Vinayak Binayak Sen & Ors. v. State of Chhattisgarh, Criminal Appeal No 20 of 2011 & Criminal Appeal No. 54 of 2011, Judgement dt. 10/02/2011 passed by Chhattisgarh High Court"
[123] "Article by Time of India- 'Facts about the Dr Binayak Sen case', Retrieved from- https://timesofindia.indiatimes.com/india/facts-about-the-dr-binayak-sen-case/articleshow/7125220.cms , at 12.12 hours on 30th April 2021."
[124] "Binayak Sen v Chhattisgarh, Case Analysis by Global Freedom of Expression, Columbia University, retrieved from- https://globalfreedomofexpression.columbia.edu/cases/binayak-sen-v-chhatisgarh/ , at 13.03 hours on 30th April 2021."

The Supreme Court admitted the appeal, granting bail to the accused Binayak Sen. A special European Union delegation was present during the hearing of bail matter of Sen in Supreme Court which enhanced the weightage of the case. The Supreme Court granted bail to the accused observing that "that the only material against Sen was his meetings with Naxalite Narayan Sanyal and some Maoist material with him. It said while 61-year-old Sen could be a Maoist sympathiser, there could be many such sympathisers and this alone could not amount to sedition."[125] The Court further observed that such an act does not lead to the offence of sedition.

3.5.2 SEDITION CASE AGAINST HURRIYAT LEADER SYED ALI SHAH GEELANI AND WRITER ARUNDHATI ROY 2010

In the year 2010, A summit was held having the name and purpose "Azadi the only way" for the discharge of political prisoners. There was presence of Human rights activists, journalists and some members of Naxal Organisations. The conference was headed by chairman, Hurriyat Leader Syed Ali Shah Geelani and had renowned speakers namely, writer and Activists Arundhati Roy, Prof. S.A.R Geelani, Dr Aparna, Revolutionary poet Varvara Rao and Sujata Bhadra among others.

A case of alleged sedition was filed in the local court for demanding action against the speakers u/s 124A IPC for their seditious remarks on their anti-India speeches. According to reports, Syed Ali shah Geelani allegedly made speeches against India and demanded 'Azadi' from India while Arundhati Roy demanded Azadi for Kashmir, giving open call to Kashmiris to separate from "Bhookey Nange Hindustan", and further urged the youths and students of JNU, AMU and other universities to fight for independent Kashmir. Roy had stated that "Kashmir has never been an integral part of India. It is a historical fact. Even the Indian Government has accepted this."[126] Furthermore, she responded to the predictable crises of Sedition over her speeches stating that "it's a poor country that would punish its intellectuals for raising their voice for justice."[127]

After taking cognizance of the complaint for acting u/s 124A IPC, Delhi Court order the police officials to lodge F.I.R. against Ms. Roy and the Hurriyat leader Geelani. Further, "The Union Home Ministry had sought legal opinion on the issue which suggested that a case could be made out under sedition. However, after taking political opinion, the Ministry decided not to file any case against Geelani and Roy."[128]

3.5.3 ASEEM TRIVEDI CASE ON SEDITION

In case of ***Sanskar Marathe vs The State of Maharashtra And Anr***[129], a PIL was filed against the sedition charges made against the political cartoonist and social Activist Aseem Trivedi who after his arrest refused to

[125] "Article India Today- 'Binayak Sen gets bail, SC trashes sedition charge', Retrieved from- https://www.indiatoday.in/india/north/story/sc-grants-bail-to-binayak-sen-drops-sedition-charge-132224-2011-04-15 , at 13.20 hours on 30th April 2021."

[126] "Article on Outlook: 'Arundhati Roy Guilty Of Sedition?', Retrieved from- https://www.outlookindia.com/blog/story/arundhati-roy-guilty-of-sedition/2363 , at 15.30 hours on 30th April 2021."

[127] Ibid.

[128] "Article on NDTV: Sedition case registered against Arundhati Roy, Geelani, Retrieved from- https://www.ndtv.com/india-news/sedition-case-registered-against-arundhati-roy-geelani-440611 , at 16.00 hours on 30th April 2021."

[129] Cri.PIL 3-2015 of Bombay High Court

file bail application till the sedition charged were dropped. He allegedly published cartoons on "India Against Corruption" website which defames the Ashok Emblem, the Constitution of India and the parliament which further led to incitement of hatred, disrespect and disaffection against the Government amounting to sedition.

There were total of 7 cartoons in question out of which one of the carton depicted the Indian parliament building as a toilet, whereas the commode looked like the Indian parliament wherein the titled suggested 'National toilet', with following description line beneath the sketch- "Isme Istamal Hone Wala Toilet Paper Ko Ballot Paper Bhi Kehte Hain."[130]

Another alleged cartoon depicted "Mother India wearing a tri colour sari", about to be raped by a Character Labelled as 'corruption'. The cartoon was titled as "Gang Rape of Mother India. Another cartoon showed politics and corruption in a sexual position to expose their immoral relationship. The line beneath the cartoon stated- the immoral relationships are always harmful for a household."[131]

While hearing the arguments in above PIL, an ad-interim order was passed by the Bombay High Court releasing the accused on bail and further, the Court while disposing off the PIL further observed that-

> *"Cartoons or caricatures are visual representations, words or signs which are supposed to have an element of wit, humour or sarcasm. Having seen the seven cartoons in question drawn by the third respondent, it is difficult to find any element of wit or humour or sarcasm. The cartoons displayed at a meeting held on 27 November 2011 in Mumbai, as a part of movement launched by Anna Hazare against corruption in India, were full of anger and disgust against corruption prevailing in the political system and had no element of wit or humour or sarcasm. But for that reason, the freedom of speech and expression available to the third respondent to express his indignation against corruption in the political system in strong terms or visual representations could not have been encroached upon when there is no allegation of incitement to violence or the tendency or the intention to create public disorder."*[132]

The Court did not interfere in the proceedings of Trial Court and disposed off the petition giving instructions and observations only with regard to invocation of section 124A IPC.

3.5.4 KANHAIYA KUMAR SEDITION TRIAL

The student association of Jawaharlal Nehru University (JNU) organised a Poetry Reading event having the title as "The Country without Post office", which was given due permission by the authorities as the title of the event did not suggest anything objectionable. Later, the permission was cancelled as soon as posters of the event were released mentioning the purpose of the event as "Against the Judicial Killings of Maqbool Bhatt and Afzal Guru".

[130] "The World Elide Web- 4 February 2012"
[131] "Cartoonist in India Campaigns against Corruption and Censorship" in 7 March 2012
[132] Supra note 127.

Thereby the event was conducted without the permission from the university which later resulted in tension where anti-nationalist slogans were allegedly spoken by many students namely Kanhaiya Kumar, Umar Khalid and a few others. Soon after telecast of such videos on national media, Delhi Police lodged FIR No. 110/ 2016 (P.S.- Vasant Kunj North) u/s 124-A/120-B/34/147/149 IPC.

In case of ***Kanhaiya Kumar v. State of NCT of Delhi***[133], the matter was heard by Delhi High Court for bail application made by the accused who were detained by the Delhi Police and further sent to Judicial Custody. The petitioner were alleged to have spoken certain seditious and anti-nationalist slogans like *"Bharat tere tukkde honge- inshaallaha inshaallaha, Indian Army Murdabad, Bandook ki dum pe lenge aazadi"*[134] etc.

After contemplating the arguments from both the parties, the petitioner was granted interim bail for a period of six months where the Delhi High Court stated-

> *"The investigation in this case is at nascent stage. The thoughts reflected in the slogans raised by some of the students of JNU who organized and participated in that programme cannot be claimed to be protected as fundamental right to freedom of speech and expression. I consider this as a kind of infection from which such students are suffering which needs to be controlled/cured before it becomes an epidemic.*
>
> *Whenever some infection is spread in a limb, effort is made to cure the same by giving antibiotics orally and if that does not work, by following second line of treatment. Sometimes it may require surgical intervention also. However, if the infection results in infecting the limb to the extent that it becomes gangrene, amputation is the only treatment."*[135]

Recently in the year 2020, cognizance of the charge-sheet was taken and the accused were summoned by the CMM of Patiala House Court wherein a huge delay has been recorded due to delay in receiving sanction for prosecution of accused by the Delhi Government. The trial is pending and the decision is yet to come, though this case had already attracted political interests.

Irrespective of what the section reads as, the judiciary has been playing a significant role in maintaining a balance and giving a liberal interpretation in their judgements safeguarding the interests of public.

CHAPTER IV

STATUS OF FREEDOM OF SPEECH AND EXPRESSION: A CRITICAL ANALYSIS

"There cannot be any democratic polity where the citizens do not have the right to think as they like, express their thoughts, have their own beliefs and faith, and worship in a manner which they feel like."

[133] "W.P.(CRL) 558/2016 & Crl.M.A. Nos.3237/2016 & 3262/2016, Judgement dated 02.03.2016 passed by Hon'ble Delhi High Court."
[134] Ibid.
[135] Supra note 131.

John Mill has defined the term liberty as "the protection against the tyranny of political rulers."[136] While comparing the absolute monarch and newly formed democratic structure, he further warned the society about the dangers it bought along with the new opportunities. John mill while presenting the threats of newly formed democracies where freedom was at no less risk than the absolute monarch, he argued that the restrictions over liberty during monarch meant control using physical force whereas in democratic forms there will be restrictions over freedom sanctioned by legislature in form of coercion through legal penalties and moral compulsion in form public opinion. The status of freedom of speech in current scenario is something similar to what John Mill predicted a hundreds of years ago.

The right to freedom of speech and expression has evolved over the years, recognised as an inherent right and further protected as human right in international conventions and standards. As advocated by Mill, to achieve a stable society the voice of its citizens must not be suppressed, no matter how contrary it sounds, and only by ensuring right to freedom of speech and expression, open political discussions, debates and deliberations are possible to reach at right conclusion. In India, "LIBERTY of thought, expression, belief, faith and worship" is enshrined in the Preamble of Constitution which is further guaranteed as fundamental right to freedom of speech and expression in Article 19(1)(a), though it is not an absolute right and further subjected to restrictions imposed in Article 19(2) of the Constitution.

The well-recognized right of freedom of speech and expression is complimentary to a right to freedom of press, right to publish and propagate information, right to obtain information, right to dissent etc. and is recognised within the ambit of article 19(1)(a) and article 21 of the Constitution of India. India is well known as world's largest democracy and in a democracy, every voice shall be heard, not only the views of majority needs to be considered, but even the dissents and criticism shall be acknowledged. In a socialistic welfare nation, free speech needs to be safeguarded in order to achieve greater social good. At this point, the author would like to reproduce the remarkably treasured words by **Charles Bradlaugh**:

> *"Better a thousand-fold abuse of free speech than denial of free speech. The abuse dies in a day, but the denial slays the life of the people and entombs the hopes of the race."*[137]

Further in the landmark judgement of ***Shreya Singhal v. Union of India***[138], Hon'ble Supreme Court of India while declaring section 66A of the IT Act 2000 as unconstitutional for being violative of article 19(1)(a), the Court re-emphasized upon the fundamentals of our constitutional scheme by opining-

> *"The Preamble of the Constitution of India inter alia speaks of liberty of thought, expression, belief, faith and worship. It also says that India is a sovereign democratic republic. It cannot be over emphasized that when it comes to democracy, liberty of thought and expression is a cardinal value that*

[136] John Mill on Liberty 1859, XVIII: 229; see Riley 2015: 74ff.
[137] "Jewish Supremacism, Freedom of Speech and My Book Jewish Supermacism, retrieved from- http://davidduke.com/freedom-of-speech/ , at 22.15 hours on 02.05.2021."
[138] AIR 2015 SC 1523

is of paramount significance under our constitutional scheme."[139]

In last chapter, the author has already dealt elaboratively with the details of the right of freedom of speech and expression at international level with a global outlook. In order to have deeper understanding to the status of right to free speech, one has to go through the evolution and development of right to freedom of speech from natural right to fundamental right.

4.1 EVOLUTION OF FREE SPEECH- GLOBAL SCENARIO

The evolution of freedom to speech and expression can be traced back to 399 BC when Socrates was prosecuted because his ideas of open and free speech and expression without any fear of parliamentarians made the whole Greece insecure but the Athens being the only democracy in ancient world realised the need of free flow of ideas, liberty and equality when during the trial of Socrates he spoke to the jury stating-

> *"If you offered to let me off this time on condition I am not any longer to speak my mind... I should say to you, 'Men of Athens, I shall obey the Gods rather than you."*[140]

Later in 1215 A.D., the barons being fed up from the tyrannous rule of King John made him forcefully sign Magna Carta, a document which guaranteed certain rights and liberties to the people and freed the people from arbitrary laws, high taxes and feudal dues paid to the king. Thereafter in 1516, Erasmus wrote a book "The Education of a Christian Prince" which aimed to teach chivalry, gentlemen ship and all qualities for being a good Christian Prince. The book being originally dedicated to Prince Charles stated that "In a free state, tongues too should be free."[141] The poet John Mill is also seen as advocate of free flow of ideas and liberty giving the idea of a free state and have perpetually criticized the restrictions on freedom of expression and press in any state.

In 1689, the English Bill of Rights guaranteed freedom of speech in Parliament after James II was overthrown and constitutional monarchy was established in England granting 13 specific freedoms and highlighting a list of King James misdemeanors in Bill of Rights. Being inspired from the Golden Revolution of England, a revolution for freedom was also witnessed in France in order to overthrow the tyrannical rule of monarch. The great French philosophers ignited the rebellion by their philosophical writings which demonstrated their intolerance for tyranny. François-Marie Arouet, famously known as Voltaire, a French Philosopher, advocated for freedom of speech and religion and formulated the idea of separation of powers for the system of check and balance in free state. He has been imprisoned and exiled for his work but it contributed significantly in leading the French Revolution by which the people of France earnt their freedom from feudalism and lead to the development of "The Declaration of the Rights of Man" in 1789 which guaranteed right to freedom of speech and expression to the French People.

Simultaneously in 1776, the United States Declaration of Independence paved path for rights and liberties to be

[139] Id. at para 8.
[140] "Timeline- A History of Free Speech by Guardian at https://www.theguardian.com/media/2006/feb/05/religion.news"
[141] "Book by Erasmus, 'The Education of Christian Prince' published in 1516."

ensured to its citizens. In 1791, the US Bill of rights was adopted which guaranteed freedom of religion, speech, the press and the right to assemble. It was further amended to include other liberties and freedoms and became a historic example of world's first written constitution. With so many countries attaining independence from monarch adopted constitutional supremacy and democratic government ensuring right to freedom of speech and expression to its citizens. Soon in 1919, the league of nations was formed as first international organisation after first world war, formulating rights and liberties into international treaties and conventions. However, it was proven futile in its role and the causalities and dreadful situation of second world war became the evidence to the failure of the League of Nations.

In 1945 after the second world war, various countries came together to form United Nations to "save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person"[142] and further led to development of international human rights conventions such as "Universal Declaration of Human Rights 1948 (UDHR), International Covenant on Civil Political Rights 1976, International Covenant Economic, Social and Cultural Rights 1976" etc. which guarantees freedom of speech and expression as a basic human right. As a result, the constituent assembly while drafting the Constitution of India, incorporated the chapter of fundamental rights which includes the right to freedom of speech and expression as an important tool to secure liberty among citizens.

4.2 STATUS & DEVELOPMENT OF FREE SPEECH- FROM BRITISH INDIA TILL FRAMING OF CONSTITUTION

Before the colonisation of India, there were independent princely states in 'Bharat' where no absolute freedom of speech prevailed and any speech in derogation to the Ruler/King of the state was prohibited. The laws of the state were made by the ruler but no such freedom of speech as natural right was guaranteed. After the colonisation of India, the tyrannical rule of British suppressed all the voices that were raised in dissent, thereby introducing the law of sedition in Indian Penal Code,1860 in order to restrict all forms of rebels and revolts against the Government and all such acts of freedom fighters to attain independence from British Rule were criminalised.

Whereas, when the advent of publishing books and printing of newspapers and magazines sowed the seeds of freedom of speech and press in British India. In the initial years while the British administration was discreet, it was not using the law of Sedition against criticism of official measures, through it dealt severely with any attempt of uprising however negligible. Criticism in Indian press largely reflected against some official measures and did not aim at the government itself.

After 1870 the administration did not amend the law of Sedition until 1898 but sought to cover disapproving criticism by enacting two cognate laws-

[142] "The Preamble of United Nations Charter 1945."

a. THE DRAMATIC PERFORMANCES ACT (XIX) OF 1876

b. THE VERNACULAR PRESS ACT (IX) OF 1878.

Hence these acts were termed 'Preventive Measures' while the first of these laws enacted due to two allegedly seditious plays which attempted to unite people to raise voice against the despotic British rule. After the publication of newspapers and magazines started which were initially used to disseminate information, ideas, knowledge and education. Later, it was largely used by the revolutionary leaders for communicating with the masses in order to direct their campaigns. As a result, the vernacular press act of 1876 was brought about by Lord Lytton to suppress sharp criticism of British policies as a result of the events of 1875-76, namely the Deccan agricultural riots of 1875-76 and the failure of relief measures. It aimed to control the publishers and printers of periodical magazines in native languages by means of a system of personal security.

Raja Ram Mohan Roy, popularly known as 'father of Modern India' and first Indian liberal encouraged the idea of free speech and freedom of press across the nation and advocated that free flow and exchange of ideas was an essential dimension of the liberal theory of civil society and must be practiced in a State. In order to suppress such large-scale movements of liberty, the law of sedition was included amending the Indian Penal Code, and many such revolutionaries like Tilak, Gandhi etc. were subjected to such sedition charges. However, the rebellion was strengthened with the help of journalism and wide scale printing of pamphlets and newspapers. "Over time, journalism appeared as an even more effective alternative than books and pamphlets: by 1905, there were 1,359 newspapers that reached an audience of about 2 million subscribers."[143] As a result, from the year 1907 to 1947, the colonial administration imposed censorship on press, and legally seized approximately 2000 newspapers and between 8,000 to 10,000 individual titles.

Simultaneously, the creation of Indian National Congress in 1885 aided the longing of Indians to attain same rights and privileges as enjoyed by Britishers in order to end the inherent prejudice prevalent in colonial rule. "Perhaps, the earliest demand for fundamental rights was made in the Constitution of India Bill, 1895."[144] It is also regarded as 'the work of Tilak'. The Bill consisted of 111 articles out of which 14 articles were related to fundamental rights as extracted from US Constitution. Yet the given right was not absolute and was subject to restriction by parliament. Thereafter between the year 1917 to 1919, the Indian National Congress passed a series of resolutions demanding equal rights and status of Indian nationals as that of Englishmen. Annie Besant demanded self-administration for the Indians and the principle was elucidated in Commonwealth of India Bill, 1925, which became a significant document and even had a short article on freedom of speech which included "Free expression of opinion and the right of assembly peaceably and without arms and of forming associations or unions."[145] Thereafter in the said clause, Motilal Nehru added two grounds of restrictions i.e. public order and morality in pre-constitutional document of 1928.

[143] Barrier, pp. 8-9.
[144] "Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press: 1966)."
[145] "Shiva Rao, Vol. I, pp. 43-50 at p. 44."

The British Government also enacted the Press (Emergency Powers) Act of 1931 with a view to curb increasing ardour in response to civil disobedience movement led by Gandhi in 1931. Moreover, the Government of India Act,1935 was passed rejecting the Indian demands of equal rights and status. As a result, the nationalist leaders continued their pressure with a view to obtain complete independence from colonial rule and to frame their own constitution. "Marking a departure from the consistent position of the British government in the past, the British Cabinet Mission in 1946 recognised the need for a written guarantee of fundamental rights in the Indian constitution."[146]

Thereby, the Constituent Assembly was formed by a way of provincial elections in 1946, choosing 300 members who construed the task of debating and framing the Constitution of India over a tine period of three years. The process of drafting began on January 24, 1947, with the setting up of Advisory Committee to draft the provisions of the constitution. This Advisory Committee was further divided into five sub-committees, one of which was regarded as Rights sub-committee which aimed towards drafting of fundamental rights and duties of the draft Constitution. The Rights Sub-committee submitted a draft on April 21, 1947 wherein the right to freedom of speech was given as-

> *"9. There shall be liberty for the exercise of the following rights subject to public order and morality:*
>
> *(a) The right of every citizen to freedom of speech and expression. The publication or utterance of seditious, obscene, slanderous, libellous or defamatory matter shall be actionable or punishable in accordance with law."*[147]

The several restrictions imposed by the aforesaid article lead to heated debates and arguments as they were much more that ever present in any other pre-constitutional document. As the part of fundamental rights was extracted from US Constitution, B.R. Ambedkar explained the difference between the two positions-

> *"The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every state has inherent in it police power which is not required to be conferred on it expressly by the Constitution. What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute."*[148]

[146] "Statement issued by the Cabinet Mission Plan (May 16, 1946) in B. Shiva Rao, Select Documents, Vol I, pp. 209-224, at pp. 214-6."
[147] Advisory Committee Proceedings (April 21-22, 1947) in B. Shiva Rao, Vol II, p. 231.
[148] "C.A. Debates, Vol VII, pp. 40-41."

In various intermediations, the various aspects of draft article were criticised by several members of the Assembly. "The absence of a specific guarantee of the freedom of the press was criticized by KT Shah in both universalist and particularist terms by drawing attention to the historical importance of the right."[149] Whereas Ambedkar felt that there was no need of specific recognition of freedom of press in its individual capacity as it is well implied within the ambit of the provision of right to freedom of speech. "In later years, the Indian Supreme followed the latter reasoning to hold in a series of cases that the free speech provision in India impliedly includes the freedom of the press."[150]

The restrictions imposed by the provision of article related to free speech were subjected to various discussions and heated disagreements. "The inclusion of 'sedition' as a ground for restricting free speech met with particularly harsh criticism, with several members drawing attention to the abuse of sedition provisions during the colonial era."[151] In response to these and erstwhile criticisms, the final draft was altered, improved, and revised. When the constitution of India was conclusively adopted by the Constituent Assembly on November 26, 1949, the text of Article 19(1)(a) embodying the right to free speech read as follows:

> *"19. (1) All citizens shall have the right ---*
>
> *(a) to freedom of speech and expression;*
>
> *...*
>
> *(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."*[152]

4.3 STATUS OF LIBERTY AND FREE SPEECH IN PRESENT INDIA

"When an independent country adopts a colonial legacy, one might see it as symbolic of a colonized mindset that has not been able to shake off colonial rule; but one might equally see it as evidence of tolerance or broad-mindedness or strength. What makes the difference will be the content of what is adopted, not the fact that it has been adopted."[153]

The law of sedition was not directly adopted as a restriction on Article 19(1)(a), though implicitly it still exercises its power to bind the citizens by having its presence in Penal Code. The colonial laws still prevailing in the world's largest democracy, questions the very base of it. Democracy upholds 'rule by the people, rule of the people and rule for the people' and for its exercise, right to freedom of speech and expression forms an

[149] "Speech by K.T. Shah, CA Debates, Vol VII, p. 716."
[150] "See the decisions in Brij Bhushan v. State of Delhi, AIR 1950 SC 129; Express Newspapers Ltd. V. Union of India, AIR 1958 SC 578; Sakal Papers Ltd. V. Union of India, AIR 1962 SC 305. On the Indian Supreme Court's general approach towards free speech issues, which is beyond the scope of this paper, see generally, Soli J. Sorbjee, Constitution, Courts and Freedom of the Press and the Media, in B.N. Kirpal et al (eds.), Supreme But Not Infallible (Oxford University Press: New Delhi, 2000), pp. 334-59."
[151] "Speeches by KT Shah, Seth Govind Das and TT Krishnamachari, CA Debates, Vol VII pp. 716, 750 and 773."
[152] "Article 19(1)(a) and Article 19(2) of The Constitution of India,1950."
[153] "Arudra Burra, The Cobwebs of Imperial Rule, 615 Seminar (November, 2010) pp 79-83, at p.83"

integral part. In a democracy, every voice is heard, every thought is counted and not only the view of majority is considered, but even the dissents and criticism are acknowledged. In such a society, it is natural to have conflicting views and different interpretations of any given scenario but free speech needs to be safeguarded for allowing free flow of ideas and creating new paths, developing new systems, expanding the horizons of mind and questioning the existing vitiating system in order to achieve greater social good. The Hon'ble Supreme Court of India, has also opined on developing the relationship between a democratic society and freedom of speech in case of **Re Harijai Singh**[154] stating-

> *"In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action."*[155]

The Supreme Court of India on several occasions has criticised the wrong-doings, misinterpretation of law and misuse of law as tool of inflicting fear upon the individuals, observing that the morality and delinquency does not co-exist. "The free flow of the ideas in a society makes its citizen well informed, which in turn results into the good governance. For the same, it is necessary that people be not in a constant fear to face the dire consequences for voicing out their ideas, not consisting with the current celebrated opinion."[156] Moreover time and again, the Apex Court has reiterated the importance of free speech in a democracy opining that "Freedom of speech goes to the heart of the natural right of an organised freedom-loving society to impart and acquire information about that common interest."[157]

It is emerging as an important argument that abuse of process of law with respect to sedition and curbing the freedom of speech further hampers the liberty and dignity of individuals, therefore, further violative of Article 21 of the Constitution i.e. Right to life and personal liberty. The misapplication of law of sedition and detainment of individuals which were later acquitted by courts after conclusion of trial, imposes a silent threat on liberty of individuals, which shall become a persistent reason for cessation of democratic republic in our nation. "The freedom of speech does not only help in the balance and stability of a democratic society, but also gives a sense of self-attainment."[158]

But today, right to freedom of speech is not threatened directly by the lawmakers and by their implementing officers/authorities but is continuously being worn and battered through twisting and turning the law and

[154] AIR 1997 SC 73
[155] Ibid.
[156] "S. Khusboo v. Kanniamal & Anr AIR 2010 SC 3196"
[157] "Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors AIR 1995 SC 2438, see also LIC of India v. Prof. Manubhai D. Shah & Cinemart Foundation, AIR 1993 SC 171"
[158] "Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal, AIR 1995 SC 1236"

imposing restrictions which was not even accepted by the constitution makers. The examples of such misapplication and abuse of process of law can be read on daily basis in newspapers giving headlines such as "*After 110 Days in Jail for Saying 'Pakistan Zindabad,' 19-Year-Old Activist Gets Default Bail*"[159]. It raises an important question that- Can such statements praising neighbouring nation or even (per say) an enemy nation, can incite hatred or cause disaffection or destabilisation of our government, even when no violence was followed subsequent to such act? If not, then whether the violation of the basic human rights and liberty of a teenager by spending 4 months in jail before default bail u/s 167(2) Cr.P.C., justified?

At this point, I would like to reproduce the case of *Indian Express Newspaper (Bombay)(P) Ltd. v. Union of India*[160], where the Supreme Court of India laid down the importance of the freedom of speech and expression. The four significant purposes of free speech are produced herein-

"(i)it helps an individual to attain self-fulfilment,
(ii) it assists in the discovery of truth,
(iii) it strengthens the capacity of an individual in participating in decision-making, and
(iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change."[161]

Once the importance of freedom of speech and expression is clear, we cannot deny the fact that such right in isolation is not sufficient. One has to realise that one has to be well versed with all the aspects of an issue and current affairs in order to speak or express a thought in a discussion. A person who gives an opinion given without having true knowledge of any event, cannot be considered wise and thereby never becomes the subject of attention in any discussion. Therefore, we will discuss about another aspect of free speech i.e. importance of free flow of information available, followed by right to know and obtain information.

4.3.1 IMPORTANCE OF FREE FLOW OF INFORMATION

In a democracy, there must be free flow of information available, and any unreasonable censorship imposed is violative of Article 19(1)(a) of the Constitution as this right flow from the freedom of speech and expression and falls within in ambit. Though censorship of movies, books and documentaries has always been used to filter the flow of information based on its content. The first act ever regularising such censorship was enacted during the British rule as the Cinematograph Act, 1918 which was created with a vision of reviewing the movies and further allowing its certification. Few years later, Indian Cinematograph Committee was set up suggesting for U/A certification method which was finally adopted and regularised after independence in The Cinematograph Act, 1952.

The validity of the cinematograph act and the screening certificate obtained by Board of Film Censors was challenged for being violative of Article 19(1)(a) by the Hon'ble Supreme Court of India in the case of ***K.A.***

[159] The Wire Article on- "After 110 Days in Jail for Saying 'Pakistan Zindabad,' 19-Year-Old Activist Gets Default Bail" retrieved form- https://thewire.in/rights/amulya-leona-bail-bengaluru at 1700 hours on 05.05.2021.
[160] AIR 1986 SC 515
[161] Ibid.

Abbas v Union of India[162] where the petitioner challenged the refusal of 'U' certification as decided by the Film Board for release of film "A Tale of Four Cities" as it comprised of scenes related to a Red-light district situated at Bombay. The Apex Court in its decision while upholding the validity of the act of censoring films in India justified the act including the pre-censorship of film on the decency, public morality and in the interest of the society. The Court further held that "the imposition of reasonable restrictions on the film before granting approval for screening was valid as per Article 19(2) of the Indian Constitution."[163]

Not only movies but various restrictions and censorship have also been imposed time and again on various authors such as banning books like Salman Rushdie's novel The Satanic Verses, and cinematography such as India's Daughter, and a 2015 documented film on the 2012 gang rape case made by Leslee Udwin for the BBC. Whereas many a times the Courts have opined that "blocking the free flow of information, ideas and knowledge renders a society inhibited and repressed."[164]

The Supreme Court in case of ***Union of India & Ors. v. The Motion Picture Association & Ors, etc.***[165] opined that-

> *"...free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of differing view-points, debating and forming one shown views and expressing them, are the basic indicia of a free society."*[166]

However, another right that follows through the freedom of speech and expression is right to know which is intrinsic part of Article 19(1)(a) and is later recognised as right to information, founded within the scope of Article 21 i.e. Right to Life and personal liberty, which is much wider than the ambit of article 19(1)(a).

4.3.2 RIGHT TO KNOW AND ATTAIN INFORMATION

Alexander Meiklejohn has observed that liberty and self-determination leads to a vibrant democracy. Meiklejohn's focus was not free speech, rather he has been an advocate of right to hear. He propagated the theory and importance of autonomy and self-rule for the people for which they shall be able to make an "informed and well-researched decision and that is only possible when they will be able to hear every voice raised in the society."[167]

The Hon'ble Supreme Court of India on various instances has held that "the right to know is inherent in the right to freedom of speech and expression under Article 19(1) (a)."[168] The Apex Court further "expanded the domain of freedom of speech and expression by inculcating in it the right to impart and receive information

[162] 1971 AIR 481, 1971 SCR (2) 446, 1970 SCC (2) 780
[163] "K.A. Abbas v Union of India 1971 AIR 481"
[164] "Kamal R. Khan v. State of Maharashtra 2009(4) BomCR 496"
[165] AIR 1999 SC 2334
[166] "Union of India & Ors. v. The Motion Picture Association & Ors, etc. AIR 1999 SC 2334"
[167] "A. Meiklejohn, Free Speech and its relation to Self- Government, Washington: London, 1948, cited in Anushka Sharma, Sedition in Liberal Democracies, Oxford, 2018"
[168] "S. P Gupta v. Union of India AIR 1982 SC 149"

including the freedom to hold opinions."[169]

The dictum of the Hon'ble Supreme Court in the year 2004 provided the final validation to this right in case of ***Essar Oil Ltd. v. Halar Utkarsh Samiti***, where the Court opined that "there was a strong link between Art.21 and Right to know, particularly where secret government decisions may affect health, life, and livelihood."[170] Later, the right to know was further developed as right to information which was well propounded within the interpretation of article 21, grating the status of fundamental right which further led to enactment of Right to Information Act,2005.

Whereas the right to freedom of speech and expression becomes pre-requisite for enjoyment of this right of knowledge and information. The Supreme Court in a recent case titled as "*Cellular Operators Association of India & Ors. v. Telecom Regulatory Authority of India & Ors.*"[171], held that-

> *"right to information rests upon the right to know, which ultimately was an inseparable part of the freedom of speech guaranteed under Article 19(1)(a)."*[172]

While discussing about right to know, there is a very crucial role played by the press/media in disseminating the information which cannot be overlooked. Thereby, in any democracy, the freedom of press becomes integral part to free speech.

4.3.3 RIGHT TO FREEDOM OF PRESS

"Our liberty depends on the freedom of the press, and that cannot be limited without being lost." ~ Thomas Jefferson[173]

We have already discussed the emergence of journalism and censorship imposed on press/media during the colonial rule. Though post-independence and during the framing of constitution, it was criticised that freedom of press has not been included in fundamental rights to which Ambedkar contended that it is implicit and essential part of freedom of speech and expression and well within the ambit of article 19(1)(a).

Soon after independence, the Hon'ble Supreme Court of India has followed the same view, giving wider interpretation of article 19(1)(a) and "making freedom of press as integral part of freedom of speech and expression."[174] The Apex Court has further opined that the significance of press in a democracy and have considered it as a duty of the courts to uphold the freedom of press and invalidate all such laws and actions that restricts and aims to limit that freedom on unreasonable grounds. The Apex Court has elaborated on three essential elements of freedom of press which are stated herein-

"1. freedom of access to all sources of information,

[169] "Union of India v. Association for Democratic Reforms (2002) 10 SCC 111."
[170] "Essar Oil Ltd. v. Halar Utkarsh Samiti (2004) 2 SCC 392."
[171] AIR 2016 SC 2336
[172] Ibid.
[173] "Thomas Jefferson, Jerry Holmes (2002). "Thomas Jefferson: A Chronology of His Thoughts", p.71, Rowman & Littlefield"
[174] "Romesh Thaper v. State of Madras AIR 1950 SC 124."

2. Freedom of publication, and

3. Freedom of circulation."[175]

In past few years, the media is alleged to be bent, corrupt and further divide into leftist and right groups publishing biased news/information. Though there has not been any direct censorship imposed but the saying 'power tends to corrupt' can be implicated at this instance. Therefore, this has raised several concerns looking at the miserable condition of media in world's largest democracy. I would further like to remind a similar miserable condition of journalism in India during the emergency of 1975-1977 when the press bowed down to the pressure of the government when L.K. Advani in his interview highlighted the condition of press by commenting- "when Mrs. Gandhi asked the media to bend, they crawled."[176]

Even today, the attacks on journalism are witness of a similar tale where "at least 55 journalists faced arrest, registration of FIRs, summons or show-cause notices, physical assaults, alleged destruction of properties and threats for reportage on COVID-19 or exercising freedom of opinion and expression during the national lockdown" [177] from March 25 to May 31, 2020. Furthermore, "at least 154 journalists were either arrested, detained, interrogated or served show cause notices for their professional work and notably more than 40% of these instances were in the year 2020 where at least three journalists were killed due to their professional work."[178]

Though the speech by Hon'ble Vice President of India, Sh. M Venkaiah Naidu in amidst of the covid-19 pandemic has praised the role of media and further commented that "A robust, free and vibrant media is as important as an independent judiciary in consolidating democracy and strengthening constitutional rule of law. Democracy cannot survive without a free and fearless press."[179] But the act of prohibiting media from reporting an extremely important news where a 19 year-old Dalit woman was allegedly gang-raped and murdered by four upper caste men and the journalists were prohibited from meeting the family of the victim by deploying a few hundred of police officers and imposing prohibitory order u/s 144 Cr.P.C.

At this point, I would recall the comment by Hugo Black, a renowned American jurist who while commenting upon freedom of press stated-

> *"The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and*

[175] "Indian Express Newspapers v/s Union of India (1985) 1 SCC 641."

[176] "INDIRA GANDHI'S CALL OF EMERGENCY AND PRESS CENSORSHIP IN INDIA: THE ETHICAL PARAMETERS REVISITED- Paper by Dr. Jhumur Ghosh, published by Global Media Journal – Indian Edition, Sponsored by the University of Calcutta, ISSN 2249 – 5835"

[177] "As per Report prepared by the Rights and Risks Analysis Group (RRAG) dated 15th June 2020, retrieved from- http://www.rightsrisks.org/wp-content/uploads/2020/06/MediaCrackdown.pdf , at 16.30 hours on 09.04.2021."

[178] "Report named as Behind Bars: Arrests and Detentions of Journalists in India 2010-2020 published by Free Speech Collective, retrieved from- https://freespeechcollectivedotin.files.wordpress.com/2020/12/behind-bars-arrests-of-journalists-in-india-2010-20.pdf , at 16.45 hours on 09.04.2021."

[179] "Speech by Vice President of India Sh. M Venkaiah Naidu on November 16,2020 in a video message at a webinar on 'Role of media during the COVID-19 pandemic and its impact on media" organized by the Press Council of India to mark the National Press Day. Retrieved from- https://economictimes.indiatimes.com/news/politics-and-nation/any-attack-on-freedom-of-press-is-detrimental-to-national-interests-vice-president/articleshow/79244597.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst , at 16.20 hours on 09.04.2021."

inform the people. Only a free and unrestrained press can effectively expose deception in government."[180]

Though any attempt to bring out secrets of government in today's scenario are either restricted by force or by strict laws such as sedition by labelling the act as to incite hatred and disaffection towards the government. Thereby questioning the very base of freedom of press in the country. As a result, India has been ranked in 142nd place out of 180 countries by the Reporters Without Borders in its 2020 World Press Freedom Index[181].

Not only censorship but false information and fake news which is spread over social media has also been a matter of concern in our country. Let us analyze how fake news can be differentiated from misinformation and how it could lead to charge of sedition when interpreted narrowly.

FAKE NEWS V. SEDITION

Undoubtedly, disseminating false information is incorrect and such false news is circulated with certain propaganda which is certainly condemnable but if such act attracts charges of sedition has to be analyzed. Recalling a few tweets about Kashmir which attracted charges of sedition against leader Shehla Rashid who tweeted the ground reality in Kashmir when army was deployed after abrogation of article 370. She further tweeted that army was "entering houses at night, picking up boys, ransacking houses, deliberately spilling rations on the floor, mixing oil with rice.."[182] which led to her interrogation by army. The allegations were denied by the army and it was said to be baseless, unverified and fake news. The matter was closed and further no complaint was registered against her for the tweets. But later some 'public-spirited person' registered a complaint to the police accusing her of inciting disaffection and hatred towards the government by fake news and therefore must be charged with sedition. This had kept the case going for more than a year without any effective results. This raises several concerns, a few of them being that if the army after required investigation closed the matter, then shall any complaint by third party be considered by the police and does circulating any false information about given scenario on social media be considered as seditious.

Further, a person in Punjab was also charged with sedition for making a post on Facebook urging people to donate to a particular NGO for arranging necessary equipment to fight cocid-19 as there are no ventilators in that district for covid-19 patients. This led to lodging of FIR against the person making the post for allegedly spreading false news and trying to create panic situation and fear among people further leading to attempt to incite hatred and disaffection towards the government.

In light of such conditions, where attempt to bring out secret of government and even spreading of alleged misinformation/ false news is labelled as sedition, we shall once again consider whether law of sedition shall be amended to exclude government from the ambit of section or any other liberal interpretation or modification

[180] Quoted by Hugo Black in "New York Times Co. v. United States, 403 U.S. 713". Concurring opinion, 1971.
[181] "World Press Freedom Index 2020 at https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus , retrieved at 22.40 on 08.04.2021."
[182] "Article on Wire- Army, Shehla Rashid Lock Horns Over 'Torture' Charge, retrieved from- https://thewire.in/security/shehla-rashids-allegations-on-kashmir-baseless-indian-army at 22.15 hours on 06.05.2021."

which shall not harm the basic structure of democracy of our nation.

FREEDOM OF PRESS EXTENDS TO REPORTING OF JUDICIAL PROCEEDINGS

Recently, in a case appealed to Supreme Court of India by the Election Commission of India aggrieved by publication of oral remarks of the Judge at High Court of Judicature at Madras during the proceeding of the case where while observing the failure of EC to take safety measures during election polls amidst of pandemic, the bench stated that the EC is "the institution that is singularly responsible for the second wave of COVID-19 and that the EC should be put up for murder charges"[183], though these remarks did form part of official order of the court.

The Election Commission of India thereby appealed to the Supreme Court on grounds of such allegations being baseless and prayed to stop reporting of oral remarks which lack in substance by the press. The Hon'ble Supreme Court rejected their plea while emphasizing that "the media coverage of court hearings was part of freedom of press, had a bearing on citizens' right to information and also on the accountability of the judiciary"[184] and held that- ***"Freedom of speech and expression extends to reporting proceedings in judicial institutions as well".***[185]

Discussing about freedom of press, it becomes imperative to include the social media and press through internet which has become a large source of information in present world.

4.3.4 FREEDOM OF SPEECH AND INTERNET

Technological advancement in today's world cannot be overlooked though there is need to address the consistent development of technology with equivalent movement in the law. Non recognition of technology within the sphere of law is only a disservice to the inevitable. In this light, the importance of internet in current scenario cannot be disregarded where internet is seen as the most utilised and accessible medium for exchange of information. Following the trend where our whole day used to be encapsulated within the medium of internet, the global pandemic of covid-19 showed the world a phase when internet was the only medium of communication, work, education, judicial adjudication, learning of skills etc.

In such conditions, "Expression through the internet has gained contemporary relevance and is one of the major means of information diffusion. Therefore, the freedom of speech and expression through the medium of internet is an integral part of Article 19(1)(a) and accordingly, any restriction on the same must be in accordance with Article 19(2) of the Constitution."[186]

[183] "Election Commission of India v MR Vijaya Bhaskar Civil Appeal No. 1767 of 2021 (Arising out of SLP (C) No. 6731 of 2021)"
[184] Ibid.
[185] Ibid.
[186] "Anuradha Bhasin v Union of India & Ors. in WRIT PETITION (CIVIL) NO. 1031 OF 2019, decided by Hon'ble Supreme Court of India."

In this context, we need to note that the internet is also a very important tool for trade and commerce. "The globalization of the Indian economy and the rapid advances in information and technology have opened up vast business avenues and transformed India as a global IT hub. There is no doubt that there are certain trades which are completely dependent on the internet. Such a right of trade through internet also fosters consumerism and availability of choice. Therefore, the freedom of trade and commerce through the medium of the internet is also constitutionally protected under Article 19(1)(g), subject to the restrictions provided under Article 19(6)."[187]

Yet district and state wise internet shutdowns became a tool for government in disguise of blanket orders preventing breach of public order putting prior restraint and stifling freedom of speech and expression. Infact, an internet shutdown has been seen across global community as most misappropriate method to curb any protest as it affect everyone in the region who uses internet for medical, educational, personal and professional reasons which hampers their basic human rights as well.

In December 2019, while the protests against CAA were going across the nation, the internet services were shut down in part of Assam for almost a week. As a result, PIL were filed before the Guwahati High Court which passed order for striking down the shutdown while observing that "mobile internet services now play a major role in the daily walks of life, so much so, shut-down of the mobile internet service virtually amounts to bringing life to a grinding halt."[188] The government filed review petition against the resumption of internet services which was further dismissed, and situation was normalised.

Similarly, during the CAA protests in UP, the government tackled the situation with internet shutdown on which the ***Allahabad High Court took Suo-moto cognizance*** wherein while issuing notice the court observed that-

> *"The stoppage of Internet Services, as a matter of fact, has paralyzed the entire judicial system. It is emphasized that in absence of Internet all day to day activities stands still. The right to have continuous Internet Service in the present era is an extension of the right to live and, as such, discontinuation of that is in violation of Article 21 of the Constitution of India."*[189]

The well-known longest ever internet shutdown in a democracy in Kashmir cannot be forgotten which continued for over a period of 200 days[190] after the abrogation of article 370 which granted special status to J&K. For over a period of four months, the lives of people were stopped, barring them from communicating with their families at distance, redressal in case of medical emergencies, making applications for higher education, passport, jobs, services etc. and all other essential tasks. Finally, the PIL was heard by the Hon'ble Supreme Court and decision came out after 5 months of such internet shutdown in case of ***Auradha Bhasin v Union of India & Ors*** where in the Supreme Court directed-

---

[187] Ibid.

[188] "The telegraph online- Guwahati HC nudge to restore Internet services in Assam, retrieved from- https://www.telegraphindia.com/india/court-prod-on-internet-services/cid/1728078 , at 14.15 hours on 07.05.2021."

[189] "In re: Reference to the discontinuation of Internet Services by the State Authorities, order dated 20.12.2019, passed by Hon'ble Govind Mathur, Chief Justice Hon'ble Vivek Varma, J., Allahabad High Court."

[190] "Internet Shutdowns- digital advocacy group Software Law and Freedom Centre, retrieved from - https://internetshutdowns.in , at 15.34 hours on 07.05.2021."

"….b. We declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction upon such fundamental rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution, inclusive of the test of proportionality.

c. An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017. Suspension can be utilized for temporary duration only.

d. Any order suspending internet issued under the Suspension Rules, must adhere to the principle of proportionality and must not extend beyond necessary duration.

…f. The existing Suspension Rules neither provide for a periodic review nor a time limitation for an order issued under the Suspension Rules. Till this gap is filled, we direct that the Review Committee constituted under Rule 2(5) of the Suspension Rules must conduct a periodic review within seven working days of the previous review, in terms of the requirements under Rule 2(6).

g. We direct the respondent State/competent authorities to review all orders suspending internet services forthwith.

h. Orders not in accordance with the law laid down above, must be revoked. Further, in future, if there is a necessity to pass fresh orders, the law laid down herein must be followed……"[191]

Thereby, the judgement came as a sigh of relief but was criticised for it being focused towards declaring the law and directing the government to take appropriate action in consonance with law instead of providing rights and remedy issuing clear directions of lifting the internet shutdown. And as a result of such ambiguity, even after the ruling, the internet shutdown continued for a long period in certain areas of J&K which was condemned by United Nations and whole international community.

Further during the farmers protest in amidst of pandemic and covid-19 crisis, again a similar situation was witnessed when internet was shut down in regions around the protest sites. According to Access Now, a digital rights group, reported that India alone had about 134 of 196 documented shutdowns across the year in 2018.[192] Further, there have been more than 100 documented cases of internet shutdowns in India in 2019.[193]

Further all such records were broken in the year 2020 in amidst of covid-19 pandemic wherein out "of the 155 internet shutdowns that were imposed globally, India accounted for 109".[194] Considering the situation of pandemic of covid-19 when everything from basic learning, work projects, adjudication of cases, doctor

[191] "Anuradha Bhasin v Union of India & Ors. in WRIT PETITION (CIVIL) NO. 1031 OF 2019, decided by Hon'ble Supreme Court of India."
[192] "Report by AccessNow- the state of internet shutdowns in the year 2018 published on 8th July 2019- retrieved from- https://www.accessnow.org/the-state-of-internet-shutdowns-in-2018/ , at 16.00 hours on 07.05.2021."
[193] Supra Note 189.
[194] "Report by AccessNow- Internet shutdowns report 2020: Shattered dreams and lost opportunities — a year in the fight to #KeepItOn,published on 3rd March 20201, retrieved from- https://www.accessnow.org/keepiton-report-a-year-in-the-fight/ , at 16.15 hours on 07.05.2021."

appointments to even plain communication with society runs through internet, the denial of accessibility to internet will not only hamper right to access information under article 19(1)(a) but also leads to violation of article 21 i.e. Right to Life and personal liberty.

Now once the importance of accessibility to internet has established, let us examine the connection of freedom of speech with internet. In today's world, internet has given us a social platform for open discussion, debate and deliberations. Not only exchange of views and information, but this social platform has also proven to be boon in times of covid-19 pandemic when all the help was asked on social media and community as a whole was united to help the needy. In such circumstance, the freedom of speech and expression on internet plays a significant role and denial of such right does not only hampers fundamental rights but also leads to violation of basic human rights and condemnable by whole international community.

4.3.5 RIGHT TO DISSENT

"There can be no democracy without dissent"[195]

India, the world's largest democracy is formed on the basis of cohabitation of diverging views and ideologies. Thereby it is natural to have opposite views or criticism in the country and the protests like Anti-CAA/ NRC protests, Farmers Bill protests are examples of such disagreements and criticism among individuals. It is also ironical to observe that dissenters in various other nations like 'Black Lives Matter' movement are commended and praised whereas dissenters in our nation are often labelled as anti-national or charged with sedition for criticising government act and holding different perspective. At this point, it is important to recall a quote by 26th President of United States, Theodore Roosevelt-

> *"Patriotism means to stand by the country. It does not mean to stand by the president or any other public official, save exactly to the degree in which he himself stands by the country. It is patriotic to support him insofar as he efficiently serves the country. It is unpatriotic not to oppose him to the exact extent that by inefficiency or otherwise he fails in his duty to stand by the country. In either event, it is unpatriotic not to tell the truth, whether about the president or anyone else."*[196]

Thereby, this creates a tug of war situation between the public morality & state security and individual liberty & social responsibility. The rights guaranteed under article 19(1) does not only provide liberty to individuals but also acts a check of abuse of power by the government, thereby providing right to form association and union for political and administrative purposes and collectively challenging abusive government policies and right to assemble peacefully to question and object certain acts of the government legally. Criticism and dissent are the symbol of a free democratic nation upon which rests the principle of hearing the voices of people by those in power and decisions to be made only after proper redressal, discussion, and consideration and such responsibility cannot be denied hiding behind the veil of restrictions imposed by article 19(2) to (6) of the

[195] "Quote by Justice Deepak Gupta at a lecture event organised by the Supreme Court Bar Association on February 24, 2020, published on the Wire."
[196] "Theodore Roosevelt (2015). "Theodore Roosevelt on Bravery: Lessons from the Most Courageous Leader of the Twentieth Century", p.42, Skyhorse Publishing, Inc."

Constitution.

This reminds me a quote by Hon'ble Justice D.Y. Chandrachud while delivering a lecture at Gujarat High Court, he stated-

> *"Protecting dissent is but a reminder that while a democratically elected government offers us a legitimate tool for development and social coordination, they can never claim a monopoly over the values and identities that define our plural society. Employment of state machinery to curb dissent instills fear and creates a chilling atmosphere on free speech which violates the rule of law and distracts from the constitutional vision of pluralist society."*[197]

The system of plural majoritarianism is what our nation needs. The very existence of democracy is based upon the fact that every citizen shall not only be subjected to participate in electoral process but also in the decisions by which country is governed. And a democracy is meaningless if a person does not have the right to criticize the actions of the government, ofcourse not by breaking the law or encourage strife. Merely because of the fact that certain groups encourage violence and disturbs social order in the country, the ones in power cannot take away the right to every citizen to oppose any action of the government as long as it is peacefully protested. Protest is an integral part of expressing dissent which has been backbone of attaining independence and can be termed as legacy left by our freedom fighters in form of "Civil Disobedience Movement".

The higher courts are also duty-bound to protect rights of the people ensuring balance of power in a country and acting as watchdog of democracy, they must not suppress dissent which can be regarded as a 'chilling effect' on the freedom of speech as regarded by Justice Nariman in case of ***Shreya Singhal v. Union of India & Ors.***[198] where the court stated-

> *"In point of fact, Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, **as any serious opinion dissenting** with the mores of the day would be caught within its net. Such is the reach of the section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total."*

It is a well-established principle of jurisprudence that law ought to be certain, but in this fast-changing world, the interpretation of law shall also be dynamic in order to be in consonance with the needs of the society. The judges in their decisions have also shown dissent on various occasions which later established the difference between fair criticism and disaffection.

FAIR CRITICISM v. DISAFFECTION

On various instances the difference between fair criticism and disaffection has been reiterated by the Supreme Court of India. In the landmark case of *Kedar Nath v. State of Bihar*, the Supreme Court made it clear that fair criticism does not lead to constituting the offence of sedition till it attempts to incite violence. The Court further

[197] "Quoted by Justice D.Y. Chandrachud in 15th PD Desai Memorial Lecture at the Gujarat high court auditorium in Ahmedabad."
[198] (2013) 12 S.C.C. 73

stated that "Sedition was not a valid restriction to freedom. However, out of the six grounds listed in Article 19(2), the court was of the view that 'security of the State' could be one of the grounds to uphold the constitutional validity of Section 124A."[199] The apex court also observed that "strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means"[200] is not sedition.

Further, in any democracy fair criticism of the government functioning is the catalyst for better administration. In this light, the Hon'ble Delhi High Court in the case of Javed Habib v. the State of Delhi has held that "criticizing the government or the Prime Minister does not amount to sedition."[201]

The core of the offence of sedition lies in the difference between strong criticism and feeling of disloyalty towards India which has been much recently reiterated by the Hon'ble High Court of Bombay in ***Sanskar Marathe v. State of Maharashtra & Ors.*** wherein the Court opined that "disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence."[202]

Recently, Hon'ble Supreme Court of India in the case of *Common Cause & Anr. v. Union of India,* has held that "only a 'violent revolution' against the government attracts the charge of sedition. Further, the Court held that a free expression of disapprobation against the ruling government's action with an intention to better the condition of the people is not treason."[203] The Court further reiterated that judgement in the case of Kedar Nath to reach to the conclusion that "Someone's statement criticising the government does not invoke an offence of sedition or defamation."[204]

Thereby, to conclude, we can refer to another quote by Hon'ble Justice D.Y. Chandrachud- "The blanket labelling of dissent as anti-national or anti-democratic strikes at the heart of our commitment to protect constitutional values and the promotion of deliberative democracy."[205]

5. OTHER RESTRICTIVE LEGISLATIONS

There are various other legislations which fulfil the purpose by imposing certain restrictions on freedom of speech and expression for ensuring national security, integrity, public order etc. The 16th amendment act 1963 which amended article 19(2) adding "reasonable restrictions in the interest of the sovereignty and integrity of India" in the provision which paved path for the Unlawful Activities Prevention Act 1967 which gave powers to the central government to impose all-India bans on associations. Such restrictive enactments, time and again

[199] "Kedar Nath v. State of Bihar AIR 1962 SC 955."
[200] Ibid.
[201] "Javed Habib v. the State of Delhi (2007) 96 DRJ 693."
[202] MANU/MH/0608/2015.
[203] "Common Cause & Anr. v. Union of India (2016) 15 SCC 269."
[204] Ibid.
[205] "Quoted by Justice D.Y. Chandrachud in 15th PD Desai Memorial Lecture at the Gujarat high court auditorium in Ahmedabad."

have been abused as a tool to curb dissent and some of them have been repealed only for such reasons. The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and The Prevention of Terrorism Act (POTA), 2002, being few of such enactments "The number of people arrested under TADA had exceeded 76,000, by 30 June 1994.Twenty-five percent of these cases were dropped by the police without any charges being framed. Only 35 percent of the cases were brought to trial, of which 95 percent resulted in acquittals. Less than 2 percent of those arrested were convicted."[206] As a result, TADA was finally repealed and was succeeded by POTA in 2002 which was enacted in wake of 1999 IC-814 hijack and 2001 Parliament attack. POTA was finally repealed for its reported gross misuse and this action of repealing POTA in 2004 was an election promise of then elected Congress government. For reasons such as 26/11 Bombay terrorist attacks in the year 2008 lead to amendment of UAPA in 2008 and later again in 2012. The 2019 amendment bill is yet to be passed by the parliament and subject to debate and discussion.

Similar to the provision of TADA and POTA, the UAPA also criminalizes association along with the ideology. These acts empower the government to declare any organization 'unlawful' and label it as 'terrorist' organization and banning such act de facto leads to criminalization of ideologies. Further any membership or association with such organization and any act of possessing any literature of any such organization or even upholding the ideology of that organization not followed by any act inciting violence, is still understood as an offence. Following the same logic, various organization which advocates the rights of oppressed or minority sections which dissents from government actions can be easily labelled and oppressed by use of such law. Thereby, the activists & members of such organizations can be easily arrested by abuse of such powers and kept in prison for years. Further, the UAPA, Amendment Bill 2019 proposes to further give power to the government to declare not only organizations but individuals as well as 'terrorists'.

There are legislations such as National Security Act, Public Safety Act which substitute for the law of sedition along with other various prevailing enactments which further provides for safety and security of state and public order and protection from causing any act of disruption in public order and further restricts speech and expression for that purpose. In view of above-mentioned legislations, the need of the colonial law of sedition is lessened whereas its misuse is seen at peak, in such a situation it becomes important to reconsider the need to amend or repeal the provision.

[206] "Zaidi, S. Hussain (2002). Black Friday – The True Story of the Bombay Bomb Blasts. Mumbai, India: Penguin Books. ISBN 978-0-14-302821-5."

CHAPTER V

SEDITION VIS-A-VIS FREEDOM OF SPEECH AND EXPRESSION- GLOBAL PERSPECTIVE

The development of the law of sedition in India has been marred with controversies and from time to time there have been cases that have toyed with the minds of the lawmakers and have made them question the logic behind the existence of such a law. Even then the law stillexists and stands operational.

Though criticizing the lawmakers of India shall not be done in isolation as the law was introduced by Britishers as part of English law, which makes the author's curiosity to trace down the evolution of law of sedition to its roots is genuine in order to find out how it emerged as English law and where does its root leads to. It also becomes important by way of this chapter to analyze the existence of similar provisions prevailing in other parts of the world.

5.1 EVOLUTION OF LAW OF SEDITION- INTERNATIONAL PERSPECTIVE

Historically, the provisions of the sedition law have always been tainted in the name of security of the state and further misused to subdue public opinion, crush dissent, frighten political opponents by suffocating the basic civil right to free speech of individuals of any nation. Reviewing the penal codes of various nations provides an understanding that law of sedition across the globe "falls under the category of crimes against the state."[207] During the time of political and economic tension, the history is witness to the fact that the democratic governments have equally contributed as the totalitarian governments to the misuse of such stringent provision against their citizens. The Prosecutions after the World War I, II and the Cold War clearly corroborate with the fact.

Although while tracing the history of crime against the state, the most ancient law which can be dated back is Germanic law of Treason. Further it can be found in the forms imposed by Rome over vanquished Germanic people. During the Roman Empire, both the 'person' and 'authority' of the ruler was safeguarded, whereas the term 'Treason' was used for 'Sedition' popularly. And after the fall of Roman Empire, the law relating to Treason or Seditious words came to be prominent in feudal clothes and the scope of the law was expanded in order to include association with the enemies of one's tribe and betraying one's lord.[208] Further, the Roman legal doctrines were re-incarcerated by the Western Europe at the end of 11th Century. The absolute power was emanated in the hands of monarchs who later adopted the roman concept of Crimen Laesae Majestatis i.e. high treason against the sovereign or against the state.

[207] Michael Head, Crimes Against the State: From Treason to Terrorism (Ashgate Publishing Company, 2011).
[208] Ibid.

By 15th century, Sedition came to known under common law as an offence and in 16th century, during the reign of Tudor, the offence of Sedition was recognised as political crime. "Much of its development took place, not by legislative interference but by the change in public sentiment over a period of time."[209]

ENGLISH LAW

The first reference of sedition as part of English law can be found in Statute of Westminster the First[210] in which any publication of false news out of which occasion of disharmony with the king or sovereign may arise or any other act causing 'public discord' with the 'great men of the realm' were bought under the ambit of the offence. The offence was made quasi-seditious in nature. Thereafter, the first English codification of law of treason came up as Statute of Treason in 1351. The idea behind the law was to punish anyone who associates with king's enemies, levy war against the king or attempts to overtake the throne by compassing the death of monarch.[211]

In 16th century, the offence of sedition was understood close to treason when directed against the monarch or crown whereas in cases if not covered under that category, it was covered under ***'Scandalum Magnatum'*** which referred to "*defamatory speech or writing published to the injury of a peer, or the other great officer of England*"[212]. Thereafter, any seditious speech, expression or wish, will & imagination in form of publication came to be strictly punished under Treason Act of 1534 which was further repealed by the Treason Act, 1547 because of growing rebellions and riots in England against the tyrannical rule and undue suppression during the period of 1530 and 1550.

In the year 1606, for the first time, the definition of sedition was understood and prescribed as different from treason by the Star Chamber in the ***De Libellis Famosis*** decision, where Sedition was defined as-

> *"speaking of inflammatory words, publishing certain libels, and conspiring with others to incite hatred or contempt for persons in authority in which the truth and falsity of libel was immaterial."*[213]

After the abolition of Star Chamber in 1641 by Long Parliament, efforts were made to make seditious libel punishable only where there was direct incitement to crime. Lord Justice Holt in ***R v. Tutchin***[214], stated-

> *"If men should not be called to account for possessing the people with an ill opinion of the government, no government can subsist; for it is very necessary for every government that the people should have a good opinion of it. And nothing can be worse to endeavor to procure animosities as to the management of it. This has always been looked upon as a crime, and no government can be safe unless it can be punished."*[215]

[209] James Stephen, History of Criminal Law of England 300 (Macmillan, London, 1883).
[210] (1275) 3 Edw. I, C. 34, available at: http://www.legislation.gov.uk/aep/Edw1/3/5
[211] J.N. Figgis, The Divine Rights of Kings as cited in William E. Conklin, "The Origins of Sedition Law" 289 Crim L.Q. 277 (1972-1973).
[212] Scandalum Magnatum, available at: https://www.merriamwebster.com/dictionary/scandalum%20magnatum
[213] Sandford Kadish (ed.), Encyclopedia of Crime and Justice 1425 (The Free Press., New York, 1983).
[214] (1704) 91 Eng. Rep 1224
[215] Ibid.

Few years later, Libel Act 1792 was passed which gave the authority to the Jury to decide the fact of publication of seditious libel along with the guilt of the accused. The understanding of sedition law along with its application underwent a change from earlier being used to maintain Monarch's Peace to later being applied to prevent any public disturbance. The offence can be understood from the observation of Fitzgerald, J in ***R.* v. *Sullivan***[216], which was further endorsed by Coleridge, J as under-

> *"one is guilty of seditious libel if by language or by words spoken or written, use of physical force or violence is encouraged by way of incitement or encouragement in a public matter connected with the state. Thus, the word sedition in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar, it implies violence or lawlessness in some form"*[217]

From here, arose the definition of understanding of offence of sedition in Common Law.

5.2 DEVELOPMENT OF RIGHT TO FREEDOM OF SPEECH & EXPRESSION IN INTERNATIONAL LAW

The concept of free speech can be dated back to the ancient Greece, where the term 'free speech' is traced to be first appeared towards the end of 5th Century BC. "The term has been derived from Greek word 'Parrhesia' which means free speech or to speak candidly."[218] Throughout European history, the concept of freedom of speech has been the bone of contention between the religion and politics. "It continued to the reformation of sixteenth century that gave rise to new religious tradition of Protestantism."[219] King James I issued a speech restraint which further led to the Declaration of Freedoms by Parliament in 1621. By the end of 17th century, the freedom of speech came to be known as a natural right. In the 1789 Declaration of the Rights of Human (after the French Revolution), the freedom of speech was regarded as a valuable right. It was followed by US Declaration of Independence. Later, the US Bill of Rights in 1791 gave it a status of fundamental right which was further recognised as human right in UDHR 1948.

A list of such series of events along with international documents/ bill of rights which recognised the concept of free speech is given in detail.

[216] (1869) 11 Cox. C.C. 44.
[217] Rex v. Aldred, (1909) 22 CCLC 1.
[218] Origin of Free Speech, available at: https://www.history.com/topics/united-states- constitution/freedom-of-speech retrieved at 1300 hours on 11.05.2021.
[219] "Protestantism is the second largest form of Christianity with collectively between 800 million and more than 900 million adherents worldwide or nearly 40% of all Christians. It originated with the 16th century reformation, a movement against what its followers perceived to be errors in the Roman Catholic Church. They emphasize the priesthood of all believers, justification of faith alone rather than also by good works, and the highest authority of the Bible alone in faith and in morals."

5.2.1 IMPORTANT INTERNATIONAL DOCUMENTS/BILLS OF RIGHTS

There are several incidences which promoted the development of free speech along with ancient documents which were later preserved and became the founding stone and building block of universal charter of human rights and international bill of rights. Some of them are discussed below:-

399 BC- ***Socrates***, a renowned Greek Philosopher was prosecuted for refusing to acknowledge gods recognised by the state. He was sentenced to death for propagating anti-democratic views to which he replied-

> *"If you offered to let me off this time on condition, I am not any longer to speak my mind…I should say to you, Men of Athens, I shall obey the Gods rather than you".*[220]

539 BC- ***Cyrus Cylinder or Charter of Cyrus***

The first king of ancient Persia, Cyrus the Great, after conquering the city of Babylon freed the slaves and declared that all people are entitled to freedom of thought and choice of religion and established racial equality. It further lead to development of 'natural law'. There rights and degrees of 'natural law' were inscribed in a baked clay cylinder in Akkadian language which is popularly known as 'Cyrus Cylinder'.

1215 AD- ***Magna Carta or the Great Charter***

Magna Carta also known as Charter of English liberties signed by King John under the pressure of barons which freed the people from tyrannical rule of the Kind by establishing rule of law and granting certain rights and liberties to the people and freed the people from arbitrary laws, high taxes and feudal dues paid to the king.

1516 AD- ***The Education of a Christian Prince***

Erasmus wrote a book which aimed to teach chivalry, gentlemen ship and all qualities for being a good Christian Prince. The book being originally dedicated to Prince Charles stated that "In a free state, tongues too should be free."[221]

1689 AD- ***English Bill of Rights***

It guaranteed freedom of speech in Parliament after James II was overthrown and constitutional monarchy was established in England granting 13 specific freedoms and highlighting a list of King James misdemeanors in Bill of Rights.

1776 AD- ***Virginia Bill of Rights***

It was drafted in 1776 by George Mason adopted by the Virginia Constitutional Convention on June 12, 1776 which later influenced US Declaration of Independence and was adopted as US Bill of Rights. The section 12 of this convention provided freedom of press by stating-

[220] "Timeline- A History of Free Speech by Guardian at https://www.theguardian.com/media/2006/feb/05/religion.news "
[221] "Book by Erasmus, 'The Education of Christian Prince' published in 1516."

"That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments."[222]

1776 AD- ***United States Declaration of Independence***

In 1776, the US Declaration of Independence was a document approved by Continental Congress which granted freedom to 13 North American British Colonies from Great Britain. It paved path for rights and liberties to be ensured to its citizens.

1789 AD- ***The Declaration of the Rights of Man***

The French Revolution demonstrated the intolerance of French people against tyrannical rule by which the people of France earnt their freedom from feudalism leading to the development of "The Declaration of the Rights of Man" in 1789 which guaranteed right to freedom of speech and expression to the French People along with several rights and liberties.

1791 AD- ***US Bill of Rights***

The Virginia Bill of Rights 1776 was adopted as US Bill of Rights 1791, the first ten amendments to the U.S. Constitution which guaranteed freedom of religion, speech, the press and the right to assemble etc. to its citizens.

1919-1945- ***Formation of United Nations***

In 1919, the League of Nations was established after World War I as first international organisation to maintain world peace which failed in its purpose and was dissolved because of World War II. Later in 1945, after the end of World War II, United Nations was formed to "save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person"[223]. Since the establishment of UN, various conventions have been passed by the General Assembly, further ratified by various nations which declared freedom of speech and expression as a human right.

The provisions relating to free speech of various international conventions passed by United Nations which are even ratified by its member nations are discussed below.

5.2.2 INTERNATIONAL CONVENTIONS & THEIR PROVISIONS

The significance of freedom of speech and expression has been recognized by various International and Regional Instruments which are produced as under:-

Universal Declaration of Human Rights 1948

Article 19 of Universal Declaration of Human Rights provides for freedom of opinion and expression which states that-

[222] "The Virginia Declaration of Rights 1776"
[223] "The Preamble of United Nations Charter 1945."

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions with- out interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[224]

European Convention on Human Rights 1950

Article 10 of the European Convention on Human Rights provides for freedom of expression and freedom to freely impart information with certain restrictions and is not absolute in nature. The Article states that-

"*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 and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."[225]

International Covenant on Civil and Political Rights 1976 (ICCPR)

Article 19 of International Covenant on civil and political rights, provides for expression of opinion without interference but is subject to certain restrictions. It states that-

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

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

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

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

(b) For the protection of national security or of public order, or of public health or morals."[226]

American Convention on Human Rights 1969

Article 13 of the American Convention on Human Rights provides for freedom of thought and expression in elaborative for, stating that-

[224] "Article 19 of Universal Declaration of Human Rights 1948."
[225] "Article 10 of European Convention on Human Rights 1950."
[226] "Article 19 of International Covenant on Civil and Political Rights 1976"

"(i) Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of ones' choice.

(ii) The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.

(iii) The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

(iv) Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

(v) Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offenses punishable by law;"

African Charter on Human and People's Rights 1981

Article 9 of the African Charter on Human and People's Rights provides for free expression of opinion which states that-

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

2. Every individual shall have the right to express and disseminate his opinions within the law."[227]

5.3 COUNTRY WISE GLOBAL PERSPECTIVE

In western liberal democracies, the significance of free speech is well established as it is considered as an implied right.[228] John Stuart Mill, Alexander Meiklejohn, T. Scanlon and various renowned authors have advocated for the importance of free speech in a democracy and further criticized the restrictions imposed by the state on the right and liberty. But there are certain expressions like 'Extreme Speech', which can be defined as that form of speech that goes beyond the limits of legitimate protest, therefore, in such cases state's intervention becomes necessary to maintain peace and harmony. The expression 'extreme speech' includes 'harm speech', 'hate speech' and 'hurt speech'. Sedition is also a form of 'extreme speech'.[229]

[227] "Article 9 of the African Charter on Human and People's Rights 1981."
[228] Sarah Sorial, Sedition and the Advocacy of Violence 8 (Routledge, London, 2012).
[229] Ivan Hare and J. Weinstein (eds.), Extreme Speech and Democracy (Oxford University Press, Oxford, 2009)

There is a no definite parameter to distinguish between 'extreme speech' and 'criticism of the government'. It depends upon various factors such as the context in which the words are used, the tone and intention of the speaker and the attitude of the listeners, political conditions of a nation, therefore, no universal principle can be applied to assess harm caused by the speech.

According to the concept of 'Normative Universalism', there are certain values, like freedom of speech, which are universal in nature but, the grounds on which such right is restricted may differ from country to country. Sedition as a form of 'extreme speech' is also a ground for restricting freedom of speech, in the public interest. The continuous tussle between the offence of sedition and freedom of speech, in different legal regimes along with their differed approach and domestic laws to deal with the offence are discussed below.

5.3.1 UNITED STATES OF AMERICA

The offence of sedition can be found in United States Code which contains 53 titles i.e. chapters consisting of all the major general and permanent law of United States. The sedition and related offences are dealt in title 18 which is named as 'Crimes and Criminal procedure' of which Part I, Chapter- 115 deals with the offences of "Treason, Sedition, and Subversive Activities". The 18 U.S. Code § 2381 punishes the offence of 'Treason' and 18 U.S. Code § 2385 prohibits advocating to overthrow of the Federal Government by force. The 18 U.S. Code § 2385 prescribes for the offence of 'Seditious conspiracy' which is produced as under :-

> *"If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both."*[230]

The Supreme Court of United States in the case ***Schenck v. United States***[231], for the first time determined the scope of offence of sedition in the context of free speech. Justice Holmes laid down the 'clear and present danger' test for evaluating restrictions on expression that is if a speech is linked closely enough to illegal action, then it can be restricted. But in ***Gitlow v. New York***[232], the Supreme Court of United States abandoned the 'clear and present danger' test and applied a 'bad tendency analysis' which implied that acts involving danger of substantive evil must be punished.

Whereas in the case of ***Dennis v. U.S.***[233], the Supreme Court upheld the convictions under the Smith Act of 1940, of eleven leaders of the communist party for conspiring to advocate the overthrow of government of United States by force and violence, which marked the beginning of the end of the 'clear and present danger' test and gave way to a 'balancing test' as put forward by Justice Frankfurter who observed that the object of

[230] "(June 25, 1948, ch. 645, 62 Stat. 808; July 24, 1956, ch. 678, § 1, 70 Stat. 623; Pub. L. 103–322, title XXXIII, § 330016(1)(N), Sept. 13, 1994, 108 Stat. 2148.)"
[231] 249 U.S. 47 (1919).
[232] 268 U.S. 652 (1925).
[233] 341 U.S. 494 (1951).

First Amendment to the Constitution of United States was not to grant unqualified immunity to every expression concerning matters of political interest. Therefore, the individual right of free speech must be balanced in view of security of the nation.[234]

Finally, in the case of ***Brandenburg v. Ohio***[235], which is the latest authority on the scope of offence of sedition vis-à-vis freedom of speech and expression, the Supreme Court held that restriction on free speech can only be placed if there is danger of 'imminent lawless action'. Further, The Supreme Court of United States held that-

> *"the constitutional guarantees of free speech and free press do not permit a state to forbid or prescribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."*[236]

5.3.2 UNITED KINGDOM

I am not sure if it comes as a surprise that the colonial law of sedition which is still prevalent in India has been abolished in United Kingdom way back in the year 2009 through Coroners and Justice Act 2009.

The offence of sedition and criminal libel have been developed from ancient British Laws including the Statute of Westminster 1275, the Treason Act when the acts of the Kings and royal officials were forbidden to be questioned. Both the offences of treason and sedition were conceptualized as offences against the monarch and the government of the United Kingdom. The 1848 Act provided for what constitutes seditious practices which at one time was considered to be a treason. The explanation appended to treasonable and seditious practices was also common. The 1848 Act included provisions of the Sedition Act 1661 and the Treason Act, 1795. The Sedition Act, 1661 widened the scope of High Treason by incorporating the acts like depriving King of his Crown, imagining or levying war against the King or inciting any foreigner to invade territories belonging to the King. Under the Treason Act, 1351, it was an offence to levy a war against the King but under the Sedition Act, 1661 and The Treason Act, 1795, imagining, devising or intending a levy of war was also considered as an offence.

Section 3 of the Treason Felony Act, 1848 stated that 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. Section 7 of the Treason Felony Act, 1848 stated the felonies under the Act amounted to Treason.

In 2001, the 'Guardian' newspaper challenged the provisions of section 3 of Treason Felony Act, 1848, which punishes the publication of any intention for the abolition of monarchy without incitement to violence. It was contended by the newspaper that it restricts freedom of expression guaranteed by the ***Human Rights Act, 1998*** and only the acts which incites violence should be made criminal. The court refused to answer the hypothetical

[234] "Michael Head, Crimes Against the State: From Treason to Terrorism53 (Ashgate Publishing Company, 2011)."
[235] 395 US 444 (1969).
[236] Ibid.

question. Further, in 2003, in appeal to the House of Lords, the Judges agreed to the stance taken by the High Court but, also did not disagree that the existence of such a provision is contradictory to the modern legal system.

The enactment of Human Rights Act 1998 guaranteed a secure and certain status to the fundamental right of speech and expression. The legislation protects the right to speech and expression guaranteed under Article 10 of the European Convention on Human Rights and the courts have responsibility to interpret any provision in harmony to such right as far as possible. But it is interesting to note that the Law Reform Commission in 1977 had recommended for the abolishment of offence of sedition even before the enactment of the Human Rights Act.

The offence of "sedition and seditious libel, the offence of defamatory libel and the offence of obscene libel" were abolished through the Coroners and Justice Act, 2009, under Gordon Brown's Labour government. During debates on the Coroners Act in the House of Lords, Lord Lester of Herne Hill noted that the common law of sedition had rarely been used in England over the course of the past century. Interestingly, the last major case in England was in the year 1988 where an attempt was made to resuscitate the law of sedition in a case of blasphemy against Salman Rushdie for his publication renowned as Book, The Satantic Verses[237]. There was allegation made against the author for making "scurrilous attack on the Muslim religion" through the book which as a result lead to violence in U.K. The book has referred to quotes from Prophet as 'Satanic Verses' whereas the Arab historians has described these verses as glaring verses which even lead to strains in diplomatic relations between the U.K. and Iran. "A demand was made to prosecute the author, the publishers and distributors of the book for seditious libel on the ground that it caused hostility between her Majesty's subjects."[238] The case was tried in the year 1991 when the judges acquitted the accused as there was absence of seditious intent against any of the UK's democratic institutions.

Lord Denning also commented on the outdated law of seditious libel in the following words.

> "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".[239]

5.3.3 AUSTRALIA

The offence of sedition was inherited from the British common law which was further amended and punished under section 24A to 24F of the Crimes Act 1914. In late 2005 the existing Sedition provisions in the Crimes Act 1914 (Crimes Act) were repealed and new Sedition offences were inserted into the criminal code. Reflecting its historical associations with treason, Sedition is included in chapter titled "Treason and Sedition". "The new

[237] R v. Chief Metropolitan Stipendiary (Ex Parte Choudhury), [1991] 1 QB 429
[238] D. Feldman, Civil Liberties and Human Rights in England and Wales 677-679 (Clarendon Press, Oxford, 1993).
[239] Lord Denning, Landmarks in the Laws 295 (Butterworth London, 1984).

Sedition offences prescribes for urging others to assist the enemy or those engaged in armed hostilities."[240]

The Australian Government in 2006 investigated Islamic books found in Lakemba and burn in Sydney promoting suicide bombings, anti-Australian conspiracies and racism, but the Australian federal police found in 2006 that they did not breach commonwealth criminal code or NSW crimes Acts 1900.

When introducing the New Sedition provision into Parliament, in Australia the attorney general emphasized that the provision were not a wholesale revision of the then existing Sedition provisions. Rather the New Provisions were designed to modernize language.[241]

The new provisions were inserted as section 80.2 and 80.3 of the Criminal Code Act 1995 which provides for the offence of sedition and further elaborates the defenses for the acts done in good faith. Broadly speaking, two of the five offences contained within the criminal code prohibit person urging others to use force or violence against the Constitutional system of Government. Another two offences broadly speaking, prescribe person urging others to assist enemies of Australia. Those provisions criminalize the following conduct:

- "Where a person urges another person to overthrow by force or violence the Constitution,[242] the Government of the Commonwealth, a state or a territory[243] or the Lawful authority of the Government of the Commonwealth (Section 80.2(1)),
- Where a person urges another person to interfere by force or violence with federal parliamentary elections (Section 80.2(3)),
- Where a person urges another person to assist an organization or country at war with the commonwealth or engage in armed hostilities against the Australian defense force (Section 80.2(7), (8))."

The 2005 amendments repealed previous provisions on sedition in the Crimes Act and, in their place, inserted new provisions (sections 80.2-80.6) into the Criminal Code. "This was done in accordance with Government policy to put major new offences into the Criminal Code Act 1995 rather than in the Crimes Act. The Code is intended to incorporate old common law offences as well as new changes to the criminal law." "The new provisions expanded the offence to include the behaviour of 'urging' and the element of recklessness."[244]

The new provisions which were inserted were similar to the existing ones, yet they were criticized, and the law commission was asked to review the appropriateness and effectiveness of the amended sedition legislation. Several changes were recommended which led to removal of the word 'sedition' since it was seen as being

[240] Australian Criminal Code 80.2 (1).
[241] "Commonwealth Parliamentary Debates, House of Representatives, 3 November 2005, 103 (Philip Ruddock, Attorney General)"
[242] "As Dixon J Recognize in Burns v. Ransely (1949) 79 Criminal Law Review 101, 115, the word 'Constitution' does not refer to a Document or Instrument of Government but to the Policy or Organized form of Government which the Fundamental Rules of Law have Established Whether they are Expressed in a Written Constitution or not."
[243] "The word 'Government' was Interpreted by Dixon J to Signify the Established System of Political Rule. The Governing Power of the Country Consisting Executive, legislature Considered as an Organized Entity and Independently of the Persons of whom it Consist from time to time."
[244] "In Good Faith: Sedition Law in Australia- Parliament of Australia, Published on April 2006. Last updated 23 August, 2010, retrieved from- https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/sedition#top , at 17.00 hours on 14.05.2021."

archaic, but the Parliament still supported the offence of urging violence against the government and community groups.

5.3.4 MALAYSIA AND SINGAPORE

Both the countries being British colonies have inherited the law of sedition from the common law of England. These countries have continued with the old sedition law till date. There is a demand in both the countries to repeal the colonial law in order to respect the Constitutional and International obligation of maintaining free speech standards.

The prosecutions of sedition are on the rise in Malaysia which have raised concerns about the misapplication of this law. The government of Malaysia has declared several times to reform the law relating to sedition, but it seems that no government is actually interested in getting rid of a 'tool' to suppress political dissent.

5.3.5 CANADA AND NEW ZEALAND

Canada has continued with the same understanding of common law offence of sedition. Though, the law has not been put much in use in the twenty first century, but its existence remains intact in the statute books.

Whereas in New Zealand, a similar common law for the offence of sedition existed till the year 2006 but it was later repealed as suggested by the Law Commission, to uphold the freedom of speech in the country.

5.3.6 PAKISTAN AND BANGLADESH

The provision for the offence of sedition is similar in Pakistan and Bangladesh as it is in India. The section 124A of the Penal Code of respective countries prescribes for the sedition law as both the countries have originated from India and were separated only after India gained independence from British Rule. Thereby, the colonial penal code is still into existence and the prescribed sedition law is used as a tool to suppress the voices of dissent among people in respective nations which has been criticized by the public and their citizens on various occasions.

If we analyze the history of crimes against the state, it is evident that there is a need for new approach which is consistent with the current legal doctrines and the socio-economic environment. This analysis is significant as it has been witnessed that laws such as sedition have been resorted to in situations of social, economic and political tensions. Historically, it has been witnessed that some offences were held significant depending upon the level of popular discontent. The criminality and prosecution of offences strongly depends upon political calculations. Different countries have reacted in a diverse manner to contain the public order situations. Thereby, India is not the only nation which has criminalised such act, various other nations also need to take vigilant steps towards protection of freedom of speech and expression of their citizens in consonance with various human rights conventions as discussed in this chapter.

CHAPTER VI

ANALYSIS OF EXISTING LAW OF SEDITION AND NEED FOR REFORM

"Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and …inflict great pain. Hence, it is to be delivered rightfully."

– John G. Robert, CJ.[245]

With the expanding horizons of mind, thought and societal views, it can be easily gathered that the acts which were not acceptable in the past, are well considered and defined as a matter of right with changing times. The rights of LGBTQ can be seen as the biggest example of increasing acceptance in society and the growing need to respect basic human rights of people. With the same view, it is evident that freedom of speech and expression is now given more consideration and weightage than it has ever been given in past.

Earlier, it has always been upon the discretion of the king about what rights may be granted to its citizens and no rights surpassed the exclusive authority of sovereign. Thereby, to satisfy the ego of the king, such seditious laws were developed. "It was a reflection of the old idea that the King can do no wrong. For a subject to suggest otherwise was a serious criminal offence. The essence of the offence of treason lies in the violation of the allegiance owed to the Sovereign."

Therefore, it may be inferred that sedition laws were enacted in time when the freedom of speech did not prevail but comparing even with the present governance, the idea and need for existence of such laws is seen to have a similar purpose. The concept of sovereignty has played an important role in the law of sedition as it has always revolved around and protected the will and authority of sovereign. The basic idea of sedition law to protect the Crown from rebel or criticism. As soon as the idea of free speech started flowing, the insecurity of the Rulers tightened the grip of law with severe punishment in order to protect their throne.

Though with changing times, there has been transformation in the concept of sovereignty, but the purpose of sedition law has remained intact i.e. to protect the throne of officials/rulers. Even though in a democratic set-up where the representatives are elected by will of the people to form government, yet the existence and misuse of such draconian laws is a reflection of "power tends to corrupt, and absolute power corrupts absolutely".[246]

In order to bring any reform or any change, a complete understanding of existing law of sedition along with its judicial interpretation in necessary.

[245] "Snyder v. Phelp, 562 U.S. 443 (2011)."
[246] "Quote coined by the English nobleman Lord Acton in 1857, John Dalberg-Acton, 1st Baron Acton."

6.1 ANALYSIS OF EXISTING LAW OF SEDITION

Sedition is viewed as a constitutional issue rather than Criminal Law matter because of its repressive effect on a constitutional guarantee of freedom of speech and expression. Historically and in modern times, sedition laws have always been considered contradictory to the freedom of speech and expression. Sir James Stephen, draftsman of framework of sedition laws in colonies opined 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".*[247]

Today, sedition laws are legitimated on narrow grounds aimed at interfering with the democratic regime. Generally, freedom of speech can be restricted if it causes a change in the law beyond the constitutional protection or "produces extra-legal change which undermines the process of rational deliberation that is a priori value of a democratic system".[248]

If the law of sedition is viewed from the national legal perspective, then the inherited ambiguities in the language used in the section 124A of Indian Penal Code, makes it an arduous task to interpret the terms like 'disaffection', 'hatred' or 'contempt' in the context of the provision. The term 'sedition' is itself not defined in the provision and no doubt, what constitutes sedition is defined but that too by the use of vague terminology. In India, acts promoting class hatred have been kept outside the purview of offence of sedition and for these specific provisions are carved in the Indian Penal Code. The point here is that sedition is linked with affection or allegiance to the government. In short, it is considered as an offence against the government established by law. The common people understand the concept of sedition by terming it as 'Deshdroh' which is opposite to 'Deshprem' or 'Nationalism'.

However, the Courts have continuously differentiated between the acts inciting violence as a result of speech/publication causing hatred and disaffection among people towards the government and anti-nationalism or acts of spreading terrorism. The former may constitute the offence of sedition, but the criminal conspiracies and acts of terrorism did not constitute seditious acts. It has been clarified in case of ***Mohd. Yaqub v. State of West Bengal***[249], where in the accused was tried for being a spy for the Pakistani intelligence agency ISI and was responsible for causing terrorist attacks. Along with prosecution in TADA and other sections of waging war against the state for Bombay Blast case, he was also charged for sedition u/s 124A IPC, wherein the Calcutta High Court cited the elements of sedition that were laid down in Kedar Nath case and held that- "the prosecution had failed to establish that the acts were seditious and that they had the effect of inciting people to violence." Thus, the accused was not found guilty for the offence of sedition and was given punishment in relevant statutes.

[247] "James F. Stephen, A History of the Criminal Law of England 348 (Macmillan & Co., London, 1883)."
[248] "Frederick Schauer, Free Speech: A Philosophical Enquiry 190 (Cambridge University Press, New York, 1982)."
[249] "Mohd. Yaqub v. State of W.B., (2004) 4 CHN 406."

Whereas in the Hon'ble Supreme Court has taken a slightly different view in case of ***Nazir Khan v. State of Delhi***[250] *without giving any remark or distinguishing the present case explicitly from the observations in* ***Kedar Nath case***. In present case, the accused allegedly carried terrorist activities in India and kidnapped British and American Nationals demanding release of 10 terrorists confined in jails of India in return of these foreign nationals. However, the master mind of the plan escaped but others were caught and prosecuted under TADA and sections of waging war against the state along with section 124A IPC. The Supreme Court defined the objects of sedition while establishing the guilt of the accused and held 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 endeavour to subvert the Government and laws of the country. The objects 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. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder. In the aforesaid analysis, the offences punishable under Sections 121A, 122, 124A are clearly established and sufficiently and properly stand substantiated, on the overwhelming materials available on record."*[251]

The Supreme Court in this judgement has not referred to other similar judgements on sedition including the landmark Kedar Nath case and has blurred the distinction between 'act' and 'incitement' by suggesting that the act of sedition itself has the tendency to incite people to insurrection and rebellion, whereas in the case of Kedar Nath, the 5-judges Bench has drawn a clear distinction between the act of sedition and the incitement to public disorder. In such a circumstance, it becomes important for the Apex Court to draw clear parameters for constituting the offence of sedition. Thereby, it becomes important to understand the need for reform in sedition law.

6.2 NEED FOR REFORM IN LAW OF SEDITION

Relying on Locke and Rousseau's concept of a social contract and supported by Constitutional and International legal guarantees of sovereignty in the people, Governments do not have the power to Act independently of their people. They serve as the representatives of the people, not the state, which is merely a territorial unit in which a political community lives. As representatives of the people, the Government is tasked with protecting the political community from domestic and International threats to their Security and the common good.

[250] "Nazir Khan v. State of Delhi, (2003) 8 SCC 461: AIR 2003 SC 4427."
[251] Ibid.

Since, now it is the people who are sovereign, it raised several questions on need of such Laws like Sedition. Sedition prevents the Government from criticism due to the sole reason that they are Sovereign. Since, they are no more sovereign, they are not entitled for this protection. Further, for identifying the object of sedition, we need to differentiate between Government and People engaged in Administration.

DISTINCTION BETWEEN GOVERNMENT AND PEOPLE ENGAGED IN ADMINISTRATION

The Supreme Court of India while outlining the ingredients of the offence of sedition in case of Kedar Nath, also distinguished between "the Government established by law as used in section 124A of the IPC from people engaged in the administration for the time being. The former was said to be represented by the visible symbol of the State."[252] Thereby, any attempt to destabilize and sabotage the government established by law will threaten the very existence of the State. "However, any bona fide criticism of government officials with a view to improve the functioning of the government will not be illegal under this section."[253] This exception was introduced to protect journalists criticising any government measures.[254]

However, this distinction clouds the overview and is difficult to implement. "Any persons involved in the daily administration of the government or acting as a representative of the people in the government would also necessarily constitute a visible symbol of the state."[255] This vague distinction has led to the creation of a conflicting situation. While calling all the bureaucrats of a government "thugs and profiteers" does not qualify as a seditious act,[256] attributing the same qualities to the government as a whole would bring the speech within the ambit of sedition.

At this point, the proposal presented by *Prof. Saugata Roy* (Trinamool Congress) for amendment of section 124A of Indian Penal Code plays an important role and needs consideration for understanding of a different picture of the concept of sedition. She proposed to replace the word 'government' with 'principles of democracy, secularism, or national unity enshrined in the Constitution of India'. The punishment part and the explanation clause were left untouched. Following this amendment, by replacing the word 'government', the sovereign status is granted to 'principles of democracy, secularism & national unity enshrined in the Constitution of India' which represents the spirit of the democracy.

The vagueness involved in the definition of the crime has also acted significantly in its dissolution. Apart from it, the stiffness, which got created due to the uprising of freedom of speech and expression, also played an important role in creating a dilemma on the legitimate use of the Law. This is the reason why Sedition Laws are getting repealed across the world. New Zealand, Indonesia and England are the countries who have repealed the Law of Sedition.

[252] "Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955, ¶36."
[253] Ibid.
[254] "Durga Das Basu, Commentary on Constitution of India 2547 (Justice Y.V Chandrachud et al, 8th ed., 2008)."
[255] "R.A. Nelson, Indian Penal Code 665 (S.K. Sarvaria, 2008)."
[256] "Om Prakash v. Emperor, 42 PLR 382."

At present times, the concept of democracy and freedom of speech and expression have become synonymous. Therefore, there is a need to fit in the law of sedition and to determine its scope to the right width. There is a need to reform the law of sedition in a new political, social and democratic set up. The option of repealing the law of sedition has serious implications as the country is facing the problem of insurgency and separatist elements. Presently, there is no self-sufficient and a comprehensive law to deal with such a menace. In this situation doing away with law of sedition does not seem to be a smart move. Retention of the law of sedition with old colonial phraseology has led to its abuse to the extent of violation of fundamental right of freedom of speech and expression. Therefore, the modernization of law of sedition is highly recommended.

CHAPTER VII

CONCLUSION AND SUGGESTIONS

"The freedom of speech is the benchmark of the democratic government. This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a perfect position in the hierarchy if liberties giving succour and protection to all other liberties. It is the mother of all liberties. Freedom of speech plays crucial role in the formation of public opinion on social, political and economic matters."

– Dr. B.S. Chauhan and Swatanter Kumar JJ.[257]

The power of words can never be underestimated. Indeed words and language may be the only thing that separates man from beast. It is the importance of words in the continuing development of Civilization and Humanity and for the spread of ideas and knowledge that causes more states around the world to protect words. This is done through various means, the most important of which is the guarantee of the Right to free speech.

Freedom of Speech and Expression has been given a supreme place as it is regarded as first and foremost right in the process of individual's self-development. It is like an asset in perpetuity that no one actually wants to part with. The tussle between the law of sedition and freedom of speech and expression is ever growing to the extent that it has pressurized the governments of various nations to review the law of sedition in the twenty first century.

After this elaborated study, we can conclude that the foundation of the law of sedition was based on a notion that the 'ruler' and the 'ruled' do not stand on the same footing. Therefore, questions are being raised as to the validity of such a law in the present times, where the relationship between the 'ruler' and 'ruled' has undergone a drastic change. After analyzing the jurisprudence of this law in the various countries, it can be concluded that the inclusion of law of sedition has always been politically motivated. The rationale behind this law is not to curtail any evil prevalent in the society, but, to hamper the growth of seeds of 'dissent' against the established authority. No doubt, the authority has changed hands, yet, the ideology has not changed. History has witnessed that the prosecutions for sedition increased at the time of instability within the country. It has been observed that the authorities have acted in panic and many a times have tried to ward off genuine political dissent within

[257] In Re Ramlila Maidan Incident (2012) 8 SCC 461.

the limits of free speech. As a concept, sedition has suffered from infirmities due to lack of a clear cut definition and varying interpretation by the judiciary. Its conceptual dimensions have not been certain and are quiet dependent upon an environment within the country. As a concept it is very difficult to determine the scope of sedition as it involves an element of subjectivity. Which statement is seditious and which is not, is determined on the basis of its effect on the audience and further there is every possibility that the effect on individuals may vary, according to their personalities, background and ideology. The study of the history of law of sedition reveals that the use of this law has been resorted to its peak during two episodes of world war, freedom struggles, political uprisings or to control press.

Even in present times, the Sedition laws seek to limit and control freedom of speech and expression way beyond the permissible limits known to mankind. The law must be given a narrow interpretation having regards to the particular Rights at issue, namely freedom of speech and expression and liberty of the persons and the purpose of the restriction.

The sedition law has been deliberated by Supreme Court of India on various occasions giving a narrower interpretation like in Kedar Nath case but there is need of constant reminders to the implementing authorities i.e. police which time and again lodged false and frivolous FIRs charging the accused with the offence of sedition and as a result leading to their arrest and harassment as the offence in law is cognizable and non-bailable in nature. Whereas in trial, most of the accused are acquitted yet because of such draconian law, they are defamed in society and have to hardships during detention for which no compensation can be called 'just'.

The Sedition laws has been continuously applied in an arbitrary manner, in bad faith and for an improper purpose to prevent political opposition. It cannot be said that the harassment during arrest of accused when charged with the offence of Sedition is prescribed by Law or that persons charged with Sedition are being deprived of their liberty of the persons in accordance with Law. The effect of restriction- the stifling of all political speech- the restraint on dissent and fair criticism of government by police officials is disproportionate to the aim of protection of the democracy, sovereign or National Security.

Even the ***United Nations High Commissioner*** in 46th session of the Human Rights Council raised serious concerns over attempts of curbing free speech and misuse of sedition law in India stating that-

> *"Charges of sedition against journalists and activists for reporting or commenting on the protests, and attempts to curb freedom of expression on social media, are disturbing departures from essential human rights principles…. We continue to monitor the situation in Indian-administered Kashmir, where restrictions on communications, and clampdowns on civil society activists, remain of concern. Despite recent restoration of 4G access for mobile phones, the communications blockade has seriously hampered civic participation, as well as business, livelihoods, education, and access to health-care and medical information."*[258]

[258] "Statement by Michelle Bachelet, UN High Commissioner for Human Rights delivered on 46th session of the Human Rights Council, Item 2 - High Commissioner's Oral Update, on 26 February 2021."

Article 19 of the International Covenant on Civil and Political Rights provides for freedom of speech and expression and also clause (3) of the Covenant outlines the test for putting reasonable and legitimate restrictions which provides that a restriction must be-

> *"(a) Be provided by law;*
>
> *(b) Pursue a legitimate aim; and*
>
> *(c) Conform to the strict test of necessarily and proportionally."*[259]

Further, the Human Rights Council makes it clear that restriction on free speech and expression must be legitimate in the particular circumstances in which they apply and must be clear and accessible to everyone. "Restrictions must also be the least intrusive measures available and must not be overbroad. General comment 34 further elaborates that the principle of proportionality has to be respected not only in the law that frames the restriction but also by the administrative and judicial authorities in applying the law."[260]

The test set out in Article 19(3) is discussed in general comment 34 on Article 19 of ICCPR by Human Rights Committee which clears that Article 19(3) i.e. legitimate restrictions on right to freedom of speech and expression "may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and Human Rights. Nor, under any circumstance can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture threats to life and killings, be compatible with Article 19."[261] Further, the Human Rights Committee has observed that-

> *" Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who punish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress."*[262]

Thereby, every careless or reckless usage of words, signs or representations criticising government policies or their actions cannot be terms as sedition. An act of mere expression of a thought that is not in consonance with the views or policies of the government cannot be labelled as seditious act. The demonstration of infuriation and dissatisfaction with the affairs of the state for instance, calling India "no country for women" or calling government officials "enemy of Farmers" during protest of farm laws or questioning the Prime Minister or the elected government for poor response or management in tackling covid-19 crisis which lead to millions of casualties in the nation, are critiques that do not threaten the idea of a nation. If a country cannot be open to positive criticism then it closes the door for its future development and start moving towards its downfall.

[259] "Article 19(3) of the International Covenant on Civil and Political Rights."
[260] "UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, report of the special Rapporteur on the protection of the right to freedom of opinion and expression, Frank La Rue (May 16, 2011)."
[261] General Comment No.34 on Article 19 of ICCPR by Human Rights Committee 102nd session, Geneva, 11-29 July 2011.
[262] Ibid.

"While it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy. Therefore, every restriction on free speech and expression must be carefully scrutinized to avoid unwarranted restrictions."[263] Thereby the need for reform in section 124A IPC cannot be overlooked but some advocates of check and balance suggest that the complete absence of any law restricting the freedom of speech for protection of public order and national security may lead to disruption social order and tranquility. With different approaches, alternative suggestions to reform the provision of sedition are provided for taking into consideration as per the need of the society.

Thereby on the basis of above discussion, the present study proposes the following suggestions for reforms to be made in the law of sedition, to check its misapplication-

- ***Guidelines to be issued by the Supreme Court/Government to police authorities to detain or arrest only when the Contents of Sedition are fulfilled:*** When any FIR in case of sedition is lodged then the police authorities must follow the guidelines following the landmark judgment Constitutional Bench judgement in case of Kedar Nath, issued by the appropriate authorities and the arrest/detention can only be made when the contents of sedition are fulfilled i.e. "The words, signs or representations must bring the Government (central or state) into hatred or contempt, must cause or attempt to cause or attempt to cause disaffection, enmity or disloyalty to the Government and the words/signs/representations must also cause violence or incitement to violence or must be intended to tend to create public disorder or a reasonable apprehension of public." Here, it is noteworthy that causing violence and incitement to violence form an important element in constituting the offence of sedition and no case is made out in its absence as observed by Hon'ble Supreme Court of India.

- ***Appointment of a Specific Officer*:** A senior officer, at least of the rank ACP level or above must be appointed and entrusted for keeping a check in cases of sedition and no arrest or detention shall be made without compliance of above noted guidelines and approval by such senior officer. This would act as an additional safeguard to prevent misuse of law of sedition.

- ***Government and People engaged in administration to be excluded from the definition of Sedition:*** In a democracy, the people are considered the sovereign , therefore the section must be amended or interpreted in such a manner that the government and people engaged in administration must be excluded from the definition of Sedition, so that the Words, signs or representations against politicians or public servants or their acts, do not constitute the offence of sedition.

- ***Fair Criticism or Dissent should not be discouraged:*** Comments expressing disapproval or criticism of the Government with a view to obtaining a change of Government by "Lawful means" are not Seditious under section 124-A of the Indian penal code. Further, when the people are considered Sovereign, then their dissent with any action or decision taken by the elected government or criticism

[263] "Consultation Paper on 'Sedition' by Law Commission published on 30 August 2018."

of any action which is not seen in favour of the general public should be encouraged for better governance and shall not be suppressed under the veil of sedition.

- ***Vulgarity should not be a factor:*** Obscenity or vulgarity by itself should not beconsidered as a factor for deciding whether a case falls within the purview of section 124- A of the Indian Penal Code.

- ***Reorganisation of Offence of Sedition:*** The provision for the offence of sedition is provided in Chapter VI titled as "Offences against the State", thereby considered as crime against the state and listed with heinous offences like waging war against the state, but it has been held by the Supreme Court that mere political dissent does not constitute an offence of sedition unless coupled with a tendency to cause violence and disturb public peace whereas the criticism of the government is a part and parcel of a democracy which should be encouraged in order to make the government accountable and to enhance citizens participation. Sedition as a ground for restricting freedom of speech and expression is only justified if the restriction is imposed to prevent public disorder or undermining of security of state. Therefore, the offence of sedition shall be shifted from Chapter VI titled "Offences against the State" to Chapter VIII titled "Offences against Public Tranquillity".

- ***Repeal or modification of section 124A IPC:*** The misuse of section 124A IPC has led to gross violation of freedom of speech and expression in World's largest democracy i.e. India. In its current form, it is being used a weapon in the hands of authorities to subvert every form of expression to meet their political ends. Therefore, the current section should be repealed and substituted with a new provision with a reformed terminology and narrower scope of interpretation, removal of ambiguity and with lessened degree of punishment.

BIBLIOGRAPHY

PRIMARY SOURCES-

STATUTES:

1. The Constitution of India, 1950
2. Indian Penal Code, 1860
3. The Code of Criminal Procedure, 1973
4. Unlawful Activities (Prevention) Act, 1967
5. National Security Act, 1980
6. Information Technology Act, 2000

7. Terrorist and Disruptive Activities (Prevention) Act, 1995
8. Prevention of Terrorism Act, 2002
9. Defense of India Act, 1939
10. The Government of India Act 1935
11. United States Code
12. Coroners and Justice Act 2009
13. Treason Felony Act, 1848
14. Human Rights Act, 1998
15. Australian Crimes Act 1914
16. Australian Criminal Code Act 1995

BILLS:

1. The Indian Penal Code (AMENDMENT) Bill 2012, Bill No. 129 of 2012.
2. UAPA Amendment Bill, 2019
3. Commonwealth of India Bill, 1925

INTERNATIONAL CONVENTIONS/ CHARTER/ TREATIES:

1. United Nations Charter 1945
2. Universal Declaration of Human Rights 1948
3. European Convention on Human Rights 1950
4. International Covenant on Civil and Political Rights 1976
5. American Convention on Human Rights 1969
6. African Charter on Human and People's Rights 1981
7. United States Bill of Rights 1791

SECONDARY SOURCES-

BOOKS:

1. Walter Russell Donough, The History and Law of Sedition and Cognate Offences in India, Thacker Spink and Calcutta, 1914, 2nd Edition.
2. Sastri G.D, The Law of Sedition in India, N.M Tripathi Private Ltd. New Delhi, 1964.

3. Dr. J.N Pandey The Constitutional Law of India 46th Edition by, Published by Central Law Agency.

4. Prof. T. Bhattacharyya, The Indian Penal Code 5th Edition Central Law Agency.

5. Inamdar, N.R Political Thought and Leadership of Lokmanya Tilak, Concept Publishing Company, New Delhi, 1983.

6. Stephen F. James, History of the Criminal Law of England, (Macmillan London 1883).

7. K.I. Vibhute, P.S.A. Pillai's Criminal Law 335 (Lexis Nexis Butterworths, Nagpur, 2012).

8. Ganachari Arvind, Nationalism and Social Reform in (SC) Colonial Situation, published by Kalpaz Publications (15 November 2004), ISBN No.- 8178353512

9. Bhattacharjea Ajit, Kashmir: The Wounded Valley, New Delhi: UBS, 1994.

10. W R Donough, A Treatise on the Law of Sedition and Cognate Offences in British India, Penal and Preventative, Thakker, Spink and Co. Calcutta, 1911.

11. Book by Erasmus, 'The Education of Christian Prince' published in 1516.

12. Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press: 1966).

13. Michael Head, Crimes Against the State: From Treason to Terrorism (Ashgate Publishing Company, 2011).

14. Frederick Schauer, Free Speech: A Philosophical Enquiry 190 (Cambridge University Press, New York, 1982).

JOURNALS:

1. All India Reporter

2. Criminal Law Journal

3. Supreme Court Cases

4. Journal of Criminal Cases

5. Supreme Court Weekly

REPORTS:

1. Consultation Paper on 'Sedition' by Law Commission published on 30 August 2018.

2. Trial of Tilak (1986) Publications Division, Ministry of Information & Broadcasting, Govt. of India, New Delhi

3. Donough .OP. CIT. PP. 38-39.

4. Constituent Assembly Debates Official Report, Vol. VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014.

5. C.A. Debates, Vol VII

6. Report on World Press Freedom Index 2020 by Reporters without Borders

7. Report by AccessNow- the state of internet shutdowns in the year 2018 published on 8th July 2019

8. Report of the UN special Rapporteur on the protection of the right to freedom of opinion and expression, Frank La Rue (May 16, 2011).

9. General Comment No.34 on Article 19 of ICCPR by Human Rights Committee 102nd session, Geneva, 11-29 July 2011.

10. Report on Behind Bars: Arrest and Detention of Journalists in India 2010-20- An analysis of a decade of summons, detentions, arrests, interrogations and show-case notices against journalists by Geeta Seshu, published by Free Speech Collective.

WEBSITES:

- www.frontline.com
- www.scconline.com
- www.manupatra.com
- www.indiankanoon.org
- www.humanrights.org
- www.ssrn.com
- www.economictimes.com
- www.bombayhighcourt.nic.in
- www.thehoot.org.com
- www.thehindu.com
- www.frontlineonnet.com
- www.britannica.com
- www.indianexpress.com
- www.etymonline.com
- www.duhaime.org
- https://thelawdictionary.org/sedition/
- www.oxfordbibliographies.com

- https://en.oxforddictionaries.com/definition/sedition
- www.scroll.in
- http://ncrb.gov.in
- http://www.lawcommissionofindia.nic.in
- https://www.cambridge.org
- https://www.livemint.com
- https://www.dictionary.com/browse/republic
- www.qrius.com
- www.oxfordislamicstudies.com
- www.livelaw.com
- www.indiatoday.in
- www.theguardian.com
- www.thewire.in
- www.telegraphindia.com
- www.internetshutdowns.in
- http://www.rightsrisks.org
- https://www.britannica.com/biography/William-Sancroft
- https://frontline.thehindu.com/the-nation/history-of-sedition/article9049848.ece