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**JURISPRUDENCE OF SEDITION IN INDIA: Weighing the Balance of  
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*Rushali*

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# JURISPRUDENCE OF SEDITION IN INDIA: Weighing the Balance of Fundamental Rights and Administrative Control

*Rushali\**

*[Abstract: This paper deals with the question, whether section 19(2) of the Indian Constitution and section 124-A of the Indian Penal Code are compatible or contradictory. The paper is divided into four parts. The report begins with the introduction to section 124A of the IPC and 19(2) of the Indian Constitution. In part two of the paper, the author looks forward to providing a holistic view of the scope of sedition laws across the globe while highlighting the approach of different countries on this issue. Further in part three of the paper, the author attempts to show the importance of both the provisions related to sedition through a comparative analysis with the help of case laws and the precedent established by the judiciary. Finally, the author arrives at a conclusion and suggests recommendations to fill the legislative lacunae to provide a balancing act between freedom of speech and protection of the state.]*

## I

### Introduction

One of the most fundamental rights essential to every human is the right to freedom of speech and expression. The same has also been addressed as a human right in the Universal Declaration of Human Rights (Article 19). The principle of freedom of speech can be traced back to the fifth or sixth century BC in Athens.<sup>1</sup> Freedom of speech allows every human to express their views and opinions in front of the world without fear. The struggle to attain this human right goes long back to 399BC when Socrates, a Greek philosopher, was persecuted for promoting the freedom of speech.<sup>2</sup> Since then, thousands of people have been persecuted, prosecuted, and even punished in the name of free speech. Scientists like Galileo Galilei have also suffered for putting up their views.

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<sup>1</sup> Josiah Ober, Kurt Raaflaub, and Robert Wallace, ORIGINS OF DEMOCRACY IN ANCIENT GREECE (2007).

<sup>2</sup> Richard Kraut, *The Athenian Ideal of Free Speech*, ENCYCLOPEDIA BRITANNICA ONLINE (Dec. 2, 2022) available at: <http://www.britannica.com/EBchecked/topic/551948/Socrates/233637/The-Athenian-ideal-of-free-speech> (Last visited 10 Jan., 2023).

Galileo suffered a lifetime of house arrest for insisting that the Sun did not revolve around the Earth. The very first accomplishment in this fight was made in 1215 when freedom of speech was protected in Magna Carta involuntarily by King John of England.<sup>3</sup> This was followed by the United States of America incorporating this right in its constitution under the first amendment done in 1791.<sup>4</sup> Today, the right to Freedom of Speech has been recognised internationally and has been enshrined in:

1. The European Convention on Human Rights<sup>5</sup>,
2. The American Convention on Human Rights<sup>6</sup>
3. The African Charter on Human and Peoples' Rights<sup>7</sup>, and
4. The International Covenant on Civil and Political Rights<sup>8</sup>

After Independence, India incorporated the freedom of speech and expression under Articles 19 (1) and 19 (2) of the Indian Constitution.<sup>9</sup> The article 19(1) of the Indian Constitution states that the citizens of India have the right to express their views and opinions freely. It provides Indians with the right to express themselves in words spoken or written, pictures, or any other communicable medium. By granting this right, the Government of India promises that there is nothing an individual should be scared

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<sup>3</sup> Doris Mary Stenton, *Magna Carta*, ENCYCLOPEDIA BRITANNICA ONLINE (Aug. 23, 2022) available at: <https://www.britannica.com/topic/Magna-Carta> (Last visited 10 Jan., 2023)

<sup>4</sup> David Schultz, *State Constitutional Provisions on Expressive Rights*, THE FIRST AMENDMENT ENCYCLOPEDIA (Sep. 2017) available at: <https://www.mtsu.edu/first-amendment/article/874/state-constitutional-provisions-on-expressive-rights> (Last visited 10 Jan., 2023).

<sup>5</sup> Article 10, *The European Convention on Human Right and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

<sup>6</sup> Article 13, *The American Convention on Human Rights*, Treaty Series, No. 36, Organization of American States, 1969.

<sup>7</sup> Article 9, *African Charter on Human and Peoples' Rights*, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67 /3/Rev. 5, reprinted in Report of the Secretary General on the Draft African Charter on Human and Peoples' Rights, O.A.U. Doc. CM/1149 (XXXVII) (Annex II) (1981); 21 I.L.M. 58 (1982).

<sup>8</sup> Article 19, *The International Covenant on Civil and Political Rights*, U.N.G.A. Res. 2200A(XXI) 19 Dec. 1966.

<sup>9</sup> The Constitution of India, 1950, Article 19(1) which mentions that, All citizens shall have the right – (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions [or co-operative societies]; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; (g) to practise any profession, or to carry on any occupation, trade or business. and Article 19(2) which mentions that, Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 6 [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.]

about before articulating their views, including criticising the government itself. One of the famous political theorists, Alexander Meiklejohn, contended that the concept of democracy is the notion of self-government or a government those functions on behalf of the people.<sup>10</sup> He also says that true democracy is the one that does not constraint the free flow of information and ideas. The essence of a true democracy will be lost if the people in power can manipulate the electorate by withholding information and stifling criticism.<sup>11</sup> Manipulating the electorate negates the whole concept of democracy. While on the other hand the Article 19 (2) seems to put reasonable restrictions on the natural right to freedom of speech and expression. The freedom of speech and expression can be restricted on the following grounds:

- Security of State
- Friendly relations with foreign states
- Public order
- Decency or Morality
- Contempt of Court
- Defamation

### ***Incitement to an offence Sovereignty and Integrity of India***

Mentioned above are few grounds on which free speech can be restricted. There are no strict rules to determine whether a reason is a reasonable ground for restriction on a fundamental right. The Parliament determines the reasonableness of a restriction. One of the reasonable restrictions includes inciting hatred for the country or sedition.

The word 'Sedition' comes from the Latin word 'seditio', meaning 'going apart'. Sedition, as it means today, was established in the Era of Elizabeth. The laws of sedition were brought in force in the seventeenth century by England.<sup>12</sup> This was done as free speech was considered a threat to the Monarchy. The then lawmakers, in order to make sure that only good opinion of the government is circulated brought introduced sedition laws which were then implemented by the Britishers for the same purpose during their reign in India. In 1870, under British rule, sedition was made a part of the IPC under section 124-A.<sup>13</sup> This law was used to clamp down voices against the British Empire.

<sup>10</sup> Dara E. Purvis, *Alexander Meiklejohn*, THE FIRST AMENDMENT ENCYCLOPEDIA available at: <https://www.mtsu.edu/first-amendment/article/1302/alexander-meiklejohn> (Last visited Jan. 10, 2023).

<sup>11</sup> C. Edwin Baker, *Is Democracy A Sound Basis For A Free Speech Principle*, 97 VIRGINIA LAW REVIEW 515 (2011).

<sup>12</sup> Gauri Kashyap, *Sedition in the Common Law Jurisdictions: UK, USA and India* (May 20, 2021) available at: <https://www.scobserver.in/journal/sedition-in-the-common-law-jurisdictions-uk-usa-and-india/> (Last visited 10 Jan., 2023).

<sup>13</sup> [124A. Sedition. — Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, 13\*\*\* the Government established by law in 14[India],

Freedom fighters like Bal Gangadhar Tilak and Mahatma Gandhi himself have also been tried under this law.

Sedition falls under section 124-A of the Indian Penal Code (IPC). According to the IPC, inciting hatred or disaffection towards the government or even an attempt to incite hatred towards the government falls under sedition. So, if a person says something which incites hatred in another person towards the government, he will be liable for sedition. In this situation, even if another person does not get affected, the first person can still be held liable for sedition if he said something with an intention to incite hatred or disaffection towards the government. According to the Indian Penal Code, the elements of the crime of sedition are as follows<sup>14</sup>:

**Words, Signs, Visible Representation or Otherwise:** One of the most essential requirements to carry out a seditious activity under S 124 A of IPC is the presence of words, signs or any other representation visible to the eyes such as a mime show or a dramatic performance.

**Brings or Attempts to bring into Hatred or contempt:** Any words, spoken or written, or signs, or visible representation that has the effect of inciting hatred or contempt, or exciting disaffection towards the Government established by law in India. The section not only includes the actual causing of inciting hatred or contempt, but even an attempt to do so.

**Excite Disaffection:** This phrase is used to describe the act of inciting a lack of loyalty or affection towards the government. Disaffection can include feelings of hostility, disillusionment, or resistance towards the government. In order for an act to be considered seditious under this section, it must be intended to excite disaffection towards the Government established by law in India. This means that the act must be designed to inspire feelings of disloyalty or animosity towards the government in the minds of others. It is intended to capture a wide range of behaviors that may be seen as threatening to the stability and security of the government, including inciting violence or rebellion, advocating for the overthrow of the government, or spreading false or malicious information about the government.

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15\*\*\* shall be punished with 16[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

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

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

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

<sup>14</sup> *Id.*

**Government established by law:** It refers to the legal system and institutions of government in India. This includes the national government, as well as state and local governments and their respective branches, agencies, and instrumentalities. It is distinct from a particular ruling party or the bureaucracy running the government. Lokmanya Bal Gangadhar Tilak argued that it was important to distinguish between the "Government established by law" and the "bureaucracy of the government," as the bureaucracy of the government referred to the administrative and executive branches of the government, while the Government established by law referred to the legal system and institutions of government. Tilak argued that criticism of the bureaucracy of the government was not the same as criticism of the Government established by law, and that it was important to protect the right to criticize the actions of the bureaucracy without being charged with sedition.

**Expressing Disapprobation:** It refers to criticizing or expressing dissatisfaction with the actions or policies of the government. However, simply expressing disapprobation or criticism of the government is not enough to constitute sedition under this section. Strongly expressing one's views within the lawful limits of the country would not constitute as sedition. In order for an act to be considered seditious, it must be an attempt to bring into hatred or contempt, or excite disaffection towards, the Government established by law in India.

In addition, the Supreme Court of India has ruled that sedition can only be applied in cases where there is an incitement to violence or public disorder, and cannot be used to punish peaceful protests or criticism of the government.<sup>15</sup> This means that in order for an act to be considered seditious, it must be likely to lead to violence or public disorder. The test for an act to qualify as seditious lies in the manner in which the criticism on political matters is made. As long as the discussions are candid, honest and do not pass the boundaries of fair criticism, they are permitted. Overall, the elements of sedition in India are defined broadly and have been the subject of much debate and controversy. Many have argued that the sedition law is often used to suppress dissent and stifle freedom of expression, and there have been calls for its repeal or reform. Peaceful protests are being clamped down in the name of sedition. People are getting arrested for this non-bailable offence for expressing their views over the actions of the government on the internet. Journalists are being imprisoned for putting up their views, and a nation without a free press can barely be called a democracy. The antiquated law of sedition still holds a place in the largest democracy in the world. This paper gives a world view of sedition, which includes sedition in various countries around the world, and then goes on to describe the development of sedition laws through various eras with the help of cases. The paper ends with the author's views on sedition laws.

This paper is now divided into World View of sedition and Sedition in different eras in India. Sedition in the different era's is further divided into pre-constitution and post-

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<sup>15</sup> *Kedar Nath Singh v. State Of Bihar*, 1962 AIR 955



constitution era's which is discussed at length by making reference to some landmark judgements. The paper then ends with a conclusion where the author has presented her views and suggestions.

## II

### **Sedition: A Global Perspective**

Sedition is a law which is disputed worldwide. Every country has its own views and interpretation of the law of sedition. Some countries have completely gotten rid of this law calling it archaic and outdated while some countries have improvised it according to its needs and wants. There are also a few countries in which this law stands much disputed and debates have been going with respect to amending this law. This section analyses, briefly the laws in various countries across the globe.

#### ***United Kingdom***

The country responsible for introducing sedition in India has itself repealed it more than a decade ago through the Coroners and Justice Act, 2009.<sup>16</sup> It was done under the Labour government of Gordon Brown. The offences that were abolished were:

- Sedition and Seditious libel
- Defamatory libel, and
- Obscene libel

The last prosecution under the sedition law in the United Kingdom was in the year 1947 in the case of *R v. Caunt*, for publishing an article considered to be anti-semitics. The court found Mr Caunt not guilty. The Law Commission of Britain had suggested the abolition of sedition in 1977, but only in 2009 was sedition finally abolished. Claire Ward, the then Minister of Justice of Britain, said that Sedition in all its forms is an arcane offence. Sedition is an antiquated law from a bygone era when freedom of speech did not hold the importance it does today. The fact that this law still exists in Britain has been used as an excuse by other countries to justify their misuse of this law. Other countries have been using sedition to suppress political dissent and restrict the freedom of the press. By taking the lead and abolishing this law, Britain inspires other countries to do the same and prevent its misuse.<sup>17</sup>

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<sup>16</sup> A. G. Noorani, *How a Supreme Court judgment brought back the sedition law in India*, FRONTLINE, <https://frontline.thehindu.com/the-nation/how-a-supreme-court-judgment-brought-back-the-sedition-law-in-india/article33481062.ece> (Last visited Jul 31, 2021).

<sup>17</sup> Sedition in England: The Abolition of a Law From a Bygone Era | In Custodia Legis: Law Librarians of Congress, <https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/> (Last visited Jul 31, 2021).

### ***New Zealand***

Law of sedition was mostly out of use in New Zealand since its last prosecution in 1930. The law revived in 2004 when Tim Selwyn, a political activist, was prosecuted under sedition for throwing an axe through Prime Minister Helen Clark's window at her electorate office. He was convicted in July 2006.<sup>18</sup> The case gained widespread publicity. Sedition was criticised, leading to prompted calls in order to repeal sedition laws. Law Commission was put to review the laws of sedition in the country. On April 5, 2007, the Law Commission of New Zealand released its report suggesting to repeal the Laws of Sedition, and the same was done by the four major parties in power vide the Crimes (Repeal of Seditious Offences) Amendment Act in January 2008.<sup>19</sup>

### ***Malaysia***

Malaysia is among the few countries that practice federal representative democratic constitutional monarchy. The governments in power used the broadly defined offence of sedition to suppress all movements against the government. The current central government resumed power in May 2018. Before coming to power, this government had promised to repeal the Act of Sedition from the Constitution of Malaysia. There is an instant need to terminate the use of the law of sedition followed by repealing it, said the former communications and multimedia minister, Gobind Singh. However, arrests on the ground of sedition are still being made in Malaysia.<sup>20</sup>

### ***The United States of America***

The act of sedition was introduced in the United States of America (USA) in 1798 by the then President, John Adams. This act was repealed once the opposition came into power in the year 1801. After which, the Espionage Act of 1917 was passed. The Espionage Act of 1917 made the recalcitrant spreading of news about the army or navy of the USA by anyone an offence.<sup>21</sup> The offence was punishable by up to twenty years of imprisonment and a fine of up to \$10,000. This act was later amended, and the Sedition Act of 1918 was brought into existence, expanding the scope of the 1917 Act. In the landmark case of *Schenck v. the United States* of 1919, it was established by the Supreme Court as stated by Justice Oliver Wendell Holmes Junior that the First Amendment or the scope of

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<sup>18</sup> Prabhat Singh, *A quick history of sedition law and why it can't apply to JNU's Kanhaiya Kumar*, NEWSLAUNDRY (Feb 16, 2016) available at: <https://www.newslandry.com/2016/02/16/a-quick-history-of-sedition-law-and-why-it-cant-apply-to-jnus-kanhaiya-kumar> (Last visited 10 Jan., 2023).

<sup>19</sup> REFORMING THE LAW OF SEDITION, (New Zealand & New Zealand eds., 2007).

<sup>20</sup> Richard C. Paddock, *Malaysia to Repeal Death Penalty and Sedition Law*, THE NEW YORK TIMES, (October 11, 2018) available at: <https://www.nytimes.com/2018/10/11/world/asia/malaysia-death-penalty-repeal.html> (Last visited Jul 31, 2021).

<sup>21</sup> Section 6, The Espionage Act, 1917.

Freedom of Speech did not protect 'clear and present danger' which can otherwise be avoided by the Congress. Most parts of the Sedition Act were repealed in 1921.<sup>22</sup>

After that, The Smith Act was passed by the Government of the United States in 1940. The act criminalised teaching the ideas of overthrowing the Government of the United States or being a member of a group or organisation that preached the same.<sup>23</sup> The Smith Act has been challenged many times since then. Some of the landmark cases being The Great Sedition Trial of 1944 and *Dennis v. the United States*, but the act stands tall to date. The act has been unused since 1961. There have been attempts made to use this act, but the convicts have been acquitted every time. The most recent arrest was that of nine members of the Hutaree Militia community in march of 2010. All of them were acquitted from the charges of seditious conspiracy. Although not in use, the offence of sedition has not yet been repealed in the United States of America.<sup>24</sup>

### ***Ireland***

Similar to most of the countries, the offence of sedition was picked up by the Irish constitution from English Law. Even though the law of sedition existed in Ireland, the last prosecution done under this law was in the year 1901. The Law Reform Commission of Ireland recommended the abolition of sedition in 1991 on the grounds that it was at odds with the right to freedom of speech given by the Irish constitution. Another reason for this recommendation was the history associated with seditious libel. It was in 1999 when the blasphemous libel was being adjudicated to be unconstitutional, that jurists argued that seditious libel was also not in line with the Irish constitution and that it tampered with the right to freedom of speech. Finally, in 2009, both blasphemous libel and seditious libel were abolished in Ireland vide Defamation Act 2009. However, the offences of sedition and blasphemy are now punishable under other provisions of Irish legislation, like, Offences Against the State Act, 1939 and Broadcasting Authority Act, 1960.<sup>25</sup>

### ***Indonesia***

Sedition in Indonesia was an offence leftover from the colonial administration by the Dutch. Article 154 and Article 155 of the Indonesia Criminal Code mentioned 'public expression of feelings of hostility, hatred or contempt toward the government' and prohibited 'the expression of such feelings or views through the public media', punishable up to seven years of imprisonment. In 2002, forty two people were arrested

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<sup>22</sup> *Schenck v. United States*, OYEZ, <https://www.oyez.org/cases/1900-1940/249us47> (Last visited Jul 31, 2021).

<sup>23</sup> Nine Members of the Hutaree Militia Indicted in Plans for "Armed Conflict," SOUTHERN POVERTY LAW CENTER, <https://www.splcenter.org/hatewatch/2010/03/29/nine-members-hutaree-militia-indicted-plans-armed-conflict> (Last visited Jul 31, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> REFORMING THE LAW OF SEDITION, *supra* note 6.

for Sedition in Papua, while in the April of 2005, two individuals Yusak Pakage and Filep Karma, were arrested and charged with sedition for raising the morning star flag of Papua and commemorating the declaration of Papuan independence in a peaceful rally in West Papua. The two men were charged with ten years and twelve years of imprisonment, respectively. The Human Rights Watch of Indonesia reported this case 'Protest and Punishment: Political Prisoners in Papua'. On July 17, 2007, Article 154 and Article 155 of the Indonesia Criminal Code were declared unconstitutional by the Constitutional Court of Indonesia.<sup>26</sup>

### ***Australia***

The crimes act of Australia passed in the year 1914 contained sedition as an offence against the government. However, the last successful prosecution under the law of sedition in Australia occurred in 1960. Brian Cooper was imprisoned for persuading the people of Papua New Guinea to demand independence from Australia. He was pronounced guilty by the court and awarded rigorous imprisonment for two months. In the year 1984, Hope Royal Commission, responsible for reviewing national security offences, spoke about how statements of political belief, no matter how strongly worded, should not be considered sedition.<sup>27</sup> Hence, the Crimes Act of Australia was amended, and an intention to disrupt public harmony was added to the condition to fall under sedition. This section was again reviewed by the Gibbs committee in 1991. The Gibbs committee termed sedition as an archaic law and that there was a need to rewrite this law in accordance with the modern democratic era. Finally, in 2005, the government of Australia decided to upgrade the laws of sedition in a way that also guards national and international security. Hence, the Anti-Terrorism Act (No. 2) 2005 was passed with revised sedition offences and carried a maximum penalty of seven years imprisonment. In 2006, the Australia Law Review Committee (ALRC) recommended removing the word 'sedition' from Australian criminal law but, only in 2010 was this recommendation accepted by the Australian government vide National Security Legislation Amendment Act 2010.<sup>28</sup>

The Republic of Korea abolished the laws restricting freedom of speech mentioned in Article 104-2 of their Criminal Code in 1988. Many other countries still have sedition laws that are actively used. According to the Human Freedom Index, the freest country

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<sup>26</sup> Indonesia: Bold Court Decision Good for Free Expression, HUMAN RIGHTS WATCH (2007), available at: <https://www.hrw.org/news/2007/07/19/indonesia-bold-court-decision-good-free-expression> (Last visited Jul 31, 2021).

<sup>27</sup> Roy Jordan, *In Good Faith: Sedition Law in Australia*, Parliament of Australia, Parliament of Australia (Aug. 23, 2010) available at: [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_departments/Parliamentary\\_Library/Publications\\_Archive/archive/sedition](https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Publications_Archive/archive/sedition).

<sup>28</sup> *Id.*

in the World is New Zealand, followed by Switzerland and the least free countries are Syria and Venezuela.<sup>29</sup>

Almost every country has its own version of sedition laws. Most of which are more stringent as compared to what we have in India. Some prominent countries which have categorised sedition as a criminal offence are Saudi Arabia, Malaysia, Iran, Uzbekistan, Sudan, Senegal, and Turkey. The USA has more stringent laws of Treason.

### III

#### **Sedition in India: Judicial Review & the Current Discourse**

Sedition is a crime that has long been a source of tension and debate in India, with many arguing that it is often used to suppress dissent and stifle freedom of expression. In India, sedition is a cognizable and non-bailable offense, meaning that the police can arrest someone suspected of sedition without a warrant and the person can be detained without bail. The punishment for sedition can be imprisonment for up to three years, or up to life imprisonment if the seditious act involves violence.<sup>30</sup> However, the sedition law has been the subject of much controversy in India, with many arguing that it violates the constitutional laws and fundamental rights guaranteed by the Indian constitution. Some of the ways in which the sedition law of India has been argued to violate constitutional laws and fundamental rights include:

1. Freedom of expression: The constitution of India guarantees the right to freedom of speech and expression, subject to certain reasonable restrictions. However, critics have argued that the sedition law goes beyond these reasonable restrictions and is used to suppress dissent and punish those who criticize the government. This violates the fundamental right to freedom of expression guaranteed by Article 19(1)(a) of the Indian constitution.<sup>31</sup>
2. Right to life and personal liberty: The sedition law allows for the arrest and detention of individuals suspected of sedition, which violates the right to life and personal liberty guaranteed by Article 21 of the Indian constitution.<sup>32</sup>
3. Right to a fair trial: The sedition law allows for the arrest and detention of individuals suspected of sedition without a warrant, and the offense is non-bailable, meaning that the accused cannot be released on bail. This violates the

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<sup>29</sup> Cato Institute, Human Freedom Index (2020) available at: <https://www.cato.org/human-freedom-index/2020> (Last visited Jul. 31, 2021).

<sup>30</sup> *Supra* 14.

<sup>31</sup> The Constitution of India, Article 19(1)(a).

<sup>32</sup> The Constitution of India, Article 21.

right to a fair trial and due process guaranteed by Article 21 of the Indian constitution.<sup>33</sup>

This section of the paper will further highlight the approach of judiciary and governments towards the issue of sedition with the help of case laws dividing them into:

- Pre-independence era
- Post-independence era

### *Pre-Independence Era*

The Law Commission, headed by Lord Macaulay, was set up in India in 1834 under the Charter Act of 1833.<sup>34</sup> Increasing restlessness for Freedom among the Indians started creating problems for the British rule in the country. Newspapers and magazines being the prime mode of communication at that time, helped in spreading awareness and uniting people against the British empire. The revolt of 1857 as a result of this unity and increasing demand for independence in India. The 1857 revolts lead to handing the ruling powers of India over to the British crown. In order to suppress any such revolts in the future, it was important to cut off or at least put restrictions on the content being printed in the newspapers and magazines. As an aftermath of the 1857 revolts, an effort was made to codify criminal law in India. The Law commission drafted the Indian Penal Code in 1860. However, it came into force in the year 1862. The draft consisted of an offence to put a restriction on the words, either spoken or written, which could incite hatred against the British Raj, mentioned under section 113. However, for reasons unknown, this section was not mentioned in the original Indian Penal Code that was brought into force in 1862. On the suggestions of James Fitzjames Steven, Sedition was finally added in section 124A of the Indian Penal Code in 1870. The section was mentioned as 'Exciting Disaffection' and said as follows:

*Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.<sup>35</sup>*

This section was then amended in 1898 and given a form that exists to date. The very first known case filed under Sedition was *Queen Empress v. Jogendra Chunder Bose* in Calcutta high court in 1891.

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<sup>33</sup> *Id.*

<sup>34</sup> Introduction, Legislative Department, Ministry of Law and Justice, Government of India, available at: <https://legislative.gov.in/about-us/introduction> (Last visited Jul. 31, 2021).

<sup>35</sup> Agathocleous, *Reading for the Political Plot: A Genealogy of Disaffection*, 61 *CRITICISM* 569 (2019).

*Queen Empress v. Jogendra Chunder Bose*<sup>36</sup>

As a result of the death of a ten-year-old girl named Phoolmani due to sexual intercourse with her husband, who was a man of over thirty years of age, the Britishers passed The Age of Consent Act in 1891. The act increased the age to have sexual intercourse with a girl from ten to twelve years. Under the act, any physical relation with a girl below 12 years of age would be considered rape.

Jogendra Chunder Bose was the owner of a Bengali weekly newspaper named Bangobasi. He published in his newspaper an article criticising the Age of Consent Act, 1891. In his opinion introducing such acts was tampering with Hindu customs and traditions. He felt like it was a way to force European culture on Hindus. The repercussions of this were a case of seditious libel under article 124-A of the Indian Penal Code against Mr Bose, his proprietor, his manager, his editor, and the publisher of his newspaper. The case had two significant questions, firstly what falls as an offence of sedition under section 124A of the IPC, and secondly, whether Mr Bose and others accused in this case were liable or not. The Chief Justice of the Calcutta High Court, Justice C. Petheram, briefed the jury about the case. This was the first time when the Indian judiciary attempted to define sedition. It said, '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 within the section.'<sup>37</sup>

However, the jury was unable to reach a unanimous verdict, and a retrial before a different jury was suggested. This retrial did not take place since an apology for the article was issued by the accused.

*Queen Empress v. Bal Gangadhar Tilak*<sup>38</sup>

Bal Gangadhar Tilak, popularly known as Lokmanya Tilak, was a lawyer by profession and a political enthusiast fighting for the independence of India. He owned two daily newspapers, namely Kesari in Marathi and Mahratta in English. The first time Tilak was arrested for sedition was in 1897 when the bubonic plague raged in Poona in a severe epidemic form. The military comprising of mostly British soldiers forcefully entered the houses of the people to discover concealed cases, if any. On June 15, 1897, Tilak published an article in his daily newspaper Kesari justifying the killing of Afzal Khan by Shivaji and commemorating the coronation of Shivaji. The article said that Shri Shivaji was not wrong in killing Afzal Khan as he did not do it for himself, and everyone

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<sup>36</sup> *Queen-Empress v. Jogendra Chunder Bose and Others*, (1892) ILR 19 Cal 35.

<sup>37</sup> Siddharth Sijoria, *Understanding the Law of Sedition*, ONE LAW STREET (2016), <https://onelawstreet.com/opinion-understanding-law-sedition/> (Last visited Jul 31, 2021).

<sup>38</sup> *Emperor v. Bal Gangadhar Tilak* (1917) 19 BOMLR 211.

should look at the bigger picture beyond the Penal Code, which was the Srimat Bhagavad Gita. Just a week after the publication of this article, two British officials responsible for plague measures were shot dead by Brahmin youths. It was pointed out that the murders of the British officials were a direct result of Tilak's article and, it was decided that Tilak should be prosecuted. Since the newspaper, Kesari, was published in the Marathi language and the jury was dominated by English speaking individuals, the jury had to be briefed about the case, and the article written by Tilak and section 124-A of the IPC was also to be explained. Justice Arthur Strachey was appointed to brief the jury. In his long speech of charges against Tilak, Justice Strachey introduced "disaffection" as mentioned in the IPC as 'the contrary to affection' or hatred instead of putting it as 'absence of affection'. The definition of sedition was widened in this case, and Justice Strachey defined the disaffection portrayed by Tilak in his article as hatred against the government and, in turn, as a form of sedition. The jury then pronounced Tilak guilty and awarded him eighteen months of imprisonment. The High Court of Calcutta denied Tilak the right to file an appeal in the Privy Council. He then wrote a special leave petition to the Privy Council, but the special leave was also refused.

Bal Gangadhar Tilak was tried again in the year 1908 for his articles titled 'The Country's Misfortune' and 'These Remedies Are Not Lasting' in his newspaper Kesari. Tilak was found guilty under the newly defined section 124A of the IPC and sentenced to six years of imprisonment and a fine of Rs. 1000.

*Emperor v. Mohandas Karamchand Gandhi and Shankarlal Ghelabhai Sankar*<sup>39</sup>

Mohandas Karamchand Gandhi, popularly known as Mahatma Gandhi, owned a weekly journal named Young India. In 1922 a situation of unrest was created due to the preaching of Civil Disobedience and Non-Cooperation by Mahatma Gandhi. Although Gandhi preached nonviolence, his preaching's led to a few instances of violence and bloodshed. The situation was further fueled by the treatment of Turkey by allies after the war terminated. The Indian Muslims looked at the Sultan of Turkey as their Khalifa. The Indian Muslims, guided by the Ali brothers, started the Khilafat movement as a form of resentment to any disrespect shown to the Sultan of Turkey. Gandhi joined the Khilafat movement and, in one of his articles, said that 'it is sinful for anyone, either soldiers or civilian, to serve this government which has proved treacherous to the Mussalmans of India, and which has been guilty of the inhumanities of the Panjab. I have said this from many a platform in the presence of sepoys'.<sup>40</sup> After this, a series of articles were printed in his newspaper asking Indians to unite and overthrow the British government. As a result, Gandhi and Shankarlal Banker, the publisher of articles in Young India, were prosecuted under article 124A of the IPC. Both Gandhi and Shankarlal were sentenced to six years of imprisonment. Gandhi referred to section 124A of IPC as the prince

<sup>39</sup> Session Case No. 45/1922, Ahmedabad.

<sup>40</sup> K.D. Gaur, THE TEXTBOOK ON INDIAN PENAL CODE 378 (2020).



among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen.<sup>41</sup>

### ***Post-Independence Era***

The drafting committee of the constitution was of the opinion to adopt the Irish Constitution, which has sedition as one of the exceptions of Right to Freedom of Speech and Expression. Hence, the initial drafts of the constitution mentioned sedition as an exception to Article 19(2) of the Constitution. K.M. Munshi, a member of the drafting committee, wanted the deletion of sedition when the Constituent Assembly debated the draft constitution on December 1 1948. He said that the word 'sedition' is of varying import. It has been vaguely defined and has led to uncertainty not only in the minds of members there but also in different courts of law around the world. The definition of sedition is simple and dates back to 1868.<sup>42</sup>

During the assembly, Shri K.M. Munshi agreed with the decision of the Federal court in the case of *Niharendu Dutt Majumdar v. King-Emperor (1942)*, in which the Federal court held that sedition should be associated with words or actions that disrupt public order and anarchy. Thus, unless one's words or actions do not derange the public order or create a reasonable apprehension of the same, it cannot fall under the category of sedition. Partly due to his efforts, sedition was removed from Article 19(2) of the Constitution.<sup>43</sup>

After independence in 1947, there was much debate regarding the abolition of section 124A of the Indian Penal Code as well. Jawaharlal Nehru debated against the introduction of sedition even when Article 19(2) was tightened to introduce more grounds. He said in the Parliament in 1951 that action should be taken against section 124A of the IPC.<sup>44</sup> The same was referred to as 'objectionable' and 'obnoxious' by Shri M. Ananthasayanam Ayyangar. He said that sedition should not hold any place in the country. The sooner we get rid of this law, the better it will be for us.<sup>45</sup>

Seth Govind Das, another member of the drafting committee, also argued against sedition and reminded how Bal Gangadhar Tilak was imprisoned under this section while exercising his freedom of speech and expression. However, the two most

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<sup>41</sup> *Id.* at 375.

<sup>42</sup> Indian Parl. Deb., Constituent Assembly Draft Making Debates, Volume VII, (Dec 02, 1948) (remarks of Shri T. T. Krishnamachari on abolition of Sedition).

<sup>43</sup> India's freedom fighters fought sedition law, <https://www.deccanchronicle.com/opinion/op-ed/201019/indias-freedom-fighters-fought-sedition-law.html> (Last visited Jul 31, 2021).

<sup>44</sup> Sedition debate Part 3: Families of accused often bear brunt, face boycott and social harassment-India News, Firstpost, FIRSTPOST (2017) *available at*: <https://www.firstpost.com/india/sedition-debate-part-3-brunt-of-law-goes-beyond-accused-as-families-face-social-boycott-harassment-3961731.html> (Last visited Jul 31, 2021).

<sup>45</sup> Indian Parl. Deb., Constituent Assembly Draft Making Debates, Volume VII, (Dec 02, 1948) (remarks of Shri M. Ananthasayanam Ayyangar on abolition of Sedition).

prominent members of the Constituent Assembly, namely, Sardar Vallabhbhai Patel and C. Rajagopalachari, favoured restrictions on Freedom of Speech and opposed the total removal of sedition. Despite vigorous opposition, section 124A of IPC still managed to have its place in our country.

The first case post-independence challenging the validity of section 124A of the IPC was *Tara Singh Gopichand v. the State of Punjab*.

#### *Tara Singh Gopichand v. The State of Punjab*<sup>46</sup>

Master Tara Singh Malhotra, formerly known as Nanak Chand Malhotra, was a headmaster as well as a politician in the village of Haryana, Punjab, India (now in Pakistan). In 1951, Tara Singh was alleged under sections 124A and 153A of the Indian Penal Code and section 24A of the Punjab Public Safety Act for a speech he made in Karnal and Ludhiana. In his defence, Tara Singh filed a petition under sections 226 and 228 of the constitution. This was the first time that the constitutional validity of section 124A of the IPC was put to judicial scrutiny. The Punjab High Court, in its judgement, said that section 124A of the IPC has no place in democratic India.

A similar judgement was passed by the High Court of Allahabad and High Court of Madras in the cases of Ram Nandan vs State of Uttar Pradesh and Romesh Thapar vs the State of Madras, respectively. In both the abovementioned cases, it was held that the restriction imposed by section 124-A of the IPC was unreasonable, and it was declared ultra vires. This judgement was later overruled by the honourable Supreme Court in the case of *Kedar Nath Singh v. The State of Bihar*.

#### *Kedar Nath Singh v. the State of Bihar*<sup>47</sup>

Kedar Nath Singh was a resident of Barauni in the Begusarai district of Bihar. He was a member of the Forward Communist Party in a Congress majority government. Kedar Nath, in one of his speeches, accused Congress of corruption, black-marketing, and tyranny. He talked about overthrowing the government and referred to congressmen as 'Gundas' and 'Dogs'. As a repercussion of this, he was charged with sections 124A and 505(b) of the Indian Penal Code. Kedar Nath was convicted at the district level, and his appeal to the Patna High Court was dismissed. This case was then heard by the Supreme Court through a Special Leave Petition. Supreme Court Acquitted Kedar Nath and set up guidelines stating that 'section 124A cannot be interpreted literally. Supreme Court observed that "Government established by law" refers to the "State". If the government established by law is subverted, then the very existence of the state will be jeopardised. Hence, section 124A comes under offences against the state. By the "effect of subverting the Government" refers to subverting the government by violent means. The Supreme Court also stated what does not fall under sedition. It said:

<sup>46</sup> *Tara Singh Gopi Chand v. The State*, 1951 CriLJ 449.

<sup>47</sup> *Kedar Nath Singh v. State of Bihar*, 1962 AIR 955.

Expressing disapprobation towards the government will not be considered sedition. No matter how strongly worded the disapprobation might be, if it is expressed with an intention to enhance the government lawfully, then it cannot be considered sedition.

Putting out remarks on the government, even if strong words are used to frame that remark, cannot be considered sedition unless it is said with the intention to incite hatred towards the government and disrupt public order leading to any act of violence.

Constructive criticism on the actions or measures of the government, or any of the branches of the government in order to improve those actions by lawful means for public benefit, without inciting the feeling of hatred or disaffection towards the government cannot be referred to as sedition.

Citizens have the right to freedom of speech and expression. It includes criticising the actions of the government, so, as long as the comment does not disrupt public harmony or lead to any act of violence, people can express themselves freely. The recent arrests on the grounds of sedition include the arrest of the former president of the Students Union at Jawaharlal Nehru University, Kanhaiya Kumar, in February 2016. Mr Kumar was arrested for shouting anti-national slogans during an event held in the college premise in order to commemorate the hanging of the Parliament attack convict Afzal Guru. The case is still pending before the Indian courts.<sup>48</sup> One of the Senior Advocates of the Punjab High Court, KTS. Tulsi commented that raising slogans empty-handed or delivering speeches expressing disapprobation towards the government does not amount to sedition. It should be more than an intellectual exercise being practised by a group of people. It can be regarded as sedition only if it incites hatred and disrupts public harmony. The senior advocate called it a gross mistake on the part of the government.<sup>49</sup>

A 19-year-old journalism student named Amulya Leona was arrested under sedition for raising pro-Pakistan slogans at an anti-C.A.A. protest in Bangalore. While giving a speech, Amulya said 'Pakistan Zindabad' a couple of times, after which she was immediately taken into custody and was sent behind bars. She was denied bail for almost four months. Later, it was pointed out that she was trying to repeat her Facebook post, which meant that she was going to say 'Hindustan Zindabad' next. The mic was

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<sup>48</sup> Kainat Sarfaraz, *JNU row: What is the outrage all about*, HINDUSTAN TIMES (2019), available at: <https://www.hindustantimes.com/india-news/jnu-row-what-is-the-outrage-all-about/story-3OglXKhzB3RCFsEgjlOIZP.html> (Last visited Jul. 31, 2021).

<sup>49</sup> Samanwaya Rautray, *Section 124A: From Mahatma Gandhi to Arundhati Roy, sedition charges often invoked but rarely stick*, THE ECONOMIC TIMES (Jul. 31, 2021).

snatched off of her before she could complete her speech. The case of Amulya is still going on in the Bangalore High Court.<sup>50</sup>

Another instance is of the political activist and Convenor of Peoples Resurgence and Justice Alliance (PRJA), Erendro Leichombam. Mr Leichombam had posted a picture of Manipur's newly-elected Rajya Sabha member, Leishemba Sanajaoba, bowing before the Union Home Minister, Amit Shah. He captioned the picture 'Minai macha, ' meaning son of a servant, for which he was charged for sedition. Leichombom argued that calling someone a servant does not fall under sedition.<sup>51</sup>

## IV

### Conclusion

The above cases show the progress of section 124A of the IPC through the years. In the year 1862, sedition was introduced in India with an intention to suppress the increasing movements against British rule. The section mainly takes into account contempt, disaffection, and hatred towards the government. Mere thoughts are not a threat to anyone but presenting and sharing of thoughts has the capability to lead to protests which can threaten the rule of the government. The trials before independence, especially in the trial of Bal Gangadhar Tilak, Strachey J. observed that attempting to excite any kind of disturbance in the nation, no matter how big or small, is immaterial. The mere fact that the accused attempted to excite mutiny or disturbance among the people is a ground enough for sedition. He went on to state that even if the intention was not to excite outbreak or any disturbance but instead the person tried to incite hatred towards the government, that is still a sufficient ground for sedition. In the case of *Queen Empress v. Gandhi*, Gandhi pleaded guilty, saying that it is a sin to cooperate with an evil-doer. Gandhi, in his written statement, mentioned that affection towards a government cannot be manufactured or regulated by law. He said that if one has disaffection towards the system, he should have complete freedom to express it as long as he does not contemplate, promote or incite violence. Mere promotion of hatred should not be a crime. Regardless, Gandhi was awarded an imprisonment for six years.

Post-independence, in the case of Tara Singh, the Honorable Supreme Court struck down section 124A of the IPC as unconstitutional and contrary to the exceptions under

<sup>50</sup> After 110 Days in Jail for Saying "Pakistan Zindabad," 19-Year-Old Activist Gets "Default Bail," THE WIRE, available at: <https://thewire.in/rights/amulya-leona-bail-bengaluru> (Last visited Jul 31, 2021).

<sup>51</sup> Abhishek Saha, *Who is Erendro Leichombam, Manipur activist facing NSA case*, THE INDIAN EXPRESS (May 20, 2021) available at: <https://indianexpress.com/article/north-east-india/manipur/who-is-erendro-manipur-activist-facing-nsa-case-7322280/> (Last visited Jul 31, 2021).

Article 19(2) of the Constitution of India. Chief Justice Watson observed that India, being a Sovereign state, should have the freedom she was denied under foreign rule. However, in the case of *Kedar Nath Singh v. the State of Bihar*, the Apex court brought section 124A of the Indian Penal Code to power. Chief Justice Sinha stated that the provisions of the said section imply disturbances that have the tendency to disrupt public peace by resort to violence. It said that criticism on measures or actions of the government, no matter how strongly worded, would be in accordance with the fundamental right to freedom of speech and expression. Hence, only actions or words, written or spoken with a tendency or an intention to create public disorder by resort to violence, would be considered a crime under section 124A of IPC. In one of the latest judgements involving the J&K Chief Minister Farooq Abdullah, who made a statement on scrapping of Article 370, the Supreme Court stated that having an opinion that differs from the views of the government cannot amount to sedition. Having a contrasting view falls under the ambit of the right to freedom of speech and expression.<sup>52</sup>

In recent years the number of arrests under sedition has increased exponentially. However, a far smaller number of people are actually convicted for the crime. There has been a significant hike in the number of cases of sedition in recent years, according to the National Crime Records Bureau (NCRB). As per the NCRB reports, between 2016 and 2019, the number of cases filed under sedition has increased by 160 per cent, while the rate of conviction dropped to 3.3 per cent in 2019 from 33.3 per cent in 2016.<sup>53</sup> According to the data of the Union Home Ministry, there have been a total of 326 arrests between the years 2014 and 2019, while only six people were actually convicted.<sup>54</sup> This non-bailable section is being used solely to suppress voices and not to convict the criminals. Despite the judgement of *Kedar Nath Singh*, which particularly states that: *The hate speech should be against the country and not against a party or any political leader. It should directly incite violence.* People are being arrested for mere expression of their views on the internet or even for protesting peacefully.

Veteran journalist, Vinod Dua, was also arrested for sedition. Mr Dua had been arrested for commenting against Prime Minister Narendra Modi in his YouTube video. Although he was acquitted by the Supreme Court, the court said that it is important to

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<sup>52</sup> *Expressing views different from government's opinion not seditious*: Supreme Court - India News, available at: <https://www.indiatoday.in/india/story/supreme-court-views-different-from-government-opinion-sedition-farooq-abdullah-article-370-1775053-2021-03-03> (Last visited Jul. 31, 2021).

<sup>53</sup> Dipankar Ghose, *NCRB report: Sedition cases up in 2019 but conviction at all-time low*, THE INDIAN EXPRESS (2020) available at: <https://indianexpress.com/article/india/ncrb-report-sedition-cases-up-in-2019-but-conviction-at-all-time-low-6664179/> (Last visited Jul. 31, 2021).

<sup>54</sup> PTI, *326 sedition cases filed in India between 2014-19; only 6 convictions*, THE ECONOMIC TIMES, available at: <https://economictimes.indiatimes.com/news/india/326-sedition-cases-filed-in-india-between-2014-19-only-6-convictions/articleshow/84521955.cms?from=mdr> (Last visited Jul 31, 2021).

protect the journalists of our country and Mr Dua was acquitted.<sup>55</sup> Laws like sedition threaten free media in a democratic country like ours. Some of the journalists were charged under sedition for tweeting over the issue of farmer's protest. This law is widely used to harass journalists to suppress their voices. Although, in cases like the one in Andhra Pradesh, where Andhra Pradesh police booked two TV channels under sedition for showing speeches of people criticising the present government of Andhra Pradesh. The Supreme Court restrained the Andhra Pradesh Police from taking any coercive actions against the two channels and their members.<sup>56</sup> Despite all these efforts from the Supreme Court, India was ranked at 142 on the World Press Freedom Index Report 2020, released by Reporters Sans Frontieres.<sup>57</sup> Even though India has signed innumerable treaties and covenants, including International Covenant on Civil and Political Rights, but still happens to do nothing over the misuse of this law. The current Chief Justice of India, Justice N.V. Ramana, has also questioned the government as to why is there still a need for an archaic law like sedition, which was used to suppress freedom movements and punish our freedom fighters? Why is there still a need for sedition despite seventy-five years of independence?<sup>58</sup> The author agrees with the views of the CJI. Not to forget that this is the same law that was used to imprison the father of our nation, Gandhiji, for publicly expressing his views and criticising the government. According to the author, the Right to Freedom of Speech and Expression is the foundation of any democracy. The ability of an individual to be able to express themselves is what creates a sound democracy. Furthermore, constructive criticism helps improve and cover up the loopholes in the system. However, inciting violence and disturbing public peace in the name of practising the fundamental right to speech is also not justified and needs to be taken care of. There should be a limit to criticising the government. The author of the paper also understands that the complete abolition of sedition might even open a gate to overthrow the government using violence or illegal means. Some areas in the country face hostile activities by rebel groups trying to take over the administration in the area, like the Maoists. In order to take over the area, these groups promote overthrowing the administration in these areas. These groups

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<sup>55</sup> The Wire Staff, *SC Quashes Sedition Case Against Vinod Dua, Says Every Journalist Entitled to Protection*, THE WIRE (Jun. 03, 2021) available at: <https://thewire.in/law/supreme-court-quash-vinod-dua-sedition-case> (Last visited Jul. 31, 2021).

<sup>56</sup> PTI, *SC to examine interpretation of sedition law over right of press*, BUSINESS STANDARD NEWS (May 31, 2021) available at: [https://www.business-standard.com/article/current-affairs/sc-to-examine-interpretation-of-sedition-law-over-right-of-press-121053100774\\_1.html](https://www.business-standard.com/article/current-affairs/sc-to-examine-interpretation-of-sedition-law-over-right-of-press-121053100774_1.html) (Last visited Jul. 31, 2021).

<sup>57</sup> Shobhana K. Nair, *India again placed at 142nd rank in press freedom*, THE HINDU (Apr. 21, 2021) available at: <https://www.thehindu.com/news/national/india-again-placed-at-142nd-rank-in-press-freedom/article34377079.ece> (Last visited Jul. 31, 2021).

<sup>58</sup> Kanu Sarada, *Why is "colonial" sedition law still required 75 years after independence, SC asks Centre*, THE NEW INDIAN EXPRESS (JUL. 16, 2021) available at: <https://www.newindianexpress.com/nation/2021/jul/15/why-is-colonial-sedition-law-still-required-75-years-after-independencesc-asks-centre-2330482.html> (Last visited Jul. 31, 2021).

must be kept in check. The continued stability of the government is essential for a huge democracy like India. Hence, abolishing sedition altogether might not be an ideal solution, in my opinion. The laws of Sedition in India needs revisiting in a way similar to Australia. Amendments should be made to this broadly disputed section. The law of sedition needs to be more specific in nature. Terms like 'disaffection' have not been defined, which makes the law vague and, in turn, open to all kinds of interpretations. This widens the possibility of misuse of this law.

Further, the suggestions of the Law Commission should be considered. Some relevant suggestions put forth by the Law Commission are:<sup>59</sup>

### ***Narrowing the Scope of the Sedition Law***

The Law Commission recommended that the scope of the sedition law should be narrowed to exclude "mere expressions of disapproval" of the government or its policies. The Commission argued that the current language of the law was overly broad and vague, and that it was being used to punish individuals for expressing dissenting views or criticizing the government.

### ***Clarifying the Definition of "Disaffection"***

The Law Commission recommended that the definition of "disaffection" in the sedition law does not take into account disaffection towards the Constitution, the Legislatures, and the Administration of Justice. This section only includes disaffection towards the Government of India.

### ***Punishment for Sedition***

The law commission pointed out that punishment prescribed for sedition is rather peculiar as it could either be an imprisonment for life or an imprisonment for three years and nothing in between. The commission also suggested making insult to the national flag, national emblem, nation anthem and the book of constitution to be made punishable by rigorous or simple imprisonment for upto three years or fine or both.

Overall, the Law Commission of India made a number of recommendations for amendments to the sedition law, these recommendations were intended to address the problems that the Commission had identified with the current law and ensure that it was used more fairly and appropriately.

Provisions like the Unlawful Activities (Prevention) Act 1967 already criminalise the offences that fall in the category of sedition, such as 'disruption of public order' or 'overthrowing the government using violence and illegal means.' There is no need for sedition, in particular. However, if we stick by section 124-A of the IPC, then the

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<sup>59</sup> Law Commission of India, *Consultation Paper On "Sedition"* (2018) available at: <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/09/2022092610.pdf> (Last visited on Jan. 10, 2023).

difference between what is mentioned under section 124-A of the IPC and the judgement of Kedar Nath Singh needs to be reduced. Bridging the gap between the two can be a probable solution to the problem and would allow people to exercise their freedom of speech and expression freely. The guidelines stated by the Honorable Supreme Court in the case of *Kedar Nath Singh v. the State of Bihar* should be made a part of Section 124-A of the IPC as the same should have been done a long time ago. Doing this will add the necessary conditions for making arrests under this law and prevent the misuse of Sedition in India.