

# A Need for Emendation of Sedition Laws in India

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“A good government is the one where intelligence of the people is promoted” – John Stuart Mill

## ABSTRACT

There are many laws inherited from India's colonial rule, few have been as contentious as those relating to seditious offences. When we speak in particular about the law of sedition so since independence the law of sedition has been updated and interpreted to include protections so that it can withstand constitutional scrutiny. This rule, however, still serves as an important instrument for means to restrict freedom of speech and for purposes that are probably similar to those of our former authoritarian rulers, various governments have used it. I have made a case in this paper in favour of abolishing the law of sedition. By examining how the legislation has evolved, interpreted and applied by the courts since it was passed by the British regime and it can be argued that it is indeterminate and vague by its very nature and cannot be applied uniformly. The colonial autocratic regime, however, had a specific purpose in enacting this rule, which can not apply to a democratically elected government after independence. An examination of the sedition cases before the High Courts and Supreme Court reveals that the sedition offense is becoming increasingly obsolete. In this paper I have discussed the findings of the court in Kedar Nath v. State of Bihar which upheld the constitutional validity of Section 124A of IPC and demonstrate that the law has evolved considerably since then. In this paper I will draw from the English experience with the crime of sedition, explaining why it should find no place in a modern democracy.

**Key words:** Sedition, Freedom of Speech and Expression, Indian Penal Code 1860, Sec 124A, Reasonable restrictions.

## INTRODUCTION

Free speech has always been one of the most significant principles of democracy. The main purpose of giving this freedom is to allow an individual to attain self-fulfilment, assist in discovery of truth, strengthen the capacity of a person to take decisions and facilitate a balance between stability and social change.<sup>1</sup> The freedom of speech and expression is the first and foremost human right, the first condition of liberty, mother of all liberties, as it

<sup>1</sup> Law Commission Consultation Paper on Sedition 2018

makes the life meaningful. This freedom is termed as an essence of free society. The Universal Declaration of Human Rights, 1948, in its Preamble and Article 19 declared freedom of speech as a basic fundamental right.<sup>2</sup>

But this freedom of speech often poses difficult questions, like the extent to which State can regulate individual conduct.<sup>3</sup> Since the autonomy of the individual is the foundation of this freedom, any restriction on it is subject to great scrutiny. However, reasonable restrictions may always be imposed on this right in order to ensure that it is exercised responsibly and to ensure that it is exercised equally available to all citizens. According to Article 19(3) of the International Covenant on Civil and Political Rights 1966 (ICCPR), this freedom may be subjected to restrictions, provided they are prescribed by law and are necessary for respecting the rights or reputation of others 'or for the protection of national security, public order, public health or morals.'<sup>4</sup>

If we talk about India Article 19(1) (a) of the Constitution of India guarantees freedom of speech and expression to all the citizens. However, this freedom is subjected to certain restrictions namely, interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

The offence of sedition is provided under section 124A of the Indian Penal Code, 1860. The IPC defines sedition as an offence committed when "any person by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India". Now there is a continuous debate regarding the relevance of this section in an independent and democratic nation. There are a lot who opposes it and those opposing it see this provision as a relic of colonial legacy and thereby unsuited in a democracy. There is an apprehension in the mind of some people that this provision might be misused by the government to suppress dissent. During the Freedom of Speech and Expression Conference on 5-6 November 2016, which was organized by the Law Commission in association with the Commonwealth Legal Education Association and Lloyd Law College, Greater Noida, Justice A P Shah and Dr Subramaniam Swamy suggested that even without section 124A IPC, there are sufficient constitutional and statutory safeguards<sup>5</sup>. On the other hand, there are people who support this law and it is also argued that amidst growing concerns of national security, this section provides a reasonable restriction on utterances that are inimical to the security and integrity of the nation.

The disutility of the sedition law is that according to the National Crime Records Bureau 35 cases of sedition (all over India) were reported in 2016.<sup>6</sup> Under the title 'offences against the State' the report shows a total of 179

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<sup>2</sup>Article 19 of International Covenant on Civil and Political Rights, 1966 (ICCPR); Article 9 of African Charter on Human and Peoples' Rights, 1981; Article 10 of European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; Article 13 of American Convention on Human Rights, 1969.

<sup>3</sup> S. Sivakumar, Press Law and Journalists 18-20 (Universal Law Publishing Co. Lexis Nexis, Gurgaon, 2015)

<sup>4</sup> Article 19 of the International Covenant of Civil and Political Rights 99 U.N.T.S. 171 (1966) reads as: 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 (order public), or of public health or morals.

<sup>5</sup> *Supra* note 1

<sup>6</sup> Crime in India - Statistics, National Crime Records Bureau, Ministry of Home Affairs (2016).

arrests for sedition. However, no charge sheets were filed by the police in over 70% of the cases, and only two convictions during this time period.<sup>7</sup>

The courts in India have stressed the importance of contextualizing restrictions while at the same time determining the admissibility of expression. Balancing freedom of expression with collective national interest is one of the key components of this legislation. Although it is argued that this law is a colonial vestige, the Indian courts have upheld its constitutionality.

## SEDITION LAWS IN UNITED KINGDOM

United Kingdom is the country from where this law of sedition has taken into the laws of India. The offence of sedition can be traced to the Statute of Westminster 1275 when the King was considered the holder of Divine right.<sup>8</sup> In order to prove the commission of sedition, not only the truth of the speech but also intention was considered. The offence of sedition was initially created to prevent speeches inimical to a necessary respect to government.<sup>9</sup> The *De Libellis Famosis* case was one of the first cases in which the seditious libel, whether true or false, was made punishable. This case has firmly established seditious libel in the United Kingdom. The rationale for this judgment was that true government criticism has a greater capacity to undermine the government's respect for and cause disorder, and therefore a higher degree of government criticism is prohibited.

Sedition was defined by Fitzgerald J. in *R. v. Sullivan*,<sup>10</sup> as:

“Sedition in itself is a comprehensive term and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the Empire. The objects of sedition generally are to induce discontent and insurrection and to 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.”

The United Kingdom Law Commission while examining the need of law on seditious libel in modern democracy,<sup>11</sup> in 1977 referred to the judgment of the Supreme Court of Canada in *R. v. Boucher*,<sup>12</sup> wherein it was opined that only those act that incited violence and caused public order or disturbance with intention of disturbing constitutional authority could be considered seditious.<sup>13</sup> The Commission in its working paper remarked: Apart from the fact that there are likely to be a sufficient number of other offenses involving sedition, we conclude that it is easier, in theory, to rely on such common and ordinary offenses than to have recourse to an offense which has the implication that the conduct in question is political. Our provisional view, therefore,

<sup>7</sup> Ibid.

<sup>8</sup> English PEN, *A Briefing on the Abolition of Seditious Libel and Criminal Libel* (2009).

<sup>9</sup> William T. Mayton, *Seditious Libel and the Lost Guarantee of a Freedom of Speech* 84 Colum. L. Rev. 91 (1984).

<sup>10</sup> *R v. Sullivan* (1868) 11 Cox C.C. 44 at p. 45 cited in United Kingdom Law Commission, —Codification of the Criminal Law: Treason, Sedition and Allied Offences, Working Paper no. 72, available at : <http://www.lawcom.gov.uk/wp-content/uploads/2016/08/No.072-Codificationof-the-Criminal-Law-Treason-Sedition-and-Allied-Offences.pdf> at 4.

<sup>11</sup> Working Paper No. 72

<sup>12</sup> (1951) 2 D.L.R.369.

<sup>13</sup> Ibid.

is that there is no need for an offence of sedition in the criminal code. It marked the start of the campaign to eradicate seditious libel in the United Kingdom. With the promulgation of the Human Rights Act of 1998, the existence of seditious libel has begun to be considered in contravention of the principles of the Act and the European Convention on Human Rights. The global trend has largely been against sedition and in favour of free speech. While abolishing sedition as an offence in 2009, the then Parliamentary Under-Secretary of State at the Ministry of Justice of the United Kingdom reasoned that: Sedition and seditious and defamatory libel are arcane offences – from a bygone era when freedom of expression wasn't seen as the right it is today. The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom. Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech.<sup>14</sup>

Finally, the seditious libel was deleted by section 73 of the Coroners and Justice Act, 2009.<sup>15</sup> One of the reasons given for abolishing seditious libel was: Having an unnecessary and overbroad common law offence of sedition, when the same matters are dealt with under other legislation, is not only confusing and unnecessary, it may have a chilling effect on freedom of speech and sends the wrong signal to other countries which maintain and actually use sedition offences as a means of limiting political debate.<sup>16</sup>

## SEDITION LAWS IN INDIA

The law relating to the offence of sedition was first introduced in colonial India through Clause 113 of the Draft Indian Penal Code, proposed by Thomas Babington Macaulay in 1837.<sup>17</sup> Nevertheless, when the Indian Penal Code was eventually enacted in 1860 for a period of 20 years, the section on sedition had inexplicably been omitted. Though Sir James Fitzjames Stephen, architect of the Indian Evidence Act, 1872, and then Secretary of Law of the Government of India, attributed the omission to an 'unaccountable mistake', various other explanations for the omission have been given. Some believe that the British government wanted to endorse more comprehensive and powerful strategies against the press such as the institution of a deposit forfeiture system along with more preventive and regulatory measures.<sup>18</sup> Others proffered that the omission was to be primarily attributed to the existence of section 121 and 121A of the IPC, 1860.<sup>19</sup> It was assumed that seditious proceedings of all kinds were to be subject to official scrutiny within the ambit of these sections.

<sup>14</sup> Criminal libel and Sedition Offences Abolished, Press Gazette (Jan. 13, 2010).

<sup>15</sup> Section 73: Abolition of common law libel offences etc The following offences under the common law of England and Wales and the common law of Northern Ireland are abolished— (a) the offences of sedition and seditious libel; (b) the offence of defamatory libel; (c) the offence of obscene libel.

<sup>16</sup> Liberty's Report Stage Briefing and Amendments on the Coroners and Justice Bill in the House of Commons (March 2009) available at: <https://www.liberty-humanrights.org.uk/sites/default/files/liberty-s-coroners-and-justice-report-briefing-excluding-secretinquests.pdf>

<sup>17</sup> Arvind Ganachari, Evolution Of The Law Of "Sedition" In The Context Of The Indian Freedom Struggle In Nationalism And Social Reform In A Colonial Situation 54 (2005).

<sup>18</sup> R. Dhavan, Only The Good News: On the Law of the Press in India 285-87 (1987).

<sup>19</sup> These sections dealt with "waging war against the government" and "abetting to wage a war" respectively. See Edmund C. Cox, Police and Crime in India

The immediate necessity of amending the law, in order to allow the government to deal more efficiently with seditious activities was first recognised by the British in light of increased Wahabi activities in the period leading up to 1870.<sup>20</sup> With growing outbreaks of mutinous activity against the British, there was widespread recognition of the need to make sedition a serious offense and the addition of a section expressly dealing with seditious insurrection was considered to be necessary. It was the recognition of this rising wave of nationalism at the turn of the 20th century which led to the bill containing the law of sedition finally being passed. The offence of sedition was incorporated under §124A of the IPC on November 25, 1870, and continued without modification till February 18, 1898.<sup>21</sup>

The amended legislation of 1870 was more or less structured around the law prevailing in England in so far as it drew heavily from the Treason Felony Act, the common law on seditious libels and the law on seditious words. The Treason Felony Act, widely regarded as one of the founding acts of the English law relating to treason, imposed liability on all those who were disloyal to the Queen. Any thought connoting unfaithfulness or treachery towards the Crown, coupled with the presence of an open act, i.e. an act from which an apparent criminal intent could be inferred, was subject to punishment within the scope of this legislation.<sup>22</sup>

After the introduction of the law of sedition in 1870, it was allowed to remain in force for a period of 27 years. During this period, one of the primary objectives of the British Government was to strengthen this legislation. It therefore eventually authorised the promulgation of two cognate laws: the Dramatic Performances Act XIX of 1876 ('DPA') and the Vernacular Press Act (IX) of 1878. These Acts have been popularly referred to as 'preventive measures'. While the former law was primarily introduced to keep a check on seditious activities in plays, the latter was formulated to actively suppress criticism against British policies and decisions in the wake of the Deccan Agricultural riots of 1875-76.<sup>23</sup>

Since it came into operation in 1870, the law of sedition has continued to be used to stifle voices of protest, dissent or criticism of the government. While the indeterminate enforcement of the clause has brought it to the media's attention, there has been very little academic discussion as to the essence of the statute and its potential repeal.

The punishment for seditious offences is known to be particularly harsh compared to other offences in the IPC. It is a cognisable, non-bailable and non-compoundable offence that can be tried by a court of sessions. It may attract a prison term of up to seven years if one is found guilty of committing seditious acts.<sup>24</sup> It is very difficult for a person accused of sedition to get bail.<sup>25</sup> The highly subjective nature of the offence makes it necessary for the courts to determine on a case-by-case basis whether there is a threat to the stability of the State or its

<sup>20</sup> R. SAMMADAR, *Emergence of The Political Subject* 45 (2010).

<sup>21</sup> The Indian Penal Code, 1898, §124-A (read as follows: "Whosoever, by words, either spoken or intended to be read or by signs or by visible representations or otherwise excite or attempts to excite feelings of disaffection to the Government established by Law in British India, shall be punishable with transportation of life ... to three years to which fine may be added.").

<sup>22</sup> *Supra* note 1.

<sup>23</sup> Arvind Ganachari, *Combating Terror of Law in Colonial India: The Law of Sedition and the Nationalist Response in Engaging Terror: A Critical And Interdisciplinary Approach* 98 (2008).

<sup>24</sup> The Indian Penal Code, 1898, §124-A

<sup>25</sup> PSA PILLAL, *CRIMINAL LAW* 1131 (K.I. Vibhute eds., 2009).

democratic order. Leaving such a decision to a legislative or executive feat only allows the repressive government to suppress the guarantee of freedom of speech.

## JUDICIAL APPROACH ON SEDITION IN INDIA

### Pre-Constitution Rulings

Section 124A of the IPC was commonly used to suppress political dissension in India. Jogendra Chandra Bose<sup>26</sup> was charged with sedition for opposing the Age of Consent Bill and the negative economic effects of British colonialism. While directing the case to the jury, the Court distinguished sedition from section 124A IPC, as at that time was understood by the Law of England. It was noted that the offense provided under section 124A of the IPC was milder, since in England any open act as a result of a seditious feeling was penalized, but in India only those actions which were performed with the intention of resisting by force or an attempt to stir up resistance by force fell within this provision.

It was opined in this case that section 124A IPC penalised disaffection and not disapprobation. Disaffection was defined as a feeling contrary to affection; like dislike or hatred and disapprobation as merely disapproval. The following interpretation was ascribed to the term disaffection under section 124A IPC:

“If a person uses either spoken or written words calculated to create in the minds of the 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 hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them”.<sup>27</sup>

The verdict was announced because the jury did not reach a unanimous decision. Later the lawsuit was dropped after Bose had offered an apology.

Later in *Queen Empress v. Bal Gangadhar Tilak*<sup>28</sup>, the defendant was accused of sedition for writing a newspaper article *Kesari* invoking the example of Shivaji, the Maratha Warrior, to encourage and incite the overthrow of British rule. In this case Justice Strachey placed relevant material before the jury for interpreting ‘disaffection’ by saying:

“It means hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite: he must not make or try to make others feel enmity of any kind towards the Government. The amount or intensity of the disaffection is absolutely immaterial, if

<sup>26</sup> *Queen Emperor v. Jogendur Chandra Bose* (1892) 19 ILR Cal 35.

<sup>27</sup> *Ibid.*

<sup>28</sup> ILR (1898) 22 Bom 112.

a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. The section places absolutely on the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them.”<sup>29</sup>

The interpretation that, only acts that suggested rebellion or forced resistance to the Government should be given to this section was expressly rejected by the court.<sup>30</sup> This judgment influenced the 1989 amendment to section 124A IPC wherein the explanation defined disaffection to include disloyalty and feelings of enmity.

Two important decisions pursuant to Tilak judgement were, Queen Empress v. Ramchandra Narayan,<sup>31</sup> and Queen Empress v. Amba Prasad.<sup>32</sup> In Ramchandra Narayan, 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. However, it was clarified 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.<sup>33</sup>

Following the literal interpretation of section 124A of the IPC, the Court categorically held that it was not appropriate for a real rebellion or mutiny or forcible resistance to the Government or any kind of actual disruption to be caused by the act at issue.

Such cases brought to light the confusion and ambiguity produced by the clarification in the meaning of the word disaffection. In order to remove any further inconsistencies in the understanding of Section 124A, the legislature added Explanation III to the section, which omitted comments expressing disapprobation of Government's action, but do not intend to lead to an offence under the section. The main intention behind adding another explanation was to make the law more precise and effective.<sup>34</sup>

The offence of sedition was widely discussed in Constituent Assembly Debates. It is known and well understood from the Debates of the Constituent Assembly that there was serious opposition to the introduction of sedition as a limitation on freedom of speech and expression under then Article 13 of the Indian Constitution. Such a clause was referred to as a remnant of colonial times that could not see the light of day in free India. The Constituent Assembly was unanimous in removing the word sedition from Article 13 of the draft Constitution.<sup>35</sup>

<sup>29</sup> Ibid.

<sup>30</sup> K.I. Vibhute, P.S.A. Pillai's Criminal Law 335 (Lexis Nexis Butterworths, Nagpur, 2012).

<sup>31</sup> ILR (1898) 22 Bom 152

<sup>32</sup> ILR (1897) 20 All 55.

<sup>33</sup> *Supra* note 30.

<sup>34</sup> *Supra* note 5.

<sup>35</sup> Constituent Assembly of India discussions held on 1st December 1948.

Shri K M Munshi<sup>36</sup>, while speaking on his motion to delete the word sedition from Article 13, quoted the following words of the then Chief Justice of India, in *Niharendu Dutt Majumdar v. King* wherein a distinction between what 'sedition' meant when the Indian Penal Code was enacted and 'Sedition' as understood in 1942.

As a result of the vehement opposition in the Constituent Assembly, the word sedition had no place in our Constitution.

### Post Constitutional Rulings

There had been a lot of post constitutional developments. Sedition was not acceptable to the framers of the Constitution as a limitation and restriction on freedom of speech and expression, but it remained the same as in the post-independence criminal statute. After independence, section 124A IPC came up for consideration for the first time in the case of *Romesh Thapar v. State of Madras*<sup>37</sup>. The Supreme Court has stated that, unless freedom of speech and expression threatens the security of the State or tends to overturn it, any law imposing restrictions on it would not fall within the scope of Article 19(2) of the Constitution.

The Punjab High Court, in *Tara Singh Gopi Chand v. State*<sup>38</sup>, declared Article 124A IPC unconstitutional since it infringes the right of freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution, observing that 'the law of sedition considered necessary during a period of foreign rule has become inappropriate because of the very nature of the change that has taken place'.

By the first Constitutional Amendment two additional restrictions namely, friendly relations with 'foreign State' and 'public order' were added to Article 19(2), for the reason that the Court in *Romesh Thapar* held that freedom of speech and expression could be restricted on grounds of threat to national security and serious aggravated forms of public disorder that endanger national security and not a relatively minor breach of peace of a purely local nature.<sup>39</sup>

This amendment echoed the logic in dissenting opinion of Justice Saiyid Fazl Ali, in *Brij Bhushan v. State of Delhi*<sup>40</sup>. In his opinion, serious and grave instances of public disorder and disturbance of public tranquillity might affect the security of public and State. The explanation for the absence of the word 'sedition' in Article 19(2) was that the framers of the Constitution used words with a broader connotation, which involves sedition, as well as other actions which are harmful to the security of the State as sedition.

The constitutional validity of Section 124A IPC was challenged in the case of *Kedar Nath Singh v. State of Bihar*<sup>41</sup>. The Constitution Bench upheld the validity of Section 124A and kept it in a different pedestal. The Court drew a line between the terms, 'the Government established by law' and the persons for the time being engaged in carrying on the administration observing:

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<sup>36</sup> Ibid.

<sup>37</sup> AIR 1950 SC 124.

<sup>38</sup> AIR 1951 Punj. 27.

<sup>39</sup> Dr. J.N. Pandey, *Constitutional Law of India* 193 (2016).

<sup>40</sup> AIR 1959 All 101

<sup>41</sup> AIR 1962 SC 955.



“Government established by law’ is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why ‘sedition’, as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the State. Hence any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence”.<sup>42</sup>

At the same time, the Court struck a balance between the right to free speech and expression and the power of the legislature to restrict such right observing thus:

“The security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.”<sup>43</sup>

In the case of *Dr. Vinayak Binayak Sen v. State of Chhattisgarh*,<sup>44</sup> where the Chhattisgarh High Court held that, to hold a person guilty of sedition, it is not necessary that the person himself be an author of seditious material, under this section, even circulation of such material can be penalised.

In the case of *Kanhaiya Kumar v. State (NCT of Delhi)*<sup>45</sup>, the petitioner, who was convicted under section 124A IPC, approached the High Court of Delhi for granting bail. Deciding on the matter, the Court noted that, while exercising the right to freedom of speech and expression in accordance with Article 19(1) (a) of the Constitution, it must be recalled that Article 51A of Part IV of the Constitution provides for fundamental duties for the citizens, which form the other side of the coin.

In *V.A. Pugalenti v. State*,<sup>46</sup> the case of the prosecution was that the petitioner along with others, distributed pamphlets containing seditious and defamatory statements. The Madras High Court held that calling out public

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> 2011 (266) ELT 193 (Chhattisgarh).

<sup>45</sup> (2016) 227 DLT 612.

<sup>46</sup> CrI. O.P. No. 21463 of 2017.

to demonstrate and agitate against the Central and State Governments on the issue of NEET Examination would prima facie constitute the offences of sedition and defamation. At the same time, the Court cautioned the government not to take action against any peaceful protest or criticism or dissent observing that every citizen of the country had a fundamental right to register her/his protest peacefully and to demonstrate, not causing a situation resulting in violence to paralyse the law and order situation.

The above-mentioned judicial pronouncements were discussed in order to get an idea of what amounts to seditious acts. In the light of this, it could be argued that unless the terms used or the acts in question do not endanger the security of the State or of the public; lead to any kind of public disorder of a serious nature, the act would not fall within the scope of Section 124-A of the IPC.

## **FREEDOM OF SPEECH AND SEDITION**

Democracy is not another name for majoritarianism, on the contrary, it is a system that includes every voice, and where every person's thought is counted, regardless of the number of people who support that idea. In a democracy, it is natural and very common that there will be different and conflicting interpretation of a given account of an event. Not only are opinions which constitute a majority to be respected, but at the same time, dissenting and critical opinions should also be recognized. Free speech is protected because a greater, sometimes ultimate, social good is to be achieved.

The Apex Court of India, while crystallising the relationship between a democratic society and freedom of speech In *Re Harijai Singh*<sup>47</sup> opined that:

“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.”

The court was categorical in saying that any criticism did not amount to sedition, and that the true intent of the speech had to be weighed before imputing the seditious intent to the act. In the case of *Balwant Singh v. State of Punjab*,<sup>48</sup> the Court refused to penalise casual raising of slogans few times against the State by two persons (*Khalistan Zindabad*, *Raj Karega Khalsa*, and *Hinduan Nun Punjab Chon Kadh Ke Chhadange*, *Hun Mauka Aya Hai Raj Kayam Karan Da*). It was reasoned that raising of some

<sup>47</sup> AIR 1997 SC 73.

<sup>48</sup> AIR 1995 SC 1785.

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 nor could the same give rise to feelings of enmity or hatred among different communities or religious or other groups.

In the case of *S. Khusboo v. Kanniamal & Anr.*<sup>49</sup>, observing that the morality and criminality do not co-exist, the Supreme Court opined that free flow of the ideas in a society makes its citizens well informed, which in turn results into the good governance.

In the case of *Shreya Singhal v. Union of India*<sup>50</sup>, section 66A of the Information and Technology Act, 2000, was declared unconstitutional on the ground that it was in direct conflict with the fundamental right of freedom of speech and expression. The Supreme Court held that under the Constitutional scheme, for the democracy to thrive, the liberty of speech and expression is a cardinal value and of paramount importance.

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<sup>51</sup>. In the case of *Indian Express Newspaper (Bombay) (P) Ltd. v. Union of India*<sup>52</sup>, following four important purposes of the free speech and expression were set out:

- 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 it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

Having discussed the importance of freedom of speech and expression, it cannot be denied that the right to freedom of speech and expression is not sufficient in isolation. It must be understood that, in order to speak or express an opinion, it is necessary to be aware of all the aspects and fundamentals of the issue under discussion. One cannot be supposed to form his/her opinion without having the true account of an event and debates about the matter in question.

### **What is the viewpoint of the Law Commission of India?**

- ▶ In August 2018, the Law Commission of India published a consultation paper recommending that it is time to re-think or repeal the Section 124A of the Indian Penal Code that deals with sedition.
- ▶ In its 39th Report (1968), the Law Commission had rejected the idea of repealing the section.

<sup>49</sup> AIR 2010 SC 3196.

<sup>50</sup> AIR 2015 SC 1523.

<sup>51</sup> Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal, AIR 1995 SC 1236.

<sup>52</sup> AIR 1986 SC 515

- ▶ In its 42nd Report (1971), the panel wanted the scope of the provision to be extended to include the Constitution, the legislature and the judiciary, as well as the government established by law, as entities against which 'disaffection' should not be tolerated.
- ▶ In the recent consultation paper on the sedition, the Law Commission has suggested invoking 124A to only criminalize acts committed with the intention to disrupt public order or to overthrow the Government with violence and illegal means.

#### **Arguments made in support of Section 124A<sup>53</sup>:**

- ▶ Section 124A of the IPC is of use in the fight against anti-national, secessionist and terrorist elements.
- ▶ This defends the elected government from attempts to overthrow the government through violence and illegal means. The continued existence of a government established by law is an essential condition for the stability of the State.
- ▶ If contempt of court invites penal action, contempt of government should also attract punishment
- ▶ Many districts in different states face a Maoist insurgency, and rebel groups are virtually running a parallel administration. These groups are openly advocating the overthrow of the state government by revolution
- ▶ In this context, the abolition of Section 124A would be ill-advised merely because it was wrongly invoked in some highly publicized cases.

#### **Arguments made against Section 124A<sup>54</sup>:**

- ▶ Section 124A is a legacy of colonial history and is unfit for democracy. It is a limitation on the lawful exercise of freedom of speech and expression guaranteed by the Constitution.
- ▶ The foremost objection to the provision of sedition is that its definition remains too wide. 'Overbroad' definitions typically cover both what is innocuous and what is harmful.
- ▶ Dissent and criticism of the government are essential ingredients of robust public debate in a vibrant democracy. They should not be constructed as sedition. Right to question, criticize and change rulers is very fundamental to the idea of democracy.
- ▶ Under the present law, strong criticism against government policies and personalities, slogans voicing disapprobation of leaders and stinging depictions of an unresponsive or insensitive regime are all likely

<sup>53</sup> Indian Penal Code 1860.

<sup>54</sup> Ibid.

to be treated as 'seditious', and not merely those that overtly threaten public order or constitute actual incitement to violence

- ▶ The terms used under Section 124A like 'disaffection' are vague and subject to different interpretation to the whims and fancies of the investigating officers.
- ▶ Sedition has often been used to curb any kind of political dissension in the country, and also any alternative political ideology that goes against the ruling party's mind set.
- ▶ In recent years, the basic principle laid down by the Supreme Court that incitement to violence or a propensity to create public disorder are the essential ingredients of the offence, has been overlooked.
- ▶ The British, who introduced sedition to oppress Indians, have themselves abolished the law in their country. There is no reason, why should not India abolish this section.

## CONCLUSION

Is India behaving as an example of immature democracy?

Yes, because asking for the breaking of shackles and calling for a removal of stale, stagnant and fearful social system is not sedition, that's democracy and in a democracy every person has a right to acquaint the public and the government with the depressing tales of how lives are lead in an inegalitarian society.

In a democracy, it is natural and very common that there will be different and conflicting interpretation of a given account of an event. Not only are opinions which constitute a majority to be respected, but at the same time, dissenting and critical opinions should also be recognized. Free speech is protected because a greater, sometimes ultimate, social good is to be achieved.

The terms used under Section 124A like 'disaffection' are vague and subject to different interpretation to the whims and fancies of the investigating officers. In India, the word sedition has often been used to suppress any kind of political dissent in the country, as well as any alternative political ideology that goes against the ruling party's mind. This has lead subversion on the right to freedom of speech and expression of the citizens. Over recent years, the basic principle laid down by the Supreme Court that incitement to violence or a propensity to create public disorder are the essential ingredients of the offence, has been overlooked. People are being accused of sedition depending on the whims and fancies of the authorities. One of the most important reason which we can see when we talk about to repeal the law of sedition is that the British, who introduced sedition to oppress Indians, have themselves abolished the law in their country. There is no reason, why should not India abolish this section. Now the provision of sedition specifically talks about disaffection towards the not the country so berating the country or a particular aspect of it cannot and should not be treated as sedition. Dissent and criticism are essential components of robust public discourse on policy issues as part of vibrant democracy. Therefore, every restriction on freedom of speech and expression must be carefully monitored in order to avoid unwarranted unjustified restrictions.

And at last of course, it is essential to protect national integrity, given the legal opinion and the views of the government in favour of the law, it is unlikely that Section 124A will be scrapped soon. However, the section should not be misused as a tool to curb free speech. The SC caveat, given in Kedar Nath's case, on prosecution under the law can check its misuse.

“Better a thousand fold abuse of free speech than a 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.”

-Charles Bradlaugh.

