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Law Relating To Sedition in India

Archit Shivam Mishra
LLB Honors, Amity law school
Guru Gobind Singh Indraprastha University, Delhi

Abstract:

The Constitution of India gives freedom of speech and expression to every citizen under Article 19(1) (a). However this freedom is not absolute and reasonable restriction can be imposed on freedom of speech and expression on the grounds mentioned in Article 19(2). On the other hand Section 124A of Indian Penal Code punishes a person for the offence of Sedition when he 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. From the very inception of Section 124A into IPC, it has been alleged that section has no place in a democracy and it infringes upon the fundamental right guaranteed under article 19 of our constitution. This paper attempts to highlight the lacunas in the definition of Section 124A of IPC and attempts to bring forth its correct interpretation according to the spirit of Indian Constitution with the help of judicial interpretation on the law of sedition. A case is made for the argument that even though it can be conceded that law of sedition has off late been misused by the authorities but considering the geopolitical situation and insurgency in North-East India, The red corridor and the Kashmir valley ,scrapping the law altogether by wildly imitating other countries who have so done might not be a good option because the geo-political situations in other countries are different from ours and comparing them would be like comparing apples and oranges. Thus instead of repealing the law altogether it would be a wise decision to ensure that it is not misused and is used only in the rarest of rare situations

Key words: Law of Sedition, Freedom of Speech and Expression, Disaffection, Government established by law.

"Section 124A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection

for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence".

Mahatma Gandhi,

March, 1922

The Trial Speech, From the Great Speeches of Modern India, 2014[1]

1. INTRODUCTION

The Law of Sedition in India has assumed controversial importance largely because of constitutional provisions of freedom of speech and expression guaranteed as a fundamental right under Article 19 (1) (a) of part III of the constitution.[2] Sedition Laws have been found in the following laws of India: Section 124-A of Indian Penal Code, 1860; Section 95 of the Code of Criminal Procedure, 1973; Section 5 of the Seditious Meeting Act, 1911; and section 2(o) and Section 137 of Unlawful Activities (Prevention) Act, 1967. In all these laws the basis of the offence of sedition is to excite disaffection towards the government. Section 124-A was made in most draconian form during the colonial era and other laws relating to sedition, following Section 124-A, have been made by the parliament of Independent India

Section 95 of Code Of Criminal Procedure reads:

"Power to declare certain publications forfeited and to issue search-warrants for the same.-(1) Where-

(a) any newspaper, or book, or

(b) any document, wherever printed, appears to the State Government to contain any matter the publication of

which is punishable under Section 124-A or Section 153-A or Section 153-B or Section 292 or Section 293 or Section 295-A of the Indian Penal Code, the State Government may, by notification, stating the grounds of its

Section 5 of seditious meeting act,1911 reads: Power to prohibit public meetings: The District Magistrate or the Commissioner

[1] Mohandas Gandhi, Famous Speeches by Mahatma Gandhi; Great Trial of 1922 , Gandhian Institute Bombay Sarvodaya Mandai and Gandhi Research Foundation. Available at www.mkgandhi.org/speeches

[2] Section 124-A, as it stands today, reads: "Sedition-Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine 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."

of Police, as the case may be, may at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

Section 2(o) reads: "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representations or otherwise),-

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;"

Section 13 reads: "Punishment for unlawful activities.- (1) Whoever-

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine."

2. ORIGIN OF SEDITION LAW:

To understand the idea behind the incorporation of sedition law in Indian Penal Code, one needs to look back at the time and the circumstances under which it was made. The origin of sedition law in India is linked to the Wahabi Movement of 19th century. This movement, centred around Patna was an Islamic revivalist movement, whose stress was to condemn any change into the original Islam and return to its true spirit. The movement was led by Syed Ahmed Barelvi. The movement was active since 1830s but in the wake of 1857 revolt, it turned into armed resistance. Subsequently, the British termed Wahabis as traitors and rebels and carried out extensive military operations against the Wahabis[3] In 1837, Thomas Macaulay introduced sedition as an offence through clause 113 of the Draft Indian Penal Code[4].That draft Bill was shelved for more than twenty year and when it commenced in 1860, the sedition clause for some unaccountable reason had been

[3] Autonomy Is As Autonomy Does – Law of Sedition in India, 2, Imperial Journal of interdisciplinary Hetal Chavda
Research, 30, (2016).

[4] Vasundhara Sirnate and V.S. Sambandan, Free Speech and Sedition in a democracy, The Hindu Centre for Politics
and Public Policy, 1, (2016).

omitted. It was not in fact till 1870, such a provision was recognised in Indian Penal Code and as result a special Act (XXVII of 1870) was passed by way of amendment to the penal code. Sir James Fitzames Stephen, when introducing this Bill to amend the penal code in 1870, observed that the provision in question was omitted by some unaccountable mistake[5]. Another explanation for this omission was that the British government wanted to adopt more wide-ranging strategies against the press including a deposit-forfeiture system and general powers of preventive action to suppress the Indian freedom struggle[6].The framework of this section was imported from various sources; The Treason Felony Act, 1848[7], The Common Law of Seditious Libel and the

other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorize any police officer not below the rank of sub- inspector to enter upon and search for the same in any premises where any copy of such issue or any book or other document may be or may be reasonably suspected to be."

English Law relating to Seditious Words. The Common Law relating to Seditious Libel governed both actions and words that pertained to citizen and the government, as well as between communities of persons. The present section was substituted by Act IV of 1898 through an amendment to the Indian Penal Code. The Government of India (Adaptation of Indian Laws) Order, 1937, had the effect of adding the words 'or the Crown Representative' after the words 'Her Majesty' and the words 'or British Burma' after the words 'British India'. But these additions were omitted by the

[5] Walter Russel Donogh, A treatise on the Law of Sedition and Cognate Offence in British India, 1, (1911). Available at https://archive.org/stream/onlawofsedition00dono#page/n23/mode/2up. .

[6] . Dhavan., Only the Good News: On the Law of the Press in India, 287-278, (1987).

[7] Sec 3 of The Treason Felony Act 1848 : If any person whatsoever shall, within the United Kingdom or without,
compass, imagine, invent, devise, or intend to deprive or depose our Most Gracious Lady the Queen, from the style, honour, or royal name of the imperial crown of the United Kingdom, or of any other of her Majesty's dominions and countries, or to levy war against her Majesty, within any part of the United Kingdom, in order by force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both Houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other of her Majesty's dominions or countries under the obeisance of her Majesty, and such compassing, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing and printing or writing or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable to be transported beyond the seas for the term or his or
her natural life

Adaptation of Laws order, 1948 and the words 'British India' were replaced by the words 'the provinces'. Later on, by the Adaptation of Laws Order, 1950, the words 'the provinces' were replaced by the word 'the States'. By the same order the words 'Her Majesty or' were deleted from the section. Finally, the words 'the State' were replaced by the words 'India' by Act III of 1951. The difference between the old Section 124A and the present one is that in the former the offence consisted in exciting or attempting to excite feelings of "disaffection", but in the latter "bringing or attempting to bring into hatred or contempt the Government of India" has also been made punishable.

3. JUDICIAL INTERPRETATION OF SECTION 124-A

Sedition Law is placed in the middle of Chapter VI of the Indian Penal Code that deals with "Offences against the State". Section 124-A, as it stands today, reads: "Sedition-Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added or with fine." There are three explanations attached to the section, first explanation provides that word "disaffection" includes disloyalty and all feelings of enmity and second and third explanation provides that Comments expressing "disapprobation" of the measures of the Government with a view to obtain their alteration by lawful means or the 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.

The meaning of the word "disaffection" according to Oxford English Living Dictionary is "a state of being dissatisfied, especially with the people in authority or a system of control" and word "disapproval" means "a strong disapproval, typically on moral grounds. So in context of Section 124-A it means merely showing disaffection without exciting in others disloyalty and the feeling of enmity towards the government establish by law does not attracted the liability under this section. This interpretation of Section 124-A is further supported by second and third explanation which clearly say that a person cannot be made liable under this section if he merely expresses or shows his disapproval against

the measures of the government or other administrative or other actions of the government unless he by his disapproval excites or attempts to excite hatred, contempt or disaffection against the government in others. It means a citizen under his fundamental right of freedom of speech and expression given under Article 19(1) (a) can expresses or shows even disaffection and disapproval towards the government as it would not amount to sedition unless he brings or attempts to bring or excites hatred or contempt of disaffection in others towards the government established by law and therefore up to this extent there is no question of conflict between Article 19(1) (a) and Section 124-A. Article 19 (1) (a) is restricted when a citizen by his words, signs or visible representation or otherwise cross the "Laxman Rekha" and brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection in others towards the Government established by law in India.

Different Courts (including Pre-Constitutional and Post-Constitutional) at different time intervals had differently interpreted Section 124-A. First case under sedition law can be traced far back in 1891 in the famous case of **Q.E. v. Jogendra Chunder Bose**[8] also known as Bengabasi case).

Bose, the editor of the newspaper, Bangobasi, wrote an article criticising the Age of Consent Bill for posing a threat to religion and for its co-ercive relationship with Indians. His article also commented on the negative economic impact of British colonialism. Bose was prosecuted and accused of exceeding the limits of legitimate criticism, and inciting religious feelings. The judge rejected the defences plea that there was no mention of rebellion in his article. However, the proceedings against Bose were dropped after he tendered an apology. In this case Sir Comer Patheram, C.J., has elaborately explained the meaning of the word "disaffection" in the following words:- "Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of man's sentiments or action and yet to like him. The meaning of the two words is distinct. If a person uses either spoken or written words calculated to create in the minds of the person to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should

[8] (1891) 19 ILR Cal 34 (44).

arise, and if he does so with the intention of creating such disposition 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. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling"[9]

4. CONFLICT IN INTERPRETATION OF SECTION 124-A BETWEEN FEDERAL COURT AND PRIVY COUNCIL:

The judiciary has always given conflicting interpretations to the law both before and after independence. In the pre-Independence era, a number of landmark cases on sedition were decided by the Federal Court and the Privy Council. These two high judicial bodies have always been on different footings regarding the meaning and scope of sedition as a penal offence. After Independence, Sedition law was held constitutional subject to strict limitations[10].

One view was expressed by Strachery, J. in **Queen-Empress v Bal Gangadhar Tilak**[11] in which he pointed out that "Section 124-A IPC is a statutory offence and differ in this respect from its English counterpart which is a common law misdemeanour elaborated by the decision of the judges. He observed that "the amount or intensity of the disaffection is absolutely immaterial. If a man excites or attempts to excite feeling of disaffection great or small, he is guilty under this section. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within section 124-A and would probably fall within other sections of the penal code. But even if he neither excited not intended to excite any rebellion or outbreak of forcible resistance to the authority of the Government, still if he tried

[9] K.D. Gaur, A Text Book on The Indian Penal Code, 195, (2004)

[10] Ms. Disha Pande, Sedition Laws In India: A Growing Threat to Free Speech, Bharati Law Review, 253, (2016).

[11] ILR (1897) 22Bom 112.

to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section"[12]. The observation of Strachey, J in Tilak's case on the scope of Section 124-A were approved by the Privy Council as having indicated the correct law on the question of sedition[13].

The other view was expressed by Sir Maurice Gowyer, C.J. in **Niharendu Majumdar's**[14]case. This view marks a departure from the strict rule of construction inasmuch as it attempts to bring the offence of sedition in line with the English Law on the question. Gowyer, C.J., speaking for the Federal Court observed that "The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilisation and the advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be matter of obligation because some on whom duty is rests have performed it ill. It is to this aspect of the function of the Government that in our opinion the offence of sedition stands related. It is the answer of the state to those who, for the purpose of attacking or subverting it,...seek to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writing constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring government into contempt. This is not made an offence in order to minister to the wounded vanity of Government, but because where Government and the law cease to be obeyed, because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts of words complained of must either incite to disorder or must be such as to satisfy reasonable men that is their intention or tendency."

The liberal interpretation of provisions of section 124-A of the Indian Penal Code in Niharendu Majumdar brought the Indian law of Sedition at par with its counterpart in English law. Thus public disorder or reasonable anticipation or likelihood of public disorder was held to be the gist of the offence. But Privy Council in **K.E. v. Sadashiv Naryan's**[15]had nullified

[12] ILR (1897) 22Bom, 135
[13] R. B. Tewari, Law of Sedition in India, in Essays on the Indian Penal Code, 285 (K.N. Chandrasekharan Pillai, Shabistan Aquil eds.,2008).
[14] AIR 1942 FC 22 (26).
[15] L.R. 74 I.A. 89

Niharendu manjumdar's case and approved the observation given by Stachery, J., in Tilak's case regarding the scope of Section 124-A as having the correct law on the question of sedition. It means that sedition was construed to include any statement that was liable to cause 'disaffection', namely, exciting or attempting to excite in others bad feelings towards the government. The amount or intensity of the disaffection is absolutely immaterial. If a man excites or attempts to excite feelings of disaffection great or small; (even though there was no element of incitement to violence or rebellion) he is guilty of under this section.27 In the absence of any Supreme Court decision, Sadashiv Narayan's case will continue to be binding on the High Courts in India by virtue of Article 372[16] read with Article 225[17]of the Constitution of In

[16] Article 372. Continuance in force of existing laws and their adaptation
(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other
provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority
(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law
(3) Nothing in clause (2) shall be deemed
(a) to empower the President to make any adaptation or modification of any law after the expiration of three years
from the commencement of this Constitution; or
(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

[17] Article 225. Jurisdiction of existing High Courts: Subject to the provisions of this Constitution and to the provisions
of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution: Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in

5. POST-CONSTITUTIONAL JUDICIAL INTERPRETATION AND CONSTITUTIONAL VALIDITY OF SECTION 124-A OF INDIAN PENAL CODE:

With the Commencement of Indian Constitution in 1950, Article 19(1) (a) provides to every citizen a fundamental right to freedom of speech and expression. With this development Sedition Law contained in Section 124-A comes with direct conflict with fundamental right under Article 19 (1) (a) as a result of the Privy Council decision **in K.E. v. Sadashiv Naryan's**[18] case.

In Tara Singh Gopichand v. State[19] the validity of S. 124-A of Indian Penal Code was directly in Issue. The East Punjab High Court declared the section void as it curtailed the freedom of speech and expression provided by Article 19 (1) (a) of the Constitution. Weston C.J., Observed in this case "As pointed out in the passage from the charge of Strachey J. which I have set out, the offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. The further consequences which may follow the commission of the offence are immaterial. India is now a sovereign democratic State. Governments may go and be caused to go without the foundations of the State being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about. It is true that the framers of the Constitution have not adopted the limitations which the Federal Court desired to lay down. It may be they did not consider it proper to go so far. The limitation placed by Clause (2) of Article 19 upon interference with the freedom of Speech, however, is real and substantial. The unsuccessful attempt to excite bad feelings is an offence within the ambit of Section 124A. In some instances at least the unsuccessful attempt will not undermine or tend to overthrow the State. It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the constitution. I think, therefore, that the conclusion must be that Section 124A, Penal Code, has become void as contravening the right of freedom of speech and expression guaranteed by Article 19 of the constitution."[20]

the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

[18] L.R. 74 I.A. 89.
[19] AIR 1951 E.P. 27.
[20] Tara Singh Gopichand v. State AIR 1951 E.P. .

By the **Constitutional (First Amendment) Act, 1951**, two changes have been incorporated in Article 19(2). Firstly, it widened the scope of legislative restrictions on free speech by adding further grounds and secondly, it provided that the restriction imposed on the freedom of speech must be reasonable.[21]

Now the question for consideration is that whether Section 124-A of Indian Penal Code is in conflict with the amended clause (2) of Article (19)?

In **Ram Nandan's case** the constitutional validity of section 124A of the IPC was challenged in an Allahabad High Court that involved a challenge to a conviction and punishment of three years imprisonment of one Ram Nandan, for an inflammatory speech given in 1954. The court overturned Ram Nandan's conviction and declared section 124A to be unconstitutional.[22]

But in Kedar Nath v State of Bihar[23], The Supreme Court overruled Ram Nandan's Case and held that Sedition laws are constitutional. The Court, while upholding the constitutionality of the judgement distinguished between "the Government established by law" and "persons for the time being engaged in carrying on the administration. The Supreme Court clarified that the crime of sedition was a crime against the State and was intended to protect the very existence of the State. The purpose of the crime of sedition was to prevent the Government established by law from being subverted because "the continued existence of the Government established by law is an essential condition of the stability of the State". The 5 judges constitutional bench observed that any acts within the meaning of s. 124A 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

[21] Constitution (First Amendment) Act, 1951, Section 3: Amendment of article 19 and validation of certain laws.-

(1) In article 19 of the Constitution,-

(a) for clause (2), the following clause shall be substituted, and the said clause shall be deemed always to have

been enacted in the following form, namely:---

(2) 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 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.

[22] Ram Nandan v State AIR 1959 All 101.

[23] 35 AIR 1962 955.

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. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. Thus, according to the Supreme Court the essence of the crime of sedition requires acts which are intended to have the "effect of subverting the Government" by violent means.[24] The Supreme Court also clarified that mere "strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means" is not sedition. The Supreme Court clarified that 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."

6. RECENT TRENDS AND THE LAW OF SEDITION:

Even after the clarification by the Supreme Court in Kedar Nath's case there is confusion among the various District Courts and the High Court's regarding the applicability of Sedition Laws under Article 124 A

In **Balwant Singh & Anr. V. State of Punjab**[25]

The prosecution case against the appellants is that in a crowded in front of the Neelam Cinema, on 31st

October 1984, the day Smt. Indira Gandhi, the then Prime Minister of India was assassinated, after coming out from their respective offices after the duty hours, raised the following slogans: "Khalistan Zindabad", "Raj Karega Khalsa" and "Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da".

Supreme court held that A plain reading of the above Section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the

[24] Kedar Nath State of Bihar AIR 1962 955.

[25] 1995 (1) SCR 411

prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded. Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.

Dr. **Binayak Sen's Case**

Sen had been convicted for sedition by a trial court in Chhattisgarh for alleged links with Naxalites and

sentenced to life imprisonment. The Chhattisgarh High Court had upheld the conviction, following which Sen appealed in the Supreme Court. A bench of Justices H.S. Bedi and C.K. Prasad observed that the only material against Sen was his meetings with Naxalite Narayan Sanyal and some Maoist material with him. It has been said that while 61-year-old Sen could be a Maoist sympathiser, there could be many such sympathisers and this alone could not amount to sedition

In **Bharat Desai Resident Editor, Times of India, Ahmedabad**

The newly appointed Ahmedabad City Police Commissioner, O.P. Mathur, has filed a case of "sedition and treason" against the Ahmedabad edition of The Times of India, its Resident Editor Bharat Desai, and its crime reporter Prashant Dayal. The FIR was lodged with the Navrangpura police station, against the newspaper for running a campaign on the front page of the edition during the last five days against Mr. Mathur. In articles written by Mr. Dayal, Mr. Mathur was described as an agent of the former underworld don, Abdul Latif, who was killed in an encounter in 1998, and through him, being connected with Dawood Ibrahim and the Inter Services Intelligence.

Arup Bhuyan v. State of Assam[26]

In this case the appellant is alleged to be a member of ULFA and the only material produced by the prosecution against the appellant is his alleged confessional statement made before the Superintendent of Police in which he is said to have identified the house of the deceased. Supreme Court held that mere membership of a banned organisation will not make a person criminal unless he resorts or incites people to violence or creates public disorder by violence or incitement to violence. Confession is a very weak kind of evidence.

[26] (2011) 3 SCC 377.

As is well known, the wide spread and rampant practice in the police in India is to use third degree methods for extracting confessions from the alleged accused. Hence, the courts have to be cautious in accepting confessions made to the police by the alleged accused.

Arun Jaitly V. State of UP [27]

In this case Judicial Magistrate of Kulpahar, Mahoba, U.P. taking suo moto cognizance has proceeded to summon the applicant under Sections 124 A and 505 of the Penal Code. The concerned Magistrate has taken cognizance of the alleged offences on the basis of an article written by the applicant and posted on his Facebook page. The article is titled as "NJAC Judgement-An Alternative View'. The Magistrate has recorded that no citizen has a right to disrespect the three pillars of our democracy namely, the Executive, Legislature and the Judiciary. However the Supreme Court held that the contents of the article written by the applicant can by no stretch of imagination be said to be intended to create public disorder or be designed or aimed at exciting the public against a Government established by law or an organ of the State. The article merely seeks to voice the opinion and the view of the author of the need to strike a balance between the functioning of two important pillars of the country. It is surely not a call to arms. For the aforesaid reasons, this Court is of the firm opinion that none of the ingredients essential for invoking the provisions of Sections 124A or 505 of the Penal Code stood attracted to the article in question. The Magistrate has committed a manifest illegality in forming an opinion that an offence under the above provisions stood prima facie committed.[28]

Sanskar Marathe V. State of Maharashtra and Anr.[29]

Upholding a petition challenging the charge of sedition against the cartoonist Asseem Trivedi, a bench comprising Chief Justice Mohit Shah and Justice N M Jamdar of the Bombay High Court reiterated that the charge of sedition under Sec 124 A of the Indian Penal Code 'aims at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence'. Besides, the judgement also accepted a set of guidelines, as pre-conditions to police for invoking sedition charges only if an act was an incitement to violence or disturbed pubic order. Also, a legal opinion in writing, along with reasons,

[27] Retrieved from https://indiankanoon.org/doc/140926320/.

[28] Retrieved from https://indiankanoon.org/doc/140926320/.

[29] Cr.PIL.3.2015

must be submitted before any charge of sedition was sought to be applied in any case.[30]

Hardik Patel v. State of Gujarat

In 2015 The Gujarat government booked a Patel leader under sedition for sending messages containing "offensive language against the Prime Minister, the State Chief Minister and Amit Shah, the President of BJP". These cases are indicative of a high level of intolerance being displayed by governments towards the basic freedom enjoyed by citizens. Democracy has no meaning without these freedoms and sedition as interpreted and applied by the police is a negation of it.[31] However he was granted bail by the High Court of Gujarat in 2016 on strict condition that he will have stay outside of Gujarat for the next six months.[32]

Kanhaiya Kumar's case

In February 2016, JNU, Jawaharlal Nehru university student union president Kanhaiya Kumar was arrested on charges of sedition under section 124-A of Indian Penal Code. However this arrest has raised a political turmoil in the country with academicians and activists marching and protesting against this move by the government. While those associated with JNU, past and present feel that the government is stifling and ruthlessly suppressing dissent, there is another part of the population that believes JNU for long has been supporting anti-India activities and the students involved must be punished for this act. Protests by both sides are continuing. Kanhaiya Kumar is the president of JNUSU. On 2 March 2016 the videos purporting to show this activity were found to be fake and he was released after three weeks in jail.[33]

Sedition Law: A Comparative Prospective

The British Empire enacted the Law of Sedition in its colonies and many commonwealth countries still keep a hold onto that law. But the Law of Sedition has been discarded by the UK

(where punishment once included chopping ears), Scotland, South Korea and Indonesia.

•United Kingdom

These common law principles of Sedition evolved from some of Britain's oldest laws, such as the Statute of Westminster 1275,

[30] 47Retrieved from http://www.thehoot.org/media-watch/law-and-policy/mere-criticism-is-not-seditious-bombay-high- court-on-aseem-trivedi-s-cartoons-8177.

[31] 48 Hetal Chavda, Autonomy Is As Autonomy Does – Law of Sedition in India, 2, Imperial Journal of interdisciplinary Research, 33 (2016).

[32] Retrieved from https://indiankanoon.org/doc/154630933/.

[33] 50 Hetal Chavda, Autonomy Is As Autonomy Does – Law of Sedition in India, 2, Imperial Journal of interdisciplinary Research, 33 (2016).

when the divine right of the King and the principles of a feudal society were not questioned. Seditious libel was established by the Star Chamber case

De Libellis Famosis of 1606. Later, the Criminal Libel Act 1819 made statutory provisions for the seizure, confiscation and destruction of all seditious materials.However, in the twentieth century as British democracy evolved, the number of prosecutions for these offences declined sharply with the 1970s was the last decade to see any prosecutions. Of the three offences during that decade, one defendant (1971) received a sentence of six months, the second (1972) received a suspended sentence, and the third (1978) received a conditional discharge[34]

The last major case in England relating to Sedition was the one involving the publication of Salman Rushdie's book, The Satantic Verses[35] (R v. Chief Metropolitan Stipendiary (Ex Parte Choudhury)). This book was alleged to be a "scurrilous attack on the Muslim religion" and resulted in violence in the U.K. as well as to a severance of diplomatic relations between the U.K. and Iran. An application to obtain a summons against Mr. Rushdie and his publisher was dismissed, on the ground of non existence of seditious intent by either of the parties against any of the UK's democratic institutions.[36] Section 73 of the Coroners and Justice Act 2009 abolished the common law offences of sedition and seditious libel. The laws on sedition were indeed quite arcane in today's society where freedom of thought and expression is a protected right in the U.K. under the Human Rights Act 1998. Even before the enactment of the Human Rights Act, back in 1977 the Law Reform Commission[37] had recommended that these offences be abolished. At a time when many countries are discussing on whether to "crackdown" on freedom of speech

- **New Zealand**

New Zealand has repealed its sedition law. The Crimes (Repeal of Seditious Offences)

[34] British Law Commission Report No. 149 on Criminal Libel, September, 1985. Available at: http://www.bailii.org/ew/other/EWLC/1985/149.pdf (last visited on october 12, 2016).

[35] [1991] 1 QB 429.

[36] Clare FeikertAhalt, "Sedition in England: The Abolition of a Law From a Bygone Era", Library of Congress, October 2, 2012 available at: https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-fro-a-bygone-era/ (last visited on October 12, 2016).34Section 73 of Coroners and Justice Act 2009 availableat:http://www.legislation.gov.uk/ukpga/2009/25/section/73 (last visited on July 12, 2016).

[37] Lord Hansard's Law Reform Commission, July 2009 available at:http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90709-0013.htm (last visited on October 12, 2016).

Amendment Bill[38]was passed by the New Zealand Parliament by an overwhelming majority of

114 to 7. The law had been widely criticised following the conviction of Timothy Selwyn in 2006[39]

-the first sedition prosecution in 75 years - and repeal had been recommended by the New Zealand Law Commission.[40] Minister of Justice Mark Burton criticised the law as an infringement on freedom of speech and a tool of political persecution a view widely echoed by MPs from across the house. The bill repealed all seditious offences, and came into effect on January 1, 2008.Position of sedition laws in the United States is a neutral one. With the timely interference of judiciary, the misuse of this law has been averted while reasonably restricting the free speech.

•United States of America

United States of Americacriminalises 'Seditious Activities and Speech'.Under Section 2385 of the US Code, it is unlawful for anyone to knowingly teach/advocate the propriety of overthrowing the government by force.The U.S. government's first attempt at regulating speech in wartime resulted into the enactment of the Alien and Sedition Acts of 1798 , the main purpose of which was toprotect the nation from 'spies' or 'traitors'. Being antagonist to the law, Thomas Jefferson pardoned all those who had been sentenced under it after being elected as President of the United States.[41]

The Sedition Act, 1918[42], the U.S. Supreme Court held that teaching an ideal,

however unpopular or unreasonable it might be, does not amount to sedition. The decision in

the case of

New York Timesv. Sullivan[43]was that the free criticism of public officials and public affairs would not constitute libel. In this context, it stated that the Sedition Act, 1798 had by "common consent" come to an "ignominious end", being a violation of the First Amendment.

[38] New Zealand Law Commission Report availableat:http://www.lawcom.govt.nz/sites/default/files/pressreleases/2006/10/Publication_128_343_SEDITION%20CONSULTATION%20DRAFT.pdf, para. 18. (last visited on Oct 11, 2016).ass

[39] Simon Collins, "Law advice body wants to scrap crime of sedition", NZ Herald, October 16, 2006 available at:http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10406234 (last visited on oct 11, 2016).

[41] Meacham, Jon (2012). Thomas Jefferson: The Art of Power. Random House LLC. ISBN 978-0-679-64536-8.

[42] 354 U.S. 298

[43] 376 U.S. 254.

Finally, in 1969, in the case of Brandenburgv. Ohio[44], the law of Sedition was upheld. Hence,

in the United States, the courts have generally afforded wide protection to political speech,

excepting where it results in immediate lawless action.While USA holds on to this 218 year old l

aw of Sedition, India also shares this law with other countries like Germany, Saudi Arabia, Iran,Uzbekistan, Sudan, Senegal and Turkey. Malaysia and Australia are also amongst those countries that are facing a lot of criticism over their Laws on Sedition.

•Australia

Australia is also a part of the elite group holding on to the law of Sedition. Seditious words,

participation in a seditious conspiracy and publishing seditious statements were of colonial

origin and common law offences, which still remain in the criminal codes of several states.

The law was mostly used to censor "undesirable" publishing and as in the case of the U.S. and in India, was used to target the Communist Party of Australia. War Precautions Regulations, 1915 was passed which made it an offence to advocate, incite or encourage disloyalty to or the dismemberment of the British Empire. Later, the War Precautions Act Repeal Act 1920, which inserted new sections 24A-24E into the Crimes Act, 1914 was enacted to give the sedition law a more permanent outlook.In Australia, the Sedition law has been codified in the Crimes Act, 1961 (earlier, it was the Crimes Act, 1914). After Final Report of the Royal Commission on Australia's Security and Intelligence Agencies, 1985 was submitted by Justice Hope, the scope of the law was narrowed down to apply only to instances where there was incitement to violence. The punishments were gradually brought down from imprisonment to fines after a summary procedure by a magistrate. In 2001, the Law and Justice Legislation Amendment Act, 2001,repealed and substituted Section 24C (a)-(c) with Section 24C, repealing the references of agreeing or undertaking to engage in a seditious enterprise, conspiring with any person to carry out a seditious enterprise and counselling, advising or attempting to procure the carrying out of a seditious enterprise.In 2005, Anti-Terrorism Act was passed. This repealed most of the existing provisions on sedition in the Crimes Act and, in their place, inserted new provisions (sections 80.2-80.6) into the

[44] 395 U.S. 444.

Criminal Code. The Code is intended to incorporate old common law offences as well as new changes to the criminal law. The new provisions expanded the offence to include the behaviour of 'urging' and the element of recklessness.This enactment faced a lot of criticism, primarily being that the Sedition was an archaic offence and should be repealed, not reinvented.

•Malaysia

Malaysia recently in October 2015upheld the vires of Sedition Act of 1948 United Nations has been criticising the Malaysian Sedition Act and a group of experts ssociated with the United Nations Human Rights Council in October 2014called for the abolition of this 1948 Enactment. Amnesty Internationalalso criticising the enactment said the law is an "outdated and repressive piece of legislation" that has been primarily used against opposition politicians but in recent months have included journalists, students and academics.Prior to the recent general election, Prime Minister Najib Razak announced that he would repeal the Sedition Act in July 2012 because it "represents a bygone era" and was part of his reforms to develop Malaysia into a progressive democracy.But since a coalition government came into power, Prime Minister faced mounting opposition to his reforms from hardliners within his coalition.The Sedition Act 1948[45], a relic of British colonial rule, criminalises any conduct with a "seditious tendency", including a tendency to "excite disaffection" against or "bring into hatred or contempt" the ruler or government. It does not require the prosecution to prove intent, and

provides for up to three years imprisonment and/or a fine of 5000 Ringgit for those found guilty

of a first offence. Subsequent offences may be punished with up to five years imprisonment.

Although the law has since been amended, it retains much of its original intent when introduced

by the British to curb opposition against colonial rule. And now the Malaysia's federal court

have dismissed a challenge that a sedition law implemented under the British Empire is unconstitutional, prolonging the government's ability to quell political opposition.in view of an increase in the misuse rather than actual implementation of Sedition law, the trend in the commonwealth

[45] The Sedition Act of 1948 available at: http://cijmalaysia.org/miniportal/2010/09/the-sedition-act-1948/ (last visited on October 9, 2016).Open Access Journalavailable at www.ijldai.thelawbrigade.com

countries also demonstrates a shift towards its abridgment. While reasonable restrictions are perfectly justified, however, curbing every voice of dissent against the policies of the State machinery devoid of any threat of violence is certainly not warranted in a democracy.

7. CONCLUSION:

Since its inception in Indian Penal Code the law of Sedition has been remained the subject of controversy. It has been said the language used in Section 124A of IPC is vague and capable of interpreting by ruling political party as a tool to suppress the freedom of speech and expression that goes against them. Beside that the final position of the law was settled by the Supreme Court Kedar Nath v. State of Bihar in 1960, yet recent trend regarding the applicability of sedition laws show that administrative authorities and Courts have difference of opinion and misunderstands the correct application of sedition laws.

The need of the hour is sedition laws should be interpreted and applied according to the guidelines given by the Supreme Court. It has become more important after the commencement of Indian Constitution as Article 19(1)(a) gives freedom of speech and expression as fundamental right to the citizens and this freedom can only be restricted on the grounds mentioned under Article 19(2). The elements mentioned under in Article 19 (2) which are relevant to the offence of sedition are Integrity of India, Security of the State and Public Order. So it is necessary that sedition laws should have expressly contain words which satisfied the restrictions of Article 19(2).

Law Commission of India has also pointed out in its 42nd report on Indian Penal Code that the definition of sedition does not expressly provide disaffection towards (a) Constitution (b) the Legislature (c) administration of Justice. Accordingly suggested for the amendment in Section 124A in the following words:-

"Whoever by words, either spoken or written, by signs, or by visible representation, or otherwise, excites, or attempts to excite, disaffection towards the Constitution or the Government, or the Parliament of India, or the Government, or the Legislature of any State, or the administration of justice, as established by law, intending or knowing it to be likely thereby to endanger the integrity or security of India, or any State, or to cause public disorder, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall be liable to fine.

Explanation 1. - The expression disaffection includes feelings of enmity, hatred or contempt.

Explanation 2. – Comments expressing disapprobation of the provision of the Constitution, or of the action of the Government, or of the measures of Parliament or a State Legislature, or of the provisions for the administration of justice, with a view to obtaining their alteration by lawful means without exciting or attempting to excite disaffection, do not constitute an offence under this section.[46]

[46] Law Commission of India, 42nd Report (1971), pp. 149-150.