

SEDITION LAW - LOVE THY GOVERNMENT?

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ABSTRACT

Sedition in India, a 150-year old law find its origin in the colonial era. It curbs enmity, contempt, hatred or hostility towards the government established by law. During the course of the British rule, Section 124-A was intended to indict any speech that as much as questioned the moral superiority of government, that harboured any sentiments of ill feeling towards the state. The post-constitutional era saw the liberal view taken by the Apex Court while adjudicating the offence of Sedition. Expanding the purview of Freedom of Speech and Expression, Supreme Court has been criticising the misuse of Sedition time and again. 21st century saw a rise in misuse of this law of bygone era against media personnel, activists and artists. The year 2014 saw only 1 conviction out of 58 arrests creating a “chilling effect” on free speech due to the threat of punishment and even long-drawn prosecution. In such times where media is required to strengthen the voice of public, from broadcasting unverified videos to quoting preposterous reports, the role played by media has been far from what we call ‘responsible journalism’. Sedition, once introduced by the British Empire in various commonwealth countries, has been discarded by the U.K., New Zealand, South Korea and Indonesia while the U.S. Federal Court has read down some of its provisions, rendering it nearly unenforceable. Facing huge criticism in Malaysia and Australia, this draconian law has been gaining voice for its revocation by international organizations like Amnesty International and HRW time and again.

I. Introduction

The sedition law, section 124A of the Indian Penal Code (IPC), is a colonial-era law that was once used against political leaders seeking independence from British rule. Unfortunately, it is still often used against dissenters, human rights activists, and those critical of the government. The law allows a maximum punishment of life in prison. It prohibits any signs, visible representations, or words, spoken or written, that can cause “hatred or contempt, or excite or attempt to excite disaffection” toward the government.

The word ‘*Sedition*’ immediately strikes the event recently occurred on 9th February, 2016 in Jawaharlal Nehru University, Delhi and the association of names like Kanhaiya Kumar, Umar Khalid and Anirban Bhattacharya with the event. The Nation was left aghast because of this episode of voices raised against Indian Judiciary for the ‘*judicial murder*’ of Afzal Guru. But what is Sedition, the history, its present and possible future; the authors have put forth various aspects of Sedition Laws in the country by the medium of this research paper.

II. Law of Sedition: A Relic of Our Colonial Past

Defining the offence of Sedition, the erstwhile section 113 of Macaulay’s Draft Penal Code of 1837-39 received a new identity in the form of Section 124A of the Indian Penal Code upon its enactment in 1860. James Fitzjames Stephens, the architect of the Indian Evidence Act, 1872, terms this omission as a mistake.¹ The provision, as it reads today, defines sedition as *any action, whether by words, signs or visible representation, which brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India*. Explanation 1 to this Section clarifies that the word “disaffection” includes disloyalty and all feelings of enmity.

This definition of sedition, as is only plainly evident, is exceedingly broadly worded. Its vagueness certainly did wonders for the colonialists giving the British their first case in 1891,

¹“*Sedition Laws and Death of Free Speech in India*” by Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore & Alternative Law Forum, Bangalore published in February, 2011.

when the editor of a newspaper called Bangobasi was booked for publishing an article criticising an “Age of Consent Bill.”

Perhaps one of the momentous cases defining section 124A was that of Bal Gangadhar Tilak in 1897, wherein the British Government alleged Tilak’s speeches on the killing of Afzal Khan by Shivaji had prompted the murder of two British officers in Pune. Charging Tilak for Sedition, Justice James Strachey broadened the scope of section 124A by equating “disaffection” to “disloyalty”, and interpreted the term “feelings of disaffection” to mean hatred, enmity, dislike, hostility, contempt, and every form of ill will towards the government. Based on Strachey’s interpretation, the section was used repeatedly against nationalist leaders by the colonial government. Later, Tilak faced the same charge again, twice, and spent six years in prison for an editorial published in his newspaper, Kesari.

Similarly, when Mahatma Gandhi was charged for his articles in Young India magazine in 1922, he said in the court, “Section 124A under which I am happily charged, is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen.”

During the course of the British rule, there was a general consensus that Section 124-A was intended to indict any speech that as much as questioned the moral superiority of government, that harboured any sentiments of ill feeling towards the state. Policies of government, the judiciary largely agreed, could be questioned, so long as one didn’t excite hatred, contempt or disaffection. As the lawyer and jurist A.G. Noorani once wrote, what this really meant was that the government had to be “loved, not hated”.²

III. Sedition Law in the Post Constitutional Era: Judicial Approach

A need to define the law of Sedition arises when the ambit of reasonable restriction on the right to freedom of speech and expression comes under the scanner. What is reasonable? How much is reasonable? Is there a test for determination? What are the checks against abuse of the law?

² Suhrit Parthasarathy, “Sedition and the government”, *The Hindu*, February 16, 2016 available at <http://www.thehindu.com/opinion/lead/sedition-and-the-government/article8241312.ece> (last visited on June 18, 2016).

The first case that tackled the constitutionality of Section 124-A was *Ram Nandan v. State of U.P.*³. The Allahabad High court held that S.124-A of the IPC is ultra vires as it violates Article 19(1) (a) of the Constitution. 124-A was said to restrict freedom of speech and struck at the very roots of the constitution.

In the landmark judgement of *Kedarnath Singh v. State of Bihar*⁴, the Supreme Court upheld the constitutional validity of section 124A as a necessary law in the interest of the survival of republic. The Court defined the scope of subversive speech and maintained that since the word 'sedition' by itself is not included as one of the reasonable restrictions under Article 19(2), the Court could uphold section 124A only if it was brought within the ambit of 'public order'. It made a clear distinction between strong criticism of the government and those words which excite with the inclination to cause public disorder and violence. It also distinguished between 'the Government established by law' and 'persons for the time being engaged in carrying on the administration'.⁵

The Supreme Court laying down one of the most significant tests namely the analogy of a 'spark in a powder keg' in the case of *S. Rangarajan v. P. Jagjivan Ram*⁶ held, "The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest."

A cumulative reading of the cases on public order and sedition suggests that as far as subversive speech targeted at the state is concerned, one can infer that even if there is no absolute consistency on the doctrinal tests, there is a consistency in the outer frame, namely that democracy demands the satisfaction of high standards of speech and effect if speech is to be curtailed.⁷

³ AIR 1959 All 101.

⁴ 1962 AIR 955.

⁵ Interview: Sedition and the Right to Freedom of Expression, available at <http://thewire.in/42412/interview-sedition-and-the-right-to-freedom-of-expression/> (last visited on June 22, 2016).

⁶ 1989 SCC (2) 574.

⁷ Supra Note 5.

A liberal view was taken by the Apex Court in *Balwant Singh v. State of Punjab*⁸: In this case a few people had shouted anti-India and pro-Khalistan slogans after the assassination of Indira Gandhi. The Supreme Court construed the concept of free speech in a liberal manner and observed, “Over sensitiveness sometimes is counterproductive and can result in inviting trouble. Raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established, nor could the same give rise to feelings of enmity or hatred among different communities or religious or other groups.”

Recently in *Shreya Singhal v. Union of India*⁹ the Supreme Court further liberalised its views and expanded the ambit of Freedom of Speech and Expression while differentiating between ‘advocacy’ and ‘incitement’. While the latter is one of the essentials for invoking section 124A, the former does not warrant a criminal action. The Court held, “three concepts are fundamental to understanding the scope of free speech. For them the first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.”¹⁰

Merely hurting the sentiments of others in the society does not constitute incitement to violence or causing a public order problem and, hence, would not attract section 124A but other penal provisions that criminalise hate speech.

In order to determine whether a threat of violence exists from the speech, it may be essential to consider factors like context of the speech, status of the speaker and addressee of the speech. The speech of a prominent political leader threatening to harm another community is indicative of a nexus between the speech and the probability of an imminent lawless action as opposed to the Facebook status posted by a 21-year-old girl in Maharashtra after Bal Thackeray’s death, which observed that the state had shut down out of fear and not out of respect.

⁸ 1995 (1) SCR 411.

⁹ (2013) 12 SCC 73.

¹⁰ *Ibid* at ¶13.

Hence, it can be maintained that in the largest democratic county of India with multilateral politics, it is inevitable for public groups to express their disaffection in various ways, and to treat every form of disaffection as seditious goes against common sense.¹¹

IV. Recent Developments

In the wake of recent developments, while some call it a 'political gimmick', many legal experts believe that the archaic law needs to be done away with. Some of the recent cases illustrate how the Sedition Law have been used to curb free speech and expression. While a lot of social activists are booked under 124-A, authorities fail to prove that the acts fall under the definition of Sedition.

According to a media watchdog, The Hoot¹², 11 sedition cases were booked against 19 persons in the first three months of 2016 compared to none during the same period in the previous two years. NCRB¹³ data for 2014 show that out of 47 sedition cases which were registered across the country, 58 people were arrested and only *one* person was convicted. This law has been truly described as a double-edged sword that can be offensive at times and can fall under freedom of speech in some other cases. Some of the prominent cases reinforcing the same idea have been discussed hereinunder:

- In September 2012, the political cartoonist and activist, Aseem Trivedi¹⁴ was charged under the sedition law for his cartoons satirising widespread corruption by means of sending offensive messages under the Information Technology Act and the law for Prevention of Insults to National Honour. Giving orders for Trivedi's release, the Bombay High Court said that his cartoons did not incite violence, that they only expressed anger with the state machinery, which is the right of every citizen.

¹¹ Supra Note 5.

¹² Nandita Jha, "Free speech: a dire three months", *The Hindu*, April 5, 2016 available at: <http://www.thehoot.org/research/special-reports/free-speech-a-dire-three-months-9272> (last visited on June 27, 2016).

¹³ NCRB Data on Crimes in India available at:

<http://ncrb.nic.in/StatPublications/CII/CII2014/Statistics%202014.pdf> (last visited on June 27, 2016).

¹⁴ (2015 SCC OnLine Bom 587).

- Cases of sedition against writer Arundhati Roy, hardline Hurriyat leader Syed Ali Shah Geelani, revolutionary poet Varavara Rao and others on charges of giving “anti-India” speeches at a convention on Kashmir, “Azadi: The Only Way”, and, whereby, advocating independence for the disputed Kashmir Region. However, the charges failed to stand up to judicial scrutiny.
- Sudhir Dhawale¹⁵, a reputed Dalit social activist and editor of Vidrohi magazine was arrested in January, 2011 when the magazine openly criticised the state of Maharashtra over cases of social inequalities. Police alleged Dhawale’s involvement in Naxal activities in Maharashtra. In 2014, a Sessions Court acquitted him after 40 months.
- Binayak Sen¹⁶, a doctor and human rights activist in Chhattisgarh, allegedly helped courier messages to the Maoists and was, thus, charged with sedition. He had criticised the Chhattisgarh government’s support to the vigilante group, Salwa Judum. The Trial Court and the High Court convicted and sentenced him, however, in 2011, the Supreme Court granted him bail and quashed the sedition charge against him.
- In March 2014, 60 Kashmiri students were charged with sedition in Uttar Pradesh for cheering for the Pakistani team in a cricket match against India.¹⁷ Resultantly, the university management ordered an inquiry and temporarily suspended all the students residing in the hostel as a “precautionary measure”¹⁸.
- In 2010, Noor Muhammed Bhat, a lecturer in Gandhi Memorial College, Srinagar, was arrested because he included questions on the unrest in Kashmir Valley in an examination. He was granted interim bail by the Jammu and Kashmir High Court in 2011.

¹⁵ Sukanya Shetty, “40 months on, court acquits ‘Naxal activist’ Sudhir Dhawale”, *Indian Express*, May 23, 2014 available at: <http://indianexpress.com/article/india/regional-india/40-months-on-court-acquits-naxal-activist-sudhir-dhawale/> (last visited on June 25, 2016).

¹⁶ *Asit Kumar Sen Gupta v. State of Chhattisgarh*, Cri App No. 86 of 2011 (Chh) (Unreported).

¹⁷ Sanjeev Miglani, “Kashmir students in Meerut in trouble after cheering Pakistani cricketers”, *Reuters India*, March 6, 2014 <http://in.reuters.com/article/india-pakistan-cricket-kashmir-idINDEEA250DN20140306> (last visited on June 26, 2016).

¹⁸ “India drops sedition charge for Kashmiri students in cricket row”, *BBC News*, March 6, 2014 <http://www.bbc.com/news/world-asia-india-26463140> (last visited on June 26, 2016)

- In 2009, Vaiko, leader of the Marumalarchi Dravida Munnetra Kazhagam (MDMK) in Tamil Nadu, was prosecuted on sedition charges for his alleged remarks that India would not remain united if the war in Sri Lanka was not stopped.¹⁹
- In January 2016, Gujarat crime branch filed charge-sheet against Patidar quota stir leader, Hardik Patel²⁰ and his five associates and accused them of sedition for allegedly exhorting a youth to kill a few Policemen instead of committing suicide. He has been recently released on Bail after being in Custody for more than 8 months.

The charge of sedition law being used to stem dissent is not without force; Binayak Sen, Arundhati Roy, Bharat Desai, Manoj Shinde, V Gopaldaswamy (Vaiko), all these individuals did things far from creating a tendency to incite violence against the state, and were expressing their opinion through speeches or writings which criticised specific activities of the State.

Association of politics with Sedition is not new. From the case of Balwant Singh during Indira Gandhi's time to now recently the Political Interference stirred the JNU Row. Following are some instances illustrating how the blend of Politics and Sedition is curbing the Free Speech:

- In 2008, Bharat Desai²¹, a Times of India's resident editor at Ahmedabad along with a senior reporter and a photographer were charged for questioning the competence of police officers and alleging links between them and the mafia. The Court dismissed the case for lack of evidence.
- Despite the Supreme Court ruling in the landmark case of *Kedar Nath Singh v. State of Bihar*²² that unless the accused incited violence by their speech or action, it would no longer constitute sedition, as it would otherwise violate the right to freedom of speech, in October, 2015, the police in Tamil Nadu arrested a 52-year-old folk singer S. Kovan

¹⁹ "Sedition vs Free Speech", *Frontline*, March 18, 2016 available at: <http://www.frontline.in/cover-story/sedition-vs-free-speech/article8299351.ece> (last visited on June 26, 2016).

²⁰ "Hardik Patel charge-sheeted for sedition", *The Hindu*, January 9, 2016 available at: <http://www.thehindu.com/news/national/other-states/hardik-patel-chargesheeted-for-sedition/article8082842.ece> (last visited on June 28, 2016).

²¹ CRIMINAL MISC.APPLICATION No.7536 of 2008 Accessed via <https://indiankanoon.org/doc/189493722/> (last visited on June 27, 2016).

²² Supra Note. 4.

under sedition for two songs that criticized the state government of J. Jayalithaa for allegedly profiting from state-run liquor shops at the expense of the poor.²³

- In 2012, ordinary villagers in Tamil Nadu were charged with sedition for protesting against the construction of the Kudankulam nuclear power plant²⁴ in view of its potential adverse effects on their health and livelihoods, apprehending the possibility of the likes of the 2004 Indian Ocean tsunami and a possible catastrophe like the meltdown at the Fukushima nuclear plant in Japan after a 2011 tsunami.

This law has time and again being misused by political parties and police authorities. The *vagueness* in this law facilitates it to be used *arbitrarily*. In the case of sedition the punishment is in jail and the long-drawn process has a '*chilling effect*' on free speech not just of the person in the dock but also others. Sedition, thus, *unreasonably restricts* freedom of speech and expression.

V. The Role of Media vis-a-vis Sedition

Media is considered to be the fourth pillar of Democracy, a vital functionary for informed citizenry. Media acts as an interface between the common man and the Government. It is a very powerful tool with the ability to make and break the opinion of people. Leaving the theory aside, is media still one of the most celebrated democratic tools?

Sadly, gone are the days when media was associated with words like 'truth', 'freedom' and 'justice'. The news reports have become so twisted that true or accurate reporting and interpretation of events has become far-fetched. The words like 'dalal', 'agents' and 'fixers' are being associated with certain sections of the media. Perhaps that is the reason why a derogatory tag like 'presstitutes' seems justified.

²³ Meenakshi Ganguly, "India: Folk Singer Jailed for Sedition", *Human Rights Watch*, November 3, 2015 available at: <https://www.hrw.org/news/2015/11/03/india-folk-singer-jailed-sedition> (last visited on June 26, 2016).

²⁴ Meenakshi Ganguly, "India: End Intimidation of Peaceful Protesters at Nuclear Site", *Human Rights Watch*, May 11, 2012 available at: <http://www.hrw.org/news/2012/05/11/india-end-intimidation-peaceful-protesters-nuclear-site> (last visited on June 26, 2016).

Recently the case of JNU's Kanhaiya Kumar²⁵ demonstrated why the words 'truth' and "justice" is no more attached to media. The JNU "crackdown", in this light, is a unique example and a case study of how both social and mainstream media can form a symbiotic pair where one feeds on the other.

Perhaps to outsmart the others or with the aim to foster their own, or both, several news channels broadcast unverified clips of alleged seditious speeches and slogans raised at the Jawaharlal Nehru University during a students' protest. This led to the arrest of the JNU Students' Union President, Kanhaiya Kumar on charges of sedition, who was later manhandled by a group of advocates in a Court complex, further fuelling the students' unrest. It also led to charges being framed against former Delhi University professor, SAR Geelani for raising anti-India slogans at the Press Club of India.

In a rather more shocking turn of events, Umar Khalid was alleged to have links with Jaish-e-Mohammed, an Islamist terrorist group in Kashmir²⁶ by *NewsX* and *ABP News* quoted an "IB Report" stating that Umar Khalid's "Group" had stuck naked pictures of Gods and Goddesses to vitiate atmosphere of JNU²⁷. However, authenticity of these reports was denied by the government.²⁸

The advent of social media can truly be considered as a corrective measure to the hegemony created by the media outlets on the dissemination of information. With platforms like Twitter

²⁵ W.P.(CRL) 558/2016 & CrI.M.A. Nos.3237/2016 & 3262/2016; Accessed via <http://lobis.nic.in/ddir/dhc/PRA/judgement/02-03-2016/PRA02032016CRLW5582016.pdf> (last visited on July 2, 2016).

²⁶ "JNU row: Police initiate manhunt for Umar Khalid in light of JeM link", *NewsX*, February 17, 2016 available at: <http://www.newsx.com/national/20932-jnu-row-police-initiate-manhunt-for-umar-khalid-in-light-of-jem-link> (last visited on July 2, 2016).

²⁷ "Umar Khalid's Group Had Stuck Naked Pictures Of Gods And Goddesses To Vitiate Atmosphere Of JNU: Report", *ABP News*, February 16, 2016 available at: <http://www.abplive.in/india-news/umar-khalids-group-had-stuck-naked-pictures-of-gods-and-goddesses-to-vitiate-atmosphere-of-jnu-report-291628> (last visited on July 2, 2016).

²⁸ "Govt denies IB report linking JNU protestors to JeM", *The Hindu*, February 17, 2016 <http://www.thehindu.com/news/national/govt-denies-ib-report-linking-jnu-protestors-to-jem/article8248148.ece> (last visited on July 2, 2016).

and Facebook, social media has democratised access to information to such an extent that it is often social media that decides the narrative in the mainstream.²⁹

Highlighting the importance of promulgation of news by the media outlets, Professor Jaishree Jathewaney at the Indian Institute of Mass Communication, Delhi³⁰ said, “There is a sense of immediacy in breaking news. But it is one thing to rush with news if you have shot it, however, if the source is secondary, then the media must remember that on the other side are rights of people, their reputation. There is a delicate line that the media must be aware of.”

Sure, there are islands of sanity and responsible journalism. A Zee News producer quit over the ‘biased’ reporting by the channel in the JNU sedition row. NDTV’s Ravish Kumar questions the media trial of JNU students under the guise of nationalism. Similarly, many senior journalists pointed out why it is crucial to tread with caution on an issue as complex as the sedition row in JNU.

Events like this force us to ask some glaring questions - why is the media so quick to jump to conclusion? Why is trial by media becoming so common? Is nothing sacred in the TRP game?

VI. 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, 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

²⁹ “JNU row: Perfect case study to show how media is losing its credibility”, *Hindustan Times*, February 23, 2016 available at: <http://www.hindustantimes.com/opinion/jnu-row-perfect-case-study-to-show-how-media-is-losing-its-credibility/story-cPwk9WhMAuEZMuqQMUjTtO.html> (last visited on July 2, 2016).

³⁰ “JNU ‘sedition’ row: When media became part of the story”, *Hindustan Times*, February 22, 2016 available at: <http://www.hindustantimes.com/analysis/jnu-sedition-row-when-media-became-part-of-the-story/story-UbqV7NaT6JwecPlcfW1yPI.html> (last visited on July 2, 2016).

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.³¹

The last major case in England relating to Sedition was the one involving the publication of Salman Rushdie's book, *The Satanic Verses*³² (*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.³³

Section 73³⁴ 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 Commission³⁵ had recommended that these offences be abolished.

- **New Zealand**

³¹ 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 July 12, 2016).

³² [1991] 1 QB 429.

³³ Clare Feikert-Ahalt, "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-from-a-bygone-era/> (last visited on July 12, 2016).

³⁴ Section 73 of Coroners and Justice Act 2009 available at: <http://www.legislation.gov.uk/ukpga/2009/25/section/73> (last visited on July 12, 2016).

³⁵ 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 July 12, 2016).

At a time when many countries are discussing on whether to "crack-down" on freedom of speech, *New Zealand* has repealed its sedition law. *The Crimes (Repeal of Seditious Offences) Amendment Bill*³⁶ 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 2006³⁷ - the first sedition prosecution in 75 years - and repeal had been recommended by the New Zealand Law Commission.³⁸

Minister of Justice Mark Burton³⁹ 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 America criminalises 'Seditious Activities and Speech'. Under Section 2385 of the US Code⁴⁰, 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 to protect the nation

³⁶ Crimes (Repeal of Seditious Offences) Amendment Act 2007 available at: <http://www.legislation.govt.nz/act/public/2007/0096/latest/whole.html#DLM981001> (last visited on July 11, 2016).

³⁷ 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 July 11, 2016).

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

³⁹ New Zealand Parliament Debates, June 14, 2007 available at: https://www.parliament.nz/en/pb/hansard-debates/rhr/document/48HansD_20070614/volume-639-week-46-thursday-14-june-2007 (last visited on July 11, 2016).

⁴⁰ U.S. Code; Full text here: <https://www.law.cornell.edu/uscode/text/18/2385> (last visited on July 5, 2016).

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, 1918⁴² targeted those during the World War I who professed a Communist ideology. The Alien Registration Act or the Smith Act of 1940 served the same purpose as the Act of 1918 and brought about 140 prosecutions. However, both these Acts have now been repealed.

In the case of *Yates v. United States*⁴³, 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 Times v. Sullivan*⁴⁴ 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.

Finally, in 1969, in the case of *Brandenburg v. Ohio*⁴⁵, 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 law of Sedition, India also shares this law with other countries like Germany, Saudi Arabia, Iran, Uzbekistan, Sudan, Senegal and Turkey.⁴⁶

Malaysia and Australia are also amongst those countries that are facing a lot of criticism over their Laws on Sedition.

- **Australia**

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

⁴² Primary Documents in American History: Alien and Sedition Acts available at: <https://www.loc.gov/rr/program/bib/ourdocs/Alien.html> (last visited on July 6, 2016).

⁴³ 354 U.S. 298.

⁴⁴ 376 U.S. 254.

⁴⁵ 395 U.S. 444.

⁴⁶ IANS, “India shares sedition law with Saudi Arabia, Sudan, Iran”, *The Economic Times*, February 23, 2016 available at: <http://economictimes.indiatimes.com/news/politics-and-nation/india-shares-sedition-law-with-saudi-arabia-sudan-iran/articleshow/51039109.cms> (last visited on July 8, 2016).

Australia is also a part of the elite group holding on to the law of 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 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.⁴⁷

⁴⁷ “In Good Faith: Sedition Law in Australia” by Parliament of Australia, April 2006 available at: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/sedition (last visited on July 10, 2016).

This enactment faced a lot of criticism, primarily being that the Sedition was an archaic offence and should be repealed, not reinvented.⁴⁸

- **Malaysia**

Malaysia recently in October 2015 upheld the *vires* of Sedition Act of 1948⁴⁹.

United Nations has been criticising the Malaysian Sedition Act and a group of experts associated with the United Nations Human Rights Council in October 2014⁵⁰ called for the abolition of this 1948 Enactment. Amnesty International⁵¹ also 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.⁵² But since a coalition government came into power, Prime Minister faced mounting opposition to his reforms from hardliners within his coalition.

The Sedition Act 1948⁵³, 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.

⁴⁸ Inquiry on Sedition by Australian Law Reform Commission available at: <http://www.alrc.gov.au/inquiries/sedition> (last visited on July 10, 2016).

⁴⁹ Malaysia: Court ruling on Sedition Act yet another blow to freedom of expression available at: <https://www.amnesty.org/download/Documents/ASA2826072015ENGLISH.pdf> (last visited on July 9, 2016).

⁵⁰ “UN rights experts urge Malaysia to abolish Sedition Act”, *Jurist*, October 9, 2014 available at: <http://www.jurist.org/paperchase/2014/10/un-rights-experts-urge-malaysia-to-abolish-sedition-act.php> (last visited on July 9, 2016).

⁵¹ “Malaysia: Sedition investigation into opposition leader politically motivated”, *Amnesty International*, September 23, 2014 <https://www.amnesty.org/en/latest/news/2014/09/malaysia-sedition-investigation-opposition-leader-politically-motivated/> (last visited on July 9, 2016).

⁵² Jennifer Park, “What is Malaysia's sedition law?”, *BBC News*, November 27, 2014 available at: <http://www.bbc.com/news/world-asia-29373164> (last visited on July 9, 2016).

⁵³ The Sedition Act of 1948 available at: <http://cijmalaysia.org/miniportal/2010/09/the-sedition-act-1948/> (last visited on July 9, 2016).

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 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.

VII. Conclusion: Authors' Opinion

A colonial legacy like sedition law, which presumes popular affection for the state as a natural condition and expects citizens not to show any enmity, contempt, hatred or hostility towards the government established by law, does not have a place in a modern democratic state like India.

The use of these laws to harass and intimidate media personnel, human rights activists, political activists, artists, and public intellectuals despite a Supreme Court ruling narrowing its application, shows that the very existence of sedition laws on the statute books is a threat to democratic values. Law Commission Chairman Justice Balbir Singh Chauhan⁵⁴ asserted that Sedition Law needs reconsideration giving a ray of hope for change in this barbaric law. This is a start but there is a long way to go.

Countries like New Zealand, U.K have repealed their law on Sedition while the Federal Court in the U.S. has read down the provisions, limiting its application to such a degree that it became nearly unenforceable. International laws such as ICCPR and UDHR, to which India is a signatory, provides for *reasonable and justifiable restrictions* and not a law which creates a

⁵⁴ PTI, "Sedition law needs relook, says Law panel chief", *Indian Express*, March 22, 2016 available at: <http://indianexpress.com/article/india/india-news-india/sedition-law-needs-relook-law-panel-chief/> (last visited on July 14, 2016).

‘chilling effect’. Numerous International Organisations such as Human Rights Watch (HRW) in its *Stifling Dissent*⁵⁵ and Amnesty International⁵⁶ have recommended that Sedition law must be read down to the Constitutional *vires* in order to protect the freedom of speech and expression.

Repealing Sedition laws will open a Pandora box resulting in numerous uncertainties. The authors of the present paper concur to the fact that although there may be misuse of the right to freedom of speech at times by the active citizenry, however, it cannot be denied that government institutions also go beyond the jurisdiction of the prescribed application of laws. However, this does not warrant an action of total revocation of the laws. In pursuance of the “Doctrine of Severability”, severing the unconstitutional part through effective implementation by means of a mechanism of screening or sanctions, whereby, the alleged seditious content should conform to certain specific parameters which would further act as a tool to preclude the arbitrary application of this vague law of Sedition.

⁵⁵ “Stifling Dissent”, *Human Rights Watch*, May 24, 2016 available at: <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india> (last visited on July 14, 2016).

⁵⁶ “India: Crackdown on freedom of expression must end”, *Amnesty International*, February 17, 2016 available at: <https://www.amnesty.org/en/latest/news/2016/02/india-crackdown-on-freedom-of-expression-must-end/> (last visited on July 14, 2016).