SEDITION LAW IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

The law of sedition prohibits words or conducts that are intended to incite discontent or rebellion against the authority of the state. Freedom of speech and expression is a two edged sword and while it provides the citizens the enjoyment it also prohibits certain acts that could tantamount to abuse of this intrinsic and inviolable right. The Author has analysed the legal aspects of Sedition law in various legislations in India. The Author has made a comparative analysis of the sedition law in light of Freedom of speech and expression.

INTRODUCTION

The idea of freedom of speech emerges from the liberal idea that there should be a space where the individual is free from social coercion. One of the central tenets of this line of thought is that the only good reason for interfering with an individual's liberty of action is where that action could harm others.[i]

This sphere that is free from coercion includes the 'liberty of conscience, in the most comprehensive sense'[ii]. This is the view that everyone is not only entitled to an opinion on all subjects be they practical, speculative, moral or theological, but that individuals are at liberty to express those opinions, notwithstanding how unpopular, offensive or harmful these opinions may be, excepting those circumstances where they do actual harm to others. A society in which these liberties are not, on the whole, respected, cannot call itself a free society, irrespective of the form of government it has. Freedom of the press and freedom of discussion are thus two of the most important liberties necessary for any open society and therefore any liberal democracy.[iii]

These principles of freedom of speech are theoretically constitutive of liberal theory. In an effort to set up a true liberal democratic society and heavily influenced by the recent events in France, the 'Founding Fathers' of the United States entrenched these principles in its First Amendment. They clearly saw this principle as essential for a free society as evidenced by the fact that it is the subject of the First Amendment and not further down the list. The theory underlying this law is that free speech enables us to discover the truth.[iv] Sedition is an offence under Section 124-A of the Indian Penal Code that attracts mass public criticism on the pretext that it violates the sacrosanct right to free speech and expression.

1. LAW COMMISSION ON SEDITION

The Law Commission of India has dealt with the issue of sedition and the reform this provision needs in its report as early as in the year 1968. Reports followed in the year 1971 which comprised of two reports pertaining to this issue and in recent times in the year 2017 when the commission made a distinction between the ingredients of the offence of Sedition and hate speech.

1.1 The 39th Report, 1968

This report basically dealt with the penalty that was imposed under this offence and pointed out that the punishment prescribed for this particular offence was too grave and disproportionate to the object sought to be eliminated. It highlighted that this offence should not be made punishable than imprisonment for life as there are certain inconsistency in the manner the cases are prosecuted with regard to the offence of sedition.[v]

1.2 The 42nd Report, 1971

This report in particular propounded major suggestion to this provision and emphasised on the fact that the mental element should be included as an ingredient to the offence of sedition. Furthermore, the disaffection that is limited to the government should extend to its other organs such the Judiciary and even the Executive. The major premise of this report was that it limited the scope of punishment to seven years accompanied with fine as it pointed out towards the gap present between the imprisonment for life and three years imprisonment. It is to be noted that the Union government did not adhered to such recommendation at that time. In the year

1971, another report was published which has presented the recommendations made out in the 42nd report only.[vi]

1.3 267th Report, 2017

In the year 2017, the commission brought forth the recommendation on the issue of hate speech which established the distinction between hate speech and sedition as an offence. The premise of this lies on the fact that the former happens to be an offence that hampers the public peace, while the latter is a grave offence which includes the act which cause threat to the 'sovereignty' and 'unity' of the nation. There are various tests devised to check which form of speech qualifies to be held as seditious as what may seem to be 'disaffection' or 'disloyalty' may rather be constructive criticism and point out the legitimate short comings that are prevailing in the society. There exists a 'right to offend' which must not perish to the colonial provisions as speeches which may seem to be offensive may later prove to be path breaking in the form of ideas and expressions forming the basis of a healthy modern democratic society.[vii]

2. SEDITION LAWS IN INTERNATIONAL JURISDICTION

2.1 United Kingdom

The offence of sedition was initially created to prevent speeches 'inimical to a necessary respect to government'.[viii] The De Libellis Famosis[ix] case was one of the earliest cases wherein 'seditious libel' whether 'true or false was made punishable'. This case firmly established seditious libel in United Kingdom.[x] The rationale of this judgment was that a true criticism of government has a greater capacity to vilify the respect commanded by the government and cause disorder, and therefore needs a higher degree of prohibition. Sedition was defined by Fitzgerald J. in R. v. Sullivan[xi] as: Sedition in itself is a comprehensive term and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the Empire. The objects of sedition generally are to induce discontent and insurrection and to stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. The United Kingdom Law Commission while examining the need of law on seditious libel in modern democracy in 1977 referred to the judgment of the Supreme Court of Canada in R. v. Boucher[xii] wherein it was opined that only those act that incited violence and caused public order or disturbance with intention of disturbing constitutional authority could be considered seditious.[xiii] With the enactment of the Human Rights Act, 1998, the existence of seditious libel, started being considered in contravention to the tenets of the Act and the European Convention on Human Rights.[xiv] The global trend has largely been against sedition and in favour of free speech. While abolishing sedition as an offence in 2009, the then Parliamentary Under-Secretary of State at the Ministry of Justice of the United Kingdom reasoned that "Sedition and seditious and defamatory libel are arcane offences – from a bygone era when freedom of expression wasn't seen as the right it is today… The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom… Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech."[xv] The seditious libel was deleted by section 73 of the Coroners and Justice Act, 2009.[xvi] One of the reasons given for abolishing seditious libel was "Having an unnecessary and overbroad common law offence of sedition, when the same matters are dealt with under other legislation, is not only confusing and unnecessary, it may have a chilling effect on freedom of speech and sends the wrong signal to other countries which maintain and actually use sedition offences as a means of limiting political debate".[xvii]

2.2 United States

The United States Constitution proscribes the State from enacting any legislation curtailing the first amendment – right to expression. There has been a debate among the jurists whether first amendment guarantee was aimed at eliminating seditious libel.[xviii] It is argued by many that this doctrine _lends a juristic mask to political repression'.[xix] Despite the conflicting views and the attempts by courts to narrow the scope of sedition, it survives as an offence in the United States, though it is very narrowly construed and can even be said to have fallen in disuse.[xx] It was argued by many that the first amendment aimed at abolishing seditious libel.[xxi] However, this view has been opposed on grounds that the first amendment does not protect speech of all kind; therefore, suggesting that law on sedition was abolished by it would amount to interpreting history through one's own civic sensibilities.[xxii] Sedition was made a punishable offence in the United States through the Sedition Act of 1798.[xxiii] This Act was repealed in 1820. In 1918, Sedition Act was again enacted by the U.S. Congress to protect American interests in the First World War.[xxiv] In Schenck v. United States[xxv] the court while adjudging the validity of Sedition Act 1918, laid down the ―clear and present danger‖ test for restricting freedom of expression. Words which, ordinarily and in many places, would be within the freedom of speech protected by the First Amendment may become subject to prohibition when of such a nature and used in such circumstances as to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent. The Supreme Court in Abrams v. United States[xxvi] held that distribution of circulars appealing for strike in factories to stop manufacturing of machineries to be used to crush Russian revolutionaries could not be protected under the First Amendment. Justice Holmes‘ dissenting opinion, however championed the wide ambit of free speech liberty in United States. He remarked: It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Sedition was also brought as an offence under Alien Registration Act 1940 (also known as Smith Act) which penalised advocacy of violent overthrow of the government. The constitutional validity of this Act was challenged in Dennis v. United States[xxvii] Applying the ―clear and present danger‖ test, the court upheld the conviction on the grounds that: …the words [of the act] cannot mean that, before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required. The argument that there is no need for Government to concern itself, for Government is strong, it possesses ample powers to put down a rebellion, it may defeat the revolution with ease needs no answer. For that is not the question. Certainly an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt. The restriction on free speech has, however, been narrowly construed in subsequent cases. In Yates v. United States[xxviii] the Supreme Court distinguished advocacy to ‗overthrow as an abstract doctrine from an advocacy to action'.[xxix] It was reasoned that the

Smith Act did not penalise advocacy of abstract overthrow of the government and the Dennis (supra) did not in any way blur this distinction. It was held that the difference between these two forms of advocacy is that ‗those to whom the advocacy is addressed must be urged to do something, now or in the future, rather than merely to believe in something'. In New York Times v. Sullivan[xxx] the Supreme Court remarked that speech must be allowed a breathing space in a democracy and government must not be allowed to suppress what it thinks is ‗unwise, false or malicious'. In Brandenburg v. Ohio[xxxi] the Supreme Court categorically held that ‗freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action'. This decision overruled the Supreme Court decision in Whitney v. California[xxxii] wherein the court had held that ‗to knowingly be or become a member of or assist in organising an association to advocate, teach or aid and abet the commission of crimes or unlawful acts of force, violence or terrorism as a means of accomplishing industrial or political changes involves such danger to the public peace and the security of the State, that these acts should be penalised in the exercise of its police power.' Legislations penalising such acts were not considered an arbitrary and unreasonable exercise of State power. Pursuant to Brandenburg case (supra), restrictions on expression are subject to intense scrutiny. Thus, criticism or advocacy must lead to incitement of immediate lawless action in order to qualify for reasonable restriction of first amendment. The U.S. Constitution though forbids apparent restrictions on speech, there are various doctrines that are practised to avert hate speech. The doctrines such as-―reasonable listeners test, ―present danger test, ―fighting words are just examples. The chilling effect concept had been recognised most frequently and articulated most clearly in decisions chiefly concerned with the procedural aspects of free speech adjudication.

2.3 Australia

The first comprehensive legislation that contained sedition offence was the Crime Act 1920. The provisions on sedition in this Act were broader than the common law definition as subjective intention and incitement to violence or public disturbance were not the sine qua non for conviction under these provisions. The Hope Commission constituted in 1984 recommended that the Australian definition of sedition should be aligned with the

Commonwealth definition.[xxxiii] Subsequently, the sedition provisions were again reviewed by the Gibbs Committee in 1991. It was suggested that while the offence of sedition should be retained, convictions should be limited to acts that incited violence for the purpose of disturbing or overthrowing constitutional authority. In 2005 amendments were made in Schedule 7 of the Anti-Terrorism Act (No 2) 2005, including the sedition as an offence and defences in sections 80.2 and 80.3 of the Criminal Code Act 1995. The Australian Law Reform Commission (hereinafter ALRC) reviewed whether the use of the term sedition was appropriate to define the offences mentioned under the 2005 amendment. After a detailed study the ALRC Report suggested that[xxxiv]: 'The Australian Government should remove the term sedition from federal criminal law. To this end, the headings of Part 5.1 and Division 80 of the Criminal Code should be changed to Treason and urging political or inter-group force or violence', and the 'heading of s 80.2 should be changed to Urging political or inter-group force or violence'. The Recommendation of the ALRC was implemented in the National Security Legislation Amendment Act 2010 wherein the term sedition was removed and replaced with references to urging violence offences'.

2.4 New Zealand:

The crime of sedition in New Zealand attentively mirrors the understanding of sedition in England. It was codified in Sections 81 – 85 of the Crimes Act of 1961.[xxxv] Following are the points that were noted by both England and New Zealand in abolishing the crime of sedition: Sedition is defined in vague and uncertain terms. This offends the fundamental principles of criminal law. In any case, it refers to a particular historical context (sovereignty residing in the person of the King) which no longer holds. The law is archaic and must be done away with. While certain political views may be unreasonable or unpopular, they cannot be criminalized. This offends democratic values. The definition of sedition offends fundamental freedoms of speech and expression which are universally recognized. In practice, the law is used to silence political opposition or criticism of the government. This has a ―chilling effect‖ on free speech.[xxxvi]

2.5 Nigeria:

Introduced during the early years of the twentieth century, the law on sedition in Nigeria too is of colonial origin. Reading Section 51 of the Criminal Code, it is evident that it draws inspiration from the English definition of sedition. It classes an act as seditious if it is done with an intention to harm the person of the President or the governor, the justice administration system or the government, if it attempts to alter ―any matter's without the use of lawful means, or if it raises discontent, disaffection, ill will of hostility in the population or between different classes of the population in Nigeria. Writers have come to the conclusion that the law was introduced with a view to curbing the writings and speeches of the educated elite under British colonial rule.[xxxvii]

2.6 Malaysia:

In Malaysia, the Sedition Act, 1948[xxxviii], is of colonial origin. Section 4 defines seditious acts as one where someone ―does or attempts to do, or makes any preparation to do, or conspires with any person to do‖ any act which has or would have a seditious tendency, who utters any seditious words, or who prints, publishes or imports any seditious publication. Furthermore, it is a crime to have in one's possession, without lawful excuse, any seditious publication. Although Article 10(1) of the Malaysian Constitution guarantees freedom of speech and expression, reasonable restrictions have been placed in Articles 10(2) – (4).(4).[xxxix]

3. THE CONSTITUENT ASSEMBLY DEBATES[xl]

"The initial Article 13 of the Draft Constitution, introducing a truncated concept of fundamental rights, initially toed the British model by proposing in Article 13(2) that the State would have the authority to make any law relating to libel, slander, defamation, sedition, or any other matter which would offend against the decency or morality, or would undermine the authority or foundation of the State. This draft provision drew heavy criticism, along with passionate and heated debates in the Constituent Assembly. A seminal concern was raised by Damodar Swarup Seth, a fiery socialist from the United Provinces. He argued that giving the Legislature the unbridled and unchallenged authority to enact laws posing these wide restrictions cancels the very guarantees of Article 13, and places the rights of people in the high handedness of the legislature”.[xli]

"The Draft Constitution will have no greater freedom of the press than we enjoyed under the cursed foreign regime and citizens will have no means of getting sedition law invalidated however flagrantly such a law may violate their civil rights. Damodar Swarup Seth, Member, Constituent Assembly of India He was vociferously supported by many members, notably, by Professor KT Shah (Bihar) and Sardar Hukum Singh (East Punjab). Pandit Thakur Dass Bhargava moved an amendment to Article 13 incorporating the mandate that all restrictions imposed by the Legislature must be “reasonable”. This safeguarded against the high-handedness of the Legislature, and made the judiciary the final arbiter of the nature of the restriction, imposing a heavy and unenviable duty on the judiciary to uphold the spirit and the mandate of the Constitution.[xlii]

4. STATUTES RELATED TO SEDITION LAWS

4.1 Criminal Procedure Code, 1973

The Criminal Procedure Code contains Section 95 which gives the government the right to forfeit material punishable under Section 124A on stating grounds. The section requires two conditions to be fulfilled:

1. That the material is punishable under the sections
2. The government gives grounds for its opinion to forfeit the material.

Chapter X of Criminal Procedure Code deals with maintenance of public order and tranquility and permits Police, Magistrate, Armed Forces to cause an unlawful public assemble to disperse, if necessary, by use of force and to restore public order. Acts which could be deemed to be seditious can be prevented by these pre-emptive actions.[xliii]

4.2 Prevention of Seditious Meetings Act, 1911

The Seditious Meetings Act, which was enacted by the British to control dissent by criminalizing seditious meetings, unfortunately continues to be on our statute books. Section 5 of the Act empowers a District Magistrate or Commissioner of Police to prohibit a public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection towards the government or to cause a disturbance of the public tranquility. This legislation was specifically enacted to curb meetings being held by nationalists and those opposed to the British Government, the continuation of this legislation is completely unnecessary and undemocratic.

4.3 Unlawful Activities (Prevention) Act, 1967

According to Section 2(o) of the said Act, supporting claims of secession, questioning territorial integrity and causing or intending to cause disaffection against India fall within the ambit of unlawful activity. Section 13 punishes unlawful activity with imprisonment extending to seven years and a fine.

4.4 Insult to Indian National Flag and Constitution of India, 1971

Section 2 of the said Act states as whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

4.5 Constitution and Sedition Laws

The effect of these laws threatens to undermine, and gradually destroy, the legitimate and constitutionally protected right to protest, dissent or criticize the government.[xliv] As a result after the Constitution of India came into operation the Constitutional validity of Section 124-A of the Code was challenged as being violative of the fundamental right of freedom of speech and expression under Article 19(1) (a) of the Constitution of India.[xlv]

Article 19(1) (a) provides guarantee to every citizen freedom of speech and expression. That means every citizen of India can express their opinion freely. This right to freedom of speech and expression secures protection for severely censuring existing government structures, policies, actions and administrative schemes, coupled with protection for suggesting and recommending the required development of other systems. Freedom given under Article 19(1)

(a) is not absolute one. Article 19(2) deals with the grounds of reasonable restrictions with regard to Article 19 (1) (a). Sedition has not been mentioned therein as one of the grounds justifying reasonable restrictions. Now the question comes whether Section 124-A of Indian Penal Code imposes reasonable restrictions on the freedom of speech and expression guaranteed under Article 19(1) (a). However, this conflict between sedition and freedom of speech is not recent origin. The framers of the Constitution also have apprehended with the dilemma as to whether the word "sedition" should be used in Article 19(2) but finally they omitted it. It was witnessed that if they have the intention to insert it within Article 19 (2) they would have inserted it. Although, they decided not to use the word "sedition" in clause (2) but used the more general words which cover sedition and everything else also.

5. INTERPRETATION OF THE OFFENCE OF SEDITION

It has been precisely laid down that the provisions of this law are only brought into play when there is an incident which involves violence due to the speeches made. The public order test is the foremost requirement to invoke this section. This above mentioned proposition has been emphasised by the Supreme Court in the *Kedar Nath*[xlvi] case which has interpreted this section in a careful manner. On one hand, there is the most sacrosanct idea of country's sovereignty and unity while on the other hand there is the intrinsic right of free speech. The apex court has tried to construct in a harmonious manner this problematic scheme and has held that only in cases where the speaker or person accused intentionally or penchant disrupts the law and order of a public gathering by the provocation to cause violence. This particular position of the court's interpretation has stood the test of the time and holds well in the present scenario as well. The court laid down the following keeping in mind the citizen's intrinsic and inviolable right to express themselves in a free manner.

> "*the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established. … But the freedom has to be guarded against becoming a licence for vilification and*

> *condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder*".[xlvii]

But the above scheme has been given a cold shrug by the lower judiciary as well as the executive and misapplication of this section by the government has led to violation of not only the inviolable and unalienable right to speech but also of human right violations due to unprecedented arrests. With this we shall look into the cases where there authorities have misread the provisions of this colonial law.[xlviii]

In *Nazir Khan* v. *State of Delhi*[xlix] the Supreme Court explained meaning and content of sedition thus:[l] Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquility of the state, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of the sedition is to incite the people to insurrection and rebellion. The court further observed: "Sedition" has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.

The *Manubhai Patel*[li]case is a classic example dealing with the confiscation of the book that contained material which propagated the philosophy of a communist leader, namely: 'Mao-Tse-Tung'. This was carried out following the provisions contained in the criminal procedure code under Section 99A. The divisive book contained content that included speeches and other incidents that preached about communist ideology as devised by various Chinese philosophers. The book was confiscated on the ground that it had the likelihood of inciting violence in the country and attracted the penal provision of Section 124A of the IPC. However, where the executive and the legislature disappoint the alleged offenders, the judiciary comes in play in upholding the principles of fairness and reasonability that are intrinsic to a fair trial. The Gujarat High Court in this very case came to rescue and declared that this particular book did not in any way tend to cause disruption of public order and furthermore, did not in any manner tries to undermine the government in power.[lii] The court further laid down that the book only contained ideas and expressions that gave a glimpse of various principles that the communist party follows in their country. Hence, such book did not in any manner have the propensity to subvert the government in power and in finality quashed the orders of the Gujarat government against the accused person.[liii] Similarly, if a person makes out appeal to the people during the election campaigning that whether they are content with the manner the elections were carried out that consisted of the bourgeois election, does he has the probability to get booked for the felony of sedition. This situation arose in the *Aravindan*[liv] case as the accused person was framed under various stringent provisions of the penal code including sedition. The court in this matter was not satisfied and held that the proceeding was still awaiting any action to be taken by the Magistrate and went on to quash the frivolous allegations made out against the accused. There is an important aspect of this particular provision that in order to constitute the commencement of the proceedings against the accused, the permission of the government has to be taken prior to any action against the accused person. The Andhra Pradesh High Court in the *Kandi Reddy*[lv] case pointed out this discrepancy where the petitioner was framed on the charges of sedition without the prior sanction of the State Government. The prior sanction is of great importance as it is only through the proper channels that the prosecution can be initiated under section 196 of Cr.PC. The court citing this discrepancy set aside the case pending against the petitioner. In another case that involved the chanting of slogans was that of *Balwant Singh*[lvi]. Balwant Singh along with Bhupinder Singh was charged with the offence of sedition who were both serving under government departments. They both came near a movie house and started hurling slogans in support of an extremist group. This incident had taken place just after the news of the assassination of then Prime Minister; Smt. Indira Gandhi had taken place. Following this incident they bother were arrested and prosecuted. They were successfully convicted for the said offence and awarded prison sentence of one year along with fine. They went on to appeal against this decision to the Supreme Court which over ruled their conviction and emphasised on this issue in the following words:

> "*the raising some slogan only a couple of times by the two lonesome appellants, which neither evoked any response nor any reaction from anyone in the public can neither attract the provisions of Sedition and causing enmity or hatred between class of persons..... Some more overt act was required to bring home the charge to the two appellants, who are Government servants. The police officials exhibited lack of maturity and more of sensitivity in arresting the appellants for raising the slogans. Raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established not could the same give rise to feelings of enmity or hatred among different communities or religious or other groups*".[lvii]

Thus, it can be understood from this above proposition laid down by the court that mere chanting of slogans would not attract the essential postulates laid down for the offence against the state. Furthermore, it emphasised on the working pattern and efficiency of the police authorities and held that these instances can be defeat the very purpose for they were enacted and portray the role of state in a negative manner.[lviii] There was another case that showcased that lack of efficient application of such severe penal provisions leads to subverting of the fundamental rights of the citizens and not the subversion of government in power. This incident was related to the conviction of Bilal Ahmed who was linked to an extremist outfit which had its primary objective of separation of Kashmir from India. This was a grave charge levelled against an Indian citizen. He was alleged to have given inflammatory speeches in the heart of the state of Hyderabad in India to young men and furthermore, was said to have provided them the means to undergo combat training.[lix] It was discovered that he had weapons of military grade and had offered the same to the youth. Another charge that was levelled against him was that he had incited the populace about the inhuman treatment that was being imparted to people in Kashmir by Indian forces. He was charged under various provisions of IPC and the Arms act along with prevention of terrorist act.[lx]

The court referred to the 1962 position and re-iterated the important element related to sedition as pointed out in the judgment and further observed which is mentioned as follows:

> "*Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder*".[lxi]

It was then decided by the court as so to overturn the judgement as the provisions of sedition cannot be invoked due to various factors. Firstly, it was the untailored manner in which the trial court had convicted the said person without going into the provisions which demanded evidence and the decisive ingredients that were needed to achieve a precise and undisputable conviction. Secondly, the absence of any patent instance that could show the manner in which the accused was involved in provoking citizens against the sovereign. Hence, he was convicted for other penal provision such as under the arms act and not for the graver offence of sedition.[lxii]

6. JUDICIAL TRENDS OF SEDITION LAWS

In the case of Ram Nandan v. State of U.P[lxiii]. The Hon'ble High Court held that section 124-A imposed restriction on the freedom of speech which is not in the interest of the general public and hence declared 124-A as ultra vires. But this decision of the Hon'ble High Court was overruled by the Hon'ble Supreme Court in the case of Kedarnath Das v. State of Bihar3, and held Section 124-A, intra vires.

In Tara Singh v. State of Punjab[lxiv] section 124-A, of Indian Penal Code was struck down as unconstitutional being contrary to freedom of speech and Expression guaranteed under Art 19(1) (a).

The essence of the crime of sedition, therefore, consists in the intention with which the language is used and what is rendered punishable by section 124-A of the penal code is the intentional attempt, successful or otherwise, the rouse as against Government the feelings enumerated in the section, a mere tendency to promote such feelings is not sufficient to justify a conviction; in other words, the prosecution must bring home to the accused that his intention was as is described in the section itself.[lxv]

In forming an opinion as to the character of speech charged as sedition, the speech must be looked at and taken as a whole, freely and fairly, without giving undue weight to isolated passages and without pausing upon an objectionable sentence here or a strong word there, and, in judging of the intention of the speaker, each passage, should be considered in connection with the others and with the general drift of the whole.[lxvi]

Speech suggesting generally that the Govt. established by law in India was thoroughly dishonest and unfair and that steps should be taken either by violence or by threat of violence to abolish it, comes within the provisions of section 124- A.[lxvii] the gist of the offence under section 124-A lies in the intention of the writer to bring into hatred and contempt the Government and is not to be gathered from isolated or stray passages here and there but from a fair and generous reading of the article as a whole. Further, in gathering the intention allowance must be made for a certain amount of latitude for writers in the public press.[lxviii]

If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within this section, and would probably fall within other sections of the penal code. If he tried to excite feelings of hatred or contempt towards the Government, that is sufficient to make him guilty under this section.[lxix] The Federal Court of India had, however, held that the gist of the offence of sedition is incitement to violence; mere abusive words are not enough.[lxx] The view of the Federal Court was subsequently overruled by the Privy Council[lxxi] as being opposed to the view expressed in several cases.

When the speaker told the audience that the Government wanted to ruin those people who were trying to set them on the right path, that the Englishmen had come to India to make the people addicted to drink, opium and bhang, that the executive and judiciary are partial to white men and exhorted the audience to resolve not to live under Englishmen: It was held that the speech was calculated to excite disaffection against the Government and to bring it into hatred and contempt.[lxxii]

Where in course of a speech at a meeting of the labourers, the accused urged upon the labourers to unite in order to fight against their to enemies, the Govt. and the capitalists, characterizing them as sucking the blood of the labourers and dilated upon the advantages which would be conferred upon them by a general strike, and emphasized that the Govt. were getting afraid of labour and were putting labour leaders in jail for long periods, it was held that the speech was not strong enough to promote or attempt to promote feelings of enmity or hatred against the capitalists, whether they constituted or not, a class within the meaning of Section 153-A and that no offence punishable under that section was committed. Dissenting from this view the minority held the whole effect of the effect, so far as Govt. was concerned, was to suggest to the persons to whom it was addressed that Govt. in taking sides against them, was taking the part of their opponents, and that to make a charge of gross partiality on that sort against Govt. was calculated to feelings of enmity and disaffection towards Govt. and that an offence under section 124-A, was committed.[lxxiii]

A man may criticize or comment upon any measure or act of the Govt. and freely express his opinion upon it. He may express condemnation but so long as he confines himself to that he will be protected, but if he goes beyond that he must pay the penalty for it. The question of intention is always an important factor in such cases.[lxxiv] Authorship of seditious material alone is not the gist of offence of sedition. Distribution, circulation of seditious material may also be sufficient.[lxxv]

Where a speaker said that the Govt. had wounded the feelings of the Sikhs in the matter of Sis Ganj Gurdwara at Delhi and any one could see the grief-provoking picture showing thousands of bullet marks on the walls of the Gurdwara and that in the name of law and order bullets were showered on the people: held, that the reference to the Sis Ganj Gurdwara and to the motive of the authorities to rain bullets under the cover of maintaining law and order was undoubtedly such as to bring the Govt. established by law in India into hatred and the speaker guilty of sedition.[lxxvi]

Where a person says in his speech that he himself is the follower of the precept of non-violence but at the same time says that he is nobody to find fault with people who in their anger at oppression as is witnessed under the present Govt. use more violent methods and shoot at members of the assembly and where throughout his speech he insinuates various disabilities of village life to be due to the present Govt. there is an intention on his part to bring the Govt. into hatred and he commits the offence under section 124-A.in order to decide whether or not a speech constitutes an attempt to excite hatred, contempt or disaffection, it should be viewed from the standpoint of the types of persons to whom it was primarily addressed. On the one hand, their limitations, if any, have to be taken into account; on the other, the fact that the words may convey to them a literal meaning must not be lost sight of. The time and the place are also factors which should be considered.[lxxvii]

Where the propaganda secretary of a Gurdwara addressed a gathering of Sikhs, some of whom were wearing black clothes and turbans, and in course of his speech though he did not give direct incitement to violence but he nevertheless gave exaggerated figures of casualties following army action in Punjab, it as held that it would be quite proper to infer from the text and tenor of the speech made by he accused that the same was intended to bring the Govt. into contempt with the likelihood of eruption of violence and public disorder contemplated in Kedarnath's case. In the circumstances, his petition for quashing the criminal proceedings against him under S. 482, Cr. P.C., was rejected.[lxxviii] In a Supreme Court case it has been held that the casual raising of slogans once or twice by two individuals alone cannot be aimed at exciting or attempt to excite hatred or disaffection towards the Govt. as established by law in India.[lxxix]

It is to be seen now, whether S. 124-A of the Indian Penal Code is in conflict with the amended clause (2) of Article 19 or not. There appears to be three different views on the question as reflected by the decisions of the courts. These can be summarized as under:

I. Section 124-A IPC is *ultra vires* the Constitution inasmuch as it infringes the fundamental right of freedom of speech in Art. 19(1) (a) and is not saved by the expression "in the interest of public order".[lxxx]

II. Section 124-A is not void because the expression "in the interests of public order" has a wider connotation and should not be confined to only one aspect of public order *viz.* to violence It has a much wider content, and embraces such action as undermines the authority of Government by bringing it into hatred or contempt or by creating disaffection towards it From this point of view S. 124-A IPC is saved under clause (2) of Art. 19.[lxxxi]

III. Section 124-A IPC is partly void and partly valid. In *Indramam Singh* v. *State of Manipur*[lxxxii] it has been held that S. 124-A which seeks to impose restrictions on exciting mere disaffection or attempting to cause disaffection is *ultra vires*, but the restriction imposed on the right of free-speech which makes it punishable to excite hatred or contempt towards the Government established by law in India, is covered by clause (2) of Art. 19 of the Constitution of India and can be held *intra vires.* Whether restrictions under Art. 19(2) may be imposed in the interest of public or not has been clarified by the Supreme Court; it held that restrictions imposed must have a reasonable and rational relation with the public order, otherwise it would be invalid.[lxxxiii]

The desirability of having such a law as S. 124-A has been questioned in the present context of events.[lxxxiv] Thus it may be observed that the courts appear to be differing in their view points with regard to its constitutional validity. The desirability of having a law of sedition in our statute book may be examined and its proper meaning and scope determined so that a law of sedition, if it is necessary must fit in not only within the four corners of the constitutional provisions but must also be in consonance with the democratic spirit and traditions which pervade our Constitution. A suitable amendment, therefore, of S. 124-A in the light of the Federal Court decision in *Niharendu Majumdar's* case would perhaps remove the conflict which appears to confront the problem of freedom of speech in this country.[lxxxv]

The Supreme Court has held in *Kedarnath* v. *The State of Bihar*[lxxxvi] that the provision of S. 124-A Penal Code are not constitutional as being violative of the fundamental right of freedom of speech and expression under Art. 19(l)(a) of the Constitution of India. After discussing the case law on the matter the Court observes that if we accept the interpretation of the Federal Court in *Niharendu Majumdar's*[lxxxvii] case as to the gist of criminality in an alleged crime of sedition, namely, incitement of disorder or tendency or likelihood of public disorder or reasonable apprehension thereof the section will lie within the ambit of permissible legislative restrictions mentioned in clause (2) of Art. 19, but that if on the other hand we are to hold that, even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government the offence of sedition is complete then such an interpretation of the section would make it unconstitutional in view of Art. 19(l)(a) read with clause (2). The Supreme Court held

(i) that it is well settled that if certain provisions of law construed in one way would make them consistent with the constitution and another interpretation would render them unconstitutional, the court would lean in favour of the former construction;

(ii) that the provisions of S. 124-A read as whole, along with the explanations make it reasonably clear that the section 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, (Hi) that even assuming that S. 124- A is capable of

> being construed in the literal sense in which the Judicial Committee of the Privy Council construed it, it is open to the Court to construe the section in such a way as to avoid the unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it (applying the *ratio decidendi* of the case *iaR.M.D. Chambarbaugwalla* v. *Union of India*[lxxxviii] The Court in the end declared that the provisions of S. 124-A impose restrictions on the fundamental right of freedom of speech but those restrictions cannot but be said to be in the interests of public order and within the ambit of permissible legislative interference with that fundamental right

The position hitherto taken has been altered. It is only when the words have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in. In order to save S. 124-A of IPC from being questioned as infringing the freedom of speech and expression guaranteed by the Constitution, the apex court in *Kedar Nath* v. *State of Bihar*[lxxxix] limited the application of the provision to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.[xc] A Constitutional Bench explained the meaning of the words, 'excite disaffection' and also upheld the constitutional validity of S. 124-A. The Supreme Court observed:[xci]

The security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is a *sine qua non* of a democratic form of Government that our Constitution has established...But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have a tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Supreme Court further held:[xcii] 'Government established by law' is the visible symbol of the state. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the government established by law, is an essential condition of the stability of the State. That is why 'sedition' as the offence in S. 124-A comes under Chapter VI, relating to offences against

State...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', which have been made penal by the section.

The court held that valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination of social interests, needs and necessities to preserve the very chore of democratic life, preservation of public order and rule of law.[xciii] The apex court has accepted that the line dividing preaching disaffection towards the Government and legitimate political activity in a democratic set up cannot be neatly drawn.[xciv]

7. RECENT TRENDS AND EFFICACY OF SEDITION LAW

Another illustration, where sedition has been misused or abused is one of Aseem Trivedi case whereby a cartoonist was arrested by the police authorities under the stringent section of IPC; section 124A, the now unconstitutional 66A of the IT Act and also under section 2 of the Prevention of Insults to National Honour Act. The accused cartoonist was charged because he made certain objectionable cartoons that upset the tone of many in the government as well as other watchful citizens. The case was filed by Amit Katarnayea who happens to be a Mumbai based lawyer as he was offended by the manner in which the cartoonist had sketched out the cartoons. The tone of sketches in question was corruption and portrayed the Indian National Emblem in a distinct unusual manner by showcasing wolves instead of heads of four lions.[xcv] The court brought forth a distinction between criticism and disloyalty and further observed:

> "*disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence*".[xcvi]

This proposition lays down what has been said even by the apex court in many cases let alone many other high courts in plenty of matters. In recent times, where one of the cabinet ministers went onto criticise the judiciary and its approach with regard to the reforms in the collegium system of the appointments in higher judiciary was also charged for the offence of sedition. But the Allahabad High Court did not entertain this charge and held that it was merely a criticism and did not in any manner intended to disrupt public order or create violence. It was held by the court as follows:

> "*Hence 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 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*".[xcvii]

The rationale for striking down this colonial law is because of the manner in which it is being casted upon the citizens of this great nation. If people that belong to a particular locality and in their periphery a nuclear power plant comes to be soon established thereby causing their displacements, then don't they have a right to protest against such happening? Apart from the issue of displacement, lack of rehabilitation facilities from the government and the threat it poses to their surrounding and in many cases to their livelihood is something that is understandable to any ordinary prudent person. But it turns out this was not in the case of Tirunelveli district, where the people were protesting the establishment of Kudankulum nuclear power plant and were booked under the offence of sedition. There is no clarity as to the most important question: did the state government authorise the initiation of proceedings which is the foremost requirement to be fulfilled for prosecution under this offence. Other than this, there are countless people who have been put in the F.I.R. as accused even though the veracity as to their committing the act or not through any evidence is far from clear. This is also evident from the fact that there have been no charge sheet framed so far and it was only until the Supreme Court intervened that some names were dropped from the F.I.R. but some still remain and the overall efficacy of this question only points in direction of scraping off this law.[xcviii] In one of the most recent cases, on 12th April 2019, the Kerala High Court overruled a special court verdict of conviction of four persons who had been convicted for the said offence as they had organised a meeting of the banned terrorist organisation "SIMI". The National

Investigation Agency (NIA) had charge sheeted sixteen persons out of whom, two were awarded sentence of life imprisonment while other two were awarded a sentence of twelve years. Astonishingly, one of the accused was a juvenile who was later dropped out of the case after the high court entertained the appeal.[xcix] The Court went to hold that the speech may have been made out maliciously but there was nothing seditious in its contents and held as follows:

> "*None of the speakers said that they should show disloyalty to the Government of India. They were projecting the plight of Muslims, of course viewed in a narrow angle as saviours of Muslims community. They might be wrong in making such a statement. It is their thought process that the rule of Mughal or Nizam is better and they should fight under the leadership of SIMI. Therefore we are of the view that none of the accused can be charged with the offence under the Section 124A of the IPC*".[c]

Thus one thing can be seen from above mentioned case laws that the point where the criticism becomes uncanny to the government in power, it comes heavy handed on its critics. However, it is no new principle that constructive criticism is essential or rather vital to a healthy democracy but still what makes it more questionable is the intent with which the government takes the actions making it even more questionable about the viability and existence of this provision anymore.

JNU incident is what one can term as Kohinoor for the opportunist Indian media that has given it undue media attention and driven away from the rationale mindset that our country has been known for. The shouting of anti India slogans and creating an environment that is supporting a neighbouring country's ambitious policy of infiltrating terrorists and de-stabilising the country is in no way protected. Rather such instances belittle every little sacrifice made by thousands of freedom fighters who fought hard for country's independence. Every citizen has a fundamental duty that though not enforceable by courts, serves as a guiding principle for the country's young and agile youth. Such duty is provided under Article 51A (a) which casts upon us a duty to uphold the nation's constitution and the ideals and institutions it comprises of. Although the case is pending in court, slogans that were shouted tantamount to subversion of the government and demeans the very ideals and principles enshrined in our Constitution which we strive to achieve.[ci]

8. CONCLUSION

Sedition is an offence that has been used since the colonial times as a means to encroach upon the citizen's inviolable and intrinsic right to freedom of speech and expression. This was achieved by framing various freedom fighters for this offence and hence the Britishers were successful in keeping them at bay from continuing their fight for Independence. But this particular provision has been cast upon Indian citizens in the post-Independence era in a haphazard and careless manner. This has caused unrest amongst the Indians as well as the legal critics and luminaries as they have stressed upon the deletion of this provision. They have further stressed upon amending the provisions present under other enactments so to maintain the unity of the nation as well as the faith of people in the Indian democracy. Now in a modern era it is basic human rights of the individual to speak free and raise his voice which is part and parcel of democracy. Hence if the contradiction appears between sedition law & freedom of speech and expression the later should always prevail over the former. In my opinion the freedom of speech in the inherent right since birth, hence it cannot be curtailed by any means.

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[iii] Sarah Sorial, Sedition & question of freedom of speech, 2007
[iv] Ibid.
[v] LAW COMMISSION OF INDIA, 39th Report on: "*The Punishment of Imprisonment for Life under the Indian Penal Code*", 1968
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[viii] William T. Mayton, ―Seditious Libel and the Lost Guarantee of a Freedom of Speech‖ 84 Colum. L. Rev. 91 (1984).
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[xi] R v. Sullivan (1868) 11 Cox C.C. 44 at p. 45
[xii] [1951] 2 D.L.R.369.
[xiii] Working Paper No. 72
[xiv] European Convention on Human Rights, 1950, 213 UNTS 221
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[xxi] 77 Eng. Rep. 250 (K.B. 1606).
[xxii] L. Levy, ―Legacy of Suppression‖ 10 (1960) in Mayton,
[xxiii] Section 2 of the Sedition Act, 1798 defines sedition as : To write, print, utter or publish, or cause it to be done, or assist in it, any false, scandalous, and malicious writing against the government of the United States, or either House of Congress, or the President, with intent to defame, or bring either into contempt or disrepute, or to excite against either the hatred of the people of the United States, or to stir up sedition, or to excite unlawful combinations against the government, or to resist it, or to aid or encourage hostile designs of foreign nations.
[xxiv] This Act was a set of amendments to enlarge Espionage Act, 1917
[xxv] 249 U.S. 47 (1919)
[xxvi] 250 U.S. 616 (1919)
[xxvii] 341 U.S. 494 (1951).
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[xxx] 376 U.S. 254, 273-76 (1964).
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[lvi] *Balwant Singh v. State of Punjab*, (1995) 3 SCC 214.
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[lxii] Shivani Lohiya, LAW OF SEDITION, Universal Law Publishing Co. (2014), p. 57.
[lxiii] AIR 1962 SC 955
[lxiv] AIR 1950 SC 124
[lxv] Satyaranjan Bakshi v. Emperor (AIR 1927 Cal 698)
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