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Sedition: The Doom of India

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ABSTRACT

In our rich legal history, there can hardly be an enactment which can parallel let alone surpass the controversial relic of imperialism that is Sedition. Deliberately left out of the Draft Penal Code of Thomas Babington Macaulay, it finds its way in because of contingencies unfathomed. The extensive and expansive power of Section 124A ergo Sedition, has been used by the avaricious Imperial Forces to stifle and arrest embers of Dissent. Cases galore from Jogendra Chandra Bose to 'Lokmanya' Bal Gangadhar Tilak, from Mahatma Gandhi to Jawaharlal Nehru, from Ganesh Savarkar to Maulana Abul Kalam Azad. One would have hoped that after getting deep wounds from the sharp teeth of Sedition, the Elected Constituent Assembly will abolish this draconian law. But alas, it still lives.

In this paper the Author traces the Legislative History of the colonial relic from the drafting and enforcement of Indian Penal Code to legendary trials of Indian Freedom Fighters under the section. The Author will discuss the development of law that happened in the British Raj and the landmark pronouncements of the Federal Court of India and the Privy Council. The Author will delve into the Constituent Assembly Debates to paint what was in the mind of the Framers and how the jurisprudence on the law evolved in Independent India. Lastly, the Author will discuss how the draconian law is being misused in contemporary India.

I. LEGISLATIVE HISTORY OF SEDITION

At the dawn of the 17th Century, a powerful trading corporation emerged, which indulged in an unprecedented *"corporate terrorism*" which twisted the very fabric of Asian Trade forever. At Leadenhall Street in London, an association of traders came together and formed '*Merchants Adventurers'* in 1599. Because of the extensive lobbying efforts of the avaricious Members of Parliament, the Merchants were granted a Charter by Her Majesty, Queen Elizabeth on 31st December, 1600, for exclusive trading rights with the East Indies. With the blessing of the Crown, the merchants went on a voyage and soon established their first trading port on Indian soil, at a place called Surat. From the coast of Bombay, they travelled

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to Agra via land, then to the Cape of Comorin and finally settled at the Coast of Madras. But, the smell of greener pastures allured the corporate greed of the Merchants and took them to the richest province at that time, Bengal. The Merchants were indeed the '*East India Company'*.

The British in the allurement of superior cloth quality at Madraspatnam, got the lease of the place from the 'Nayak' and started to fortify the place. This place came to be known as Fort St. George after the patron saint of England and was later elevated to a Presidency. Other two Presidency Towns were Bombay[2] and Bengal. Bengal was the crown jewel of the British Administration. The English marked this with the establishment of "Fort William", named after King William III, or *"King Billy."* With the defeat of Siraj-Ud-Daula at Battle of Plassey (Palashi) in 1757, Robert Clive established the Empire's hold over Bengal with Mir Jafar at the helm of administration but only as a lame duck.

With the administration of these prosperous, fecund and high yielding regions under the Company's control, this association of Merchants transformed from an organization of corporate greed into a territorial and colonial force. However, the British only were responsible for administration of *diwani rights* as *fauzdari rights* were administered by the Nizams. A welcome change in the administration came with the passing of Regulating Act of 1773.[3]

The British raided this rich country fuelled by their avaricious desires and plundered and pillaged the resources indiscriminately. That lead to Bengal Famine in 1770 under the leadership of Cartier and 10 million innocent lives were lost. Fed up with the blatant corruption in the administration and its incapability British Parliament passed an act[4] which gave the administration of the Empire to a Board of Directors nominated by the Parliament from the Company.

The Board of Control in an effort to bring reforms in day-to-day administration procedure, started to develop a unification and drafting of laws and legislations. It is imperative to bear in mind that at the same time in England, a gentleman from Houndswitch, London was bringing in similar legislative reforms. His name was Jeremy Bentham[5]. In February of

[2] Earlier the seat of the power was in Surat but later transferred to Bombay when Bombay was ceded in a dowry to King Charles II by the Portuguese. When Catherine of Braganza married King Charles II, the map of Bombay went missing. Nobody knew where Bombay actually was. When asked, Lord Chancellor suggested it was somewhere near Brazil!

[3] Supreme Court was established via this act at Calcutta and the Court applied the English law and decided both civil and criminal cases against both British and Indian subjects of the company.

[4] Pitts India Act, 1784, Act of British Parliament, (24 Geo. 3 Sess. 2 c. 25), 1784 (India)

[5] He published a Treatise on the subject, '*Treatise on Legislation'* which gained accolades from around the

1830, an enquiry was instituted against the Company. At this enquiry, a Scotsman submitted a proposition of four-member legislative council comprising of an English Law expert amongst them, to suggest reforms in the archaic legal system. His name was James Mill[6]. The result of this enquiry was the Charter of 1833. The charter envisaged a Council of Governor having 4 members and one of the members was tasked to 'legislate' for British India. A 33-year-old member was nominated by the Parliament to chair the First Law Commission.[7] His name was Thomas Babington Macaulay.

The first law commission proposed codification of a Penal Code. Macaulay outlined his approach towards the enormous task as *"Uniformity where you can have it; diversity where you must have it, but in all cases certainty."*[8] This code, he suggested, will be based on two principles namely, suppressing crime with minimum suffering and secondly, principle of ascertaining truth with smallest expenditure of time and money.[9] It took Macaulay 2 years to complete drafting his Penal Code and it was finally presented to Lord George Auckland on 14th October, 1837. Among other offences[10], Clause 113 of the Draft Code provided an offence that would constitute Sedition[11]. The Clause read;

Whoever, by words, either spoken or intended to be read, or by signs, or by his visible representation, attempts to excite feelings of disaffection to the Government established by law in the territories of the East India Company, among any class of People who live under that Government, shall be punished with banishment for life or for any other term, from the territories of the East India Company, to which fine may be added, or with simple imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation: Such disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the

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world.

[6] James Mill was very close to Jeremy Bentham and regarded him as his *'Spiritual Father'*.

[7] Though he was nominated by the Parliament, the board of Directors were not very keen on his appointment. They opposed his nomination on the grounds of his age. He was also very critical of the James Mill so nobody gave him a chance to be appointed as the Chairman.

[8] SIR GEORGE TREVELYAN, THE LIFE & LETTERS OF LORD MACAULAY, (New York; Harper & Brothers, 1877)

[9] *Id.*

[10] Offences relating to State, Armed Forces, Coin, Religion or Caste, Illicit Immigration, Body, Marriages etc.

[11] Though the Draft Penal Code in its Clause 113 doesn't mention exactly the offence 'Sedition' but it did mention it in the notes to the Chapter titled 'Defamation.' This provision was based on the Libel Act of 1792, (32 Geo III, c. 60) Act of British Parliament, 1792 (India)

Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.

This original Draft Penal Code was revised two times[12] but it was implemented at a glacial pace. However, a cataclysmic event happened in the next couple of years which alerted the British. The event is now known as the 'Sepoy Mutiny of 1857' or 'The First War of Independence', depending on who you ask. The revolt though, lasted for two more years and left the British Parliament furious. They placed the blame on the EIC and came up with Government of India Act, 1858, by virtue of which the government of India and the properties of the Company were transferred to the British Crown. This transfer of power hastened the process of enactment of Draft Penal Code and it came into force on 1st January 1862.[13]

Strangely, amongst all this fanfare, something was amiss. Clause 113 which was present in the Original Draft made by Macaulay, was nowhere to be found in the new Code. The absence of such a vital provision caught the attention of a Cambridge educated Barrister who was the one of the 15 Council members of the Governor. His name was James F. Stephen and on 25th November, 1870, the Legislative Council introduced vide an amendment, Section 124A in the Penal Code.[14] The original section read as;

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

Explanation- Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.

[12] First it was sent to the Supreme Court and other Courts for comments and thereafter it was revised. However, this revision was not to the satisfaction of the Courts so it was revised yet again for the second time.
[13] It received the assent of the Governor on 6th October, 1860 and was meant to come into force 1st May 1861 but was deferred.
[14]After coming into force of Section 124A, the British Government supported this provision with two different set of acts namely, Dramatic Performances Act of 1876, No. 19, Acts of Parliament, 1876 and Vernacular Press Act, 1878

II. NASCENT STEPS

Till 1891, that is 21 years, no account of any trial or any prosecution can be found under Section 124A. The first Sedition trial recorded happened in the State of Bengal. The British Government passed the Age of Consent Act, 1891 which extended the age for consent from previous 10 years to 12 years which essentially made sexual intercourse with a girl child below 12 years of age, whether with or without her consent, punishable and amounting to Rape. This law was the need of the hour as at this point in time, a social evil by the name of *"Garbhadaan"* was rummaging the society. The first sedition case was related to this Act only.

A weekly Bengali newspaper by the name of *'Bangobasi'* lamented and lambasted the government for interfering with the ancient Hindu traditions and violating their beliefs. The newspaper wrote a chastising article which rubbed the British administration the wrong way. They said "*You should not try and suppress girl marriage because you won at Plassey and Assaye. It is error and presumption on your part to attempt to reform our morals."* As a result of this offending article the Editor and the Manager of the Magazine was charged with Sedition. The case was *Queen Empress v. Jogendra Chunder Bose & Ors.*[15]

The defence argued that only the actual writer of the Article can be prosecuted for Sedition and defendants cannot be made liable for the acts of the writer. The Court though, speaking through C.J. Petheram, negated the contention of the defendants and propounded that the essence of Section 124A was the '*attempt to excite disaffection by words intended to be read',* and certainly did not restrict the scope of the offence to the writer alone. Therefore, even the publishers can be prosecuted for the offence. However, the kernel of the judgment was elucidated by His Lordship while reading and explaining the charge to the Jury[16]. He explained in lucid terms the difference between '*disaffection'* and '*disapprobation'.* He summarised "***It is sufficient for the purposes of the section that the word used are 'calculated' to excite feelings of ill-will against the government and to hold it up to the hatred and contempt of people, and that they were used with the intention to create such feeling."***

The second case under the Sedition law was of great Indian Patriot who Mahatma Gandhi referred as *'The Father of Indian Unrest'*. His name was *'Lokmanya'* Bal Gangadhar Tilak. Long before Tilak was put on trial for Sedition there was no love lost between the British

[15] Queen Empress v. Jogendra Chunder Bose & Ors., (1892) ILR 19 Cal 35
[16] Despite all his effort, the jury could not come to unanimous conclusion and thus C.J. Petheram ordered a retrial but since the defendants issued an unconditional apology, the charges were dismissed.

Administration and him. His newspaper *'Kesari'* carried out detailed critiques of the administration policy. In one such article he justified the killing of Afzal Khan by Shivaji Maharaja as 'self-defence' which British historians refer as a 'murder'. He wrote "*"Do not circumscribe your vision like a frog in a well. Get out of the Penal Code, enter into the high atmosphere of Bhagwat Gita and then consider the actions of great men."*[17]

Coincidentally at the time of the publication of the Article, just a few days later, Mr. Rand, a British officer was assassinated. But the Times of India putting two and two together, blamed Tilak for the assassination of Mr. Rand, as this article was published just before his murder and imputations were made linking him to the murder even though there was no apparent link between him and the Assassination. A complaint was filed against Tilak under Section 124A and he was arrested at midnight. The trial was set for 8th September, 1897 and was presided over by Justice Arthur Strachey.[18]

Advocate General Basil Lang argued on behalf of the State that, *"It is not necessary to prove that the writings in the Kesari, whether poetical or otherwise, incited a particular person to commit a violent act or create sedition in his mind.* ***It is enough if there is possibility of it."*** The defence argued that there was actually no suggestion of any violence or overthrowing of the Government. He referred to the speech made by James Stephen[19] vis-à-vis Section 124A and said *'free and fair discussion'* and more importantly cases which don't excite *'disaffection'* against the government are not seditious.

Justice Strachey while reading the charge to the jury explained two considerable issues which were firstly, the test to be applied is whether these people were trying to stir up rebellion or feeling of enmity against the government and secondly, **the class of readers of the publication and the state of feelings at the time of the publication of the articles and their *'natural effect'* on those people.** He also opined the meaning of the term of 'disaffection' and said it is a ***"a mere lack of affection and a feeling which do not translate into an overt act of hatred, enmity, dislike, hostility, contempt or any other form of ill will against the government."*** Though the decision of jury was not unanimous, Tilak was sentenced to 18 months rigorous imprisonment[20]. Tilak filed an appeal to the Privy Council but to no avail and was sentenced to his punishment.[21] However this was not Tilak's only rodeo with Sedition.

[17] T.V. PARVATE, BAL GANGADHAR TILAK, (Navjivan Publishing House, Ahmedabad, 1972)
[18] Queen-Empress v. Bal Gangadhar Tilak and Keshav Mahadev, ILR (1897) 22 Bom 112
[19] Reg v. Alexander Martin Sullivan, (1867-71) 11 Cox's Criminal Law Cases, 44 at p.45
[20] Though he spent only 51 weeks of his sentence.
[21] N.C. Kelkar, *Full & Authentic Report of the Tilak trial*, available at https://indianculture.gov.in/reports-proceedings/full-authentic-report-tilak-trial

On 25th December, 1897 a bill was introduced in the Governor's Legislative Council to amend the Section 124A. This didn't come as a surprise as the interpretation of this Section caused a lot of varied judgements between Calcutta, Bombay and Allahabad High Courts who all interpreted according to their own wit and wisdom. To bring about a uniformity in interpretation, the bill seeks to amend the section. The bill was again amended on 18th February, 1898.[22] Through the new amendment, a new phrase *"brings or attempt to bring into hatred or contempt"* is added to the section. A phrase was added to the definition which read *"or promotes or attempts to promote feelings of enmity or ill-will between different classes of Her Majesty's subjects"* but later this phrase was further deleted[23]. Also, an Explanation 1 was added to the section defining the term of disaffection which included *'disloyalty'* and *'all feelings of enmity'.* Explanation 2 and Explanation 3 were also added to the section protecting the fair criticism of government measures. The punishment in the earlier section was also reduced from 10 years to 3 years.[24]

During the Indian Summer of 1908, India witnessed another sedition trial of Tilak[25]. On 12th May, 1908 he published an Article in *Kesari* blaming the '*Perversity of the White Official Class'* for the Muzaffarpur incident in which Khudiram Bose and Prafulla Chaki in attempt to assassinate Douglas Kingsford blew up the wrong carriage and killed a barrister and his daughter instead. He published another article talking about Bomb Making! He was charged with the duo of Section 124A and Section 153A.[26] He was represented by another barrister from Bombay, who was initially at the vanguard of the freedom struggle but later changed the very fabric of this nation with disastrous effect. His name was Mohammed Ali Jinnah.

A 'special jury'[27] was empanelled to hear the case which led to a furore in Tilak's camp.

[22] WALTER RUSSELL DONOGH, A TREATISE ON THE LAW OF SEDITION AND COGNATE OFFENCES IN BRITISH INDIA, (Calcutta: Thacker, Spink, 1911)

[23] The deleted phrase was enacted as a new provision in the form of Section 153A under the Chapter of Offences against Public Tranquility.

[24] Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excites disaffection towards Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term to which fine may be added, or with imprisonment which may extend to 3 years, to which fine may be added, or with fine.

Explanation 1.- The expression 'disaffection' includes disloyalty and all feelings of enmity.

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

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

[25] King Emperor v. Bal Gangadhar Tilak, 10 Bom LR 848: (1908) 8 Cri LJ 281

[26] He was charged with two counts of Sedition (section 124A) and one charge of promoting Religious hatred (Section 153A)

[27] Most members in the jury would be European who would not be able to comprehend the complexities of

Nevertheless, the jury was constituted with 7 Europeans and 2 Indians. Since the European jury were at sea, Tilak demanded that he be given the chance to address the jury and the Court for long and he was granted the request.[28] Tilak's address to the jury was an attempt on his behalf to illustrate that he lacked the essential ingredient of the offence, criminal intention or '*Mens Rea'.* As anticipated, Tilak was convicted yet again but this time with a 7-2 majority[29]. His words however, will echo forever in the minds and thoughts of Indians. He said "*All I wish to say that in spite of the verdict of the jury, I maintain that I am innocent. There are high powers that rule the destinies of things; and it may well be the will of the providence that the cause which I represent may prosper more by my sufferings than by my remaining free."*

At the turn of the Century, revolutionary feelings amongst the common Indian masses rose. People were already averse to the British Administration but then in 1905 they became vehemently opposed to the very idea of the British Rule and started demanding *'Swaraj'* or as The Grand Old Man of India[30] once said, *"The power for self-taxation, self-legislation and self-administration."* Once the conscience of the Indians was galvanised because of the revolutionary sentiment and yearning of *'Swaraj'* or Political, Social and Cultural Independence, Indian leaders started using Seditious offences to further their political outreach with the masses. Sedition was now politicised. The Sedition Trial of Mahatma Gandhi and Jawaharlal Nehru epitomises this new political variant.

Mahatma was arrested and was charged with Sedition or as Mahatma called it, *"The Prince among the Political Sections of IPC"*.[31] He along with Shankarlal Banker was arrested for certain articles he wrote in his publication *'Young India'* which he established in 1919. At around 11:45 AM, with only 200 people in attendance, accused were brought in. Those who were present were astonished to see the Judge himself standing up in respect and reverence for Mahatma! This was unprecedented at many levels since the accused was a shabbily dressed Indian in a loincloth and the Judge was an English 'Sahib'. The accused plead guilty on all charges and refused to call any witness in his defence. Mahatma called Sedition as the highest duty of the citizen and asked the judge to give him the harshest punishment possible.

Marathi language.

[28] Tilak's address to the jury commenced on 15th of July and completed on 22nd July. 8 days in total.

[29] He was sentenced to 3 years Transportation on 2 sedition counts which would run consecutively i.e., for 6 years. He was also fined Rupees 1000 u/s 153A for promoting religious hatred and enmity.

[30] Dadabhai Nairoji

[31] SIR THOMAS STRANGMAN, *Trial of Mahatma Gandhi-1922*, BOMBAY HIGH COURT, (April 27, 2021, 11:15 PM), https://bombayhighcourt.nic.in/libweb/historicalcases/cases/TRIAL_OF__MAHATMA_GANDHI-1922.html.

The Judge sat flummoxed but with a heavy heart sentenced him to 6-year imprisonment.[32]

In October, 1930 Jawaharlal Nehru was released from prison after getting arrested for taking part in Dandi March.[33] Just afterwards he started a No-Tax campaign in United Provinces. He also made certain speeches to the utter dislike of the Administration and therefore was forbidden to address any public gathering. But throwing caution to the wind, Nehru proceeded to start the campaign but was arrested rather by the Police and was charged with Sedition.[34] He too in the same spirit as Mahatma declined to argue his case and plead guilty to all charges.[35] In his statement to the Magistrate, Nehru eloquently said, *"There can be no compromise between freedom and slavery, and between truth and falsehood. We realized that the price of freedom is blood and suffering, the blood of our own countrymen and the suffering of the noblest in the land. And that price we shall pay in full measure."*[36]

A watershed moment in India's fight against Sedition, came in 1941. Under the Government of India Act, 1935, a supreme court of India was created after persistent efforts of Hari Singh Gaur since 1922. It was called the Federal Court of India. It came into force in 1937 and functioned till 1950.[37] A case decided by a Full Bench of the Federal Court is important from the aspect of understanding how the Courts interpreted the cases involving Sedition during the trying times of the Second World War. The case involved the promulgation of Defence of India Rules 1939 by the Viceroy of India. According to the rules, every single person was prohibited from bringing into hatred or contempt or to excite disaffection towards *"His Majesty or the Crown representative or the Government established by law in British India or in any other part of his Majesty's dominions."*[38]

This section being an almost facsimile of Section 124A ergo Sedition, the Full Bench of the Federal Court presided by Chief Justice Maurice Gwyer, was of the view that the explanations mentioned in Section 124A should be 'read into' the 1939 Rules.[39] The case was

[32] After his conviction, Inner Temple, one of the four Inns of England removed Gandhiji from its roll. But alas, it was Inner Temple who lost here and certainly not Mahatma Gandhi.
[33] A political demonstration started by Mahatma Gandhi to protest against the new Salt Laws by making salt out of sea water.
[34] His tryst with Sedition however will continue when in 1934 he will again be charged under Sedition for his speeches at Albert Hall in Calcutta.
[35] He was sentenced to 2 years in Prison under Section 124A. However, he was released after only 97 days.
[36] CHITRANSHUL SINHA, THE GREAT REPRESSION 145, 146 (Viking, 2019)
[37] GEORGE HAROLD GADBOIS, THE SUPREME COURT OF INDIA: THE BEGINNINGS, (Vikram Raghavan & Vasujith Ram, Oxford University Press, 2018)
[38] Rule 34(6) of Defence of India Rules, 1939
[39] The Court noted that *"In our opinion the law relating to the offence of Sedition as defined in the Code is equally applicable to the 'Prejudicial Act' defined in the Defence of India Rules 1939. We do not think that the omission in the Rules of the three explanations, appended to the Section of the Code affects the matter."*

titled as ***Niharendu Dutt Majumdar v. The King Emperor***.[40] In this case the appellant who was a member of Bengal Legislature Assembly had criticised the Governor rather vehemently for his abuse of police powers in Dhaka Riots and also charged him for stirring communal hatred. He was convicted by both the lower court and the High Court and hence this appeal. The Federal Court though was not much inclined to prosecute him for Sedition and acquitted him of the charge. The Court categorically stated, *"[the speech although] a frothy and irresponsible performance…, to describe it as an act of sedition is to do it too great an honour."*

The Court made it ample clear that ***"it [Sedition] is not made an offence in order to minister to the wounded vanity of the government but because where the Government and the law ceased to be obeyed because no respect is felt any longer for them, only anarchy can follow."***[41] The Court also answered the question as to what comprises the offence of Sedition. It said, *"The gist of the offence of sedition is the promotion of public disorder or the reasonable anticipation or likelihood that public disorder will be promoted. The acts or words complained of* ***must either incite to disorder or must be such as to satisfy a reasonable man that that is their intention or tendency."***

However, this fine exhibition of judicial interpretation was laid to waste as the judgment was called into question in another case before the Privy Council and the Council overruled the decision by the Federal Court.[42] The Privy Council went back in time and adopted the meaning of Sedition as enunciated by Justice Strachey in Tilak's case. The Privy Council reiterated that ***"the offence (Sedition) consisted in exciting or attempting to excite in others certain bad feelings towards the Government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small"***. Just after six months of this judgment by the Privy Council, India gained Independence.

III. SEDITION IN IDEPENDENT INDIA

V.P. Menon notes in his book[43] that prior to the partition of India, there were Elections for the establishment of an Interim Government which will see through the Partition and will stabilise the transition process from being an English Dominion to an Independent nation. Indian Constituent Assembly under the chairmanship of Dr. Rajendra Prasad, constituted a

[40] Niharendu Dutt Majumdar v. The King Emperor, AIR 1942 FC 22: 1942 SCC Online FC 5: 1942 Cri LJ 504
[41] Recently an Additional Sessions Judge, Dharmendra Rana, in *State v. Disha Ravi*, Bail Application No. 420/2021, cited the words of C.J. Maurice Gwyer but certain faction of uninformed people took offence at the words and openly threatened the Judge.
[42] King Emperor v. Sadashiv Narayan Bhalerao, AIR 1947 PC 82
[43] V.P. MENON, TRANSFER OF POWER IN INDIA (Princeton University Press, 1957)

Sub-Committee on Fundamental Rights and Sardar Patel was elected as the head. They submitted their draft interim report before the assembly for its consideration on 29th April 1947. Sardar Patel in Clause 8 of the Interim Report on Fundamental Rights added a proviso. The relevant Clause dealt with freedom of Speech and Expression. The proviso essentially placed certain restrictions on the right of the citizenry to exercise free speech. The restriction dealt with 'Seditious' speech. Bewildering was the notion that the Assembly who was responsible for drafting the Constitution would include Sedition as a restriction on free speech when they have themselves faced the ire of this draconic law at the hands of the British! But nonetheless it was included.

Somnath Lahiri, a Communist Leader in the Constituent Assembly led the tirade against the insertion of Clause 8. He specifically targeted Sardar Patel and C. Rajagopalachari[44] and said "*I feel that many of these fundamental rights have been framed from the point of view of a police constable and many such provisions have been incorporated. Why? Because you will find that very minimum rights have been conceded and those too very grudgingly and these so-called rights are almost invariably followed by a proviso. Almost every article is followed by a proviso which takes away the right almost completely, because everywhere it is stated that in case of grave emergency these rights will be taken away."*[45]

As a result of this lionhearted and valiant tirade by Somnath Lahiri, the word *'Seditious'* was dropped from the Clause 8 by Sardar Patel. However, this was not the end. Article 13(1)(a) of the draft constitution which guaranteed freedom of speech etc. to all the citizens qualified the freedom given to the citizenry in the name of "libel, slander, defamation, ***Sedition*** or any other matter which offends against decency and morality or undermines the authority or foundation of the State." Poignantly the word 'reasonable' was missing from the Article, enabling the State to make sweeping provisions to curb the freedom of Speech and expression of the public at large.[46] On 1st December, 1948, debate on Article 13 commenced and the charge was led by Damodar Swarup Seth. He suggested that "*the present is the age of the Press and the Press is getting more and more powerful today. It seems desirable and proper, therefore, that the freedom of the Press should be mentioned separately and explicitly."*[47]

After the debate progressed further, K.M. Munshi moved an amendment in the Assembly to

[44] Independent India's Last Governor General

[45] Constituent Assembly of India Debates (Proceedings) – Volume III, available at https://www.constitutionofindia.net/constitution_assembly_debates/volume/3/1947-04-29

[46] Later, Thakur Das Bhargava proposed restrictions should be qualified by use of the word 'Reasonable' before them.

[47] Constituent Assembly of India Debates (Proceedings) – Volume VII, available at https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-01

delete the word 'Sedition' from the Article 13(2) of the Draft Constitution. He also wished to substitute the phrase 'undermines the authority and foundation of the state', with 'undermines the security of, or tends to overthrow the state'. He politely submitted "*the importance of this amendment is that it seeks to delete the word 'sedition' and uses a much better phraseology, viz. 'which undermines the security of, or tends to overthrow, the State.'* He stressed about the ambiguity of the word Sedition and impressed upon the varying interpretation of the word done by various Courts of Law. He impressed upon the assembly that "*we have a democratic Government**, a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State."*** [48]

As a result of these criticisms levelled by such Himalayan luminaries, the word 'Sedition' was dropped from Article 13(2) of the Draft Constitution. In the final Constitution, Article 13(1)(a) became Article 19(1)(a) and Article13(2) became Article 19(2). However, Section 124A remained on the statute books because of Article 372 of the Constitution which provided that all the laws in force before the commencement of the Constitution, if not explicitly modified or repealed would continue to be in force. The provision of Sedition in Independent India read as;

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excites disaffection towards the Government established by law in India, shall be punished with imprisonment for life or with imprisonment which may extend to 3 years, to which fine may be added, or with fine.

Explanation 1.- The expression 'disaffection' includes disloyalty and all feelings of enmity.

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

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

Independent India was still following the same imperialistic interpretation of the Sedition laws and thus came the first challenge to the Sedition laws in 1950. Tara Chand Singh gave two speeches allegedly seditious, at Shahabad, Karnal and the other at Ludhiana. He was

[48] Id. At 46

charged with Section 124A and Section 153A of IPC along with Section 54 of East Punjab Public Safety Act. He filed four applications against his arrest under Article 226 and 228 before the Punjab High Court challenging the constitutional validity of sections 124A and 153A of the IPC.[49] Interestingly, the court abandoned the interpretation propounded by C.J. Maurice Gwyer in Niharendu Dutt case but instead adopted the Privy council opinion in Sadashiv Case vis-à-vis Section 124A. The Court then went on to test whether Section 124A ergo Sedition is a valid restriction on Free Speech and Expression under Article 19(2). Keep in mind that in Constituent Assembly Debates the word 'Sedition' from the draft article 13(2) was deleted. The Court stated, "***It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the constitution. The section then must be held to have become void.***[50]

Therefore, the Punjab H.C. has held Section 124A to be unconstitutional. And as a bonus gift it also opined Section 153A to be unconstitutional too. But this feeling of liberty, freed from the shackles of the Imperial Crusade on Free Speech was short-lived as Parliament had other plans. Lo & behold, Parliament passed the First Amendment Act 1951.

In the Statement of Objects and Reasons of the First Amendment Act 1951, the Parliament argued that, *"The citizen's right to freedom of speech and expression guaranteed by article 19(1)(a) has been held by some courts to be so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence."*[51] According to the Parliament *"the main objects of this Bill are, accordingly to amend article 19 for the purposes indicated above and to insert provisions fully securing the constitutional validity of zamindari abolition laws in general and certain specified State Acts in particular. the opportunity has been taken to propose a few minor amendments to other articles in order to remove difficulties that may arise."*

The Amending Act modified Article 19(2) to protect the State's power to provide 'reasonable' restrictions on freedom of speech by extending the power to do so in the interest of 'public order', 'security of state', 'friendly relations with foreign states' and to 'prevent incitement of an offence'. These restrictions were given a retrospective effect as if these restrictions were there when the Constitution came in force on 26th January 1950 and were in

[49] Tara Singh Gopi Chand v. State, 1951 Cri LJ 449

[50] To arrive at this decision, the Punjab H.C. relied on the pronouncements of the Apex Court in landmark cases of *Romesh Thapar v. State of Madras* AIR 1950 SC 124 and *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129 which has observed that Section 124A would be unconstitutional because the Constituent Assembly deleted the word 'Sedition' from Draft Article 13(2) which would now be Article 19(2) of the Constitution.

[51] Statement of Objects & Reasons, The Constitution (First Amendment) Act, 1951

addition to the exemptions provided in Article 19(2). And after the passing of the First amendment, another challenge was mounted on Section 124A in the case of *Debi Soren & Ors. v. State of Bihar.*[52] A Conference was held in the Santal Parganas district of Bihar wherein certain remarks were made advocating all the Non-Biharis to leave Bihar and also against the Government who was accused of repressing the Tribal population. The appellant was charged with Section 124A and was convicted by the trial court. Hence the appeal to Patna H.C.

As expected of the appellants, they argued that as per *Tara Chand,* Sedition that is Section 124A, has become void as it contravened the freedom of Speech and Expression enshrined under Article 19(1)(a) of the Constitution. However, the High Court disagreed. The Court held that the *Tara Chand* judgment is no longer a good law after the First Amendment has added 'public order' as a restriction in Article 19(2). The Court justified its holding by saying ***"{Our}view is that even accepting the interpretation put upon the section by their Lordships of the Privy Council, the restrictions it imposes on freedom of speech and expression are reasonable restrictions in the interests of public order."*** Thereby, Patna H.C. upheld the constitutional validity of Section 124A but the convictions of the Appellants were set aside.

Secessionist feelings were soaring in Imphal, Manipur wherein the demand was made in a public meeting held at a Polo Club asking for the creation of a 'Buffer State' of Manipur under the aegis of United Nations. The accused was charged with Section 124A and Section 153A and were convicted. So, an appeal was preferred before the Manipur H.C.[53] Similar contention was made before the Hon'ble H.C. as was earlier made in *Tara Chand.* The Manipur H.C. held that Section 124A was ***'partially unconstitutional'*** to the extent it sought to impose restrictions on freedom of speech insofar as a speech merely excites or tends to excite or tends to excite disaffection against the government.

Another development was accouching in the holy city of Allahabad. A person by the name of Ram Nandan was delivering a speech to villagers saying that Congress Party is responsible for mass poverty, food scarcity, inflation and high taxation. He labelled Jawaharlal Nehru as a traitor who partitioned the country. He claimed that the labour class has organized themselves and would overthrow the government through armed revolt if it didn't concede to their demands. He was charged with Section 124A. Ram Nandan then challenged the

[52] Debi Soren & Ors. v. The State of Bihar, 1954 Cri LJ 758
[53] Sagoslem Indramani Singh & Ors. v. State of Manipur, 1955 Cri LJ 184

constitutional validity of the archaic and draconian section 124A.[54] The H.C. relying on *Brij Bhushan, Romesh Thapar and Debi Soren* (Supra) held that danger to public order is not an ingredient to the offence of Sedition. The court said *"**The danger of public disorder must, however, be real and not fanciful** and reasonable restriction imposed upon a speech giving rise to a real danger of public disorder is constitutional."*

The Court also opined that the Section 124A is 'severable' in nature. The Court said, *"Neither exciting a feeling of hatred, nor exciting a feeling of contempt, nor exciting a feeling of disaffection towards the Government, necessarily involves a threat to public order and, therefore**, neither a restriction on a speech exciting a feeling of hatred, nor one on a speech exciting a feeling of contempt, nor one on a speech exciting a feeling of disaffection towards the Government, can be said to be in the interests of public order."*** Therefore, the Court did not find anything in Section 124A to distinguish between the two classes of speeches and thus did not deem it be reasonable restriction under Article 19(2). The Allahabad H.C. held Section 124A to be unconstitutional.

This discrepancy in High Courts' judgments were not desirable and thus it was required that Supreme Court once and for all settle the law. The stage was set for the Supreme Court to decide the scope and future of this archaic legislation, a relic of imperialism, in the landmark case of ***Kedar Nath Singh v. State of Bihar***.[55]

The Appellant was a member of Forward Communist Party and gave a speech in the Munger district of Bihar on the 26th of May, 1953. He was alleged to have said;

"To-day the dogs of the C. I. D. are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country and elected these Congress goondas to the gaddi and seated them on it. To-day these Congress goondas are sitting on the gaddi due to mistake of the people. When we drove out the Britishers, we shall strike and turn out these Congress goondas as well. These official dogs will also be liquidated along with these Congress goondas. These Congress goondas are banking upon the American dollars and imposing various kinds of taxes on the people to-day. The blood of our brothers- mazdoors and 'Kisans' is being sucked. These zamindars and capitalists will also have to be brought before the people's court along with these Congress goondas. On the strength of the organisation and unity of Kisans and mazdoors the Forward Communists Party will expose the black deeds of the Congress goondas, who are just like the Britishers. Only the colour of the body has changed. They have to-day established a rule of

[54] Ram Nandan v. State, AIR 1959 All 101
[55] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955

lathis and bullets in the country. The Britishers had to go away from this land. They had aeroplanes, guns, bombs and other weapons with them. The Forward Communist Party does not believe in the doctrine of vote itself. The party had always been believing in revolution and does so even at present. We believe in that revolution, which will come and in the flames of which the capitalists, zamindars and the Congress leaders of India, who have made it their profession to loot the country, will be reduced to ashes and on their ashes will be established a Government of the poor and the downtrodden people of India."[56]

For this alleged speech he was arrested and his speech was found seditious by the trial court and he was sentenced for one year of rigorous imprisonment. He appealed to the Patna H.C. but his appeal was dismissed. He therefore, appealed to the Apex Court. In the headnote to the case, the Court noted, *"Section 124A of the Indian Penal Code which makes sedition an offence is constitutionally valid. Though the section imposes restrictions on the fundamental freedom of speech and expression, the restrictions are in the interest of public order and are within the ambit of permissible legislative interference with the fundamental right."* The Court relying on the reasons of introduction of the Sedition clause and the history of the clause, said *"**the section must be so construed as to limit its application to acts involving intention or tendency to create disorder, or disturbance of law and order; or incitement to violence."***

The appellants argued that *"A speech may disturb public order or it may not, but both are made punishable under Section 124A. The section hits speeches of both varieties- permissible speeches and impermissible speeches"*[57] and therefore they argued that Section 124A is unconstitutional. The appellant also submitted that the *Niharendu Dutt Case* is the correct precedent and the *Sadashiv Case* should not be followed. The Court after tracing the history of this archaic and much disputed Section and caressing through mountain of precedents observed;

*"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. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the **sections aim 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. As already pointed out, the explanations appended to the main body of the section make it clear that***

[56] *Id.* at 54
[57] The Appellants relied on *Ram Nandan Judgment.*

criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. *So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress.* ***Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence."***

It held that Section 124A would be within the ambit of reasonable restriction prescribed in Article 19(2) of the Constitution.[58]

There were a few cases in the 60's and 70's which dealt with Communist Literature which attracted Sedition. The confrontation with our neighbour China escalated during the early 60s which resulted in a full-fledged war between the two erstwhile friendly nations. The war with China made India apprehensive of Communist sympathisers in India and especially Maoists. This was the time when Communism was considered a threat to India's sovereignty and thus the Indian Government was quick in arresting and stifling various communist voices.

In 1971, the Gujarat Government ordered[59] the forfeiture of a book by the name of *"Extracts from Mao Tse Tung"* which contained snippets and passages from Mao Zedong's speeches[60], the father of communist movement in China. The Book was published by Manubhai Tribhovandas Patel. Astonishingly the order was published in the Official Gazette as required by the law but nonetheless the notice was given to the Manubhai who only came to know about the same after reading in the newspaper!

This order of the Gujarat Government was challenged and the constitutional validity of Section 99A was also challenged on the grounds that it violated Article 19(1)(a).[61] The Petitioners argued that Section 99A calls for a *prior restraint* on the freedom of speech and

[58] CHITRANSHUL SINHA, THE GREAT REPRESSION 177 (Viking, 2019)
[59] Order was made under Section 99A of the erstwhile code of criminal procedure.
[60] The Book contained 184 passages from Mao's Speeches but the Gujarat Govt. could only pick out 6 passages to justify its order u/s 99A.
[61] Manubhai Tribhovandas Patel v. State of Gujarat, 1972 Cri LJ 373

expression under Article 19(1)(a). They argued prior restraint is unreasonable but conceded that in certain situations comprehended u/s 144 of Cr.P.C. it is valid.[62] They also contended that an order under Section 99A seriously interferes with the fundamental right of the publisher u/a 19(1)(a).

The Court in its judgment juxtaposed the right of an individual to free speech and the right of the State to maintain the security of the state. The court stated "*The protection of freedom, of speech and expression should not be carried, to an extent where it may be permitted to disturb law and order or create public disorder with a view to subverting Government established by law. It is, therefore, necessary to strike a proper balance between the competing claims of freedom of speech and expression on the one hand and public order and security of the State on the other."*

Regarding the passages of Mao's speeches in the publication the Court noted "*These passages are intended to acquaint the reader with the principles and practice of Communism as understood and explained by Mao-Tse-Tung in various speeches delivered by him to the Chinese people over a period of about thirty years.* ***They are not exhortations to our public to resort to violence or create public disorder with a view to subverting Government by law established in India. There is not a word in these passages which even remotely suggests that people should overthrow lawfully established Government in India by force or violence."***

In response to the Government imposing Sedition charges on people solely for reading Communist literature, the Court lamented,

"It is not for the Government of the day nor for the Judges presiding over our Courts to decide what doctrine of philosophy is good for our people. It is for the people to choose what is best for them and in order that they may be able to make a wise and intelligent choice, free propagation of ideas is an essential requisite. The ideas propagated may be unorthodox and unconventional: they may disturb the complacency of a handful minority or they may challenge deep seated, sacred beliefs and question the most fundamental postulates of our social, political or economic thinking. That should be no ground for anxiety or apprehension, particularly in a country like ours which has always believed in the pursuit of truth and in its unending search for truth, never hesitated to receive new ideas and absorb them, if found acceptable. There can indeed be no real freedom unless thought is free and unchecked, not free thought for those who agree with us but freedom for the thought we hate. It is only from

[62] Madhu Limaye v. Sub-Divisional Magistrate, (1970) 3 SCC 746

clash of ideas that truth can emerge, for the best test of truth is the power of the thought to get itself accepted in the competition of the market. Let the people decide what doctrine or philosophy they wish to adopt."

The Court however clarified that *"we do not wish to suggest, that if any words or writings incite violence or disturb law and order or create public disorder with a view to overthrowing Government established by law, the State would have no power to forfeit a book containing such words or writings in order to prevent disturbance of public tranquillity or public order"* But held that in this particular case they cannot find anything in the Book which suggests that it contains anything of Seditious nature and thus the appeal was allowed and the order was quashed.

The Court would not be so liberal while interpreting Communist literature in the next case of *P. Hemlatha v. State of Andhra Pradesh*.[63] Lakshmaiah J. after caressing through plethora of cases[64] from American Jurisprudence on the First Amendment protection of Free Speech, drew a corollary between the right to free speech and duty to maintain the security of the State. Observing the various precedents on Sedition, from Jogendra Chandra Bose to Kedar Nath Singh (Supra) His Lordship held,

"These writings incite and advocate the overthrow of the Government with arms by violence and by unlawful means. By their very nature they involve danger to the public peace and to the security of the State. They have the pernicious tendency or intention of creating public disorder or disturbance of public tranquillity and 'law and order'.... They excite disloyalty and all feelings of enmity. They bring or attempt to bring into hatred and contempt the Government."

His Lordship also held in this case that ***'truth'*** even if there is one in these writings ***"is not a justification for such seditious utterances."*** Thereafter the Petition was dismissed.

Another landmark case on Sedition was a progeny of a deplorable and devastating incident. On 31st October 1984, Benant Singh and Satwant Singh assassinated the then Prime Minister of India, Ms. Indira Gandhi as a retaliation for Operation Blue Star. At 2:23 P.M. AIIMS had declared the first and only woman Prime Minister of India dead. The same day, some 250 kms away Balwant Singh and Bhupinder Singh, two government employees shouted *"Khalistan Zindabad"* slogans outside Neelam Cinema, Chandigarh. They were arrested and

[63] P. Hemalatha v. The Govt. of Andhra Pradesh, AIR 1976 AP 375

[64] Dennis v. United States, 341 U.S. 494 (1951); Abrams v. United States, 250 U.S. 616 (1919); Schenck v. United States, 249 U.S. 47 (1919); Whitney v. California, 274 U.S. 357 (1927); Gitlow v. New York, 268 U.S. 652 (1925)

tried u/s 124A and 153A of IPC and were sentenced to 1 year of rigorous imprisonment and 500 rupees fine by a Special TADA Court in 1985.

The Appellants challenged the decision in the Apex Court. The case was ***Balwant Singh & Another v. State of Punjab.***[65] Court remarked that, even if the Appellants raised pro Khalistan slogans "*we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded."* The Hon'ble Court opined "***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."***

The Apex Court thus accepted the appeal and acquitted the accused of the crime for Sedition and promoting religious enmity and hatred.

Another important case regarding Sedition is *Bilal Ahmad Kaloo v. State of Andhra Pradesh*[66] not for some emphatic interpretation of Sedition but for distinguishing an important phrase which most of us can't appreciate and also for its remarks on mechanical approach of the government in slapping people with Sedition. The Court relied upon the judgment in the case of *Kedar Nath Singh (Supra)* and stated that the phrase 'Government Established by Law' has to be differentiated from the People who are engaged in carrying on the administration for the time being. By suggesting that the offence of 'Sedition' comes under the Chapter of "Offences against the State", the Court opined that there is a difference between 'State' and 'Government'. This exception was introduced to protect journalists criticising any government measures.[67]

The Court then chided the mechanical approach of the Trial Court in slapping Sedition charges against the accused. It remarked,

".. the manner in which convictions have been recorded for offences under Sections 153A, 124A and 505(2) has exhibited a very casual approach of the trial court. Let alone the absence of any evidence which may attract the provisions of the sections, as already observed, even the ***charges framed against the appellant for these offences did not contain the essential ingredients of the offences under the three sections. The appellant strictly speaking should not have been put to trial for those offences. Mechanical order convicting a citizen for offences of such serious nature like sedition and to promote enmity and hatred***

[65] Balwant Singh & Another v. State of Punjab, 1994 Supp (2) SCC 67
[66] Bilal Ahmad Kaloo v. State of Andhra Pradesh, 1997 (7) SCC 431
[67] D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 2547 (8th Edition, 2008)

etc. does harm to the cause. It is expected that graver the offence, greater should be the care taken so that the liberty of a citizen is not lightly interfered with."

Juxtapose this finding of the Constitution Bench of the Apex Court with how Courts have been dealing with Sedition cases now. One can only reach the conclusion that the Indian judiciary leaves much to be desired. We fervently hope and pray that the Judiciary protects the freedom of Speech and Liberty of the citizenry with zeal.

IV. CONTEMPORARY CASES OF SEDITION IN INDIA

At Swami Vivekananda Subharti University, Meerut an unusual development took place in 2014. Cricket led to Sedition! It's an axiomatic truth that you don't mess with an Englishmen's tea and the same can be said for an Indian and his Cricket. 67 Kashmiri Students would learn this the hard way. India was playing Pakistan in Asia Cup Match at Mirpur, Bangladesh. And India lost. But these Kashmiri students rejoiced and cheered when Pakistan won the game. This led to altercation between the students which led to the filing of Sedition charges against these Kashmiri Students. Now, a plethora of judgments analysed thus far suggest that Sedition Charges are nothing but an abuse of power. No way rejoicing for a Pakistan's victory would bring hatred, contempt or excite disaffection towards government established by law in India but nonetheless all 67 Kashmiri students were charged with Sedition[68].

This is not any isolated incident. This incident is one in many such incidents where Sedition charges are slapped against individuals for really bizarre reasons. Take the case of a 25-year-old M. Salman, resident of Kerala, who was booked under Section 124A for not standing up during National Anthem[69]. After investigation it was revealed that he also posted certain derogatory remarks about the national flag online. He was arrested and was denied bail. Later, Kerala H.C. granted him bail. It's not the argument of the Author that the gentleman should not be prosecuted at all. He could've been prosecuted under Section 2 of the Prevention of Insults to National Honour Act, 1971[70] but certainly to charge him with Sedition is an overbreadth application of the law and definitely borders on prosecutorial abuse.

[68] Gardiner Harris, *Kashmiri Students Briefly Charged with Sedition for Rooting for Wrong Cricket Team*, NEW YORK TIMES (March 6, 2014), https://www.nytimes.com/2014/03/07/world/asia/kashmir-students-sedition-cricket.html

[69] Shaju Philip, *Youth slapped with sedition charges for not standing to national anthem, gets bail*, THE INDIAN EXPRESS (September 22, 2014 10:29 PM), https://indianexpress.com/article/india/india-others/youth-slapped-with-sedition-charges-for-not-standing-to-national-anthem-gets-bail/

[70] The Section deals with Insults to Indian National Flag and the Indian Constitution.

An Indian cartoonist Aseem Trivedi, who drew certain cartoons and posted them on his website *"Cartoons against Corruption"* depicting India's National Emblem and Parliament in a distasteful and confrontational manner was slapped with sedition charges. He wrote *'Brashtmeva Jayate'* on the emblem which was depicted by blood thirsty wolves. Another cartoon of his depicted the Parliament building as lavatory buzzing with flies. He was arrested and charged with Section 124A and other relevant sections. A gentleman filed a PIL at Bombay[71] asking for his bail but not before Bombay H.C. gave him a piece of their mind. The court lamented "*Cartoons or caricatures are visual representations, words or signs which are supposed to have an element of wit, humour or sarcasm. Having seen the seven cartoons in question drawn by the third respondent, it is difficult to find any element of wit or humour or sarcasm. The cartoons displayed… were full of anger and disgust against corruption prevailing in the political system and had no element of wit or humour or sarcasm."* Court however granted him bail.

Another bizarre case arose from Tamil Nadu. 8856 people from a small village of Idinthakarai were charged with Sedition for protesting against Kudankulam Nuclear Power Plant.[72]. Common Cause, an NGO along with S.P. Udaykumar filed a PIL in the Supreme Court against these vile Sedition charges and seeking intervention of the Apex Court to stop this misuse of Sedition laws. However, the Apex Court dismissed the petition. The apex Court noted *"Someone making a statement to criticize the government does not invoke an offence under sedition or defamation law. We have made it clear that invoking of section 124(A) of the Indian Penal Code (IPC) (sedition) requires certain guidelines to be followed as per the earlier judgement of the SC."* The Supreme Court basically says that guidelines laid down in Kedar Nath (supra) should be followed and arbitrarily sedition charges should not be slapped. This is only one such case but there are 140 more such cases against people in the village.

In 2015, a Tamil Nadu resident by the name of Sivadas alias Kovan, a folk singer, made a song ridiculing the then Chief Minister Jayalalitha for allegedly profiting from the State-run Liquor Stores at the expense of the poor.[73] Sloganeering is not a Seditious offence as per the Apex Court Decision in *Balwant Singh (Supra).* But a bare perusal at the newspapers reports

[71] Sanskar Marathe v. State of Maharashtra, Criminal Public Interest Litigation No. 3 of 2015

[72] Arun Janardhanan, *8,856 'enemies of state': An entire village in Tamil Nadu under shadow of sedition*, THE INDIAN EXPRESS (September 12, 2016 7:02 AM), https://indianexpress.com/article/india/india-news-india/kudankulam-nuclear-plant-protest-sedition-supreme-court-of-india-section-124a-3024655/

[73] *SC dismisses Tamil Nadu petition against folk singer Kovan*, HINDUSTAN TIMES (November 30, 2015 1:11 PM), https://www.hindustantimes.com/india/sc-dismisses-tamil-nadu-petition-against-folk-singer-kovan/story-qJgnI5GupOj3n4cWsAQr4M.html

suggests that government seems to have either forgotten the law of the land or just choose to blatantly ignore it. Amulya Leone shouted "Pakistan" among the countries which she hailed as "Zindabad" in a public forum. She was arrested and charged with Sedition but after three months in custody, enlarged on bail as per Section 167(2) of Cr. P.C..[74]

Intellectuals and even accomplished academicians have faced the unfurling wrath of this imperial mammoth. Like Arundhati Roy. The Booker Prize winning author gave a Seminar on the topic "Azadi- The Only Way" on 21st of October, New Delhi, 2010. She gave a controversial statement regarding the ever-diaphanous situation of Kashmir. She was finally arrested and charged with Section 124A, 153A and even 153B for "anti-national" speech. Again, the term 'anti-national' is not a legally defined. A careful perusal of Kedar Nath Singh (Supra) will make it clear that whatever might be your political views, but abovementioned statements don't attract Sedition. Nonetheless, in all their wit and wisdom, The Union Home Ministry charged her under sedition. However, after taking a political opinion, better sense prevailed and the Ministry decided not to file any case against Roy.[75]

Even cabinet ministers could not be spared from the all-encompassing Sedition law.[76] An overzealous magistrate taking a suo-motu cognizance, charged the Finance Minister Arun Jaitley with Sedition for his article critiquing the Apex Court decision in *SCAORA v. UOI*[77] colloquially known as NJAC Judgment. Allahabad H.C. came to the rescue of the Minister and quashed the orders of the magistrate.[78]

Sedition law has also been used against the journalists who don't toe the line of the Central Government. And this not something which is peculiar to the current ruling establishment. For 'misleading tweets' about a farmer's death[79], for reporting on a rape at Hathras, U.P.[80], for publishing a news that Gujarat Government might have a change of leadership over poor performance during Covid-19 lockdown[81], for making remarks about CAA in Assam[82],

[74] Sanyukta Dharmadhikari, *3 months after arrest, Bengaluru student Amulya gets bail in sedition case*, THE NEWS MINUTE (June 12, 2020 7:59 AM), https://www.thenewsminute.com/article/3-months-after-arrest-bengaluru-student-amulya-gets-bail-sedition-case-126364

[75] *Sedition case registered against Arundhati, Geelani*, INDIA TODAY (November 29, 2010 11:22 PM), https://www.indiatoday.in/india/story/sedition-case-registered-against-arundhati-geelani-86331-2010-11-29

[76] Recently, another Lok Sabha M.P., Dr. Shashi Tharoor, has been charged with Sedition for 'misleading tweets' about the death of a Farmer during the violent Farmer's Protest on 26th January, 2021. Though the Apex Court has stayed his arrest.

[77] Supreme Court Advocates-on-record Association & Anr. v. Union of India, (2016) 5 SCC 1

[78] Arun Jaitley v. State of U.P., 2015 SCC Online All 9413

[79] Supra at 113

[80] *Hathras Case: Journalist, 3 Others 'Booked' Under UAPA, Sedition*, THE QUINT (October 7, 2020 4:52 PM), https://www.thequint.com/news/india/hathras-rape-case-men-held-with-links-to-pfi

[81] *Sedition case against Gujarat journalist quashed by Gujarat High Court*, INDIA LEGAL (November 9, 2020), https://www.indialegallive.com/top-news-of-the-day/news/sedition-case-against-gujarat-journalist- quashed-by-gujarat-high-court/

blaming the government for poor administration during Covid-19 on a YouTube Video[83], for investigative reporting on a Chief Minister's alleged corruption[84], for a Facebook Post about the Titular King of Manipur bowing before the Home Minister[85], criticising the government about Judge Loya's investigation[86], for spreading misinformation about Covid-19[87], calling the C.M. a puppet of Hindutva[88] (earlier charged with Sedition but then was charged under NSA) and countless others, Sedition was considered apposite by the respective governments.

Sedition has been used as a tool to stifle protests and dissent quite regularly. This becomes abundantly clear when a Chief Minister threatens to use it as a weapon against the protestors.[89] The two most prominent protests in recent times have been against Citizenship Amendment Act 2019, and Farmer's Protest. Sedition was unleashed. Anumeha Yadav writing for Al-Jazeera chronicled the anguish and helplessness of the people who are charged with Sedition for taking part in Anti-CAA protests.[90] Nearly 22 of 25 Sedition cases were filed in BJP ruled states during the Anti CAA protests. At Shaheen School, Bidar, Karnataka, two women were charged with Sedition for organising a play on CAA, and depicting Mr. Narendra Modi in a bad light.[91] A 22-year-old, was charged with Sedition for raising slogans in support of Sharjeel Imam who incidentally was himself charged with Sedition. Later, he

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[82] *Assam journalist slapped with sedition charges over CAA remarks*, NORTHEAST NOW (February 20, 2020 7:41 PM), https://nenow.in/north-east-news/assam/assam-journalist-slapped-with-sedition-charges-over-caa-remarks.html

[83] Krishnadas Rajagopal, *Vinod Dua case | Sedition FIR cannot be quashed even if one listed offence is made out: government informs Supreme Court*, THE HINDU (September 18, 2020 9:49 PM), https://www.thehindu.com/news/national/sedition-fir-against-dua-cannot-be-quashed-even-if-one-listed-offence-is-made-out-govt-to-sc/article32643572.ece

[84] Shailesh Shrivastava & Amit Pandey, *Criticism Of Govt Is Not Sedition: A Journalist's Story*, ARTICLE 14 (December 1, 2020), https://www.article-14.com/post/criticism-of-govt-is-not-sedition-a-journalist-s-story

[85] Ratnadip Choudhury, *Manipur Activist Charged With Facebook Post On BJP MP*, NDTV (July 29, 2020 10:14 AM), https://www.ndtv.com/india-news/manipur-activist-erendro-leichombam-charged-with-sedition-for-social-media-post-on-bjp-mp-sanajaoba-leishemba-2270485

[86] Sushmita, *Bastar Journalist Kamal Shukla booked on Sedition Charges*, INDIAN CULTURAL FORUM (May 3, 2018), https://indianculturalforum.in/2018/05/03/bastar-journalist-kamal-shukla-booked-on-sedition-charges/

[87] *Indian journalist Dhaval Patel arrested, charged with sedition*, COMMITTEE TO PROTECT JOURNALISTS (May 13, 2020 1:46 PM), https://cpj.org/2020/05/indian-journalist-dhaval-patel-arrested-charged-wi/

[88] Anurabh Saikia, *Manipur journalist arrested under National Security Act for Facebook post against Modi, BJP*, SCROLL (November 30, 2018 6:11 PM), https://scroll.in/article/904065/a-journalist-in-manipur-has-been-booked-under-national-security-act-for-facebook-post-against-bjp

[89] Press Trust of India, *CAA protests: Yogi Adityanath warns of sedition charges on raising azadi slogans*, INDIA TODAY (January 23, 2020 10:09 AM), https://www.indiatoday.in/india/story/caa-protests-yogi-adityanath-warns-of-sedition-charges-on-raising-azadi-slogans-1639326-2020-01-23

[90] Anumeha Yadav, *How India uses colonial-era sedition law against CAA protestors*, AL JAZEERA (January 21, 2020), https://www.aljazeera.com/news/2020/1/21/how-india-uses-colonial-era-sedition-law-against-caa-protesters

[91] Nolan Pinto, *Bidar sedition case: Arrested for portraying PM Modi in poor light over CAA & NRC, 2 women granted bail*, INDIA TODAY (February 14, 2020 6:55 PM), https://www.indiatoday.in/india/story/bidar-sedition-case-arrested-for-portraying-pm-modi-in-poor-light-over-caa-nrc-2-women-granted-bail-1646549-2020-02-14

was released on bail.[92] Sedition charges were slapped on 3000 people peacefully protesting against CAA at Dhanbad, Jharkhand.[93] Sahitya Akademi Award winner Hiren Gohain and Political Activist Akhil Gogoi were also charged with Sedition for protesting against Citizenship Bill 2019.[94] In Lucknow, Uttar Pradesh, 60 people were arrested for opposing CAA, however out of these only 16 were named.

Farmer's Protest also saw sedition charges being levied against protestors. Devi Lal Burdak and Swaroop Ram were also charged with sedition for posting an alleged fake video. Judge Dharmendra Rana noted that the law of sedition was a powerful tool in the hands of the state to maintain peace and order in the society. ***"However, it cannot be invoked to quieten the disquiet under the pretence of muzzling the miscreants. Evidently, law proscribes any act which has a tendency to create disorder or disturbance of public peace by resort to violence."***[95]

Judge Rana was also involved in another popular case regarding an innocuous 'tool kit'. A 22-year-old Climate Activist, Disha Ravi was arrested and charged for Sedition for editing a document known as a 'Toolkit'[96]. In a bail order, Judge Rana came down upon the Government in a judicially astute, well written order. He scathed the officials and observed *"**In my considered opinion creation of a WhatsApp group or being editor of an innocuous Toolkit is not an offence***. Citing Niharendu Dutt Majumdar (Supra), Judge Rana said **"*The offence of sedition cannot be invoked to minister to the wounded vanity of the governments".*** [97]

Despite the Supreme Court clarifying the law on Sedition on several and numerous occasions, the Government seems oblivious. It can be safely assumed with regard to several instances of Sedition being charged against people without due cause, that Sedition is now immortalised as a weapon in the hands of the ruling dispensation, whosoever it might be. And they have no plans to give up their grip over the fate of an informed and conscious citizenry.

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[92] Kanchan Chaudhari, *TISS student accused of sedition for slogan gets arrest shield from court*, HINDUSTAN TIMES (February 11, 2020 9:02 PM), https://www.hindustantimes.com/india-news/kris-chudawala-gets-arrest-shield-from-bombay-high-court-cops-get-a-rap/story-UdYEjRX5uyiu5eyLmHfeHN.html

[93] *Jharkhand: Sedition cases slapped against CAA, NRC protestors in Dhanbad*, NATIONAL HERALD (January 8, 2020 5:37 PM), https://www.nationalheraldindia.com/india/jharkhand-sedition-cases-slapped-against-caa-nrc-protesters-in-dhanbad

[94] The Wire Staff, *Assam: Hiren Gohain, Akhil Gogoi Charged With Sedition for Opposing Citizenship Bill*, THE WIRE (January 10, 2019), https://thewire.in/rights/assam-hiren-gohain-akhil-gogoi-charged-with-sedition-for-opposing-citizenship-bill

[95] *State v. Swaroop Ram*, Bail Application 364/2021, FIR No. 37/2021

[96] According to American Library Association 'Toolkit' is defined as a collection of authoritative and adaptive resources for frontline staff that enables them to learn about an issue and identify approaches to tackle them.

[97] *State v. Disha A. Ravi*, Bail Application No. 420/2021, FIR No. 49/2021

V. CONCLUSION

When 49 celebrities including Ramchandra Guha, Aparna Sen, Adoor Gopalakrishnan, wrote to the Prime Minister about the growing instances of Mob-Lynching, they were charged under Sedition. The barbarity of this offence is not so much in the duration of the imprisonment but the weaponised manner in which it is used against the citizenry, arresting their exercise of fundamental rights.

In 2014, a total of 47 cases were registered and 58 people were arrested in relation to these registered cases. In 2015 cases though, only 30 cases were registered and 35 in 2016. But that escalated quickly when 51 and70 cases were registered in 2017 and 2018 respectively. In 2019 there has been a 165% jump in Sedition cases from 35 in 2014 with total 93 cases registered in 2019.[98]

Why so many People are being charged with Sedition? One could argue that the number of Seditious activities might have increased during these 5 years. But this doesn't reveal the big picture. However, the number of convictions will indeed tell us all we need to know. In 2014 out of 35 cases registered only 16 cases went to trial and resulted in only 1 conviction. In 2017, 51 cases were registered, 27 were sent to trial and resulted in only 1 conviction yet again. In 2018, 70 cases were registered, 38 went to trial and resulted in 2 convictions. 2019 saw 93 cases being registered (most since 2014) with only 3 convictions. A logical inference from the abovementioned statistics would be that Sedition cases are registered without any application of judicial mind and primarily to stifle dissent.[99]

A recent study[100] done by Article 14, a legal think tank and research organisation, suggests that of all the Sedition cases registered since 2010 till 2020, mammoth 65% of approximately 11,000 people charged with Sedition in total of 816 cases registered, were implicated after 2014. Of all the Sedition cases registered against people for criticising Politicians, 96% were registered after 2014 with 149 derogatory remarks against the Prime Minister and 144 against a particular Chief Minister. The report also finds that in Uttar Pradesh, 77% of 115 sedition cases since 2010 were registered over the last four years.

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[98] Pooja Dantewadia & Vishnu Padmanabhan, *Sedition cases in India: What data says*, LIVEMINT (February 25, 2020 10:51 AM), https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html

[99] Dipankar Ghose, *NCRB report: Sedition cases up in 2019 but conviction at all-time low*, THE INDIAN EXPRESS (October 2, 2020 4:30 AM), https://indianexpress.com/article/india/ncrb-report-sedition-cases-up-in-2019-but-conviction-at-all-time-low-6664179/

[100] Kunal Purohit, *Our New Database Reveals Rise In Sedition Cases In The Modi Era*, ARTICLE 14 (February 2, 2020), https://www.article-14.com/post/our-new-database-reveals-rise-in-sedition-cases-in-the-modi-era#:~:text=Our%20sedition%20database%20tracks%20all,Indians%20by%20the%20colonial%20government

In 2011, a private member bill was presented in the Rajya Sabha, seeking for omission of Section 124A from the India Penal Code by Mr. D. Raja. But it lapsed. Another Private Member Bill titled Indian Penal Code (Amendment) Bill 2015 was introduced in Lok Sabha in 2015 by Dr. Shashi Tharoor to amend the Section but to no avail. Law Commission of India released a Consultation Paper on Sedition in 2018. It recommended ***"Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means."***[101]

But are we listening? The Apex Court time and time again have chided the governments to follow their dicta but it all fall on deaf ears. The chilling effect caused by the indiscriminate use of Sedition laws is very much visible, with people becoming more and more circumspect in exercising their fundamental rights. Chandrachud J. while giving Justice Desai Memorial Lecture at Bombay H.C. where once the great Tilak was tried for the same offence, said ***"Constitution fails when a Cartoonist is jailed for Sedition".*** The cherished principles of the Constitution should never be compromised but alas, it's all that's happening.

Despite all these recommendations by the Law Commission, despite the glaring facts which suggest that Sedition is being used to arrest innocent protestors who are doing nothing but exercising their rights, despite bills being introduced in both the Houses of the Parliament, despite jurists and intellectuals criticising the abuse of this archaic law, why there is Sedition still on the Statute books? Why the respective Governments apply Sedition in total contravention to judicial precedents? When the country of origin of this law has abolished it in back in 2009, why can't we rid ourselves of this imperial relic? WHY? This is actually the question which India asks.

In the end, the Author would like to leave the readers with the words of our Prime Minister that, ***"Our democracy will not sustain if we can't guarantee freedom of Speech and Expression".***

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[101] Law Commission of India Consultation Paper on "SEDITION", August 30, 2018, available at https://static.pib.gov.in/WriteReadData/userfiles/Consultation%20Paper%20on%20Sedition.pdf