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COLLISION OF SEDITION LAW AND FREEDOM OF SPEECH AND EXPRESSION IN A DEMOCRATIC SETUP IN THE LIGHT OF CONSTITUTIONAL VALIDITY

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ABSTRACT

The struggle for life and liberty was kindled in pre-independence era and today it took the shape of a bonfire. It was the Hon'ble Supreme Court who opined that a life with "dignity" is a life that is more than mere "animal existence "and the word "liberty" must empower an individual to freely express his/her thoughts, opinions and feelings without any fear of prosecution. But such a nightmare comes true when bewildered executives fell in the foot of the jury of the streets and arbitrarily snatched away such liberty in the name of "sedition". The masons of constitution themselves realized that such a draconian and archaic concept of sedition would be erroneous, and have no place in the Constitution. It is the state who must guarantee pluralism within the territorial boundaries and not curb the same in the name of "Offences against the State". Also strict interpretation of the statutory provision led to blatant misuse of the law time and again. It is also astonishing that Britishers who had introduced such law in India abolished such law in their motherland. This paper aims to adjudicate this disputed and overlapping provision in the light of constitutional validity, focus on public awareness and urge for repeal of this particular section keeping in mind equity, justice and good conscience.

Keywords: *Liberty, Opinion, Pluralism and Sedition.*

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I. INTRODUCTION

"Give me liberty to know, to utter and to argue freely,

according to conscience, above all liberties."

- John Milton (*Areopagitica*)

A life without the right to express the opinion of one's own self, without the right to be judgmental about what is wrong and what is right and thereby remaining within the nutshell because of fear of being prosecuted, is a life of mere puppet in the hands of few.

The Law Commission had identified *"Treason"* as the gravest crime against the state and also suggested the severest of punishment[3] but such a draconian and archaic provision of sedition, in this 21st century is not only superfluous, but also a socio-legal stigma on the face of the world's largest democracy. At the dawn of laissez-faire political philosophy of libertarianism, the citizens of the country with an introspective gesture, is hereby is expecting the potentiality of the basic fundamental right of freedom of speech and expression, to surpass the Sedition Law.

Jurisprudentially, the Constitution of India comprises of all the fundamental doctrines which stands as a *grundnorm* laying down the foundation and cornerstones of *modus vivendi* of a civil society. One such basic structure of the constitution is Art. 19 (1) (a)[4] which empowers the citizens of the country with right to express their opinion in the form of free speech, written, printed or visual representation mode. But Art. 19 (2) *reasonably restricts* such right if it's exercise pose a *threat to the sovereignty and integrity, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence*.[5] But restrictions put on by the State must not be unnecessary, unreasonable, excessive or arbitrary in nature unlike the sedition law.

[3] Law Commission of India, Forty-Third Report on Offences Against The State (March 29, 2014, 12:05 am) http://lawcommissionofindia.nic.in/1-50/report43.pdf

[4] Keshvananda Bharti v. State of Kerala, (1973) 4 SCC 255

[5] Constitution of India, Art. 19 (2).

II. BRIEF HISTORY ABOUT THE LAW OF SEDITION IN INDIA

It was only after the advent of the Britishers to India after developing flourishing trades and winning fortunes of war, that they started administration of English law which began to affect the life and liberty of the indigenous people and ultimately many controversies arose around the crucial point of governance. Under the Charter Act, 1833, a Legislature was constituted to enact a criminal law of India which in turn appointed a Law Commission (headed by Macauley). Though the Law Commission came up with a section penalizing *"attempt to incite feeling of disaffection to the Government established by law in the territories of East India Company",* under § 113 of Draft Penal Code, 1837-39 (corresponding to § 124A of IPC, 1860), the English Law of Treason and Seditious Libel was still in force only in Presidency Towns. [6]

But on enactment of the Indian Penal Code, 1860 the section which was omitted brought about two probable explanations for the same:

a. Sir Barnes Peacock, C.J., Supreme Court of Calcutta, and as well a member of the Governor-General's Council, in his letter to Sir Henry Maine (dated June 7, 1869) stated that either it was forgotten or by mistake it was not added and that must have taken place after it was passed by the Committee of the House.

b. In Part II of the Report of Indian Press Communication, Mr. Natarajan in *The History of India Journalism* wrote that the omission was a suggestion of Lord Canning as it was a direct violation of freedom of speech and expression.

It was only after 1869, when the *Wahabi Conspiracy Case* was going on, that a bill was drafted by Stephen as § 124A, as a part of Act XXVII of 1870. But that section did not penalize dissent against Queen or British rule. Rather due to some unexplained reason the word "incite" was changed to "excite" and the territorial jurisdiction was changed from "territories of East India Company" to "British India" and later to "India" after the amendment in the year 1898.

The first case of sedition was *Queen-Empress v. Bal Gangadhar Tilak*[7], which was adjudicated by Hon'ble Justice Strachey. British Government after launching this section mainly preyed the nationalists like Mahatma Gandhi, Bal Gangadhar Tilak, Annie Besant etc.

[6] INDIAN LAW INSTITUTE, THE LAW OF SEDITION IN INDIA, 12-13 (1964)

[7] (1898) I.L.R. XXII Bom. 112.

Mahatma Gandhi on understanding the fundamental threat proclaimed that this law is doing nothing in the name of public tranquility, rather it lastly results in suppressing the liberty of commoners.

III. CONSTITUENT ASSEMBLY DEBATES OVER REMOVING THE WORD "SEDITION" FROM ART. 13 OF DRAFT CONSTITUTION

While framing the draft constitution, the framers included the word *"sedition"* under Art. 13 (now Art. 19 (2)) as one of the reasonable criteria on which a limitation on the exercise of the fundamental right to speech and expression could be invoked. But it was eliminated later from the exception of Art. 19 (1) (a) in the final draft due the initiative been taken up by K.M. Munshi, a lawyer and an active participant in the Indian freedom struggle.

K.M. Munshi expressing his opinion said *"…now 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. Therefore, the word 'sedition' has been omitted. As a matter of fact the essence of democracy is Criticism of Government. The party system which necessarily involves an advocacy of the replacement of one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy. The object therefore of this amendment is to make a distinction between the two positions."*

TT Krishnamachari, a member of Madras Legislative Assembly, appreciating of the view of Hon'ble K.M. Munshi said *"Sir, in this country we resent even the mention of the word 'sedition' because all through the long period of our political agitation that word 'sedition' has been used against our leaders, and in the abhorrence of that word we are not by any means unique… I think it is very necessary that when we are enacting a Constitution which in our opinion is a compromise between two possible extreme views and is one suited to the genius of our people, we must take all precautions possible for the maintenance 17 and sustenance of that Constitution and therefore I think the amendment moved by my honourable Friend Mr. Munshi is a happy mean and one that is capable of such interpretation in times of necessity, should such time unfortunately come into being so as to provide the State adequate protection against the forces of disorder."*

Seth Govind, a freedom fighter and also a distinguished Parliamentarian, who was in favour of removing 'sedition' from the draft constitution, quoted one of his life-incidents where he

was booked under sedition for criticizing his grandfather's extended support to the British Government, who later colonized them and therefore he was slapped with a rigorous imprisonment for 2 years. He portrayed his glee stating *"It is a matter of pleasure that we will now have freedom of speech and expression under this sub-clause and the word 'sedition' is also going to disappear."* [8]

Thus it was very clear to the framers of the constitution that there has been gross misuse of such a draconian provision by stifling any form of criticism, opinion or dissent against the government. Therefore they did not want to restrict the ambit of freedom of speech and expression and hence, they struck down the word "sedition".

IV. SEDITION IN THE LIGHT OF THE PRINCIPLE OF PLURALISM

Criticism by the citizens and accountability of the government are the inherent essence of a democratic country. Criticism can help in self-evaluation. But Indian government believes that criticism is at par with anti-nationalism. The sedition laws were introduced in India in order to penalize *"hatred, contempt or attempt to excite disaffection*"[9] to which Mahatma Gandhi said "*affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence.***"**[10]

According to the judgment of *Handyside v. United Kingdom,*[11] while explaining the demands of pluralism, tolerance and broadmindedness, the protection of freedom of speech and expression must not only be extended to *"information or ideas"* but also to expressions that *"offend, shock or disturb".* Without such broadmindedness there is no *"democratic society."* Mere criticism of political ideas of a ruling elite do not jeopardize the integrity or the national security of a country. Rather it is compatible to the principles of democracy.[12]

The controversy regarding sedition is mainly because of two primary issues:

a. The change in body politics.

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[8] Constituent Assembly of India Part I Vol. VII, 1-2 December 1948, available at http://parliamentofindia.nic.in/ls/debates/vol7p16b.htm accessed on 3 February 2011.

[9] Indian Penal Code, 1860, § 124A .

[10] The Great Trial, Bombay Sarvodaya Mandal & Gandhi Research Foundation (Feb.17,2017,10.11am) http://www.mkgandhi.org/law_lawyers/25great_trial.htm.

[11] [1976] ECHR 5

[12] Informationsverein Lentia & others v. Austria, Application No. 13914/88; 15717/89; 17207/90

b. Constitutional guarantee of freedom of speech and expression.

In the case of *Ghulam Mohammad Khan v. The Crown*[13], it was held that:

"*The mere making of speeches, however extravagantly worded, charging members of the government with inefficiency, corruption and personal animosity, cannot rightly be regarded as acts intended or likely to bring into hatred or contempt, or to excite disaffection towards the government established by law…*"

It was in the case of *Tara Singh v. The State*,[14] where, for the first time post independence that the constitutional validity of such law was put for judicial scrutiny. Weston, C.J., pointed out "*India is a sovereign democratic state. Governments may go and be caused to go without the foundations of the State being impaired. A law of sedition though necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about*." The court opined that there is no place for such punitive and antediluvian law in the present set up. The essence was upheld in the case of *Ram Nandan v. State of U.P.*[15]

Punjab and Haryana High Court in one of its landmark judgments quashed an FIR where the accused gave a speech to the people present the establishment of a buffer state between Pakistan and India known as Khalistan and also stated that the Constitution was an "worthless/ useless" book for the Sikhs.[16]

V. A LOCUS CLASSICUS: NEITHER CATEGORICAL NOR ASSERTIVE[17]

It is urgently necessary to review the erroneous and irresolute the judgment of *Kedar Nath Singh v. State of Bihar*[18] as § 124A of IPC draws its legitimacy from the same. The judgment failed the test of constitutionality and therefore there is an urgent necessity to annul such a stringent provision.

The Hon'ble SC itself agreed to the fact that a literal interpretation of the provision is "*not only within but also very much beyond the limits laid down in clause 2"*[19]. It is very

[13] 1950 Cri LJ 77 Sind (DB).

[14] AIR 1951 E.P. 27

[15] AIR 1959 CrLJ 128

[16] Gujatinder Pal Singh v. State of Punjab, (2009) 3 RCR (Cri) 224

[17] Kaleeswaram Raj, A Case Against The Sedition Law (Feb 12, 2017 11: 07 AM), http://www.frontline.in/cover-story/a-case-against-the-sedition-law/article8299363.ece

[18] AIR 1962 SC 955.

[19] Kedar Nath Singh. v. State of Bihar AIR 1962 SC 955.

surprising that where on one hand the strict constructivism of elucidation hold the entire provision of Sedition i.e. § 124A of IPC to be unconstitutional, on the other hand the dialectical logic of exegesis render it to be constitutional.

It is a plenary power vested with the legislature to legislate statutory provisions. To challenge the legislative competence it has to be established that the fundamental rights guaranteed under the Constitution are affected on such legislation. Challenging on ground of wisdom of legislation is not permissible as it is for the legislature to balance various interests of the society.[20]

The Legislature consists of elected representatives of the people who are presumed to know and be aware of the needs and interests of the people, and is entrusted with responsibility to safeguard such interest. A court cannot sit in judgment over the wisdom of the legislature[21] and that the laws it enacts are directed to problems which are manifested by experience, that the elected representatives in a legislature enact laws which they consider to be reasonable, for the purposes for which these laws are enacted and that a legislature would not deliberately flout a constitutional safeguard or right.[22]First, attempt should be made by the Courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be.[23]

The onus probandi lies upon the person who is challenging the constitutionality and till it is not proved before the court, it must be presumed that the statute is constitutional.[24] *Amrit Banaspati Ltd v. Union of India*[25], had highlighted the allegations regarding the violation of a constitutional provision and stated that it should be specific, clear and unambiguous. *The mens or sentential legi*s[26] must be taken into consideration while interpretation of the a

[20] Mylapore Club v. State of Tamil Nadu, (2005) 12 SCC 752.

[21] State of Andhra Pradesh v. McDowell & Co., AIR 1996 SC 1628 at 1641.

[22] Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 638; Vrajlal Manilal & Co. v. State of Madhya Pradesh, AIR 1970 SC 129; Bachan Singh v. State of Punjab, AIR 1982 SC 1325.

[23] B.R. Enterprises v. State of U. P., AIR 1999 SC 1867.

[24] Charanjit lal Chowdhary v. Union of India, AIR 1951 SC 41; Mahant Moti Das v. S.P. Sahi, AIR 1959 SC 942; Delhi Transport Corporation v. D.T.C. Mazdoor Congress, AIR 1991 SC 101.

[25] AIR 1995 SC 1340: 1995 SCC (3) 335

[26] Intention of the legislature.

statute[27], as a whole in its context – *ex visceribus actus*[28]and in way to make it effective – *ut res magis valeat quam pereat*[29]

Unfortunately, the Apex Court relied on the dialectic logic. Therefore, the decision of the court is contextual and contingent and hence proving that the ratio in this case is dangerously incomplete. *Kedar Nath* v. *State of Bihar*[30], which is the *locus classicus* and binding authority on the issue of sedition, § 124A was interpreted in the narrower sense and was thus sustained against a challenge under Art. 19(2). Sedition was defined as words, deeds or writings which have a tendency or intention to imbalance peace, serenity and public tranquility. The SC rejected the broader view of § 124A because that incitement to public order was not an essential element of the offence of sedition under this section. This broad view would have made § 124A unconstitutional vis-a-vis Art. 19(1) (a) along with Art. 19 (2).

But, it is also to be noted that if on Section 124 A of IPC the intention of the legislators and the view of the judge differ, which is evident from the difference in strict constructivism and the dialectic logic of elucidation, then it is either because the legislator failed to convey their intention or the judge must have misconstrued the same for which the human rights are at stake.

After the Kedarnath Singh judgment[31], recently in the case of *Shreya Singhal v. Union of India*[32], the difference between *"advocacy"* and *"incitement"* had been put forward and said that only the later one could be penalized. So even advocating for violent overthrow of government would not amount to incitement but asking people to get prepared to overthrow should active complicity, so it may amount to incitement to offence.

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[27] RMD Chamarbaugwala v. Union of India, AIR 1957 SC 628; Chief Justice, A.P. v. LVA Dikshitulu, AIR 1979 SC 628; Prithi Pal Singh v. Union of India, AIR 1982 SC 1413; Girdharilal & Sons v. Balbirnath Mathur, AIR 1986 SC 1099.

[28] Philips India Ltd. v. Labour Court, (1985) 3 SCC 103; Osmania University Teacher's Association v. State of A.P. (1987) 4 SCC 671; Union of India v. Elphinstone Spinning and Weaving Co. Ltd. (2001) 4 SCC 139 (Constitution Bench); AG v. HRH Prince Ernest Augustus, (1957) 1 All ER 49.

[29] CIT v. S. Teja Singh, AIR 1959 SC 352; M. Pentiah v. Veeramallappa Muddala, AIR 1961 SC 1107; Tinsukhia Electric Supply Co. Ltd. v. State of Assam, AIR 1990 SC 123; Management of Advance Insurance Co. Ltd. v. Gurudasmal, AIR 1970 SC 1126; Municipal Council, Madurai v. Narayanan, AIR 1975 SC 2193; Commissioner of Income Tax v. Hindustan Bulk Carriers, (2003) 3 SCC 57.

[30] AIR 1962 SC 955.

[31] AIR 1962 SC 955.

[32] (2012) Cri. W.P. 167 of 2012.

Unlike other statutes, it is the executive that is none but law enforcement officials who imposes and interprets this specific provision becoming them the jury of the streets. There have been innumerous instances when stifling journalists[33] and artists[34] had fallen into the death-trap of unconstitutional abuse of power resulting in suppressing liberties and opinions.

It is evident from the landmark case of *Balwant Singh v. State of Punjab*[35] the irresponsibility on the part of the police officials, for which the court even rebuked that the police officials 'read too much' into the and exhibited lack of maturity and sensitivity in arresting the government servant and slogans thereby allowing dissenting opinion in a free and democratic India.

The substantive and pertinent question of law is that why the Government established by law and the Courts have over and over again suppressed rightful criticism under the confinement of enforced nationalism. The intention of the legislature while drafting of § 124A is to maintain harmony, peace and tranquility among citizens, thus, upholding public interest. Any restriction imposed on the applicability of the constitutional guarantee of freedom of speech and expression of individuals can only be justified in relation to "interest of public or public order", which was also inserted in the Constitution in the first amendment.[36]

Any sort of innocuous expressions that have no proximate or reasonable connection to public disorder do not fall under the ambit of § 124A of IPC. A pledge to overthrow capitalism and private ownership and to work for establishment of a socialist state does not amount to waging of war against the state, because every person is entitled to propagate the political faith of his choice.[37] Also mere speech of waging war or threatening to wage war will not amount to abetment.[38]

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[33] Times News Network, Gujarat HC quashes sedition cases against TOI, Times of India (May.19, 2012, 10:15 AM), http://timesofindia.indiatimes.com/city/ahmedabad/Gujarat-HC-quashes-sedition-cases-against-TOI/Art.show/12723661.cms.

[34] Sanskar Marathe v. The State of Maharashtra, 2015 Cri LJ 3561.

[35] Appeal (Crl.) 266 of 1985.

[36] The Constitution (First Amendment) Act, 1951.

[37] Emperor v. Ganesh Damodar Savarkar (1909) I.L.R. 34 Bom. 394, 408, 12 Bom. L.R. 105;Vasu Nair v. State of Travancore and Cochin AIR 1955 Tra and Coch 33, (1955) Cr LJ 414 (TC); Nazir Khan and Ors. v. State of Delhi AIR 2003 SC 4427, (2003) 8 SCC 461.

[38] K.I VIBHUTE, PSA PILLAI'S, CRIMINAL LAW, 330 (11th ed., 2012).

The judgment of *Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia*[39] was also disregarded by *Kedar Nath Singh v. State of Bihar*[40], as it could not develop any kind of test of causation or proximity, under which courts would hold someone responsible for complete arbitrariness thus giving effect to Art.19(2)'s requirement. Despite being a failed judgment *Kedarnath Singh's case* remains as a binding one that sowed many a prosecutions on ill premise undermining the dignity of individuals. This judgment pretends to be philanthropic but is only authoritarian, over protective and paternalistic in nature and hinders personal liberty to pursue their own opinions and is thus contrary to the common good as it boasts its' motto to be. Moreover whether any person is not patriotic towards the nation's governmental set up or is criticizing the same cannot be policed through laws. Hence, the social desirability of such laws in our penal system is really questionable.

VI. SEDITION CRIBS THE GUARANTEE OF NON-ARBITRARINESS

Under Art.14 substantive non-arbitrariness has been held to be a constitutional requirement. Arbitrariness and reasonableness are sworn enemies. Hon'ble Justice Bhagwati, in the case of *Royappa*[41] famously 'emancipated' the principle of equality railing against the classification doctrine holding that mere 'arbitrariness' will be sufficient enough to constitute a violation of Art. 14.

Reasonableness requires an action to be free from irrationality. It strikes at the arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as philosophically, is an essential element of equality and non-arbitrariness pervades Art.14 like a brooding omnipresence.[42] Hence, the restriction imposed under § 124A as contended above is prima facie affected with the vice of arbitrariness and is completely unreasonable as free speech or the power to dissent shall not be considered as seditious in nature, thus violating the fundamental rights under Art. 14.

In the case of Brandenburg[43], the SC of United States developed the theory of "clear and present danger" while determining under what circumstances limitations can be imposed on the freedom of speech and expression, assembly, etc. The Hon'ble Court held that the

[39] 1960 AIR 633, 1960 SCR (2) 821.

[40] AIR 1962 SC 955.

[41] (1974) 2 SCR 348.

[42] 1, H.M SEERVAI, CONSTITUTIONAL LAW OF INDIA, A CRITICAL COMMENTARY, 437(Ed. 4, 1997).

[43] Brandenburg v. Ohio, , 23 L Ed 2d 430 : 395 US 444 (1969)

restriction imposed placed on speech unless it is directed to inciting, and is likely to incite "imminent lawless action".

The vice of excessive delegation makes § 124A substantively arbitrary exhibiting naked despotism and thus violative of Art. 14. The section places intention and tendency on equal footing[44], and does not distinguish between the two. According to *Raichurmatham Prabhakar v. Rawatmal Durgar*[45] the delegation of legislative power can only be allowed when the law is adequately laid down. The delegate must abide by the guidelines being laid down by the legislature[46]. Discretionary power is ought to be hedged by standards, or procedural safeguards to regulate its action[47] otherwise the administrator falls into the foot of legislature.[48] Such a vague law when delegates the matter to the hands of Law Enforcement Officials on a subjective basis it leads to arbitrary and discriminatory application of such law.[49] In the case of City of Chicago v. Morales et al,[50] the Hon'ble Court held that a legislature can never set lay a large net to entrap all possible offenders.[51]

This section is also a gross violation of the Principal of Natural Justice. It basically violates the concept of *nemo judex in causa sua* i.e. no one shall be the judge of his own cause. However under § 196 (a) of Code of Criminal Procedure the Government has the power to to assent to or deny the sanction of a trail making them the judge of their own cause.

VII. SEDITION AGAINST THE RULE OF PROPORTIONALITY

The landmark judgment of Kedar Nath Singh[52] determines that the incitement to violence which might pose a threat to the breach of public peace and tranquility is the gist of the offence[53] disregarding the strict interpretation of the clause. Taking that into account, the offence of sedition must have been put under *"offences against the public tranquility"*[54]

[44] Kedarnath Singh v. State of Bihar AIR 1962 SC 955.

[45] (2004) 4 SCC 766.

[46] TISCO Ltd. v. Workmen, AIR 1972 SC 1917.

[47] Punjab Dairy Development Board v. Cepham Milk Specialties Ltd., (2004) 8 SCC 621

[48] U.S. v. Robel, 389 U.S. 258 (1967)

[49] Kartar Singh v. State of Punjab, (1994) SCC (Cri) 899

[50] 527 U.S. 41 (1999)

[51] Shreya Singhal v. Union of India, (2013) 12 SCC 73

[52] AIR 1962 SC 955

[53] Niharendu Dutt v. Emperor AIR 1942 FC 22, 26; R. v. Sullivan (1868) 11 Cox CC 44.

[54] Chapter VIII, IPC, 1860.

rather than *"offences against the state."*[55] An act that affects *"law and order"* may not necessarily affect *"public order"* and an activity which may be prejudicial to *"public order"* may not necessarily affect *"security of the State"*.[56] The rule of proportionality, which is the subject matter under Art. 21 must be taken into consideration while drafting a penal provision so that the punishment proposed for such offence is not misappropriate to the nature of the offence[57]. Comparing the punishments laid down under both the Chapters of IPC, the punishment under § 124A is grossly misappropriate as it extends to life imprisonment. An act which affects law and order may not necessarily affect public order and an act which is prejudicial to public order may not necessarily affect the security of the state.[58]

An activity would be rendered penal only when it is intended to create disorder. Mere criticism of public measures on government actions, however strongly, would be within reasonable limits and would be consistent with the fundamental right of free speech and expression.

VIII. ABOLITION OF SEDITION LAWS IN THE UNITED KINGDOM

Criminalizing sedition has obviously met with disfavor among modern constitutional democracies. There is an understanding that criminalizing dissent directed at the Government offends democratic values.[59] Effects-based test (based on the implications of the words) are used rather than a content-based test (which examines the 'text' closely) in U.S. and many European countries. Such an archaic section which was enacted particularly to silent dissent is probably redundant to prevent incitement to violence. But silencing dissent not only fosters discontent among the people and could just as easily lead to public disorder, which is what is intended to prevent. For this reason, a consensus seems to have emerged that a crime of sedition should not exist in common law jurisdictions[60].

[55] Chapter VI, IPC, 1860.

[56] Ram Manohar v. State of Bihar, AIR 1966 SC 740, ¶ 52, pp.758-59; V.K. Javali v. State of Mysore, AIR 1966 SC 1387.

[57] Sedition Laws & the Death of Free Speech in India, (Jan 25, 2017, 11:30 PM), https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf.

[58] Dalbir Singh v. State of Punjab AIR 1962 SCC 1106.

[59] David G. Barnum, The Clear and Present Danger Test in Anglo-American and European Law, San Diego Journal of International Law, 264, 292 (2006).

[60] L.W. Maher, The Use and Abuse of Sedition, Sydney Law Review, 287, 312 (1992).

Law commission wanted Criminal Libel, Seditious Libel and Criminal Defamation to be repealed.[61] *Joint Commission of Human Rights* prepared a note on press freedom, privacy and libel where they commented on the crime of seditious libel and criminal defamation.[62] Such law was a violation of *Art. 12 of Human Rights Act, 1988*, which has been enacted in furtherance to European Convention on Human Rights. But the primary intention behind abolishing sedition was *"the language in which the offence was framed was archaic and did not reflect the values of present day constitutional democracies."*[63] Coroners and Justice Act, 2010 abolished the crime of sedition though under § 3 of Aliens Restriction (Amendment) Act, 1919, if an alien is responsible for sedition then he/she can still be prosecuted.

Even in India, sedition laws contained in other acts or rules like Press (Emergency Powers) Act, 1931 and Defence of India Rules, 1962 stands repealed today.

IX. INTERNATIONAL LAW AND CONSTITUTIONAL INTERPRETATION

The freedom of speech and expression has been safeguarded under:

I. Art. 19, and 20, of the Universal Declaration of Human Rights, 1948.

II. Art. 22 (1) of the International Covenant on Civil and Political Rights, 1966.

III. Art. 10 and 11 of the European Convention on Human Rights, 1950.

India is a member of the UNGA, and has also ratified the UDHR and ICCPR and, therefore, has enforcement value in the country. Thus they bear a significant and influential position in law-making of the country. Though the offence of sedition is per se does not violate international standards, but any restriction on the freedom of speech and expression needs to be justified.

X. BLATANT MISUSE OF THE LAW

As feared by the SC in the erroneous judgment of *Kedarnath Singh v. State of Bihar*,[64] the lower court had time and again failed to distinguish between dissenting opinion and disaffection.[65]

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[61] The Law Commission, Treason, Sedition and Allied Offences (Working Paper No 72), ¶ 78 and 96(6) (1977); The Law Commission, Criminal Law: Report on Criminal Libel (Cm 9618) (1985).

[62] Written evidence submitted by the Joint Committee on Human Rights, (Feb.14,2017) http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcumeds/362/362we14.html.

[63] Sedition Laws & the Death of Free Speech in India, (Jan 25, 2017, 11:30 PM), https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf.

[64] AIR 1962 SCC 955

According to the National Crime Records Bureau (NCRB) Compendium, between 2014 to 2015 a total of 77 cases of sedition has been filed out of which 47 cases were of 2014 and 30 cases were of 2015. At about 131 people (58 in 2014 and 73 in 2015) had been arrested for the same. Within a time frame 2 years so many cases were registered and so many people were arrested and put under trail. But how many of such incidents did really *"incite an offence"* which is the gist of the offence of sedition, the answer for which is still pending.[66]

The crime of Sedition has now become a political crime because whether or not to prosecute a person depends on the political considerations of the Government and a court cannot proceed with a trial of the case except with the previous sanction of the State Government. Also the content matter for which the prosecution may successfully be maintained varies with the structure of the Government for the time being.[67]

Amnesty International was booked under sedition for organizing debates on Kashmir issues.[68] The Koodankulam Anti-Nuclear Plant activists amounting to ten thousand people have each been booked under sedition for protesting against nuclear testing and enrichment.[69] In 2009, Vaiko, an MDMK leader was booked under the provision for having made a statement that he was fearful whether India would remain united if the Sri Lankan war did not end.[70] The resident editor at Ahmedabad for *The Times of India* too was booked under this section for questioning the competency of the police forces and alleged them for having mafia

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[65] *J. Manuel* v. *State of Kerala*, ILR (2013) 1 Ker 793*; Bharat Desai* v. *State of Gujrat*, Cri Misc App 7536 of 2008 (Guj); *Javed Habib* v. *State(NCT of Delhi*), (2007) 96 DRJ 693; *K. Neelamangalam* v. *State*, Cri OP (MD) No. 14086 of 2011 (Mad)); *Pankaj Butalia* v. *Central Board of Film Certification*, WP (C) 675 of 2015 (Del); *Sanskar Marathe* v. *State of Maharashtra*, Cri PIL No. 3 of 2015 (Bom).

[66] National Crime Records Bureau, Ministry of Home Affairs, Crime In India 2015 Compendium (April 29, 2017, 03:04 pm) http://ncrb.nic.in/StatPublications/CII/CII2015/Compendium-CII-2015.pdf

[67] INDIAN LAW INSTITUTE, THE LAW OF EDITION IN INDIA, 4 (1964).

[68] Press Trust of India, *Kashmir debate: Amnesty International India booked for 'sedition', Amnesty International,* The Indian Express, (15/08/2016), available at http://indianexpress.com/article/india/india-news-india/fir- registered- against-amnesty-international-

india-2977287/, last seen on 26/03/2017.

[69] P. Sudhakar, S. Vijay Kumar, Kudankulam, *11 Protestors Held on Sedition Charges*, The Hindu (20/03/2012), available at http://www.hindustantimes.com/delhi/nearly-7-000-cases-of-sedition

-filed-in-kudankulam/story-I WOdCNRxlWetgMBmiOUbhP.html, last seen on 06/04/2016.

[70] Centre for the Study of social Exclusion and Inclusive Policy, National Law School of India University, Bangalore, *Overview of Sedition Laws in India*, Sedition Laws and the Death of Free Speech in India, 31 (2011).

linkages.[71] Adding to this list of bizarre usage of this provision, cartoonist Aseem Trivedi[72] with his satirical paintings which was actually describing the fate of Motherland in the hands of the Indian government in good faith was dragged behind the bars. Also human rights activist Dr. Binayak Sen[73], for criticising the Chattisgarh government for aiding vigilantism in Chattisgarh and the accused of the recent incident at JNU[74] fell into the trap of such a redundant law.

The vague law of sedition in India which makes the executive its jury has led to an unprecedented rise in cases where the people have disaffection towards the government.

XI. RECOMMENDATION AND CONCLUSION

"Let's join hands, don't create bedlam,

Now, it's the perfect second to raise your voice and not be mum… "

The genesis of the law of sedition can be traced back to 1870. Today, in the 21st century, such law is inconsistent with the structure of the society. The socio-political-legal demand of such a law at the colonial era can never fall into the foot of socio-political-legal need of 2017. The socio-political scenario of India is so dynamic that even a judgment of 1962 of *Kedarnath Singh v. State of Bihar*[75] cannot stand as locus classicus for a prosecution being held at 2017. India, at 1962, being at a very nascent stage of post colonial development might have not liberated its citizens in order to integrate the leftover of country. But almost after 70 years of independence such a policing by the state is uncalled for.

If the provision punishes only pernicious activities against the state its utility is lost in the IPC. It has always been overlooked and not reassessed whether other sections could fulfill the purpose and objective of § 124A of IPC or not. Apart from § 124A there are a host of sections that can be employed as measures to reach the same end viz. § 505 relating to statements conducing to public mischief, further we have provisions like § 121, 121A and

[71] Times News Network, *Gujarat High Court quashes sedition cases against TOI,* Times of India (19/04/2012), available at http://timesofindia.indiatimes.com/city/ahmedabad/Gujarat-HC-quashes-sedition-cases-against-TOI/articleshow/12723661.cms, last seen on 08/04/2017.

[72] Sanskar Marathe vs The State Of Maharashtra And Anr, Cri.PIL 3-2015

[73] Dr. Binayak Sen Pijush Babun Guha v. State of Chhattisgarh, Criminal Appeal No 20. of 2011 & Criminal Appeal No. 54 of 2011 (Chattisgarh High Court, 10/02/2011).

[74] Kanhaiya Kumar vs State Of Nct Of Delhi, W.P.(CRL) 558/2016 & Crl.M.A. Nos.3237/2016 & 3262/2016

[75] AIR 1962 SC 955.

122 of IPC that prevent the waging or attempt to wage war, or abetment to such heinous crime against Government of India. It also penalizes any person who even conspires for committing such offence. Under § 126, penalizes any person who commits "*depredation on territories of power at peace with the Government of India*". Since the legal requirements of § 124A is met by the other provisions of the Indian Penal Code this section can be held unconstitutional and put to disuse as its retention is defiant of constitutional logic.

Thus the paper urge for justice. Mere expressing views cannot amount to sedition. Moreover one thing must be noted that one cannot clap with one hand. So, if one is to be prosecuted under this offence for mere dissenting opinion against the government established by law, then it is also to be noted that there are some inherent flaws in the government policies which are creating confusion and jeopardizing the proper functioning of the state. Grief lies in the fact that that still the so-called executives who feel themselves to be ultimatum are actually and ultimately provoking that commoners against the government because one can face brutality anger and torture to the extent of patience level. The patience of the citizens are tested now and then for which when get somebody in their support they express themselves freely which lastly ends up being seditious in the eyes of law. Now as it has crossed all limits and levels, people understood that healing wound with gradual obliteration of time would do them no good but it is the perfect second where everyone needs to join hands against this bedlam and eradicate the problem from its root.