SEDITION IN INDIA: AN ANALYSIS OF ITS IMPLEMENTATION, ADJUDICATION, AND CONSTITUTIONALITY CONCERNING THE LATEST REPORT BY THE LAW COMMISSION

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ABSTRACT

The colonial hegemony of the Imperial British Empire has abandoned the law of sedition as one of its most oppressive vestiges. Post the Independence of India, even though India was slowly becoming a 'democracy', no changes were brought to the existing law. In its application, firstly, the courts have had very dynamic opinions regarding what would substantially constitute the offense of 'sedition'. Speculations about the confusion arising out of defining the words 'public order', 'security of the state', 'incitement to violence', 'the knowledge of a likelihood of it', 'threat to national sovereignty and integrity', 'excitement of disaffection', 'disapprobation' and so on, and distinguishing them, have led to the courts formulating a very complicated reasoning to judge sedition-related cases. Secondly, although the apprehensions regarding the constitutionality of the provision have been resolved because of incorporating the offense of sedition under the broad topic of 'reasonable restrictions' provided under Art 19(2) of the Constitution, the never-ending debate continues whether or not the ground of 'sedition' is 'reasonable' to restrain 'freedom of speech and expression'. Speaking ill of the government, or exciting a feeling of disaffection towards it, be it by inciting violence or by peaceful protests when the latter becomes tyrannical, is the hallmark of any democracy. Lastly, and most importantly, the most significant reason for public opinion to scrap the law of sedition is the misapplication in which it is put by the government. The widespread arrests and un(charge)sheeted case files corroborate such an opinion. This paper sets out to not only analyze all three implications of the law, and the repercussions they have on the larger society, but also the counter-arguments to the defences justified in favour of retention of the law, by citing existing literature and using them as a potential source.

Keywords: misapplication, law commission report on usage of sedition, public order and national security, incitement to violence.

I. Introduction

The 22nd Law Commission recently passed a report which contained some significant deductions on the ongoing discussion and debate regarding the constitutionality of the law of sedition codified under section 124A of the Indian Penal Code (IPC). The report has very meticulously examined the pros and cons of the section. It has eventually reached a deduction that the law, notwithstanding its colonial origins, *prima facie* prohibits the 'incitement of violence and public disorder', made through a published written piece or a conducted speech. It lays down that 'India's existing ground realities' can't be ignored, and that the parallel analysis of other countries' actions on the repeal of the law can't solely form a reason behind its annulment in India. Moreover, it also states that the law of sedition falls under one of the reasonable restrictions enshrined in the fundamental right to speech under Art 19(2) of the Constitution and that in the object of "combating anti-national and secessionist elements" in the nation and to safeguard the unity and integrity of India, the substantial retention of Section 124A is necessary. This report was published following the Hon'ble apex court's verdict in *S.G. Vombatkere v. Union of India*[1], in which the court directed all the State Governments and the Central Government to keep all pending trials, appeals, and proceedings arising out of a charge framed under Section l24A to be kept in abeyance. However, the Report is not conclusive, and further action of the State is still awaiting regarding the constitutionality of the Section.

There are apprehensions not only about the colonial origin of the law of sedition but also about the very object of the law, whether or not it satisfies one of the reasonable restrictions laid down under Article 19(2) of the Constitution. Irrespective of all the progressive amendments and the viewpoints given by the courts and the legislature to the said section, the use of the law of sedition in penalizing the basic right to speech and expression by the administration has remained overtly questionable. According to the compiled statistics of the NCRB,[2] spanning from the year 2015 to the year 2020, a total of 399 people were arrested on the charge of sedition, out of which, only 144 cases had chargesheet filed, and the conviction rates have fluctuated between 3% to 33%. The pendency rate with the court was as high as 95% in the year 2020 amid the worldwide lockdown due to coronavirus.[3] The charts indicate that the pace

[1] (2022) 7 SCC 433
[2] Ministry of Home Affairs, "Crime in lndia" (National Crime Records Bureau, Ministry of Home Affairs, Government of lndia) from 2015-2020.
[3] Ministry of Home Affairs, "Crime in lndia 2020" (National Crime Records Bureau, Ministry of Home Affairs, Government of lndia)

of conviction does not equitably and fairly balance with the rates of arrest of persons with the charge of sedition. However, the misappropriation is attributed to healthy debates on usual trends of constitutionality and imperial antiquity.

Besides the question of constitutionality regarding the law of sedition and the speculations about its abusive implementation in the Indian administrative system, the very interpretation drawn by the judiciary in adjudicating sedition cases in the country is very abstruse and vague. The question arises: Is it a failure of the implementation and the administration, or is it the rationale of the judiciary revolving around sedition cases, or is it the law in question that causes the problem? This paper will analyze the effects of the laws, and the peril they pose to democratic rights and will critically examine the Law Commission report on the offense of sedition.

II. Sedition: the law and its historical background

The dictionary of Merriam-Webster defines 'sedition' as an 'incitement of resistance to or insurrection against lawful authority',[4] the origin of which could be traced to the Latin term *'seditionem'*, meaning a 'civil disorder', or a 'dissension', or a 'strife', or a simple rebellion.[5] Dating back to a series of statutes passed in the State of United Kingdom in the year 1275 and later, including the Westminster Act of 1275[6], the offenders speaking or protesting against the King or the government were penalized under several laws of which the very significant was called the *Scandulum Magnatum* (Scandal of Magnates). It was primarily attributed to the offense of defamation or the spreading of 'false/unreliable news' about the king or the government in question. It however had certain defenses, viz., that only the common law courts had the jurisdiction to try the offense and that 'expression of fact or truth' held no liability for the offense. Therefore, it condemned only those materials that were found to be untrue, as opposed to the act of libel that prosecuted offenders of written/printed criticism or defamation against the government.[7] Other offenses similar to the prior were 'treason' and 'heresy', which dealt with offenses detrimental to the interests of the rulers and the non-obedience of orthodox religious doctrines.[8] With such an abstruse and variable application of several laws limiting the

[4] Merriam-Webster's Collegiate Dictionary (10th ed.). (1999). Merriam-Webster Incorporated.
[5] Online Etymology Dictionary
[6] Statute of Westminster, 1275, 3 Edw. 1. cc 1–51
[7] Philip Hamburger, The Development of the Law of Seditious Libel and the Control of the Press, 37 Stan. L. Rev. 668 (1985).
[8] Arvind Ganachari, Nationalism and Social Reform in a colonial situation, (2005), Kalpaz publications, Delhi 110052.

offenses against the state, the very law of sedition lacked efficient compilation and substantive clarity.

However, by the end of the sixteenth century, the very terminology of 'sedition' began to surface through the writings of ancient authors as 'the notion of inciting by words or writings, disaffection towards the state or its constituted authority', and not necessarily an immediate source of violent activities, thereby, distinguishing it from the act of libel.[9] The official foundation of the offense of sedition was laid down in the case of *de Libellis Famosis*[10] by the Star Chambers court in 1601, which defined seditious libel as the speaking of derogatory words, publishing a libel, and a conspiracy to incite hatred or contempt against the authority notwithstanding the truth/falsity of the libel. Following the verdict, there were many cases (of which the Fourde's case of 1601 was quite infamous) in which the law was used as an instrument to restrain the political criticism of the government.[11] The literal involvement of violence wasn't a necessity for the liability of the offense, even though, seditious materials leading to acts of violence might be considered. Sir James Stephan's "Digest of the Criminal Law"(1887)[12] classifies three types of conduct in two intersecting circles: the first one being the crime of treason, the second being an offense involving violence, and the third one lies in the part of the intersection that neither comprises treason nor does it necessitate violence. This third conduct is called 'sedition'.[13] By the 18th century, the perspective of the people towards the law of seditious libel started to become negative, and they started to view it as a draconian law used by the political elite to curb the democratic voice of free speech and criticism of the Crown.[14] With time, the definition and ambit of sedition became broader to inculcate provisions of fair and rightful criticism of the State. In R. v. Sullivan[15], Fitzgerald J. stated that "the very tendency of sedition is to incite the people to insurrection and rebellion". However, with a view to the fulfillment of the continuity of the British Imperial Rule in India, and to suppress any opposition to the rule, the law of sedition was deliberately introduced in the Draft Penal Code by Lord Thomas Babington Macaulay in 1837 under section 113.[16] Nevertheless, by mistake,

[9] Australian Law Reform Commission, *104th Report on Fighting Words: A Review of Sedition Laws in Australia" 5l (July 2006) (hereinafter "Report on Fighting Words") at 6.
[10] 77 Eng. Rep. 250 (K.B. 1606).
[11] Nivedita Saksena & Siddhartha Srivastava, '*An Analysis of the Modern Offence of Sedition*' (2014), 7 NUJS Law Review Journal, 121.
[12] James F. Stephen, ,A Digest of the Crininal Law 66 (MacMillan, London, 4th edn, 1887).
[13] H.J. Stephen & L. Crispin Warmington (eds.), IV Stephen Commentaries on the Laws of England 141 (Butterworth & Co., London, 2lst edn., 1950)
[14] Roger B. Manning, The Origins of the Doctrine of Sedition, 12(2) Albion 99 (Summer 1980).
[15] 376 U.S. 254, 273-76 (1964).
[16] A Penal Code prepared by the Indian Law Commissioners and published by the command of the Governor

the section didn't make it to the enactment in 1860.[17] It was further introduced by the Special Act XVII of 1870,[18] paralleled with the Treason Felony Act of 1848[19] under section 124A, which exists to date. [20]

A. Sedition in Pre-Independent India

With the introduction of section 124A to IPC in India, a lot of vagueness and ambiguity followed with the interpretation of the word 'disaffection' towards the government, which was according to Sir James Stephens, distinguished from disapprobation.[21] Accordingly, no expression of feelings against the government would be counted as long as there was a will to obey its lawful authority.[22] The act was further amended in 1898, adding two more essentials to it: attempting to bring in 'hatred' or 'contempt' towards the Government established by law, punishable. The West Minster parliament also passed a Prevention of Seditious Meetings Act, 1907, to prevent public meetings, which was again amended in 1911, thereby establishing a punishment as imprisonment for a term, which could extend to six months or fine, or both.[23]

The very first case highlighted post the implementation of the law was that of *Queen Empress v. Jogendra Chunder Bose*,[24] more commonly known as the Bangobashi case, in which the offender was booked under sedition because of criticising the Age of Consent Bill. The court held that unlike in England, the law in India penalizes any 'intention and attempt to incite resistance by force'. Therefore it needs to be proved that the words used in the speech were 'calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people and that they were used with an intention to create such feeling'.[25] Another significant case that came up to the Court was that of *Queen Empress v. Bal Gangadhar Tilak*[26], wherein the accused was charged with sedition for publishing an article in the newspaper 'Kesari' invoking the example of the Maratha warrior Shivaji to incite the overthrow of British rule. Interpreting broadly the word 'disaffection', the court ruled that it is

General of India in Council (Bengal Military Orphan Press, Calcutta, 1837)
[17] see *supra* note, *Ganachari*., 2005.
[18] Ganachari in his book opines that this section was included in the penal code to counter the Wahabi activities
[19] Treason Felony Act, 1848, <https://www.legislation.gov.uk/ukpga/Vict/l l-12/12/section/3>
[20] Law Commission of India, Consultation Paper, on 'Sedition', 30th August 2018, Government of India.
[21] W.R. Donogh, A Treatise on the Law of Sedition and Cognate Offences in British India 2 (Thacker, Spink and Co., Calcutta, l911)
[22] *supra,* Donogh.,
[23] *supra,* Consultation Paper on Sedition.,
[24] Queen Emperor v. Jogendur Chandra Bose (1892) 19 ILR Cal 35
[25] *Id.,*
[26] ILR (1898) 22 Bom 112.

'absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. …… The section places absolutely on the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them.'[27] This was further clarified in the case of *Queen Empress v. Ramchandra Narayan*[28], which accused the offender of publishing an article titled "Preparation for Becoming Independent". The court ruled that an attempt to incite feelings of 'disaffection' towards the government was 'equivalent to an attempt to produce hatred towards the Government as established by law, to excite political discontent, and alienate the people from their allegiance'. One safeguard provided to the section was that if the said 'person accused under this section is loyal at heart and is ready to obey and support Government',[29] then the said act wouldn't amount to the offense of sedition. The Court further clarified a distinguishable clarity between 'disaffection' and 'disapprobation' in the case of *Queen Empress v. Amba Prasad*[30], wherein it ruled that any 'disapprobation will only be 'protected as free speech if it did not lead to disloyalty or subverting the lawful authority of the State'.[31] Owing to the ambiguities of the interpretation of the law, the legislature, to avoid any further fallacies, introduced an additional explanation (Explanation III) to the section, which read comments expressing 'disapprobation'. The Select Committee elucidated the reason behind such addition as to 'protect fair and honest criticism which had for its object the alteration of the policy pursued by the Government in any particular case'.[32]

Broadening the horizons of sedition, the Court subsequently passed two progressive judgments in *Kamal Krishna Sircar v. Emperor*[33], and *Niharendu Dutt Majumdar v. the King Emperor*[34]. In the former, the accused denounced the legislation of the Government in which the Communist Party of India and various trade unions and labor organizations were declared illegal. The court welcomed criticism of certain government actions but not the suzerainty of the government as a whole and declared that imputing such a speech would absolutely curb freedom of speech and expression.[35] In the Niharendu case, wherein the accused criticized ineffective government actions during the Dacca riots, the court directed a similar stance and

[27] *Id.,*
[28] ILR (1898) 22 Bom 152.
[29] *supra,* Consultation Paper on Sedition., at *16*
[30] ILR (1897) 20 All 55.
[31] *supra,* Consultation Paper on Sedition., at *16*
[32] K.I. Vibhute, P.S.A. Pillai's Criminal Law 335 (Lexis Nexis Butterworths, Nagpur, 2012)., at 65
[33] AIR 1935 Cal 636
[34] AIR 1942 FC 22.
[35] *Id*., 30

opined that 'all unpleasant words cannot be regarded actionable'.[36] The court further held, that for a case to satisfy the offense of sedition, 'the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.'[37] However, this outlook was retracted later in the case of *King Emperor v. Sadasiv Narayan Bhalerao*[38], wherein the preconceived definition of 'public disorder' or the likelihood of it wasn't accepted; rather the Privy Council postulated that the Niharendu case was decided on an unjustified perspective of section 124A and the rationale behind the Tilak case was upheld for further. [39]

This dynamic and misleading interpretation of the law clearly ascertains that the object of the court in pre-independent India was to curb opposition to smoothly continue the established British rule. It is this stance of the judiciary towards the law of sedition, that the entire existence of the law has been continuously questioned. Mahatma Gandhi, one of the greatest opponents of the law, termed sedition as 'a rape of the word law'[40] and said, "…Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen. 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".[41]

B. Sedition Discussed in The Constituent Assembly

Before independence, the constituent assembly formed to draft the Constitution of Independent India viewed 'sedition' as a menace to the already drafted right to freedom of speech and expression, owing to its obnoxious prosecution in colonial India and because prominent freedom fighters from Annie Beasant and Tilak to even Mahatma Gandhi[42] have been incarcerated on the charges of sedition. Therefore, in light of unanimous opposition from the assembly, the word 'sedition' was not inserted in Article 13 of the Draft Constitution as an

[36] *supra,* Consultation Paper on Sedition., at *18*
[37] Siddharth Narrain, "Disaffection" and the Law: The Chilling Effect of Sedition Laws in India, XLVI (8) EPW 34 (2011)., *Id., 31*
[38] AIR 1947 PC 84.
[39] *supra,* Consultation Paper on Sedition., at *18*
[40] 'When Gandhi called Sedition- A rape of the word law' <https://www.thenewsminute.com/article/when-mahatma-gandhi-called-sedition-rape-word-law-49981> (last accessed 1st Sept, 2023)
[41] Gandhi, M. K., 2014. The Trial Speech. In: R. Mukherjee, Ed. The Great Speeches of Modern India. Gurgaon: Random House, p. 83.
[42] "Sedition: A Law Misused", Chandan Gowda, < https://bangaloremirror.indiatimes.com/opinion/views/can-barack-obama-finally-close-guantanamo-bay/articleshow/53760637.cms> (last accessed 5th July, 2024)

exception to the freedom of speech and expression. It was discussed that "it must be the fundamental right of every citizen in the country to overthrow that government without violence", "except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offense under the law".[43] (Shri M. Ananthasayanam Ayyangar)

Sardar Hukum Singh raised vehement opposition to the inclusion of 'sedition' as an exception to the fundamental right, by quoting the principle followed in the United States, that to restrict any fundamental right, the crux of the law must be deemed fairly constitutional, and that granting a 'blanket protection' to the law of sedition would be detrimental to the very foundation of fundamental rights in a democracy.[44] Due to the unanimous consensus in the assembly about the opposition to sedition law, the word sedition wasn't provided a place in the Constitution.[45]

C. Sedition in Post-Independent India

Posterior to the Independence of India in 1947, the very first case on section 124A that came up to the court was that of *Romesh Thapar v. State of Madras*[46], wherein the Apex Court ruled that for any case to fall under the offense of sedition as a reasonable restriction under Art 19(2) of the Constitution, the seditious material must essentially jeopardize the 'security of or tend to overthrow the State', thereby striking down the reasoning of the rulings in the cases decided in pre-independent India. Although the petition (challenging a ban on a newspaper) was allowed in the view that freedom of propagation of ideas forms an integral part of freedom of speech and expression, Justice Fazal Ali, in his demurring opinion, held, that the maintenance of 'peace and tranquillity' in the State is a reasonable restriction on right to speech and expression.[47] In another dissenting opinion in the case of *Brij Bhushan v. State of Delhi*[48], Justice Fazl Ali stated that disturbance of public order and tranquillity can affect the security of the State, and the word 'sedition' doesn't find a place in Art 19(2) of the constitution because there are broader

[43] Constituent Assembly of India, 2nd December 1948; Constituent Assembly Debates Official Report, Vol.VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014.
[44] Constitutional Assembly Debates, December 7, 1948, speech by S.H. Singh 16 available at <http://164.100.47.132/LssNew/constituent/vol7p21.pdf> (Last visited on Sept 1st, 2023)
[45] *supra,* Consultation Paper on Sedition., at *19*
[46] AIR 1950 SC 124
[47] *Id.,*
[48] AIR 1950 SC 129

connotations that include the offenses 'detrimental to the security of the State as sedition'.[49]

Further, a neoteric judgment arrived in the case of *Tara Singh Gopi Chand v. The State*[50], wherein the Punjab High Court declared section 124A of the IPC as *ultra vires*, in the view that it is a contravention of Article 19(1) of the constitution which provides the rights to freedom of speech and expression to its subjects. The court observed that "*a law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about*".[51] Since then, there have been severe apprehensions regarding the deterrence of the right to freedom and speech and expression in the minds of the people, and a surge of opposition was raised against the then Prime Minister, Shri Jawaharlal Nehru in the legislature during the first constitutional amendment.[52] With an object to justify the rationale in the ruling of the Romesh Thapar case, the Amendment added two additional restrictions to freedom of speech and expression, under Art 19(2) of the Constitution, viz., 'friendly relations with foreign State' and 'public order'.[53] Therefore, it was established that freedom of speech could be regulated on the grounds of 'serious aggravated forms of public disorder that endanger national security' and not 'relatively minor breaches of peace of a purely local significance'. Moreover, in the same amendment, the word 'reasonable' was added before the restrictions to manifest a sincere attempt of the government to license freedom of speech and expression.[54] However, it is also contradictory to note that on the same occasion, Nehru publicly condemned the law of sedition saying, "that particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons".[55] The judicial demise of the provision of 124A came with the decision of Allahabad High Court in the case of *Ram Nandan v. State of Uttar Pradesh*,[56] wherein the court again declared the law unconstitutional. However, both the decisions of the courts were overruled by the Apex Court in the landmark ruling of *Kedar Nath Singh v. State of Bihar*[57].

[49] *Id.,*
[50] AIR 1951 Punj. 27
[51] *Id.,*
[52] *supra* note., Narrain.
[53] *Id.,*
[54] *Id.,*
[55] Harshita, Isshita, "Sedition in India: Section 124 A of IPC v. Freedom of Speech" (2016) 3 Lloydians-International Student Law Review, 123
[56] AIR 1959 All 101
[57] AIR 1962 SC 955.

III. The modern definition and application of sedition in India

Currently, various statutes in Modern India deal with the offense of sedition, including the IPC, CrPC, and the UAPA, which are defined as follows:

1. The Indian Penal Code (IPC) enacted in 1860[58], deals majorly with the offense of sedition under Section 124A. It lays down: "*Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."*

2. The Code of Criminal Procedure(CrPC)[59] as inserted by Smt. Indira Gandhi in 1973, declared sedition as a cognizable offense. According to Section 95, "any publication that breaches section 124 A of the IPC can be confiscated or forfeited by the government under section 95 of the CrPC. In addition, the government has the power to request a search warrant to seize the publication."[60]

3. The 1967 Unlawful Activities Prevention Act's[61] Section 2(o) lays down, that "*any act advancing secession claims, disputing or disturbing territorial integrity, and inciting or seeking to encourage disaffection towards India will fall within its jurisdiction*" and section 13 entails the punishment of such an offense.[62]

A. Analysis of Kedar Nath Judgment

In the aforementioned case, the accused was booked under sedition and inciting public disorder, for a speech wherein he criticized the National Congress party for sticking to its capitalist policies. Subsequently, a total of five appeals were merged together to the apex court to discuss the constitutionality of the section. Post the application of the doctrine of severability in the case of *Romesh Thapar*, in the instant case, it was to the court to find out whether the act of sedition falls under the reasonable restrictions of 19(2) which included the grounds of 'public

[58] Indian Penal Code, 1860, see section 124A
[59] The Code of Criminal Procedure, 1973 (amended)
[60] B S UDAY KIRAN, The Analytical Study of Sedition Law in India and its Constitutional Validity, 5 International Journal of Law Management and Humanities, 1483.
[61] Unlawful Activities Prevention Act, 1967, see section 2(0)
[62] *Id,* Kiran.,

order'. The Court adhered to the interpretation drawn in the *Niharendu* case and held the 'incitement to violence' or an attempt to such as an essential ingredient of the crime.[63] It further drew a considerable distinction between the terms 'Government established by law' and 'the persons for the time being engaged in carrying on the administration'.[64] The court observed that 'Government established by law is the visible symbol of the State', and that any attempt to subvert the government established by law by bringing it into hatred or contempt would jeopardize its security, but a mere criticism of the government officials and its actions to expect an improvement in such would not lead to sedition.[65] Therefore, government measures are free to be criticized by journalists.

However, this entire interpretation is very skeptical. This is because the government officials involved in the administration and execution of government measures themselves represent the government and therefore form a symbolic representation of the State. Calling a government official, a 'thief', would therefore be no sedition, but declaring the entire government administration a 'failure' would amount to sedition. This unfair and conflicting decision leads an individual to further fathom on what is the line beyond which further criticism won't be allowed.

The court further viewed that for an act to qualify as seditious, it has to pass through the test of six grounds of reasonable restrictions under Art 19(2), of which 'public order' and 'security of the state' eventually are the essentials to constitute the crime of sedition. It emphasized that sedition would be any 'tendency to public disorder by the use of actual violence or incitement to violence' and that any person is free to criticize the government 'so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder'.

A clear distinction is also needed to be drawn between the terms 'public order' and 'security of the state'.[66] Public order is the basic public tranquillity and does not have paramount significance. Security of the state, on the other hand, involves a national upheaval or a civil war, compromising which would endanger the very existence of the State[67], i.e., the 'Government established by law.' Drawing a proper framework to define these terms in the order of their

[63] See Pillai, *supra* note 32, at 482.
[64] AIR 1962 SC 955
[65] *supra,* Consultation Paper on Sedition., at *21*
[66] V.N. Shukla, Constitution Of India 135 (M.P. Singh, 2008)
[67] *Id.,*

significance, the apex court in *Ram Manohar v. State of Bihar*[68], laid down the theory of three concentric circles. The outermost would comprise 'law and order', followed by 'public order' in the middle, to the innermost circle comprising the most significant 'security of the state'. This forms a hierarchy of significance in deciding the cases of sedition, and therefore if any seditious material is found to be justified on the grounds of endangering the 'security of the state', they would be applied on a higher standard than that of others.[69] The aforesaid ruling in the case thereafter became so significant, that the apex court in 2016, dealing with the case of *Common Cause & Anr. v. UOI*[70], directed the police authorities to review all the pending sedition cases and follow the rationale laid down in the Kedar Nath case while dealing with them.[71]

B. Judicial Pronouncements Post the Kedar Nath Case

Till today, the interpretation drawn by the court in the Kedar Nath Case is followed in all the cases that relate to sedition. It is established by the court that any material that could pose a possible threat to the existence of the Government established by law, will be termed seditious. Conforming to this, the apex court passed an order in favor of the offender in the case of *Bilal Ahmed Kaloo v. State of Andhra Pradesh*[72]. Further, in both the rulings of *Raghubir Singh v. State of Bihar*[73] and *Binayak Sen v. State of Chhattisgarh*[74], held that in order to hold a person guilty of sedition, it is not necessary that he/she himself has authored the publication, even 'circulation' of seditious material would fall under the purview of Section 124A of the IPC.

The Courts have significantly built an interpretation that 'violent activities' or very precisely the acts leading to 'violence' (acts which provoke 'imminent violence') is an essential ingredient of sedition, through cases like *S. Rangarajan, etc v. P. Jagjivan Ram*[75], *Indra Das v State of Assam*[76], and *Arup Bhuyan v State of Assam*[77]. In *V.A. Pugalenthi v. State*[78], the court reiterated that peaceful protest, criticism, or dissent should not be made actionable. However,

[68] Ram Manohar v. State of Bihar, AIR 1966 SC 740 : (1966) 1 SCR 709
[69] *Id.,*
[70] (2016) 15 SCC 269
[71] Nivedita Saksena & Siddhartha Srivastava, '*An Analysis of the Modern Offence of Sedition*' (2014), 7 NUJS Law Review Journal, 121.
[72] AIR 1997 SC 3438
[73] AIR 1987 SC 149
[74] 2011 (266) ELT 193 (Chhattisgarh).
[75] 1989 SCR (2) 204 1989 SCC
[76] [2011] 3 SCC 380
[77] (2011) 3 SCC 377
[78] Crl. O.P. No. 21463 of 2017, decided on 9/11/2017

contradictorily, in the same case, the accused was held liable for calling out to the public to demonstrate against the Government on the issue of the NEET examination. In *S. P Gupta v. Union of India*,[79] and *Cellular Operators Association of India & Ors. v. Telecom Regulatory Authority of India & Ors*[80], the Supreme Court highlighted the 'right to know', and the 'right to hear', which therefore forms a significant part of the right to freedom of speech and expression. In a democracy, it is very pertinent to keep people informed of the decisions of the government and the cons of it through peaceful criticism. The said right could be conspicuously applied via writings as well as cinematic representations, and therefore putting a ban on a movie should be highly scrutinized. In the case of *Kamal R. Khan v. State of Maharashtra*[81], the court declared that barring the 'free flow of information, ideas, and knowledge' renders a society 'inhibited' and 'repressed'.

The determination of what is seditious requires a careful study of the words used in the material. In the ruling of *Ramesh v. Union of India,*[82] the court suggested a standard of application as 'reasonable, strong-minded, firm and courageous men' and not that of 'weak and vacillating mind'. The courts have affirmed the requirement of initiation of violence as essential for conviction, and therefore the shouting of slogans for the creation of a new nation/province isn't liable. In *Gurjatinder Pal Singh v. State of Punjab*[83], wherein the accused gave a charismatic speech on the occasion of celebration in honor of the martyrs in Operation Blue Star, in favor of the creation of a new State, Khalistan, the court convicted the accused. Even though there was no sign of violence raised, the accused had called out the Indian Constitution as 'worthless' for Sikhs. In another case, *Indra Das v. State of Assam*[84], the petitioner was accused of being a member of a banned organization by the name of ULFA, the court found no offense of sedition committed. In *Mohd. Yaqub v. State of W.B.*,[85] wherein the accused had admitted to being a spy of Pakistani Intelligence, the court found no evidence to declare his acts seditious. However, in a similar case by the name *Asit Kumar Sen Gupta v. State of Chhattisgarh*,[86] where the accused was found in possession of Maoist literature and was accused of 'inciting' and 'provoking' the people to join the Maoist organization, the court declared the accused to be liable for sedition.

[79] AIR 1982 SC 149
[80] AIR 2016 SC 2336
[81] 2009(4) BomCR 496
[82] AIR 1988 SC 775
[83] Gurjatinder Pal Singh v. State of Punjab, (2009) 3 RCR (Cri) 224
[84] *ibid.,*
[85] Mohd. Yaqub v. State of W.B., (2004) 4 CHN 406.
[86] Asit Kumar Sen Gupta v. State of Chhattisgarh, Cri App No. 86 of 2011 (Chh) (Unreported)

The act of inciting people to join a Communist organization was apparently viewed by the court as an intention to overthrow the capitalist government by armed rebellion. In *Nazir Khan v. State of Delhi*,[87] wherein the accused was booked for undergoing terrorist activities in the country, irrespective of the fact that he was involved with banned organizations like the *Jamaat-e-Islamic* and *Al-e-Hadees*, the court booked him under sedition *inter alia*. However, the rationale established in the Kedar Nath judgment that distinguished between 'acts' of violence and 'incitement to violence' was not correctly applied in the case. The accused might be liable for other heinous offenses, but not for sedition, since there was no 'direct incitement to violence' established from the evidence.[88]

It can be therefore inferred that the stance of the judiciary towards deciding sedition-related cases has been very unclear, ambiguous, and conflicting. The words 'incitement to violence' have often created a buffer in determining to what extent a material can be labeled seditious. A speech opposing a government measure calling out to boycott it with/without the use of violence, or a poster inciting the public to protest against the legislative assembly can be inimical to the existence of the government in rule, but not the Government established by law. But the main ingredient, i.e., violence is inconspicuous in nature, therefore, there is no standard method of determining whether or not a seditious speech/writing is calling out for violence, owing to the fact that an accused never openly uses the word 'violence'. More than words, it is the vigor and the belligerence of the speech that influence people, which is rather difficult to comprehend. Moreover, there is a very thin line of difference between the words 'government established by law' and 'the persons involved in its daily administration', as it is the latter that grossly represents the former. Therefore, for an act to be determined as sedition, it has passed through several tests, which again raises obscurity and confusion.

C. A Strife of Constitutionality: Freedom of Speech and Expression

In the words of Charles Bradlaugh, an English political activist, "*Better a thousandfold abuse of free speech than denial of free speech. The abuse dies in a day but the denial slays the life of the people and entombs the hopes of the race.*"[89] The freedom of opinion and expression is the gift of democracy and forms the most integral part of it. With the very evolution of the state,

[87] Nazir Khan v. State of Delhi, (2003) 8 SCC 461 : AIR 2003 SC 4427.
[88] Nivedita Saksena & Siddhartha Srivastava, '*An Analysis of the Modern Offence of Sedition*' (2014), 7 NUJS Law Review Journal, 121.
[89] Jewish Supremacism, Freedom of Speech, and My Book Jewish Supermacism , available at <http://davidduke.com/freedom-of-speech/>

the right to free speech has been established by different states as one of the principal forms of democracy. Eminent writers of the 16th and 17th centuries like Mill, Locke, and Voltaire have advocated the need for individual rights in society. There was a time when these rights were obtained by revolution, due to the ancient despotism followed in the States. However, it was in the 20th century that the right to 'free speech' was universally accepted as a hallmark of democracy. A society void of 'free speech' would get potentially unstable owing to the fact that freedom of opinion not only allows a free flow of information among the citizens but also, as Mill has notably pointed out, promotes the "intelligence of the people".[90] For the healthy functioning of a civil society, this is a basic human right that can't be compromised. The Universal Declaration of Human Rights (UDHR) has laid down in its article 19 that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.[91]

The Apex Court of India, in the case of *Re Harijai Singh*[92], has talked about a very fundamental relationship between democracy and freedom of speech. The court observed, "*In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State…the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action.*"[93] In another case of *Indian Express Newspaper (Bombay)(P) Ltd. v. Union of India*[94], the court laid down four important purposes of freedom of speech in a democracy: "(i)it helps an individual to attain self-fulfillment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-making, and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change."[95]

However, it is to be also noted, that no freedom is absolute and could be restricted for legal and moral reasons. With the growing concerns of national security, it is inevitable that fundamental

[90] Law Commission of India, Consultation Paper, on 'Sedition', 30th August 2018, Government of India.
[91] United Nations General Assembly, The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948., Article 19.
[92] AIR 1997 SC 73
[93] Re Hariraj Singh and Anr.,(1997) AIR 1997 SC 73
[94] AIR 1986 SC 515
[95] *supra* note, 2, at 25.

rights are compromised to a certain extent. In the case of *A.K. Gopalan v. State of Madras*[96], the apex court declared, "*Man, as a rational being, desires to do many things, but in civil society, his desires have to be controlled, regulated, and reconciled with the exercise of similar desires by other individuals… Liberty has, therefore to be limited in order to be effectively possessed*." However, it needs to be made clear, that when and on what basis the rights are restricted upon. The 'harm principle' postulated by Mill notes that no speech should be restricted unless it results in some sort of 'harm'.[97] The International Covenant on Political and Civil Rights (ICCPR) has laid down in its Article 19(3), two important incidents, wherein the fundamental right to free speech can be restricted: (a) For respect of the rights or reputations of others; and (b) For the protection of national security or of public order (order public), or of public health or morals.[98] Despite the United States' first amendment to the constitution that says that no change should be drawn to the fundamental rights of the citizens, the 'Doctrine of Police Power' has been implemented to protect the laws passed by the Congress.[99] Therefore, no free speech can be termed absolute.[100]

The pre-independent India had seen vehement violations of free speech, and therefore, during the framing of the Constitution in the assembly, it was inevitably and unanimously agreed that with the independence, India would become a democratic nation and that all the basic fundamental rights, including the right to freedom of speech and expression, would be available to the Indian subjects. Thus, Article 19(2) of the constitution provides the right to freedom of speech and expression. However, unlike the US, India has adopted an "expressly restrictive" model[101] while dealing with the restrictions. The main ingredients that reasonably restrain free speech in India are the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, the sovereignty, and integrity of India, defamation or incitement to an offence. There have been instances when certain statutory laws have varied conflicts with fundamental rights.[102] In *Shreya Singhal v. Union of India*[103], the

[96] AIR 1950 SC 27
[97] Melina Constantine Bell, John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm, (2020), 33 Cambridge University Press, at 162.
[98] International Covenant on Civil and Political Rights (1966), General Assembly resolution 2200A (XXI), Article 19(3).
[99] Samuel M Soref, The Doctrine of Reasonableness in the Police Power, (1930), 19 Marquette Law Review. 3 (1930) <:http://scholarship.law.marquette.edu/mulr/vol15/iss1/1>
[100] Law Commission of India, 279th Report on "Usage of the Law of Sedition" (April 2023). at 47.
[101] Dr. Ambedkar, Motion Re-Draft Constitution, Vll CAD 4'h November 1948, available at: https://www.constitutionofindia.neVconstitution_assembly_debates/volume/?/1948-l I -04 (last visited on Sept 1st, 2023).
[102] Law Commission of India, 279th Report on "Usage of the Law of Sedition" (April 2023). at 45.
[103] Shreya Singhal v. Union of India, (2013) 12 SCC 73.

court struck down Section 66A of the IT Act, 2000, as unconstitutional, it contravened the right to freedom of speech and expression. The growing concerns about the constitutionality of the law of sedition can be attributed to the reason that, besides the abstruse adjudication of the law, there have been instances of acute misuse of the law by the Indian Government.

D. A Flagrant Misuse of The Law by The Administration

Besides the conflicting views of the court in several pronouncements, another concern raised against the law of sedition is the misapplication of it in several cases, by the administration. It is evident from the NCRB reports in the last few years that the conviction percentage has been very low. Out of 70 cases filed on sedition in the year 2018, only two were convicted.[104] Due to the paucity of evidence, many were not even charge-sheeted. The reason behind this can be attributed to a rumour that the government books anyone under sedition and UAPA who is found to speak against its administration, be it a comedian, or a politician from the opposition, or a college student. Although the judicial pronouncements in the precedents have already prescribed a standard for determining any case of sedition, the government continues to arrest people under sedition even when the bracket is not met.[105]

In the last few years, horrific examples have been seen in the country wherein the masses have been charged with sedition for trivial reasons. Even though, most of them had been acquitted, and a significant number of them hadn't even charge-sheeted, for such a law, the process itself is punishment. Jayshree Bajoria, co-writer of the Human Rights Watch report on 'stifling dissent' in India, said, "The charges have rarely stuck in most of the cases, but the process itself becomes the punishment."[106] Rohinton, F Nariman, a retired judge of the Supreme Court lamented his dislike towards the law of sedition and said that striking it down would let the citizens 'breathe more freely'.[107]

From arresting a cartoonist, Aseem Trivedi for drawing cartoons that depicted hostility towards the government in 2001,[108] and charging Arundhati Roy for condemning the government's

[104] Ministry of Home Affairs, "Crime in India, 2018" 845-867 (National Crime Records Bureau, Ministry of Home Affairs, Govemment of lndia (2018)
[105] Pranjal Sharma, "Sedition Law in India: Critical Analysis", (Lexforti, 23 Oct, 2020) <https://lexforti.com/legal-news/sedition-law-in-india/> (last accessed 1st Sept, 2023)
[106] Soutik Biswas, Why India needs to get rid of its sedition law (BBC News, 29 August 2016) <https://www.bbc.com/news/world-asia-india-37182206> (last accessed 1st Sept, 2023).
[107] SC Must Repeal Sedition Law, UAPA So Citizens Can 'Breathe More Freely': Justice Nariman, <https://thewire.in/law/sc-must-repeal-sedition-law-uapa-so-citizens-can-breathe-more-freely-justice-nariman> (last accessed 1st Sept, 2023).
[108] Jason Burke, Indian Cartoonist Aseem Trivedi jailed after arrest on sedition charges (The Guardian, 10 Sept.

actions in Kashmir in 2010[109], to mass arrests of students of the Jawaharlal Nehru University protesting against CAA-NRC, including Umar Khalid and Anirban Bhattacharya,[110] the government has left no stone unturned to trouble the citizens on the charges of sedition. In 2016, Kanhaiya Kumar, a student of JNU was alleged to 'incite violence' for shouting anti-national slogans. It took three years for the police to finally file a charge sheet against him in 2019.[111] In 2014, 60 Kashmiri students were charged with sedition in Uttar Pradesh for cheering a cricket match in favour of Pakistan.[112] In the same year, seven men in Kerala were arrested since they refused to stand up in the cinema hall while the National anthem was played.[113] In 2015, a folk singer S Kovan was arrested in Tamil Nadu for singing two songs that criticized the liquor-related policies of the government.[114] In 2020, the police arrested 26-year-old Nazbunnisa, a single mother, because her six-year-old daughter had participated in a play that demonstrated protests against the government policy of CAA-NRC.[115] Another anti-CAA activist, Sharjeel Imam was held for producing 'inflammatory speeches' at the Jamia Milia University.[116] The Mumbai police registered a case against 50 students of the Tata Institute of Social Sciences, on the ground that they shouted 'anti-national' slogans in support of Imam.[117] In the same year, a 19-year-old girl was arrested in Bangalore for shouting "Pakistan Zindabad".[118] According to a report, there have also been mass arrests of farmers in Jharkhand,

2012) <https://www.theguardian.com/world/2012/sep/10/indian-cartoonist-jailed-sedition> (last accessed 1st Sept, 2023)

[109] Suravi Sarawagi, "Section 124A: The offender of freedom of speech and expression" (2016) 3 Lloydians-International Student Law Review, 133.

[110]Damini Nath 'Uncertainty over prosecution sanction for JNU "sedition" case' <https://www.thehindu.com/news/cities/Delhi/uncertainty-over-prosecution-sanction-for-jnu-sedition-case/article26039326.ece> (last accessed 1st Sept, 2023)

[111] Harshita Saraf, "Evolution of Sedition laws in India and the statutory Interpretation of Section 124A of the Indian Penal Code, 1860" (2020) 1 Juscholars, 1.

[112] Kashmiri students booked for sedition for cheering Pakistan team, (Economic Times, 6 Mar 2014) <https://economictimes.indiatimes.com/news/politics-and-nation/kashmiri-students-booked-for-sedition-for-cheering-pakistan-team/articleshow/31544801.cms?from=mdr> (last accessed 1st Sept, 2023).

[113] Why are Indians being arrested for sitting during the National Anthem? (BBC News, 14 Dec 2016) <https://www.bbc.com/news/world-asia-india-38298821> (last accessed 1st Sept, 2023).

[114] India: Folk Singer jailed for sedition, (Human Rights Watch, 3 Nov, 2015) <https://www.hrw.org/news/2015/11/03/india-folk-singer-jailed-sedition> (last accessed 1st Sept, 2023).

[115] The School Play that sent a mother to prison (BBC News, 11 Feb, 2020) <https://www.bbc.com/news/world-asia-india-51441549> (last accessed 1st Sept, 2023).

[116] Sharjeel Imam row: Politics heats up as police arrest JNU student from Bihar (India Today, 29 Jan 2020) <https://www.indiatoday.in/india/story/sharjeel-imam-row-politics-heats-up-as-police-arrest-jnu-student-from-bihar-1641073-2020-01-28> (last accessed 1st Sept, 2023).

[117] TISS student Urvashi Chudawala, 50 others booked under sedition by Mumbai police (Mumbai Live 2020) <https://www.mumbailive.com/en/crime/fir-registered-against-activist-urvashi-chudawalaand50-others-under-ipc-sec-124a(sedition)-153b-505-34-at-azad-maidan-police-station-in-connection-with-raising-of-slogans-in-support-of-sharjeel-imam-44913> (last accessed 1st Sept, 2023).

[118] Teen activist charged with sedition for saying Pakistan Zindabad (the Times of India, 21 Feb 2020) <https://timesofindia.indiatimes.com/india/teen-activist-charged-with-sedition-for-saying-pakistan-zindabad/articleshow/74234051.cms> (last accessed 1st Sept, 2023).

protesting against a development project in favor of their land rights.[119]

IV. The report of the law commission and its analysis

The 22nd Law Commission of India passed a detailed report (Report no. 279) titled "Usage of the Law of Sedition" explaining why the law shouldn't be scrapped.[120] It also prescribed certain reforms to be brought about in the act. One of the first reports to discuss the issue of sedition was the 39th report (1968), which suggested certain amendments to the punishment under sedition.[121] The next was the 42nd Report (1971) that laid down certain recommendations: (1) the ingredient of 'mens rea' or 'intention to endanger' the security of the state was to be inducted under the section; (2) the inclusion of words 'constitution', 'legislature' and 'administration of justice' to be disaffected against (3) altering the 'odd' structure of punishment under the act.[122] The next report that talked about sedition was the 43rd report, titled "Offences Against the National Security" (1971) which merely reiterated the 42nd report of the commission.[123] Further, the 267th report of the 22nd Law Commission (2017) established a clear difference between 'sedition' and 'hate speech'.[124]

The instant report (279th) has not only advocated the necessity of free speech in society but also discussed the importance of 'reasonable restrictions' on it, one of which is the offense of sedition. Justifying the law, it has laid down, that there have been, since the time of independence anti-national elements present in the country that have apparently jeopardized India's internal security. From quoting Ajit Doval, the National Security Advisor (NSA)[125] to India to presenting reports and charts to depict the imminent terrorist and Maoist[126] threats, the Report has significantly established a need to retain the law of sedition in a view to protect the national interests of the country. The report has also talked about the alleged misuse of the law

[119] 10,000 people charged with sedition in one Jharkhand district. What does democracy mean here? (Scroll.in, 19 Nov 2019) <https://scroll.in/article/944116/10000-people-charged-with-sedition-in-one-jharkhand-district-what-does-democracy-mean-here> (last accessed 1st Sept, 2023)
[120] Law Commission of India, 279th Report on "Usage of the Law of Sedition" (April 2023).
[121] Law Commission of India, "39th Report on The Punishment of Imprisonment for Life under the Indian Penal Code" (July, I968).
[122] Law Commission of Indi4 "42"d Report on the Indian Penal Code" (June, l97l).
[123] Law Commission of India, "43'd Report on Offences Against the National Security" (Aug., l97l).
[124] Law Commission of India "267h Report on Hate Speech" (Mar..2017).
[125] Press Trust of India, "Internal security going to be a big challenge for India: NSA Ajil Doval" (l3 July 2018), available at https://economictimes.indiatimes.com/news/defence/intemal-security-going-to-be-a-big-challengefor-india-nsa-ajitdoval/anicleshoW4960946l.cms?utm source:contentofinterest&utm mediumnext&utm_campaign=cppst (last visited Sept. 1, 2023).
[126] Anshuman Behera, "From Mao to Maoism: The Indian Path", in Narendar Pani and Anshuman Behera (eds.) *Reasoning Indian Politics: Philosopher Politicians to Politiciqns Seeking Philosophy* 182-204 (Routledge, London, 2018)

in the hands of the administration and thus has condemned the 'complicity of the police' in dealing with sedition cases. It stated that no demand has been made to repeal any law on the ground of its misuse by 'a section of the populace', because, besides the abuser of the law, there are other victims who require the genuine protection of the law. Therefore, repealing the entire section altogether may have serious effects, however, new ways can be introduced to 'prevent the misuse of such a law.'

The Report has also discussed other countries' approaches to dealing with the law, of which a significant example is the United Kingdom. Although the law of sedition in our country is a relic of the colonial regime of the UK, the country itself abolished the law in 2009 by Section 73 of the Coroners and Justice Act[127], owing to the 'global trend' against 'sedition' and in favour of protection of free speech, subsequent to the enactment of the Human Rights Act in 1998. It also provides an image of the US, which still survives with the sedition law, although it has already 'fallen in disuse'. In Australia, the term 'sedition' has been replaced with 'urging violence offenses' by the National Security Legislation Amendment Act of 2010, and under a broad connotation, the law still survives. It also gives the example of Canada, wherein a model of sedition, similar to that of India exists in the law.

Finally, the report summarises five primary reasons, in justification of the existing law, to draw a conclusion on why the retention of such a law in India is essential. The first reason stated is "to safeguard the unity and integrity of India" wherein it elaborates on certain instances, which ascertains that the perils to national security still exist. It notes that, despite the operation of other terror-combative laws like the e Unlawful Activities Prevention Act, 1967[128], and the Maharashtra Control of Organised Crimes Act, 1999[129], sedition sets out to be the 'traditional penal mechanism' tackling the issue. Secondly, it points out that sedition falls under the 'reasonable restriction' of Article 19(2). Citing the Constituent assembly debates and the subsequent amendments to the constitution, it attempts to establish that sedition significantly constitutes the broader connotations of the words 'security of the state', 'public order', 'friendly relations with foreign states', and 'incitement to an offense'. Thirdly, the report states that the

[127] Section 73: Abolition of common law libel offenses etc.
The following offenses under the common law of England and Wales and the common law of Northern Ireland are abolished-
(a)the ofences ofsedition and seditious libel;
(b)the ofence of defanatory libel:
(c)lhe ofence ofobscene libel.
[128] Unlawful Activities Prevention Act, 1967.
[129] Maharashtra Control of Organised Crimes Act, 1999.

existence of other counter-terror legislation doesn't necessarily substitute the law of sedition. UAPA, it says, is a 'special law' that deals exclusively with terrorist activities, and the National Security Act (NSA)[130] enacted in 1980 deals with 'preventive detention'. While Section 124A protects any 'expression that incites violence against the Government'. Further, the report holds that sedition couldn't be repealed on the grounds of being a 'colonial law' because, India has now turned into a democracy, contrary to the time when it was chained under imperial rule. Lastly, it notes that the fact that the law is no longer operative in other democracies, especially the UK can't logically become a ground for its repeal in India, since the 'existing ground realities' in India differ.

Exhibiting its actual purpose, the report, in the end, has suggested certain recommendations to be made to the law of sedition, which are: (1) to incorporate in section 124A the principles and interpretations laid down in the Kedar Nath Judgment, letting the law look conspicuously clearer; (2) to lay down some 'procedural guidelines', prior to the registration of a FIR, and introduce certain 'procedural safeguards' in order to prevent the misuse of the section in the hands of the police. The rules include that the police officer registering the FIR shouldn't be under the rank of an inspector and that he/she should conduct a preliminary inquiry of the case within seven days, carefully studying the evidence; (3) to resolve the 'oddity' in punishment for sedition, by restructuring it to 'either imprisonment for life or imprisonment up to three years only, but nothing in between, with the minimum punishment being only fine'.

However, it is to be noted that the report hasn't talked about the existing substitutes to section 124A that lie in the other parts of the section comprising "offenses against the state"[131]. Offenses like the membership/recruitment to an unlawful assembly[132], obstructing/assaulting a public servant[133], rioting[134], promoting enmity and hatred among different groups[135], waging war against the government[136], and escape of a prisoner[137], broadly situated under Chapter VI (sections 121-130) and later of the Constitution, in varying aspects, does same the job as section 124A. Crimes like 'public disorder', 'threat to national security', and 'incitement to violence' which have been primarily emphasized by the judicial interpretations to be the primary

[130] National Security Act, 1980.
[131] The Indian Penal Code, 1860, Chapter VI.
[132] *Id.,* section 141.
[133] *Id.,* section 152.
[134] *Id.,* section 146.
[135] *Id.,* section 153A.
[136] *Id.,* section 121.
[137] *Id.,* section 130.

ingredients of the offense of sedition, can be potentially addressed by the aforementioned sections.[138] The report's suggestion of a necessary 'traditional penal law' is also fulfilled by such provisions, therefore no question arises of substituting it with a 'special law' to tackle the offense. Even in the absence of the penal law, there are additional special legislations present in almost every State to deal with 'public order' and 'safety'.[139] However, this point has neither been addressed nor rebutted by the report. The suggestion by the commission to incorporate some interpretations into the law per se wouldn't suffice, since the difficulty doesn't in itself lie in the law, but in its draconian implementation. Further, the second recommendation to secure certain 'procedural safeguards' is very questionable, owing to the fact, that the law has been frequently abused by the elites to serve favourable political interests.[140]

V. Conclusion

To sum up, the question of constitutionality, implementation, and other concerns attributed to the existence of Section 124A of the Indian Penal Code has led to growing attention towards the issue. The paper has analysed thoroughly, amid all the justifications to retain the law in the system, whether or not the purpose of combating public disorder and national threats be achieved if the law is at all repealed. The answer to the question of whether the problem lies in the law or in the system is very challenging, since the object behind the law, to some extent, is a necessary evil in India, owing to its dynamic and inimical ground realities.

Taking into account, the very colonial origin of the law, the vague judicial interpretations around it, and the alleged misuse of it in the system, it can be deduced that, besides the question of constitutionality, the law renders society an indispensable question of why it should exist vis-a-vis the democratic ideologies of the country. A speech or a written piece could be derogatory, and could also excite disaffection against the government as to incite the public to violence, and owing to the growing concerns of national security in the country, it is viable to be reasonably restricted, but by and large, voicing against a despotic government, be it by a coup de etat, or an armed rebellion, constitutes the very ancient idea of a democracy. Democracies have itself been formed by armed rebellion against traditional monarchs.

[138] Nivedita Saksena & Siddhartha Srivastava, '*An Analysis of the Modern Offence of Sedition*' (2014), 7 NUJS Law Review Journal, 121.
[139] See, e.g., the *West Bengal Maintenance of Public Order Act, 1972*; the *Assam Maintenance of Public Order Act, 1947*; the *Goa Maintenance of Public Order and Safety Act, 1972.*
[140] Eric Barendt, Interests in Freedom of Speech: *Theory and Practice in Legal Explorations*: Essays in Honour of Professor Michael Chesterman 175 (Kam Fan Sin, 2003).

However, practically analysing the case, in order to protect the national integrity, if it is necessary to restrain such material, even then there remains a cavity of doubtfulness as to whether such a law should exist. Therefore, the retention of the law should again be reconsidered in order to emancipate the independent citizens of democratic India from the remnants of colonial oppression.