

LAW OF SEDITION AND CONSTITUTIONAL RIGHTS IN INDIA: A CRITIQUE

Dr. Akashdeep Singh

LL.B., LL.M., Ph.D.

Assistant Professor, Rayat College of Law, Railmajra, S.B.S. Nagar, Punjab, India

Email - akash194@gmail.com

Abstract: *The Constitution of India gives freedom of speech and expression to every citizen under Article 19(1) (a). However this freedom is not absolute and reasonable restriction can be imposed on freedom of speech and expression on the grounds mentioned in Article 19(2). On the other hand Section 124A of Indian Penal Code punishes a person for the offence of Sedition when he 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. From the very inception of Section 124A into IPC, it has been a subject of controversy due to its vague definition. This paper attempts to highlight the lacunas in the definition of Section 124A of IPC and its correct interpretation according to the spirit of Indian Constitution with the help of judicial interpretation on the law of sedition.*

Key words: *Law of Sedition, Freedom of Speech and Expression, Disaffection, Government establish by law.*

“Section 124A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code 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”.

Mahatma Gandhi, March, 1922

The Trial Speech,

From The Great Speeches of Modern India, 2014¹

1. INTRODUCTION:

The Law of Sedition in India has assumed controversial importance largely because of constitutional provisions of freedom of speech and expression guaranteed as a fundamental right under Article 19 (1) (a) of part III of the constitution.² Sedition Laws have been found in the following laws of India: Section 124-A³ of Indian Penal Code, 1860; Section 95⁴ of the Code of Criminal Procedure, 1973; Section 5⁵ of the Seditious Meeting Act, 1911; and

¹ Mohandas Gandhi, *Famous Speeches by Mahatma Gandhi; Great Trial of 1922*, Gandhian Institute Bombay Sarvodaya Mandai and Gandhi Research Foundation. Available at www.mkgandhi.org/speeches, accessed on 16/04/2012.

² K.D. Gaur, *A Text Book on The Indian Penal Code*, 190, (2004).

³ Section 124-A, as it stands today, reads: “Sedition-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.

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

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

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

⁴ Section 95 reads:

“Power to declare certain publications forfeited and to issue search-warrants for the same.-(1) Where-

(a) any newspaper, or book, or

(b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under Section 124-A or Section 153-A or Section 153-B or Section 292 or Section 293 or Section 295-A of the Indian Penal Code, the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or

section 2(o)⁶ and Section 13⁷ of Unlawful Activities (Prevention) Act, 1967. In all these laws the basis of the offence of sedition is to excite disaffection towards the government. Section 124-A was made in most draconian form during the colonial era and other laws relating to sedition, following Section 124-A, have been made by the parliament of Independent India.⁸

2. ORIGIN OF SEDITION LAW:

To understand the idea behind the incorporation of sedition law in Indian Penal Code, one needs to look back at the time and the circumstances under which it was made. The origin of sedition law in India is linked to the Wahabi Movement of 19th century. This movement, centred around Patna was an Islamic revivalist movement, whose stress was to condemn any change into the original Islam and return to its true spirit. The movement was led by Syed Ahmed Bareilvi. The movement was active since 1830s but in the wake of 1857 revolt, it turned into armed resistance. Subsequently, the British termed Wahabis as traitors and rebels and carried out extensive military operations against the Wahabis.⁹ In 1837, Thomas Macaulay introduced sedition as an offence through clause 113 of the Draft Indian Penal Code.¹⁰ That draft Bill was shelved for more than twenty year and when it commenced in 1860, the sedition clause for some unaccountable reason had been omitted. It was not in fact till 1870, such a provision was recognised in Indian Penal Code and as result a special Act (XXVII of 1870) was passed by way of amendment to the penal code. Sir James Fitzames Stephen, when introducing this Bill to amend the penal code in 1870, observed that the provision in question was omitted by some unaccountable mistake.¹¹ Another explanation for this omission was that the British government wanted to adopt more wide-ranging strategies against the press including a deposit-forfeiture system and general powers of preventive action to suppress the Indian freedom struggle.¹² The framework of this section was imported from various sources; The Treason Felony Act, 1848¹³, The Common Law of Seditious Libel and the

other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any book or other document may be or may be reasonably suspected to be.”

⁵ Section 5 reads: Power to prohibit public meetings: The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

⁶ Section 2(o) reads: “unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representations or otherwise),-

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India;”

⁷ Section 13 reads: “Punishment for unlawful activities.- (1) Whoever-

- (a) takes part in or commits, or
- (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

⁸ Disha Pande, *Sedition Laws in India: A Growing Threat to Free Speech*, Bharati Law Review, 250 (2016).

⁹ Hetal Chavda, *Autonomy Is As Autonomy Does – Law of Sedition in India*, 2, Imperial Journal of interdisciplinary Research, 30, (2016).

¹⁰ Vasundhara Sirnate and V.S. Sambandan, *Free Speech and Sedition in a democracy*, The Hindu Centre for Politics and Public Policy, 1, (2016).

¹¹ Walter Russel Donogh, *A treatise on the Law of Sedition and Cognate Offence in British India*, 1, (1911). Available at <https://archive.org/stream/onlawofsedition00dono#page/n23/mode/2up>. Accessed on 28-11-2016.

¹² R. Dhavan., *Only the Good News: On the Law of the Press in India*, 287-278, (1987).

¹³ Sec 3 of The Treason Felony Act 1848 : If any person whatsoever shall, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our Most Gracious Lady the Queen, from the style, honour, or royal name of the imperial crown of the United Kingdom, or of any other of her Majesty’s dominions and countries, or to levy war against her Majesty, within any part of the United Kingdom, in order by force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both Houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other of her Majesty’s dominions or countries under the obeisance of her Majesty, and such compassing, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing and printing or writing or by any overt act or deed, every person so offending shall be

English Law relating to Seditious Words. The Common Law relating to Seditious Libel governed both actions and words that pertained to citizen and the government, as well as between communities of persons.¹⁴ The present section was substituted by Act IV of 1898 through an amendment to the Indian Penal Code. The Government of India (Adaptation of Indian Laws) Order, 1937, had the effect of adding the words 'or the Crown Representative' after the words 'Her Majesty' and the words 'or British Burma' after the words 'British India'. But these additions were omitted by the Adaptation of Laws order, 1948 and the words 'British India' were replaced by the words 'the provinces'. Later on, by the Adaptation of Laws Order, 1950, the words 'the provinces' were replaced by the word 'the States'. By the same order the words 'Her Majesty or' were deleted from the section. Finally, the words 'the State' were replaced by the words 'India' by Act III of 1951¹⁵. The difference between the old Section 124A and the present one is that in the former the offence consisted in exciting or attempting to excite feelings of "disaffection", but in the latter "bringing or attempting to bring into hatred or contempt the Government of India" has also been made punishable.¹⁶

3. JUDICIAL INTERPRETATION OF SECTION 124-A

Sedition Law is placed in the middle of Chapter VI of the Indian Penal Code that deals with "Offences against the State". Section 124-A, as it stands today, reads: "Sedition-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." There are three explanations attached to the section, first explanation provides that word "disaffection" includes disloyalty and all feelings of enmity and second and third explanation provides that Comments expressing "disapprobation" of the measures of the Government with a view to obtain their alteration by lawful means or the comments expressing "disapprobation" of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

The meaning of the word "disaffection" according to Oxford English Living Dictionary is "a state of being dissatisfied, especially with the people in authority or a system of control" and word "disapproval" means "a strong disapproval, typically on moral grounds. So in context of Section 124-A it means merely showing disaffection without exciting in others disloyalty and the feeling of enmity towards the government established by law does not attract the liability under this section. This interpretation of Section 124-A is further supported by second and third explanation which clearly say that a person cannot be made liable under this section if he merely expresses or shows his disapproval against the measures of the government or other administrative or other actions of the government unless he by his disapproval excites or attempts to excite hatred, contempt or disaffection against the government in others. It means a citizen under his fundamental right of freedom of speech and expression given under Article 19(1) (a) can express or show even disaffection and disapproval towards the government as it would not amount to sedition unless he brings or attempts to bring or excites hatred or contempt of disaffection in others towards the government established by law and therefore up to this extent there is no question of conflict between Article 19(1) (a) and Section 124-A. Article 19 (1) (a) is restricted when a citizen by his words, signs or visible representation or otherwise crosses the "Laxman Rekha" and brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection in others towards the Government established by law in India.

Different Courts (including Pre-Constitutional and Post-Constitutional) at different time intervals had differently interpreted Section 124-A. First case under sedition law can be traced far back in 1891 in the famous case of *Q.E. v. Jogendra Chunder Bose*¹⁷ also known as *Bengabasi* case). Bose, the editor of the newspaper, *Bangobasi*, wrote an article criticising the Age of Consent Bill for posing a threat to religion and for its co-ercive relationship with Indians. His article also commented on the negative economic impact of British colonialism. Bose was prosecuted and accused of exceeding the limits of legitimate criticism, and inciting religious feelings. The judge rejected the defence's plea that there was no mention of rebellion in his article. However, the proceedings against Bose were dropped after he tendered an apology. In this case Sir Comer Patheram, C.J., has elaborately explained the meaning of

guilty of felony, and being convicted thereof shall be liable to be transported beyond the seas for the term or his or her natural life.

¹⁴ "Sedition Laws and The Death of Free Speech in India", *Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore & Alternative Law Forum, Bangalore*, February 2011, p. 9. Available at https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf. Accessed on 30-11-2016.

¹⁵ Hari Singh Gaur, *The Penal law of India: Analytical Commentary on The Indian Penal Code*, 1214, (2008).

¹⁶ V. Venkatesan, *The sedition law*, 28, *FrontLine*, 15-28, (2011).

¹⁷ (1891) 19 *ILR* Cal 34 (44).

the word “disaffection” in the following words:- “Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of man’s sentiments or action and yet to like him. The meaning of the two words is distinct. If a person uses either spoken or written words calculated to create in the minds of the person to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such disposition his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. It is sufficient for the purposes of the section that the words used are 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 the intention to create such feeling”.¹⁸

4. CONFLICT IN INTERPRETATION OF SECTION 124-A BETWEEN FEDERAL COURT AND PRIVY COUNCIL:

The judiciary has always given conflicting interpretations to the law both before and after independence. In the pre-Independence era, a number of landmark cases on sedition were decided by the Federal Court and the Privy Council. These two high judicial bodies have always been on different footings regarding the meaning and scope of sedition as a penal offence. After Independence, Sedition law was held constitutional subject to strict limitations.¹⁹

One view was expressed by Strachery, J. in *Queen-Empress v Bal Gangadhar Tilak*²⁰ in which he pointed out that “Section 124-A IPC is a statutory offence and differ in this respect from its English counterpart which is a common law misdemeanour elaborated by the decision of the judges. He observed that “the amount or intensity of the disaffection is absolutely immaterial. If a man excites or attempts to excite feeling of disaffection great or small, he is guilty under this section. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within section 124-A and would probably fall within other sections of the penal code. But even if he neither excited nor intended to excite any rebellion or outbreak of forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section”²¹. The observation of Strachey, J in *Tilak’s* case on the scope of Section 124-A were approved by the Privy Council as having indicated the correct law on the question of sedition.²²

The other view was expressed by Sir Maurice Gowyer, C.J. in *Niharendu Majumdar’s*²³ case. This view marks a departure from the strict rule of construction inasmuch as it attempts to bring the offence of sedition in line with the English Law on the question. Gowyer, C.J., speaking for the Federal Court observed that “The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilisation and the advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be matter of obligation because some on whom duty is rests have performed it ill. It is to this aspect of the function of the Government that in our opinion the offence of sedition stands related. It is the answer of the state to those who, for the purpose of attacking or subverting it,...seek to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writing constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring government into contempt. This is not made an offence in order to minister to the wounded vanity of Government, but because where Government and the law cease to be obeyed, because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts of words complained of must either incite to disorder or must be such as to satisfy reasonable men that is their intention or tendency.”²⁴

The liberal interpretation of provisions of section 124-A of the Indian Penal Code in *Niharendu Majumdar* brought the Indian law of Sedition at par with its counterpart in English law. Thus public disorder or reasonable anticipation or likelihood of public disorder was held to be the gist of the offence.²⁵ But Privy Council in *K.E. v. Sadashiv Naryan’s*²⁶

¹⁸ K.D. Gaur, *A Text Book on The Indian Penal Code*, 195, (2004).

¹⁹ Ms. Disha Pande, *Sedition Laws In India: A Growing Threat to Free Speech*, *Bharati Law Review*, 253, (2016).

²⁰ *ILR* (1897) 22Bom 112.

²¹ *ILR* (1897) 22Bom, 135

²² R. B. Tewari, *Law of Sedition in India*, in *Essays on the Indian Penal Code*, 285 (K.N. Chandrasekharan Pillai, Shabistan Aquil eds.,2008).

²³ *AIR* 1942 FC 22 (26).

²⁴ *Niharendu Majumdar v. Emperor*, *AIR* 1942 FC 22 (26)

²⁵ K.D. Gaur, *A Text Book on The Indian Penal Code*, 196, (2004).

had nullified *Niharendu manjumdar's* case and approved the observation given by Stachery, J., in *Tilak's* case regarding the scope of Section 124-A as having the correct law on the question of sedition. It means that sedition was construed to include any statement that was liable to cause 'disaffection', namely, exciting or attempting to excite in others bad feelings towards the government. The amount or intensity of the disaffection is absolutely immaterial. If a man excites or attempts to excite feelings of disaffection great or small; (even though there was no element of incitement to violence or rebellion) he is guilty of under this section.²⁷ In the absence of any Supreme Court decision, *Sadashiv Narayan's* case will continue to be binding on the High Courts in India by virtue of Article 372²⁸ read with Article 225²⁹ of the Constitution of India.

5. POST-CONSTITUTIONAL JUDICIAL INTERPRETATION AND CONSTITUTIONAL VALIDITY OF SECTION 124-A OF INDIAN PENAL CODE:

With the Commencement of Indian Constitution in 1950, Article 19(1) (a) provides to every citizen a fundamental right to freedom of speech and expression. With this development Sedition Law contained in Section 124-A comes with direct conflict with fundamental right under Article 19 (1) (a) as a result of the Privy Council decision in *K.E. v. Sadashiv Naryan's*³⁰ case.

In *Tara Singh Gopichand v. State*³¹ the validity of S. 124-A of Indian Penal Code was directly in Issue. The East Punjab High Court declared the section void as it curtailed the freedom of speech and expression provided by Article 19 (1) (a) of the Constitution. Weston C.J., Observed in this case "As pointed out in the passage from the charge of Strachey J. which I have set out, the offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. The further consequences which may follow the commission of the offence are immaterial. India is now a sovereign democratic State. Governments may go and be caused to go without the foundations of the State being impaired. 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. It is true that the framers of the Constitution have not adopted the limitations which the Federal Court desired to lay down. It may be they did not consider it proper to go so far. The limitation placed by Clause (2) of Article 19 upon interference with the freedom of Speech, however, is real and substantial. The unsuccessful attempt to excite bad feelings is an offence within the ambit of Section 124A. In some instances at least the unsuccessful attempt will not undermine or tend to overthrow the State. It is enough if one instance appears of the possible application of the section to curtailment of the freedom

²⁶ L.R. 74 I.A. 89.

²⁷ Joydip Ghosal, *An Analysis of Law of Sedition and Its Impact on Freedom of Expression*, 1, Journal of Legal Analysis and Research, 37, (2014).

²⁸ Article 372. Continuance in force of existing laws and their adaptation

(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law

(3) Nothing in clause (2) shall be deemed

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

²⁹ Article 225. Jurisdiction of existing High Courts: Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution: Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

³⁰ L.R. 74 I.A. 89.

³¹ AIR 1951 E.P. 27.

of speech and expression in a manner not permitted by the constitution. I think, therefore, that the conclusion must be that Section 124A, Penal Code, has become void as contravening the right of freedom of speech and expression guaranteed by Article 19 of the constitution.”³²

By the Constitutional (First Amendment) Act, 1951, two changes have been incorporated in Article 19(2). Firstly, it widened the scope of legislative restrictions on free speech by adding further grounds and secondly, it provided that the restriction imposed on the freedom of speech must be reasonable.³³ Now the question for consideration is that whether Section 124-A of Indian Penal Code is in conflict with the amended clause (2) of Article (19)?

In *Ram Nandan's* case the constitutional validity of section 124A of the IPC was challenged in an Allahabad High Court that involved a challenge to a conviction and punishment of three years imprisonment of one Ram Nandan, for an inflammatory speech given in 1954. The court overturned Ram Nandan's conviction and declared section 124A to be unconstitutional.³⁴

But in *Kedar Nath v State of Bihar*³⁵, The Supreme Court overruled *Ram Nandan's* Case and held that Sedition laws are constitutional. The Court, while upholding the constitutionality of the judgement distinguished between “the Government established by law” and “persons for the time being engaged in carrying on the administration. The Supreme Court clarified that the crime of sedition was a crime against the State and was intended to protect the very existence of the State. The purpose of the crime of sedition was to prevent the Government established by law from being subverted because “the continued existence of the Government established by law is an essential condition of the stability of the State”.³⁶ The 5 judges constitutional bench observed that any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. Thus, according to the Supreme Court the essence of the crime of sedition requires acts which are intended to have the “effect of subverting the Government” by violent means.³⁷ The Supreme Court also clarified that mere “strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means” is not sedition. The Supreme Court clarified that a “citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.”³⁸

6. RECENT TRENDS AND THE LAW OF SEDITION:

Even after the clarification by the Supreme Court in *Kedar Nath's case* there is confusion among the various District Courts and the High Court's regarding the applicability of Sedition Laws under Article 124 A. Below are some of the recent cases in which Supreme Court correctly applied the law of Sedition.

³² Tara Singh Gopichand v. State AIR 1951 E.P. 27.

³³ Constitution (First Amendment) Act, 1951, Section 3: Amendment of article 19 and validation of certain laws.-

(1) In article 19 of the Constitution,-

(a) for clause (2), the following clause shall be substituted, and the said clause shall be deemed always to have been enacted in the following form, namely:---

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the 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.

³⁴ Ram Nandan v State AIR 1959 All 101.

³⁵ AIR 1962 955.

³⁶ “**Sedition Laws and The Death of Free Speech in India**”, *Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore & Alternative Law Forum, Bangalore*, February 2011, p. 9. Available at https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf. Accessed on 30-11-2017.

³⁷ Kedar Nath Singh v. State of Bihar AIR 1962 955.

³⁸ Retrieved from <http://www.legallyindia.com/views/entry/a-closer-reading-of-the-supreme-court-of-india-decision-in-keedar-nath-singh-vs-state-of-bihar-1962-on-the-offence-of-sedition-defined-in-section-124a-ipc>. Accessed on 9-10-2017.

In *Balwant Singh & Anr. V. State of Punjab*³⁹

The prosecution case against the appellants is that in a crowded in front of the Neelam Cinema, on 31st October 1984, the day Smt. Indira Gandhi, the then Prime Minister of India was assassinated, after coming out from their respective offices after the duty hours, raised the following slogans: “Khalistan Zindabad”, “Raj Karega Khalsa” and “Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da”.

Supreme court held that A plain reading of the above Section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded. Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.⁴⁰

Dr. Binayak Sen's Case

Sen had been convicted for sedition by a trial court in Chhattisgarh for alleged links with Naxalites and sentenced to life imprisonment. The Chhattisgarh High Court had upheld the conviction, following which Sen appealed in the Supreme Court. A bench of Justices H.S. Bedi and C.K. Prasad observed that the only material against Sen was his meetings with Naxalite Narayan Sanyal and some Maoist material with him. It has been said that while 61-year-old Sen could be a Maoist sympathiser, there could be many such sympathisers and this alone could not amount to sedition.⁴¹

In *Bharat Desai Resident Editor, Times of India, Ahmedabad*

The newly appointed Ahmedabad City Police Commissioner, O.P. Mathur, has filed a case of “sedition and treason” against the Ahmedabad edition of The Times of India, its Resident Editor Bharat Desai, and its crime reporter Prashant Dayal. The FIR was lodged with the Navrangpura police station, against the newspaper for running a campaign on the front page of the edition during the last five days against Mr. Mathur. In articles written by Mr. Dayal, Mr. Mathur was described as an agent of the former underworld don, Abdul Latif, who was killed in an encounter in 1998, and through him, being connected with Dawood Ibrahim and the Inter Services Intelligence.⁴²

*Arup Bhuyan v. State of Assam*⁴³

In this case the appellant is alleged to be a member of ULFA and the only material produced by the prosecution against the appellant is his alleged confessional statement made before the Superintendent of Police in which he is said to have identified the house of the deceased. Supreme Court held that mere membership of a banned organisation will not make a person criminal unless he resorts or incites people to violence or creates public disorder by violence or incitement to violence. Confession is a very weak kind of evidence. As is well known, the wide spread and rampant practice in the police in India is to use third degree methods for extracting confessions from the alleged accused. Hence, the courts have to be cautious in accepting confessions made to the police by the alleged accused.

*Arun Jaitly V. State of UP*⁴⁴

In this case Judicial Magistrate of Kulpahar, Mahoba, U.P. taking suo moto cognizance has proceeded to summon the applicant under Sections 124 A and 505 of the Penal Code. The concerned Magistrate has taken cognizance of the alleged offences on the basis of an article written by the applicant and posted on his Facebook page. The article is titled as "NJAC Judgement-An Alternative View". The Magistrate has recorded that no citizen has a right to disrespect the three pillars of our democracy namely, the Executive, Legislature and the Judiciary. However the Supreme Court held that the contents of the article written by the applicant can by no stretch of imagination be said to be intended to create public disorder or be designed or aimed at exciting the public against a Government established by law or an organ of the State. The article merely seeks to voice the opinion and the view of the author of the need to strike a balance between the functioning of two important pillars of the country. It is surely not a call to arms. For the aforesaid reasons, this Court is of the firm opinion that none of the ingredients essential for invoking the provisions

³⁹ 1995 (1) SCR 411

⁴⁰ Retrieved from <https://indiankanoon.org/doc/123425906/>. Accessed on 5-5-2017.

⁴¹ Retrieved from <http://indiatoday.intoday.in/story/sc-grants-bail-to-binayak-sen-drops-sedition-charge/1/135307.html>. Accessed on 5-5-2017

⁴² Retrieved from <http://www.thehindu.com/todays-paper/tp-national/Police-Commissioner-files-case-against-newspaper/article15234258.ece>. Accessed on 6-5-2017.

⁴³ (2011) 3 SCC 377.

⁴⁴ Retrieved from <https://indiankanoon.org/doc/140926320/>. Accessed on 6-6-2017

of Sections 124A or 505 of the Penal Code stood attracted to the article in question. The Magistrate has committed a manifest illegality in forming an opinion that an offence under the above provisions stood prima facie committed.⁴⁵

Sanskar Marathe V. State of Maharashtra and Anr.⁴⁶

Upholding a petition challenging the charge of sedition against the cartoonist Asseem Trivedi, a bench comprising Chief Justice Mohit Shah and Justice N M Jandkar of the Bombay High Court reiterated that the charge of sedition under Sec 124 A of the Indian Penal Code 'aims at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence'. Besides, the judgement also accepted a set of guidelines, as pre-conditions to police for invoking sedition charges only if an act was an incitement to violence or disturbed public order. Also, a legal opinion in writing, along with reasons, must be submitted before any charge of sedition was sought to be applied in any case.⁴⁷

Hardik Patel v. State of Gujarat

In 2015 The Gujarat government booked a Patel leader under sedition for sending messages containing "offensive language against the Prime Minister, the State Chief Minister and Amit Shah, the President of BJP". These cases are indicative of a high level of intolerance being displayed by governments towards the basic freedom enjoyed by citizens. Democracy has no meaning without these freedoms and sedition as interpreted and applied by the police is a negation of it.⁴⁸ However he was granted bail by the High Court of Gujarat in 2016 on strict condition that he will have stay outside of Gujarat for the next six months.⁴⁹

Kanhaiya Kumar's case

In February 2016, JNU, Jawaharlal Nehru university student union president Kanhaiya Kumar was arrested on charges of sedition under section 124-A of Indian Penal Code. However this arrest has raised a political turmoil in the country with academicians and activists marching and protesting against this move by the government. While those associated with JNU, past and present feel that the government is stifling and ruthlessly suppressing dissent, there is another part of the population that believes JNU for long has been supporting anti-India activities and the students involved must be punished for this act. Protests by both sides are continuing. Kanhaiya Kumar is the president of JNUSU. On 2 March 2016 the videos purporting to show this activity were found to be fake and he was released after three weeks in jail.⁵⁰

7. CONCLUSION:

Since its inception in Indian Penal Code the law of Sedition has been remained the subject of controversy. It has been said the language used in Section 124A of IPC is vague and capable of interpreting by ruling political party as a tool to suppress the freedom of speech and expression that goes against them. Beside that the final position of the law was settled by the Supreme Court Kedar Nath v. State of Bihar in 1960, yet recent trend regarding the applicability of sedition laws show that administrative authorities and Courts have difference of opinion and misunderstands the correct application of sedition laws.

The need of the hour is sedition laws should be interpreted and applied according to the guidelines given by the Supreme Court. It has become more important after the commencement of Indian Constitution as Article 19(1)(a) gives freedom of speech and expression as fundamental right to the citizens and this freedom can only be restricted on the grounds mentioned under Article 19(2). The elements mentioned under in Article 19 (2) which are relevant to the offence of sedition are Integrity of India, Security of the State and Public Order. So it is necessary that sedition laws should have expressly contain words which satisfied the restrictions of Article 19(2).

Law Commission of India has also pointed out in its 42nd report on Indian Penal Code that the definition of sedition does not expressly provide disaffection towards (a) Constitution (b) the Legislature (c) administration of Justice. Accordingly suggested for the amendment in Section 124A in the following words:-

"Whoever by words, either spoken or written, by signs, or by visible representation, or otherwise, excites, or attempts to excite, disaffection towards the Constitution or the Government, or the Parliament of India, or the Government, or the Legislature of any State, or the administration of justice, as established by law, intending or knowing it to be likely thereby to endanger the integrity or security of India, or any State, or to cause public disorder, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall be liable to fine.

⁴⁵ Retrieved from <https://indiankanoon.org/doc/140926320/>. Accessed on 7-7-2017

⁴⁶ Cr.PIL.3.2015

⁴⁷ Retrieved from <http://www.thehoot.org/media-watch/law-and-policy/mere-criticism-is-not-seditious-bombay-high-court-on-aseem-trivedi-s-cartoons-8177>. Accessed on 7-5-2017

⁴⁸ Hetal Chavda, *Autonomy Is As Autonomy Does – Law of Sedition in India*, 2, Imperial Journal of interdisciplinary Research, 33 (2016).

⁴⁹ Retrieved from <https://indiankanoon.org/doc/154630933/>. Accessed on 8-5-2017.

⁵⁰ Hetal Chavda, *Autonomy Is As Autonomy Does – Law of Sedition in India*, 2, Imperial Journal of interdisciplinary Research, 33 (2016).

Explanation 1. - The expression disaffection includes feelings of enmity, hatred or contempt.

Explanation 2. – Comments expressing disapprobation of the provision of the Constitution, or of the action of the Government, or of the measures of Parliament or a State Legislature, or of the provisions for the administration of justice, with a view to obtaining their alteration by lawful means without exciting or attempting to excite disaffection, do not constitute an offence under this section.⁵¹

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⁵¹ Law Commission of India, 42nd Report (1971), pp. 149-150.