



## **Law of Sedition in India-More Misuse than Use?: A Critical Analysis with respect to National and International Statistics**

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### **Abstract**

The law of Sedition in India has got a dark history with it being enacted by a colonial government to force people to accept its supremacy and penalise the deviants. The said law is being used repeatedly by governments to crush political dissent. The apex court, through its various rulings, has quite clearly restricted the scope of execution of the said law to check its misuse, and most surprisingly, the bare section of the act itself, if followed strictly, would help tackle its misuse. The explanations appended to the said section regulate the scope of this blazing fire section, which can be very easily used as tool by a democratic government to run nation like a dictator, by suppressing any voice that deeply questions and abrupt execution of any government policy. But the data revealed by various agencies, be it national, or be it international, has quite clearly established the fact of arbitrary and selective use of the said law. The statistics, viewed from various angles, very explicitly enlighten the exploitation of the said law by various means in the past few years. The work at hand, critically examining all these issues, and most importantly, the pattern of statistics, attempts to raise a case for strong amendments in the existence and execution of the said law.

**Keywords:** Liberty, Dissent, Politics, Arbitrariness, State.

### **Introduction**

Sedition is ‘*rape of the word “law”*’. “*In my humble opinion, every man has a right to hold any opinion he chooses, and to give effect to it also, so long as, in doing so, he does not use physical violence against anybody.*”<sup>2</sup> Aforesaid are the words of none other than Father of the Nation, who was once tried under the instant law, that is the issue at hand, Sedition. These words do not tell exhaustively every detail about sedition, but they do tell a lot. It is noteworthy that the instant law was absent from the original IPC that was enacted in 1860, but later it was inserted by Act No. 27 of 1870, and substituted by Act No. 4 of 1898 and could be simply understood as “*weapon in an arsenal to silence dissent*”<sup>3</sup>, enacted by the British government to crush the uprisings in the Indian Revolt. Despite IPC getting many amendments, such an important section, which may lead a person to spend his whole life-time in jail with a stigma of *desh-drohi* hasn’t met with a single substantial amendment to date, to cope with the demand of the hour.

All our eminent freedom fighters, namely, Annie Besant, Bal Gangadhar Tilak, and Mahatma Gandhi were the ones tried arbitrarily under the law that we still carry in our statute book in its original form. Bal Gangadhar Tilak was firstly charged with Sedition in 1897 for exciting disaffection through his newspaper *Kesari* and was awarded 12 months of jail. In 1908, he was again charged with Sedition for favouring Bengal revolutionaries and this time punished severely by Transportation.

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2 Ramchandra Guha, *When Mahatma Gandhi called sedition a ‘rape of the word law’*, The News Minute (Sep. 16, 2016, 06:21PM), <https://www.thenewsminute.com/article/when-mahatma-gandhi-called-sedition-rape-word-law-49981>.

3 Editorial Board, *Let go: The law against sedition*, The Telegraph Online (Sep. 7, 2020, 02:13AM), <https://www.telegraphindia.com/opinion/let-go-the-law-against-sedition/cid/1794086>.

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Even for a third time, in 1916, the Colonial Government planned to prosecute him for the third time under Sedition, but eventually different proceedings were initiated against him.<sup>4</sup> The Court in these cases held that disaffection amounts to an absence of affection. What must be adjudged is the reasonable, natural and probable effect of the speeches taken as a whole on the minds of those to whom they were addressed<sup>5</sup>. Despite laying down beautiful safeguards in these cases, Tilak was prosecuted twice under the said law for constructive criticism of the Colonial government. And ironically, the same law is being used against the citizens of free India, who gave themselves to the constitution, which was the fruit of the freedom struggle. During the trial, Mr. Gandhi remarked S.124A to be “*the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen*”<sup>6</sup>. Since the instant law penalizes ‘disaffection’ against the government, Gandhi very rightly commented that “*Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence.*”<sup>7</sup> Ironically speaking, the ones who enacted the said law in our nation have themselves done away with it by the virtue of Coroners and Justice Act of 2009<sup>8</sup>. Not a single month passes in India when debates around the constitutionality of the said law do not uprise. Though it has been continuously affirmed by the courts that dissent forms the basis of democracy and a citizen cannot be put behind the bars, just for disagreeing with the government, the picture in reality is dif-

ferent. Very recently Supreme Court made a very crucial observation that even the police officers are being blatantly charged and harassed under the said section when the ruling party, with whom they aligned, loses an election and opposition forms a new government<sup>9</sup>. The guided application of the said law lies nowhere else but in the wording of the law itself that regulates the flames of this furious law. Not only this, the Supreme Court, on various events has pressed upon the legitimate use of this law, but all goes in vain. The arrests are made quite easily under the said law of anyone who utters a word against the ruling government, but actual convictions are surprisingly very low. Hence the law has become a tool to stifle dissent on grounds of fear of arrest.

All these issues are again in highlight as the said law is again in the process of being constitutionally examined by the Highest Court of Land, ignited by a batch of seven petitions. The Chief Justice remarked that a law that was used to suppress our freedom fighters, does it deserve to be in force in the current times, taking into consideration its grave misuse and absence of any accountability on part of the executive. In words of the court, the misuse can be paralleled with a carpenter employing a saw with the object of cutting a tree, but the entire forest is turned into a desert ultimately.<sup>10</sup> Just a few weeks ago, the Apex Court in strong terms criticized the law and ordered to stop the operation of sedition law till government finishes its review.<sup>11</sup> Since the Chief Justice of India acting Highest Court of Land, at so early stage of court, can strongly assert, that the law is being used highly arbitrary, there must be some real

4 Kuldip Sharma, *The Law of Sedition and Bal Gangadhar Tilak*, The Leaflet (May 27, 2021), <https://theleaflet.in/the-law-of-sedition-and-bal-gangadhar-tilak/>.

5 Emperor v. Bal Gangadhar Tilak, (1917) 19 BOMLR 211.

6 Centre For The Study Of Social Exclusion And Inclusive Policy, National Law School Of India University, & Alternative Law Forum, *Sedition Laws & The Death Of Free Speech In India* 9 (Chandan Gowda ed., 1st ed. 2011).

7 *Republic of dissent: Gandhi's sedition trial*, Livemint (Jan. 25, 2019, 08:49AM), <https://www.livemint.com/politics/news/republic-of-dissent-gandhi-s-sedition-trial-1548352744498.html>.

8 Prasun Sonwalkar, *Sedition law in UK abolished in 2009, continues in India*, The Hindustan Times (Feb. 16, 2016, 11:27PM), <https://www.hindustantimes.com/world/sedition-law-in-uk-abolished-in-2009-continues-in-india/story-Pkrvylv6J0T3d-dY8uqvKsO.html>.

9 Shruti Kakkar, *Police Officials Who Side With Ruling Party Later Get Targeted When Opponent Comes In Power; Sad State Of Affairs: CJI Ramana*, LiveLaw (Aug. 26, 2021, 12:33PM), <http://www.livelaw.in.nludelhi.remotexs.in/top-stories/police-officials-who-side-with-ruling-party-later-get-targeted-when-opponent-comes-in-power-sad-state-of-affairs-cji-ramana-180311>.

10 Debayan Roy, *[BREAKING] Is this law still needed after 75 years of independence? Supreme Court asks AG in challenge to Sedition law under Section 124A IPC*, Bar and Bench (Jul.15. 2021, 11:42AM), <https://www.barandbench.com/news/litigation/supreme-court-sedition-challenge-section-124a-75-years-independence>.

11 SG Vombatkere v. Union of India, 2022 LiveLaw (SC) 470.

basis for the same, which is required to be examined in light of data, both domestic and international. The objective of the instant research work is to divert attention from the issue of exploitation of draconian Sedition law, but specifically in light of latest global and national statistics.

## International Statistics

Article 19 is an English organization founded worldwide in 1987 that works on issues of human rights. It specifically focusses on promoting and expanding freedom of expression and information. **The Global Expression Report 2019-20: The state of freedom of expression around the world** published by it reveals that since 2009, the liberty of expression has fallen to the lowest in the past year as it stands to be 50/100.<sup>12</sup> Now talking specifically about India, it occupies a place amongst the topmost countries alongwith problematic nations such as Iran, China, Russia, Bangladesh, etc. where there was an intense decline in aforesaid freedom.<sup>13</sup> GxR in the said report denotes Global Expression Metric and for India, in 2009 it was 59 which fell to 19 in 2019, thus a loss of 40 points, which is grievous hence troublesome.<sup>14</sup> The report highlights the reason for this decline due to the exercise of military, financial and political influence.<sup>15</sup> The report states that 2019 saw 213 Internet cessations across 33 nations, in juxtaposition to 188 shutdowns in 2009. India alone accounted for 50% (121 incidents) of these events.<sup>16</sup> India is accused by the said report to be possessing a historic record of using the said tactics.<sup>17</sup> All of this is done by censoring civil societies and media or any

other watchdogs and killing democratic institutions and then gradually undermining the sanctity of elections.<sup>18</sup> A paragraph from the said report which highlights the pathetic state of India and reasons for the same on an international platform is worth noting: “*India (GxR score 19) continues its path to autocracy. After months of violently suppressed demonstrations, the Citizenship Amendment Act was passed in December 2019, cementing Prime Minister Narendra Modi’s exclusionary Hindu Nationalist policies into law. Authorities use sedition and criminal defamation laws to stifle dissent. Journalists increasingly self-censor in an environment of harassment and increasing detention for critical reporting. Immediately following Modi’s arrival to power in 2014, India’s GxR saw a huge drop, marking the start of an ongoing decline into the in-crisis category, into which India dropped in 2019.*”<sup>19</sup> India is having tag of *In Crisis* in the said report which is the worst rating.<sup>20</sup> As of 2021, the aforesaid reports begin with the allegation that the ruling government of India “*continues to lay waste to democratic institutions and human rights*”<sup>21</sup>. The situation has not improved and a decline of 38 points has been recorded in the last decade, and currently stands in the ‘highly restricted’ category. The current trend that we see in our country tagging India to be a Hindu land, and the incumbent government is largely viewed as savior of the same. Therefore, anyone who speaks against government is additionally given tags of Anti-Hindu hence Anti-National. This fact is even highlighted by a highly reputed international report as well, with the name of our Prime Minister preceded by Hindu Nationalism.<sup>22</sup> All this has led India

12 *World freedom of expression rankings for 2019/20*, Article 19, <https://www.article19.org/gxr2020/> (last visited Jan. 16, 2021, 10:47PM).

13 *Id.*

14 Article 19, *Global Expression Report 2019-20: The state of freedom of expression around the world 12* (2020), <https://www.article19.org/wp-content/uploads/2020/10/GxR2019-20report.pdf>.

15 *Id.* at 14.

16 *Id.* at 24.

17 *Id.* at 25.

18 *Id.* at 70.

19 *Id.* at 76.

20 *Id.* at 124.

21 Article 19, *Global Expression Report 2021: The state of freedom of expression around the world 10* (2021), <https://www.article19.org/wp-content/uploads/2021/07/A19-GxR-2021-FINAL.pdf>.

22 *Id.* at 77.

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to fall into the ‘highly restricted’ category in 2020 as compared to ‘restricted’ category in 2010.<sup>23</sup>

On the **Global Press Freedom Index**, prepared by Reporters Without Borders (RSF), which is the biggest NGO across the globe working for the protection of media independence, India was at 138 in 2018, 140 in 2019 and 142 in 2020 and 2021 out of 180 nations, which portrays a constant decline which is a subject of great concern in a huge, diverse and developing democracy like India.<sup>24</sup> It portrays how restrictive the press is in India, which is deemed as 4<sup>th</sup> pillar of democracy. The report says it all - “Criminal prosecutions are meanwhile often used to gag journalists critical of the authorities, with some prosecutors invoking Section 124A”<sup>25</sup>. Press censorship is becoming quite debatable these days and has led to the coining of term *godia media* to refer to biased and pro-government media. The mainstream media is developing in a way so as to question opposition rather than the ruling government on any issue and quote last 70 years of independence in case of failure of incumbent government. The International Federation of Journalists and International Press Institute, in a joint letter urged the Government of India “to take immediate steps to ensure that journalists can work without harassment and fear of reprisal. And to direct the state governments to drop all charges against journalists, including those under the draconian sedition laws, that have been imposed on them for their work”<sup>26</sup>.

The **Human Freedom Index** prepared by Cato Institute, USA and Fraser Institute, Canada, shows

the Human Freedom Ranking of India to be 101 in 2008 and 111 in 2018 out of 162 nations, which is again pathetic in a nation where the liberty of citizens forms the nucleus of Law of the Land.<sup>27</sup> India slipped down from ‘free’ to ‘partly free’ in 2021 as per the **Global Democratic Ratings** published by Freedom House. The report reads as “*The government of Prime Minister Narendra Modi and its state-level allies continued to crack down on critics during the year..... Rather than serving as a champion of democratic practice and a counterweight to authoritarian influence from countries such as China, Modi and his party are tragically driving India itself toward authoritarianism*”.<sup>28</sup> The report highlights that “*Political rights and civil liberties in the country have deteriorated since Narendra Modi became prime minister in 2014*”, and all of this was done by pressurizing human rights institutions, intimidating academicians and journalists, passing discriminatory laws, prosecuting protestors, and even subsuming judicial independence.<sup>29</sup> The **World Report 2021** published by Human Rights Watch notes that “*Indian authorities brought politically motivated cases, including under draconian sedition and terrorism laws, against human rights defenders, student activists, academics, opposition leaders, and critics*”.<sup>30</sup> The World Report 2020 notes that Authorities used sedition and criminal defamation laws to stifle peaceful dissent.<sup>31</sup> The World Report 2019 notes that Draconian sedition and counterterrorism laws were used to chill free expression<sup>32</sup> in India. All of

23 *Id.* at 142.

24 Reporters without Borders, 2021 World Press Freedom Index, <https://rsf.org/en/ranking/2021>.

25 *Id.*

26 Express News Service, ‘Harassment’ of journalists: Global press bodies write to PM Modi, Indian Express (Oct. 22, 2020, 07:17AM), <https://thewire.in/media/international-federation-of-journalists-international-press-institute-sedition-pm-modi>.

27 Ian Vásquez and Fred McMahon, Fraser Institute and the Cato Institute, The Human Freedom Index 187 (2020), <https://www.cato.org/sites/cato.org/files/2020-12/human-freedom-index-country-profile-2020s.pdf>.

28 Freedom House, Freedom in the World 2 (2021), [https://freedomhouse.org/sites/default/files/2021-02/FIW2021\\_World\\_02252021\\_FINAL-web-upload.pdf](https://freedomhouse.org/sites/default/files/2021-02/FIW2021_World_02252021_FINAL-web-upload.pdf)

29 *Id.* at 7.

30 Human Rights Watch, World Report 321 (2021), [https://www.hrw.org/sites/default/files/media\\_2021/01/2021\\_hrw\\_world\\_report.pdf](https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf).

31 Human Rights Watch, World Report 270 (2020), [https://www.hrw.org/sites/default/files/world\\_report\\_download/hrw\\_world\\_report\\_2020\\_0.pdf](https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf).

32 *India Events of 2018 – World Report 2019: India*, Human Rights Watch, <https://www.hrw.org/world-report/2019/country-chapters/india> (last visited Jan. 16, 2021, 11:47 PM).



it is the response received to India internationally by various reputed reports and Global Organizations on the issue of silencing dissent by utilising the law of sedition. Now the domestic statistics would be critically evaluated, to make the statement of problem come to a detailed conclusion.

### Domestic Statistics and Misuse

**National Crime Records Bureau** is India's chief crime statistical agency which works under the Ministry of Home Affairs. Its data reveals that there have been more than three times increase in Sedition cases under IPC in the last five years, with just 30 cases filed all over India in 2015<sup>33</sup>, which rose to 93 cases in 2019<sup>34</sup> and 73 cases in 2020<sup>35</sup>. Figures reveal that since the passage of the Citizenship Amendment Act, 2019 on 11 December, 2019, 194 cases of sedition have been filed, which is more than the total number of cases filed in past three years together.<sup>36</sup> As per the NCRB data, there were 30 cases and 31 victims of sedition in 2015<sup>37</sup>, which rose to 35 cases and 35 victims<sup>38</sup>, which rose to 51 cases and 54 victims in 2017<sup>39</sup>, which rose to 70 cases and 80 victims in 2018<sup>40</sup> and finally in 2019<sup>41</sup>, it all rose to 93 cases and 112 victims. But the irony

here lies in the fact that on the question of increase in Sedition cases in recent years, the reply came from the government that data from NCRB shows no clear trend, therefore nothing can be concluded about the rise.<sup>42</sup> The NCRB data also shows another major trend, the use of Sedition law in BJP ruled states is more and at an increasing rate<sup>43</sup> – this would be clear from following data. If example of Karnataka, Assam and Jammu and Kashmir is taken, because these three states sparked the most sedition cases in the 2019 report, there were maximum cases in Karnataka (22) alongwith Assam (17) & J&K (11).<sup>44</sup> But under the congress rule, this was 2 cases in 2018, 3 each in 2015 & 2016 and zero in 2014 & 2017 in Karnataka.<sup>45</sup> In 2014, there was no case of sedition registered in Assam, and in 2015 only 1 case was registered. When BJP assumed power in Assam in 2016, again there were zero cases in that year. But 2017 saw 19 cases, 2018 and 2019 saw 17 cases each.<sup>46</sup> From 2014 to 2017, only 2 cases of sedition were registered in State of Jammu & Kashmir. But with the imposition of rule of Union Government due to collapse of PDP-BJP coalition government, it rose to 12 cases in 2018 and 11 in 2019.<sup>47</sup> Sedition cases continue to be at the top in BJP ruled states such as 15 in Manipur, 12 in Assam, 8 in Karnataka and 7 in UP as per latest

33 National Crime Records Bureau, Ministry of Home Affairs, Crime in India (2015), <https://ncrb.gov.in/en/crime-india-year-2015>.

34 National Crime Records Bureau, Ministry of Home Affairs, Crime in India (2019), <https://ncrb.gov.in/en/crime-india-2019-0>.

35 National Crime Records Bureau, Ministry of Home Affairs, Crime in India (2020), <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>

36 Jayant Sriram, *Should the sedition law be scrapped?*, The Hindu (Mar. 6, 2020, 12:15AM), <https://www.thehindu.com/opinion/op-ed/should-the-sedition-law-be-scrapped/article30993146.ece>.

37 National Crime Records Bureau, Ministry of Home Affairs, Crime in India (2015), <https://ncrb.gov.in/en/crime-india-year-2015>.

38 National Crime Records Bureau, Ministry of Home Affairs, Crime in India (2016), <https://ncrb.gov.in/en/crime-india-year-2016>.

39 National Crime Records Bureau, Ministry of Home Affairs, Crime in India (2017), <https://ncrb.gov.in/en/crime-india-year-2017>.

40 National Crime Records Bureau, Ministry of Home Affairs, Crime in India (2018), <https://ncrb.gov.in/en/crime-india-year-2018>.

41 National Crime Records Bureau, Ministry of Home Affairs, Crime in India (2019), <https://ncrb.gov.in/en/crime-india-year-2019>.

42 Bharti Jain, *No clear trend in sedition cases in NCRB data: Govt*, *The Times of India* (Sep. 17, 2020, 06:01PM), <https://timesofindia.indiatimes.com/india/no-clear-trend-on-misuse-of-sedition-law-govt/articleshow/78156306.cms#:~:text=As%20per%20NCRB%20reports%20on,2017%20and%2070%20in%202018>.

43 Sana Shakil and Ritwika Mitra, *Liberal invoking of sedition law in BJP-ruled states, say latest NCRB data*, *The New Indian Express* (Nov. 30, 2020, 01:00AM), <https://www.newindianexpress.com/nation/2020/nov/30/liberal-invoking-of-sedition-law-in-bjp-ruled-states-say-latest-ncrb-data-2229732.html>.

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

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NCRB statistics.<sup>48</sup> It is a fact that 2020 saw a dip in sedition cases, but that dip was very small and comparing a small dip of current year versus humongous rise between 2015-2019, no optimism can be pointed out until this dip continues in upcoming years as well.

What is happening in reality is that is some citizen, obliging their duty as an alert citizen of the nation, questions the government, he gets in trouble. To exemplify said statement, the incident of October 2019 is noteworthy here, when FIR was lodged against 49 celebrities, writers, social workers in India, for writing to their Prime Minister to look into mob-lynching events occurring often throughout the country.<sup>49</sup> This was completely violative of Kedar Nath guidelines, as the presence of specific intention could not be established<sup>50</sup> and later due to lack of evidence, a closure report was filed.<sup>51</sup> An interesting trend to note here is of conviction rate. As we have seen above, the number of cases of sedition are increasing every year, but the number of actual convictions is decreasing – The conviction rate was 33.3% in 2016, which dropped to 16.7% in 2017 and further low to 15.4% in 2018<sup>52</sup>. And in 2019, it was lowest, 3.3%.<sup>53</sup> In 2019, 96 people were arrested, out of 76 were chargesheeted and further out of which only 2 were convicted.<sup>54</sup> Further in 2020, 44 were arrested, 28 were chargesheeted and only 3 were convicted.<sup>55</sup>

What all of it points out towards: that police are making indiscriminate arrests under S.124A despite statutory and judicial safeguards to the same either due to lack of knowledge or due to political pressure – But what it is impacting, is a bigger question. The harassment faced in the process of court and trial is no less than punishment post-conviction. An arrested person becomes a *deshdrohi* and notwithstanding his later probable acquittal, the loss of time, money, and prestige as well as physical, emotional and mental trauma faced by him due to indiscriminate apprehensions as well as pre-trial detention coupled with pugnacious media trials is irreparable and irreversible. Their passports are seized, they are barred from jobs under State, and must present themselves before the court as and when required by it like bonded slaves. Another issue is that the lower courts also at times give ill-reasoned decisions due to absence of any guiding light from the higher judiciary or legislature to deal with such serious and sensitive issue. It fails to properly take into account all the laws and precedents together and give a meaningful and rationale decision and the error remains on record and makes the accused suffer till it is reversed by the higher judiciary. For raising voices of dissent against the CAA in 2019, a humongous number of 3000 people were booked under S.124A in Jharkhand.<sup>56</sup> Kedar Nath guidelines and other guidelines established in plethora of judicial precedents, are vehemently disregarded by police. In

48 Bismee Taskin, *Assam, Manipur, UP record highest no. of cases of sedition & under UAPA, NCRB data shows*, The Print (Sep. 16, 2021, 07:30AM), <https://theprint.in/india/assam-manipur-up-record-highest-no-of-cases-of-sedition-under-uapa-ncrb-data-shows/733924/>.

49 Scroll Staff, *Bihar: FIR filed against 49 writers and filmmakers who appealed to PM Modi to stop mob lynchings*, The Scroll (Oct. 4, 2019), <https://scroll.in/latest/939416/bihar-fir-filed-against-49-writers-andfilmmakers-who-appealed-to-pm-modi-to-stop-mob-lynchings>.

50 Dipak Mishra, *Bihar lawyer behind FIR against 49 celebrities for Modi letter had targeted Bachchan, Lalu*, The Print (Oct. 5, 2019), <https://theprint.in/india/bihar-lawyer-behind-fir-against-49-celebritiesfor-modi-letter-had-targeted-bachchan-lalu/301494/>

51 Debashish Karmakar, *Sedition case against celebrities for writing to PM found false*, The Times of India (Oct. 10, 2019), <https://timesofindia.indiatimes.com/india/sedition-case-against-celebrities-forwriting-to-pm-found-false-muzaffarpur-police/articleshow/71509933.cms>.

52 Shemin Joy, *Only 4 sedition cases saw conviction in 4 years: NCRB*, Deccan Herald (Jan. 10, 2020, 03:24PM), <https://www.deccanherald.com/national/only-4-sedition-cases-saw-conviction-in-4-years-ncrb-793187.html>.

53 Leah Verghese, *NCRB 2019 data shows 165% jump in sedition cases, 33% jump in UAPA cases under Modi govt*, The Print (Oct. 12, 2020), <https://theprint.in/opinion/ncrb-2019-data-shows-165-jump-in-sedition-cases-33-jump-in-uapa-cases-under-modi-govt/521861/>.

54 *Supra* Note 36.

55 *Id.*

56 Anumeha Yadav, *How India uses colonial-era sedition law against CAA protesters*, Aljazeera (Jan. 21, 2020), <https://www.aljazeera.com/news/2020/1/21/how-india-uses-colonial-era-sedition-law-against-cao-protesters>.

the ongoing Farmers protest also, the right to protest which is a part of our fundamental rights is in peril by the shadow of the said law as cases are being instituted against many on grounds of raising Khalistan slogans and inciting violence and disaffection against government.<sup>57</sup> How just raising slogans *Pakistan Zindabad* on stage by a 19 year old student against the CAA in 2019 attract a serious charge of sedition, the consequences of which could be even life imprisonment, despite safeguards of Balwant Singh case, in which court established that only raising of slogan cannot attract charges of sedition. Does saying *Pakistan Zindabad* straightforwardly implies *Hindustan Murdabad*. The answer is a big NO. The High Court of Delhi in the Disha Ravi's Toolkit case commented that citizens cannot be put "behind bars simply because they chose to disagree with the state policies" and "the offence of sedition cannot be invoked to minister to the wounded vanity of the governments".<sup>58</sup> Guwahati High Court granting bail to a women who was alleged to use a table cloth resembling Indian Flag on the occasion of Eid, observed that the sedition is a quite serious offence, and the alleged act in this case "did not prima facie suggest to be an act to have the affect of subverting the Government by bringing that Government into contempt or hatred or creating disaffection against it"<sup>59</sup>. Journalist Vinod Dua who was arrested on charges of Sedition that he made bizarre allegations against incumbent government on issues of Covid Mismanagement and Balakot air strikes was granted bail because the Apex Court found that his statements "can at best be termed as expression of disapprobation of actions of the Government and its functionaries so that prevailing situation could be addressed quickly and efficiently. They were certainly not made with the intent to incite people or showed tendency to create disorder or disturbance of

*public peace by resort to violence*"<sup>60</sup>. A three judge Supreme Court bench restrained Andhra Pradesh government from taking any action against two TV channels booked on counts of sedition, who just aired the TV program in which an MP allegedly made malafide comments on State Government and Chief Minister, with Dr. Justice D.Y. remarking that "Everything cannot be seditious. It is time we define what is sedition and what is not"<sup>61</sup>. Anti-Government straight forwards does not implies Anti-National; It is the nation that comes first and hence each case must be judged in light of its own merit rather than applying the hard and fast rule to all. So what can be said at the end is that problem doesn't lie in existing laws and precedents and their sufficiency on the subject matter, but it lies in manner of execution of the same.

Another noteworthy fact that has to be consistently kept in consideration is that, although the present figures and recent events of misuse of Sedition are worrying, its past use also has been on the same lines. The governments, despite being backed by any political party, at all times, utilized the tool of Sedition to muzzle dissent. The said arguments can be exemplified with the very recent example of Maharashtra, where, a few weeks ago, the ruling government of the State, which was different from the Union Government in terms of political party, invoked S.124A IPC on an independent MLA, who threatened to recite a Hindu religious hymn outside erstwhile CM's House. But owing to stay by Supreme Court<sup>62</sup>, the said charges were dropped in the final Chargesheet.<sup>63</sup> Hence, the problem must be viewed apolitically and focus of national debates must be shifted on remedying the issue rather than counting the problems.

57 Surjit Singh, *NIA summons farm union leader Baldev Singh Sirsa, Sikh activists for questioning in sedition case*, Hindustan Times (Jan. 16, 2021, 04:37PM), <https://www.hindustantimes.com/cities/others/nia-summons-farm-union-leader-baldev-singh-sirsa-sikh-activists-for-questioning-in-sedition-case-101610795269310.html>.

58 Meher Manga, *Sedition law: A threat to Indian democracy?*, Observer Research Foundation (Jul. 26, 2021), <https://www.orfonline.org/expert-speak/sedition-law-threat-indian-democracy/>.

59 *Rajina Parbin Sultana v. State of Assam*, 2021 SCC OnLine Gau 1096.

60 *Vinod Dua v. Union of India*, 2021 SCC OnLine SC 414.

61 *Aamoda Broadcasting Company Private Limited v. State of Andhra Pradesh*, 2021 SCC OnLine SC 407.

62 *Supra* Note 10.

63 Special Correspondent, *Mumbai Police file chargesheet against Navneet, Ravi Rana*, The Hindu (Jun. 8, 2022, 10:49PM), <https://www.thehindu.com/news/cities/mumbai/mumbai-police-file-chargesheet-against-navneet-ravi-rana/article65506947.ece>.

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## Conclusion and Recommendations

The Law Commission of India in its 39<sup>th</sup> Report had precluded the notion of revoking sedition<sup>64</sup>. In the 42<sup>nd</sup> Report, the commission advocated the expansion of scope of sedition include Constitution, legislature and judiciary, alongwith Government established by Law.<sup>65</sup> In the mid of 2018, the Commission through its consultation paper suggested strict revision of S.124A IPC<sup>66</sup> Commission while advocating careful scrutiny of every restriction on right to freedom of speech and expression, commented *“In a democracy, singing from the same songbook is not a benchmark of patriotism. People should be at liberty to show their affection towards their country in their own way.”*<sup>67</sup> In 2011, a private member bill was introduced in Rajya Sabha by Mr. D. Raja which proposed revocation of S.124A on the grounds of it being a suppressive colonial legislation which is having no place in free India as it is being misused. In 2015 again this was repeated in Lok Sabha by Mr. Shashi Tharoor but this bill provided for amendment in S.124A to penalize those acts which directly result in violence/stimulation of violence.<sup>68</sup>

On the issue of necessity of such provision, the golden words of Justice H. J. Kania are pertinent to note *“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.”*<sup>69</sup> On similar lines, Chief Justice John G. Roberts once eloquently remarked *“Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and ... inflict great pain. Hence, it is to be delivered rightfully.”*<sup>70</sup>

The aforesaid quotes point towards a single point – No liberty guaranteed to an individual is unrestricted and

absolute in any jurisdiction. It has to be regulated so that others may enjoy their liberty and the institution guaranteeing and obligatorily safeguarding the liberty itself does not become a target of the said liberty. Specifically talking about Indian jurisdiction, the constitution of India guarantees a bundle of rights to its citizens for the full-fledged enjoyment of human life in a democratic setup aiming towards the all-round development of an individual. But each one of these rights, be it right to religious belief, right to express, right to life and personal liberty, etc. comes with a restriction, so as to serve two purposes, firstly oblige the state to ensure non violation of rights of every citizen to the nation and secondly to set some boundaries under which individual could enjoy their rights but outside which, the aforesaid safeguard would not be applicable.

Now focusing the debate on the topic of research, the phased development of law of sedition, its presence across various jurisdictions around the globe, other related legislations which deal with a similar issue at hand, the judicial development and safeguards, the constitutional protection vis-a-vis sedition, and at the last, the exploitation of the instant law has been exhaustively discussed. And from all of this, it can be concluded that in the current times, the law is being misused more than it is being legitimately used. The misuse of the law of sedition is not a novel incident and for centuries it had been utilized at whims and caprices of monarch covered under the veil of Government to suppress any dissent that challenges its authority. But through recent series of events witnessed in the last 5-6 years alongwith Domestic and International statistics, what can be said is that the misuse is accelerating at an alarming rate and if not regulated properly, could very easily lead to a Democratic India convert into a Dictatorship regime and words of democracy would exist on paper of Preamble only but not in reality. And not only incumbent

64 Law Commission of India, 39th Report on Punishment for Imprisonment for Life under the Indian Penal Code (July 1968), <https://lawcommissionofindia.nic.in/1-50/Report39.pdf>.

65 Law Commission of India, 42nd Report on Indian Penal Code (June 1971), <https://lawcommissionofindia.nic.in/1-50/Report42.pdf>.

66 Law Commission of India, Consultation Paper on Sedition (August 2018), <https://static.pib.gov.in/WriteReadData/userfiles/Consultation%20Paper%20on%20Sedition.pdf>.

67 *Id.*

68 *Id.*

69 A.K. Gopalan v. The State of Madras, AIR 1950 SC 27.

70 Snyder v. Phelps, 562 U.S. 443 (2011).



government, but future governments too, inspired by the examples of their predecessors would employ the similar tactics of eroding the true meaning of *We, The People of India*.

Sir James Stephen, draftsman of the entire outline of sedition laws in colonies remarked that “*it was obvious that the practical enforcement of this doctrine was wholly inconsistent with any serious discussion of political affairs and so long as it was recognised as the law of the land all such discussion existed only on sufferance*”<sup>71</sup>.

Another conclusion that can be made which is related to statement of problem of this research work is that there is not a major lacuna in the role of Legislature or Judiciary towards the said offence as both of them in form of explanations appended to S.124A and judicial precedents have established strong safeguards which could ensure efficacious utilization of said provision alongwith eliminating any chances of its exploitation. Statistics and cases point out that the problem remains with the executive and law enforcement agencies working under it. It is also clear that the constitutionality of S.124A holds good as certified by the Apex court in Kedar Nath judgement and from the jurisprudence of constitutional law principles. So, the need is there to find a very balanced perfect, and efficient approach which is challenging to achieve but is parallelly not impossible too. This balanced approach is also tough because instant research work does not suggest the complete repeal of S.124A from the code, because in that condition, in situations of grave exigencies, Government would be unable to guard its stability and in turn the stability of entire nation as a whole and this uncontrolled internal disturbance would weaken it and make it more prone to foreign attacks, but at the same time, vehemently criticizes it. Also we have no similar provision in any law which could be employed in situations in which sedition is ought to be employed. If contempt of court attracts penal consequences, why should the contempt of Government, and that too, established by law, not have certain comparable consequences. An apparatus is sedition is reasonably required at times to maintain the unity and territorial integrity of Bharat – Union of States from separatist forces. The advocates of annulment of sedition opine that if everything can

go right in nations that have abolished sedition, then why not in India. The befitting response to this lies in diversity of Indian culture, where within a few kilometers of a state, wide variations can be witnessed. In such a diverse nation, tussles are bound to happen with the government and everyone cannot be expected to internalize the legitimacy of government and constitution, and in order to curb this, a law like sedition, with strong safeguards is needed at times. Therefore, taking into consideration each and every issue, the following suggestions are proposed by instant research work:

1. The Kedar Nath guidelines, despite being decided old, were strongly affirmed by Apex Court in the case of *Common Cause & Anr. v. Union of India*<sup>72</sup> to be mandatorily followed in every case of sedition. But despite all this, it is widely being neglected in vast majority of cases, and that is the only bone of contention to the controversy regarding sedition law. The law enforcement officials dwell more on codified black and white words rather than on judicial precedents. At times, they even have no knowledge about the existence or significance of the judicial precedents. So, the prime solution to the issue lies in reframing current S.124A to include the guidelines within the ambit of bare language of the said section, which would be hard to neglect by anyone, be it policemen or even lower judiciary also.
2. The redrafting of Section 124A must also consist of the following phrase, “*Provided further that the offending words or signs or representations must be understood in the relevant context in which they are expressed*” which would aid in eliminating any misinterpretation in such sensitive cases.
3. The Apex Court of India should frame special guidelines for proper treatment of such cases, beginning rightly from arrest and filing FIR, extending to the investigation and continuing till the post sentence stage. These would help in achieving uniformity, reducing any biasness or subjectivity in treatment of such cases in lower courts and would also ensure that the genuine offenders go behind the bars and justice is served at the end to innocent ones and that too without any inordinate delay. The

71 James F. Stephen, A History of the Criminal Law of England 348 (Macmillan & Co., London, 2nd ed. 1883).

72 (2016) 15 SCC 269.

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guidelines must include provisions for quick disposal of such cases and granting bails to maximum undertrials.

4. An independent High-Level Committee consisting of Judges of the High Court, Senior Advocates, Retired Supreme Court Judges (optional) must be setup in every state in light of the indiscriminate use of said provisions and low convictions rates, as noted above. Every case of sedition (since it is a very serious charge and for minor innocent acts also, a person could lead up serving his entire life in jail) should be subjected to intense judicial scrutiny by this Committee which would then suggest that a prima facie case exists or not after which the person could be discharged or case to be sent back to competent court for regular trial. Such a committee should sit as per the frequency of number of cases in each state requires same and should be backed by a statute.
5. Also, the aforesaid committee should be empowered to conduct a stringent enquiry against frivolous and fake cases of sedition registered by police officers and should take strict penal actions against the guilty police officers and any other related persons (howsoever influential and powerful) so that deterrence against facetious utilization of law of sedition and reverence for Fundamental Rights is established. The lower judiciary too if found faulty, should be subjected to jurisdiction of the said committee to establish deterrence in the field of judiciary too.
6. Apart from this, the police must be given proper training about constitutional ideologies of liberty and reasonable restrictions of the same alongwith time to time updates of judgements of the Supreme Court and High Courts on issue to sedition so that they act judiciously in every case and understand the balance adopted by Court in such cases and do

not let their ignorance of law serve as punishment for another. Lower Judiciary must be also from time to time undergo similar trainings so that justice at the grassroots level is served well.

7. Thus together with these multi directional concerted efforts, the cure of misapplication of provisions of sedition can be ensured. In the Indian independence struggle our forefathers were united for securing freedom for each and every native of this land from clutches of foreign rule and established a *swaraj* and spilled their blood and sweat for ensuring the same. Every Indian had just one dream in his eyes – A Free India with Domestic Government. If after 74 years of independence, we still live in atmosphere of terror where a person who elects his representative cannot freely question him/her, express his dissent against his/her policies, and if (s)he dares to do the same, (s)he finds themselves entangled in complex legal procedures, are we in any different stage from the same imperialistic rule, from which we struggled to break away? It is the people of India who are the true sovereign who have given themselves to the constitution and if the same constitution could only safeguard them on paper but become a toothless tiger in reality eclipsed by the unbridled power of ruling government, wont it become a document of mockery? And at the end, a nation whose constitution is dormant, can it achieve development and stability on an international platform? The answer to all these questions is a big NO and these questions need introspection by each and every resident of this Land. The research work stands concluded with golden words of George Washington, the first U.S. President:

“If the freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter”<sup>73</sup>

73 Shaunta Grimes, *Like sheep to the slaughter.*, The Medium (Jan. 13, 2019), <https://medium.com/the-1000-day-mfa/like-sheep-to-the-slaughter-87ec806af1d8>.