

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

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Volume 3 | Issue 5

2021

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# Sedition Laws in India: Need to Abolish the Colonial Legacy

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SHUBHAM YADAV<sup>1</sup>

## ABSTRACT

*India is a democratic country and every citizen here has a right associated with him to put forward his ideas, viewpoints, and grievances. Freedom of Speech and Expression is one of the most prominent Fundamental Rights given by the Indian Constitution. Considering the massive progress in thought and expression of individuals, and the resultant manifestation in Indian laws, there is little or almost no need to have colonial provision of sedition. Even United Kingdom has scrapped its sedition law with a message to the other countries to do so. But Indian Parliament have never ever attempted to remove this provision. Rather, The recent instance of invoking the sedition laws in various instances clearly shows that the government is applying this to curb the voices of dissent. The present work revisits the constituent assembly debates in relation to freedom of speech and expression, continued by the judicial trends in relation to the balance between freedom of speech and reasonable restrictions, thereby narrowing the scope of sedition. Further, some pre-independent sedition charges and some recent application of seditious charges has been mentioned to depict the manner as to how such provision has been proved to be sword in the hand of government to suppress dissent and hence, there is need to say bye bye to colonial sedition law.*

## I. INTRODUCTION

*“.....I would rather die having spoken after my manner, than speak in your manner and live.....”*

– Socrates

The laws of sedition in India have raised a burning controversy in recent times. It is because the application of this law against independent journalists, social activists, cartoonists and public intellectuals etc. has raised significant concern on the arbitrary nature of its application.

Moreover, many a time, courts also have expressed their concern against sedition laws which shows how they have become outdated for the present society and there are various recommendations for its application. Freedom of speech is bulwark of democratic government. This freedom is given under Article 19(1)(a) and is essential for the proper functioning of the democratic process in the country. The freedom of speech and expression is regarded as first condition of liberty and has been accorded a

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<sup>1</sup> Author is a student at University of Allahabad, India.

supreme status in almost all the countries worldwide. However, freedom of speech and expression is subject to some reasonable restriction mentioned under Article 19(2). Sedition laws are also among various restrictions that can be imposed to curtail free speech in the interest of public order. But it is very ironical for the most democratic nation i.e. India that many of people are being booked under the umbrella of public order and mainly under the charges of sedition while exercising their rights enshrined in the Constitution. According to the report of Rights and Risks Analysis Group, as many as 55 journalists were targeted by the government during 25<sup>th</sup> March to 31<sup>st</sup> May 2020 for covering facts about the government handling of the Covid-19 pandemic. At least 228 journalists have been targeted including 13 killed with highest attack in Uttar Pradesh.<sup>2</sup>

Many attempts have been made to give such an interpretation or implication to the laws relating to sedition so that they might be able to maintain the balance between freedom of speech and expression and threat to the established government of country but it still acts as sword in the hands of government or its authorities to curb the freedom of speech and expression. Present day governments are using the charge of sedition continuously for the oppression of the citizens just like the pre independence ruthless Britishers.<sup>3</sup>

<sup>2</sup> India Press Freedom Report available at <http://www.rightsrisks.org/banner/india-press-freedom-report-2020> (last visited on 13.08.2021)

<sup>3</sup> Sedition, <http://www.rmlnl.ac.in/webj/sedition.pdf> (last visited on 13.08.2021)

<sup>4</sup> Sedition available at <https://www.merriam->

This paper focuses on how the laws related to sedition have their draconian application against most celebrated freedom under Article 19 and have become obsolete for the contemporary society and India as they are used arguably for more or less the same reasons like the colonial rulers, i.e., for the oppression of masses.

## II. HISTORICAL BACKGROUND AND DEVELOPMENT OF SEDITION LAWS IN ROMAN AND ENGLISH LAW

The term 'Sedition' has been derived from the Latin *seditio*, in which – 'sed' means separation 'itio' means act of going from.<sup>4</sup> In roman times sedition meant an insurrectionary separation (political or military) dissension, civil discord, insurrection, mutiny. Sedition is nothing but libel (defamation) of the established authority of law, i.e., Government.

If the penal laws of different countries are examined and reviewed, the offence of sedition falls under the head of crimes against the state. History has witnessed that not only totalitarian governments but also the democratic governments have made use of such stringent provisions against their citizens, especially during the time of political and economic tensions.<sup>5</sup>

In English Law Statute of Westminster the First, 1275 can be first legislation where an offence, being quasi-seditious in nature,

[www.merriam-webster.com/dictionary/sedition](http://www.merriam-webster.com/dictionary/sedition) (last visited on 13.08.2021)

<sup>5</sup> Offenses against the State by Herbert L. Packer [https://www.jstor.org/stable/1034320?read-now=1&refreqid=excelsior%3Aa0263c7df67acdb2d51e118b8b4b2999&seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/1034320?read-now=1&refreqid=excelsior%3Aa0263c7df67acdb2d51e118b8b4b2999&seq=1#page_scan_tab_contents)

punished speeches in order to avoid 'public discord' with the king or great men of the realm.<sup>6</sup> In 1351 Statute of Treason was enacted. It contained three main offences which were (1) Compassing the death of the monarch (2) levying war against the king in his realm and (3) adhering to king's enemies in his realm or elsewhere. As the struggle between English capitalist class and monarchy arises, sedition arose as a crime distinct from Treason. Further, with the invention of printing press; monarchy was more concerned about suppressing the expression.<sup>7</sup> There was constitution of Court of Star Chambers by Henry III in 1487. This court exercised judicial functions aimed at maintaining king's peace. The political thought behind this function was to follow the concept of non-resistance to the king's authority. The Star Chamber used the offence of seditious libel as a weapon to suppress expression with punishments like pillory and loss of ears.<sup>8</sup> In the sixteenth century, the offence of sedition was placed close to treason, if it was referred to the Monarch or Crown. If not under that category, then it was covered under 'Scandalum Magnatum' which referred to "defamatory speech or writing published to the injury of a peer, or the other great officer of England".<sup>9</sup> In 1606, an overbroad definition of sedition was given by the Star Chamber in the *De*

*Libellis Famosis* decision, in which the Chamber defined sedition as speaking of inflammatory words, publishing certain libels, and conspiring with others to incite hatred or contempt for persons in authority in which the truth and falsity of libel was immaterial.<sup>10</sup> After the abolition of Star Chamber by Long Parliament in 1641, the offence of sedition was further developed under the new regimes. During Queen Elizabeth era i.e. from 1590 onwards, Sedition Act 1661, Treason Act of 1695, Libel Act, 1792 & the Treason Felony Act 1848 were passed. All these laws defined sedition similar to each other with some more strictness. Libel Act, 1792 was enacted and there was also a change in the definition of offence of sedition. Earlier the basis of its application was to maintain King's peace, but after the Libel Act, 1792, it was applied where there was a tendency to lead to a public disturbance. Therefore, sedition came to be known as including all actions, words, written or uttered, which would disturb public peace, incite rebellion against the government or would bring contempt to the sovereign.<sup>11</sup>

In England the sedition law was scrapped in the year 2009 through Coroners and Justice Act 2009. The then Parliamentary under Secretary of State at the Ministry of Justice Claire Ward made an important observation during the enactment of

<sup>6</sup> The History of Freedom Speech in the UK available at : <https://spartacus-educational.com/spartacus-blogURL116.htm> (19.08.2021)

<sup>7</sup> The Law Commission, Working Paper No. 72 <http://www.lawcom.gov.uk/app/uploads/2016/08/No.072-Codification-of-the-Criminal-Law-Treason-Sedition-and-Allied-Offences.pdf>

<sup>8</sup> Censorship and the Courts of Star Chamber and High Commission in England to 1640, <https://www.jstor.org/stable/26265808> (last visited on 20.08.2021)

<sup>9</sup> Scandalum Magnatum: The "Scandal of Magnates"

in English Law, Society, and Politics available at : <https://scholarworks.wm.edu/cgi/viewcontent.cgi?article=4483&context=etd> (last visited on 21.08.2021)

<sup>10</sup> Sedition and Domestic Terrorism : The Early English Experience, <https://law.jrank.org/pages/2020/Sedition-Domestic-Terrorism-early-English-experience.html> (last visited on 21.08.2021)

<sup>11</sup> Legal History of Sedition, <https://www.livelaw.in/columns/sedition-ipc-124a-article-19-1-a-of-the-indian-constitution-independence-of-the-judiciary-178280> (last visited on 21.08.2021)

the act “Sedition and defamatory libel are impenetrable offences- from a bygone era when freedom of expression was not relevant as of today”<sup>12</sup>

### III. LEGISLATIONS RELATING TO SEDITION IN INDIA

The word sedition has not been defined under the Constitution of India or any other statutes. However, the word ‘Sedition’ has been used as the marginal note of **Section 124A of I.P.C.** India was under the rule of the East India Company for almost 200 years. Hence, a majority of the Laws prevalent in India are a gift from the British. Thus, the law on Sedition is also an off-shoot of the British Raj in India. Initially, the law criminalizing the offence of sedition was omitted from the original Indian Penal Code, 1860. However, the draft Indian Penal Code which was first drafted by Lord Macaulay in the year 1837 contained detailed provisions on the offence of sedition. Later on in the year 1870 under section 124A, the offence of sedition was inserted due to constant rebel against the British Rule in India. Hence, to suppress such a rebellion section 124A was made an offence.<sup>13</sup>

Section 124A penalises anybody 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.

Further three explanations have been attached to this Section. Explanation 1 provides that the expression “disaffection” includes disloyalty and all feelings of enmity. Explanation 2 provides that 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 provides that 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.<sup>14</sup>

**Section 95 of the Criminal Procedure Code, 1973** gives power to the government to forfeit material punishable under Section 124A of I.P.C. on stating grounds. This section has a twofold requirement. Firstly, the material should be punishable under Section 124-A and secondly, the government must give reasons for its opinion to forfeit the material so punishable.<sup>15</sup>

**The Prevention of Seditious Meetings Act, 1911** was introduced by the British Officials to curb dissent by criminalizing seditious meetings. Section 5 of the Act empowers a District Magistrate or Commissioner of Police to prohibit a public meeting in a proclaimed area if, in his/her opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance

<sup>12</sup> Prasun Sonwalkar, Sedition Law in UK abolished in 2009, continues in India, Hindustantimes, <https://www.hindustantimes.com/world/sedition-law-in-uk-abolished-in-2009-continues-in-india/storyPkrvylv6JOT3ddY8uqvKsO.html> (last visited on 22.08.2021)

<sup>13</sup> The sedition story: Intricate history of Section 124A

<https://timesofindia.indiatimes.com/readersblog/myrooding/the-sedition-story-intricate-history-of-section-124a-35456> (last visited on 24.08.2021)

<sup>14</sup> Section 124A of Indian Penal Code, 1860 reads.

<sup>15</sup> Refer Section 95 of Code of Criminal Procedure.

of the public tranquility.<sup>16</sup> Considering this legislation was brought to limit the meetings being held by the nationalists to oppose the British government, the further application of this Act seems unjustified and unnecessary.

#### **Unlawful Activities Prevention Act, 1967**

Under section 2 (o) of the Act, unlawful activity is described as “any act supporting claims of secession, questioning or disrupting territorial integrity and causing or intending to cause disaffection against India will fall within its purview”.

#### **IV. JUDICIAL INTERPRETATION TO SECTION 124A I.P.C.**

It is worth mentioning that the word sedition has, nowhere, been used in the inner text of the Section 124A of the Code. It is written in the marginal note of the Section. It’s not an operative part of the Section ; it merely provides the name with which the offence is defined in the section. The Section explains only the essence of the offence of sedition.<sup>17</sup> In *Kedarnath Singh v. State of Bihar*<sup>18</sup>, B. P. Sinha, CJ, while delivering majority judgment, quoted the definition of the term ‘sedition’ as given by Fitzgerald J. in an old English case, *Reg. v. Alexander Martin Sullivan*<sup>19</sup> and observed –

“Sedition is a crime against a society, nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition itself is a comprehensive term, and it embraces all those practices, whether by word, deed or

writing, which are calculated to disturb the tranquility of the state; and leads ignorant persons to endeavour to subvert the government and the laws of the empire. The objects of the sedition, generally, are to induce discontent and insurrection and stir up opposition to the government, and bring the administration of justice into contempt, and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create a public disturbance, or to lead to civil war, to bring into hatred or contempt the sovereign or the Government, the laws are the constitution of the realm, and generally all endeavours to promote public disorder.”

Section 124-A of the Code, the expression ‘brings or attempts to bring hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India’ has been used which conveys three important effects of the speech and expression i.e. hatred, contempt, and disaffection. The words ‘hatred’ and ‘contempt’ are not synonymous. The words ‘hatred’ implies an ill-will, while the word ‘contempt’ implies a low opinion.<sup>20</sup> Hatred and contempt are the state of mind in relation to an object. One shuns an object of hatred, but an object of contempt may be the subject of pity. One may pity but wish well an object of

<sup>16</sup> Refer Section 5 of The Prevention of Seditious Meetings Act, 1967.

<sup>17</sup> Ram Nandan vs. State <https://indiankanoon.org/doc/537326/?type=print> (last visited on 24.08.2021)

<sup>18</sup> (1962) 2 SCR 769

<sup>19</sup> (1868) 11 Cox CC 44 at 45

<sup>20</sup> Textbook on Indian Penal Code by KD Gour, pg-319, 6<sup>th</sup> Edition.

contempt, but one usually wishes evil or one hated.<sup>21</sup>

In Case of *Emperor vs. Ram Chandra Narayan*<sup>22</sup>

The word ‘disaffection’ as judicially recognized, is a political distemper and not a mere absence or negation of love or good will. It is a positive feeling of aversion, which is akin to disloyalty, a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people and weaken the bond of allegiance, and prepossess the minds of the people with avowed or secret animosity to government. To say ‘i no longer love you’ can in no way be equated with ‘i hate you’. Thus, disaffection with the government signifies loss of faith, belief or confidence in its genuinity.

As per section 124A, the manner in which seditious activities can be carried out is by words, either spoken or written, or by signs or by visible representation, or otherwise. The term “visible representation” is not defined. It really means any form of communication which is visible to the eye. It includes pictures or dramatic performances in a mime show where no words are spoken.<sup>23</sup> The meaning is conveyed by gestures and motions and dramatic actions of the performers. The next words “or otherwise”

indicate the universality of the means by which the offence may be committed. Distribution or circulation of seditious material will also constitute an offence. However mere membership of a banned organisation does not incriminate a person unless he resorts to violence or incites people to violence or does an act with intent to create disorder or disturbance of public peace by resort to violence.<sup>24</sup>

### V. CONSTITUENT ASSEMBLY DEBATE ON SEDITION

The draft of ‘Justiciable Fundamental Rights’ prepared by Fundamental Rights Sub-Committee, drafted Article 8<sup>25</sup>, constituting freedom of speech and expression with an exception that in the event of ‘utterance of seditious’ matter, the government has the power to restrict the speech.<sup>26</sup>

*Mr. Somnath Lahiri*, a member of the sub-committee disapproved in making sedition a restriction on freedom of speech and expression. He observed that the freedom of speech and expression as a right has been framed from a police constable’s point of view and not from the point of view of a free and fighting nation. He feared that such a restriction, might be misused

<sup>21</sup> Law of Sedition in India: Criminal Jurisprudence [https://shodhganga.inflibnet.ac.in/bitstream/10603/143397/9/09\\_chapter%203.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/143397/9/09_chapter%203.pdf) (last visited on 25.08.2021)

<sup>22</sup> ILR (1897) 22 Bom 152.

<sup>23</sup> Indian Penal Code by Prof. S.N. Mishra, pg-325 (Central Law Publication, 20<sup>th</sup> Edition)

<sup>24</sup> *Indra Das vs State of Assam* (2011) 3 SCC 784

<sup>25</sup> Article 8 of draft ran as - “Rights of freedom: There shall be liberty for the exercise of the following rights subject to public order and morality or to existence of grave emergency declared to be such by the government of the union or unit concerned whereby

*the security of the union or the unit, as the case may be, is threatened:- The right of every citizen to freedom of speech and expression, provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libelous or defamatory matter actionable or punishable”.*

<sup>26</sup> Draft of ‘Justiciable Fundamental Rights’, Art. 8 as prepared by Fundamental Rights Sub Committee, Constituent Assembly of India, Vol III, available at: [https://cadindia.clpr.org.in/constitution\\_assembly\\_debates/volume/3/1947-04-29](https://cadindia.clpr.org.in/constitution_assembly_debates/volume/3/1947-04-29) (last visited on 26.08.2021)

by government in power to suppress any voice against it.<sup>27</sup>

*Shri K.M. Munshi* also defended the omission of the word sedition from the said article, observing that “the term sedition was of doubtful and varying import and did not fit in the phraseology of the article”. He also suggested substitution of words which undermines the security of, or tends to overthrow, the state in place of sedition.<sup>28</sup>

*Sardar Hukum Singh* and *Pandit Thakur Das Bhargava* also supported the motion for excluding sedition from the said article and also proposed the addition of the word ‘reasonable’ followed by ‘restrictions’. The rationale behind the addition of word ‘reasonable’ was to give power to courts to declare unconstitutional any restriction on freedom of speech and expression if it fails the test of reasonableness.<sup>29</sup>

*Seth Govind Das* argued that the very basis of adding Section 124A in the IPC was to prosecute freedom fighters, therefore, there shall be no place for such a law in free India.<sup>30</sup>

*T.T. Krishnamachari* by supporting its exclusion from the said Article, observed that since the law of sedition has been used in the past, against our leaders, therefore, no Indian would recommend its retention as a restriction on freedom of speech and expressions.<sup>31</sup>

If I quote *Shri M. Ananthasayanam Ayyangar*, former speaker of Lok Sabha then he said ;

*“If we find that the government for the time being has a knack of entrenching itself, however leading its administration might be, it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word sedition has become obnoxious in the previous regime. We had therefore approved of the amendment that the word sedition ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise”*.<sup>32</sup>

The Constituent Assembly had to face another issue relating to interpretation of the word ‘sedition’ if retained in the said article. The word sedition was widely interpreted as something connected with public disorder, being an offence against the public tranquillity. The confusion arose after the interpretation by the judicial committee of the Privy Council that sedition under the IPC, did not necessarily imply any intention or tendency to incite disorder.<sup>33</sup>

Therefore, the Constituent Assembly reached a consensus that instead of using the word ‘sedition’ some more general words such as ‘undermines the security of the state’ to be used as such words would include sedition as well. The Constituent Assembly decided to drop the express mention of sedition as a restriction on

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Consultation Paper on “SEDITION” available at :

<https://lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf> (last visited on 28.08.2021)

<sup>33</sup> How our Constitution makers debated & rejected the draconian sedition law by <https://theprint.in/opinion/how-our-constitution-makers-debated-rejected-the-draconian-sedition-law/183548>

freedom of speech and expression and Article 13 (2) was adopted with amendments and enumerated as Article 19 (2) in the Constitution,<sup>34</sup> which ran as: “*Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State*”.

## VI. CONSTITUTIONALITY OF SECTION 124A

After the Constitution of India came into operation, the constitutional vires of the provisions of section 124A of the IPC was assailed on the ground, that it contravenes the “freedom of speech and expression” guaranteed under Article 19 of the Constitution of India.

In *Tara Singh Gopichand vs State*,<sup>35</sup> in which for the first time the constitutional validity of section 124A was put to judicial scrutiny, Court examined the constitutional validity of Section 124-A of the Code, and declared that no doubt, Section 124-A curtails the freedom of speech and expression enshrined under Article 19(1) (a) of the Constitution of India and it is not within the permitted ambit of the restrictions under Article 19(2). It observed – ‘*India is now a sovereign democratic state. Government may go and be caused to go without the foundations of the state being impaired. A law of sedition though necessary during a period of foreign rule has*

*become inappropriate by the very nature of the change which has come about.*’

Subsequent to this case, the Constitution First (Amendment) Act 1951, added two words of wide amplitude, namely, “in the interest of the security of the State and “public order” in Article 19(2) dealing with the restrictions that can be put through law on the freedom of speech and expression guaranteed under Article 19(1)(a).

Nevertheless, the Allahabad High Court, in spite of the changes brought in Article 19(2) of the Constitution, in *Ram Nandan vs State of Uttar Pradesh*,<sup>36</sup> held that Section 124-A of the Code infringes fundamental right to freedom of speech and expression, and is ultra vires of the Constitution. So far as the term ‘in the interest of public order’ is concerned provided under Article 19(2) of the Constitution, it cannot save the Section from being so.

However, in *Kedarnath Singh vs. State of Bihar*<sup>37</sup> the Supreme Court took note of the conflicting interpretations given by the High Courts and has put the judicial ambivalence to rest. Recalling that “The freedom of speech and expression in Article 19 (1) (a) of the Constitution is not absolute. The right is available only, unless and until the exercise of the right is not violative of the restrictions imposed by Article 19(2) of the Constitution of India. The Constitution Bench held that any law which is enacted “in the interest of public order” can be saved from the vice of constitutional invalidity.

<sup>34</sup> *Ibid.*

<sup>35</sup> AIR 1951 East Punjab 27.

<sup>36</sup> AIR 1959 All 101

<sup>37</sup> AIR 1962 SC 955

The Supreme Court quoted with approval the judgment of the Federal Court in *Niharendu Dutt's case*. After discussing, with analysis, the thitherto judicial pronouncements on section 124A, the apex court opined that :

*If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression.*

But,

*If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the section would make it unconstitutional in view of article 19(1)(a) read with clause (2) (of article 19).*

And now it is the well-settled judicial practice that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the court has to lean in favour of the former construction.

Next significant case is the case of *Balwant Singh vs. State of Punjab*<sup>38</sup> In this case, applicability of sections 124A and 153A was discussed. The Supreme Court held that raising casual slogans

by two individuals a couple of times without any other overt act and without intention to create disorder or to incite people to violence, does not attract sections 124A and 153A. if the slogans are not casual but serious in nature, and are not spoken a couple of times but many times, the precedent of *Balwant Singh* will have little persuasive force.

In the famous case of *Shreya Singhal vs Union of India*,<sup>39</sup> the Supreme Court laid down three principles test the freedom of speech and expression: (a) Debate, (b) Advocacy and (c) Incitement.<sup>26</sup> As long as a person's act is within the definition of first two, which are the soul of Article 19 (1) (a), the right is available. But the point where the act fall within the purview of incitement, he is no longer protected under this right and the case falls under reasonable restrictions under Article 19 (2).

### **Some Prominent Instances of Application of Sedition Charge in Colonial Period**

#### **Bangobasi Case, 1891**

The first case was registered for the offence was *Queen Empress vs. Jogendra Chunder Bose*<sup>40</sup> (also known as Bangobasi case) in 1891, when the editor of a newspaper called Bangobasi was charged for sedition. which brought up the question of limits of legitimate criticism against the official measures. The Bangobasi a newspaper edited by jogendra Chandra, while reacting to the passage of the age of consent bill (1891), raised the cry of 'religion in danger' and charged the Government for Europeanizing India

<sup>38</sup> (1995)3 SCC 214.

<sup>39</sup> (2015) 5 SCC 1

<sup>40</sup> ILR (1892) 19 Cal 35

by brute force and held it responsible for the economic deprivation of Indians. However, he was released on bail and the charges were dropped as the jury could not reach a unanimous decision.

### **Pratod Newspaper Case, 1897**

The pratod case was concerned with newspaper Article titled “Preparation for becoming independent” in 27 may 1897. The Article described Canadian nationalist resistance to colonial exploitation and the manner by which Canadian acquired political democratic rights and urged the Indians to follow the suit. Both were sentenced. Aston remark explains generally held pre disposition against Indians: “the sentence should be such as to bring home to the minds of all the gravity of the Offence committed by those who seek to undermine the foundation on which the greatest strength of the Government in India rests.”<sup>41</sup>

### **Bal Gangadhar Tilak Trial, 1897**<sup>42</sup>

The government claimed that Tilak’s speeches on the killing of Afzal Khan by Shivaji, had prompted the murder of two British officers in Pune. Tilak was sentenced to imprisonment and only released a year later “feelings of disaffection” were interpreted to mean hatred, enmity, dislike, hostility, contempt, and every form of ill will towards the government, this led to law becoming an unrestrained bull at the hands of the government. This case was related to ‘Strachey Law’ as referred by the native press.

<sup>41</sup> An Analysis Of The Modern Offence Of Sedition <http://docs.manupatra.in/newline/articles/Upload/37E592F0-BE2A-475F-AF99-2F6909F3CF11.pdf> (last visited on 30.08.2021)

### **Annie Besant Case, 1916**

As we know the freedom of speech and expression also included also freedom of press also. Annie Besant was involved in cases related to the freedom of the press decided by the madras high court. In July 1914, Annie Besant purchased a printing press from where a Newspaper, Madras Standard, was being published. She changed its name to New India and started publishing it from august 1914. A series of Articles came to be published in New Delhi in June 1916. Some of these Criticized the bureaucracy some related to the Unlawful reservation of compartments in certain trains for European and Eurasians. She also criticized charges against Bipin Chandra Pal and Tilak. Taking into consideration all these Articles, Government in council of Bombay issued an order on June 29, 1916, under the defence of India rules, 1915, prohibiting Annie Besant from entering residing or remaining in the province of Bombay. Annie Besant moved motion against the order of the chief presidency Magistrate. The court adhered to the earlier interpretations given by the courts and confiscated the alleged seditious material of Annie Besant’s printing press and dismissed the petition and this decision was upheld by Privy Council.<sup>43</sup>

### **Sedition Trial of Gandhi, 1922**

Mahatma Gandhi was charged along with others for three articles in a weekly called Young India. This trial was presided over by Justice

<sup>42</sup> (1898) ILR 22 Bom 112.

<sup>43</sup> Mrs. Annie Besant vs The Advocate General Of Madras, <https://indiankanoon.org/doc/1373432> (last visited on 31.08.2021)

Strongman. The Judge expressed his inability to not hold him guilty of sedition and sentences him 6 years' imprisonment. Mahatma Gandhi made a very famous remark with regard to law of sedition. *"Section 124A under which I am happily charged is perhaps the prince among the political sections of the I.P.C. 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."*<sup>44</sup>

## VII. RECENT APPLICATION OF THE LAW OF SEDITION

The attitude of the court has been varied with regard to the application of the law. Whereas no proper guidelines have been laid down till date with regard to the application of the law, the cases have been of variety. Some of the cases in the recent times for which people have been charged with sedition and often sentenced to imprisonment include liking a Facebook page<sup>45</sup>, criticizing a popular yoga expert of the country<sup>46</sup>, supporting the Pakistani cricket team in a

match<sup>47</sup>, a question regarding the militants in Jammu in an examination<sup>48</sup> etc.

Sedition became a major controversy in the case where a cartoon artist Asim Trivedi of Bengal was charged with sedition for publishing some comic cartoons in the newspaper which had reference to the then chief minister of the state. This raised serious doubts regarding the application of the law.<sup>49</sup> Arundhati Roy was charged with sedition for criticizing the atrocities of the armed forces in the north east. There has been a lot of hue and cry over sedition being arbitrary when it was applied to a Gujrat community leader Hardik patel when the entire community was on streets asking for reservation for the patidar community. To explicate recent instances, on October 2019, an FIR was lodged on the order of the subordinate court against 49 celebrities in India, including celebrities, writers and social workers of immense repute such as Mani Ratnam, Shyam Benegal, Ramchandra Guha etc, for writing to the Prime Minister against the mob-lynching incidents that were being observed frequently throughout the nation.<sup>50</sup> Hundreds of people were booked under Unlawful Activities (Prevention) Act during

<sup>44</sup> Textbook on Indian Penal Code by KD Gour, pg 322, (Lexis Nexis Publication, 6<sup>th</sup> Edition)

<sup>45</sup> Mahir Haneef, Facebook 'like' case: No evidence of sedition, govt tells HC, The Times Of India available at: <http://timesofindia.indiatimes.com/city/kochi/Facebook-like-case-No-evidence-of-sedition-govt-tells-HC/articleshow/18254753.cms>

<sup>46</sup> Sedition charge against Digvijay over remark against Ramdev, The Indian Express available at: <http://www.indianexpress.com/news/sedition-charge-against-digvijay-overremark-against-ramdev/799912> (last visited on 31.08.2021)

<sup>47</sup> Samira Shaikh, Outrage over Sedition Charges against Students who cheered Pakistan, NDTV [http://www.ndtv.com/article/india/outrage-over-sedition-charges-againststudents-who-cheered-pakistan-](http://www.ndtv.com/article/india/outrage-over-sedition-charges-againststudents-who-cheered-pakistan-492250)

492250 (last visited on 31.08.2021)

<sup>48</sup> Naseer Ganai, Kashmir University lecturer released, India Today, <http://indiatoday.intoday.in/story/kashmir-university-lecturer-released/1/125303.html> (last visited on 31.08.2021)

<sup>49</sup> Anti-corruption cartoonist Aseem Trivedi arrested on sedition charges, India Today, <http://indiatoday.in/story/anti-corruption-cartoonistaseem-trivedi-arrested-on-seditioncharges/1/216643.html>

<sup>50</sup> Scroll Staff, "Bihar: FIR filed against 49 writers and filmmakers who appealed to PM Modi to stop mob lynchings", <https://scroll.in/latest/939416/bihar-fir-filed-against-49-writers-andfilmmakers-who-appealed-to-pm-modi-to-stop-mob-lynchings> (last visited on 01.09.2021).

NRC and CAA protest and still many of people are being booked under this Act protesting against the farm bills.

Recently An FIR was filed against Dua under provisions of Indian Penal Code for alleged offences of sedition, public nuisance, printing defamatory materials and public mischief was lodged by BJP leader Shyam at Kumarsain police station in Shimla district on May 6 last year and the journalist was asked to join the probe. Shyam has alleged that Dua, in his YouTube show, accused Prime Minister Narendra Modi of using "deaths and terror attacks" to get votes. Supreme Court quashes charges of sedition stating that sedition charges could not be slapped on a citizen for criticism of public measures or comments on government action, however strongly worded, as it would be consistent with the fundamental right to free speech and expression.<sup>51</sup>

### VIII. CONCLUSION

Expressing alarm at the rampant misuse of sedition law in the country CJI Justice NV Ramana said –

*"This dispute about law is concerned, its colonial law, it was meant to suppress the freedom movement, the same law was used by British to silence Mahatma Gandhi, Tilak etc. Still is it necessary after 75 years of independence?"*<sup>52</sup>

<sup>51</sup> Supreme Court quashes sedition FIR against journalist Vinod Dua, <https://timesofindia.indiatimes.com/india/sc-quashes-sedition-fir-against-journalist-vinod-dua/articleshow/83196441.cms> (last visited 01.09.2021)

<sup>52</sup> Why do you need the 'colonial law' of sedition after 75 years of Independence, CJI asks govt *available at*: <https://www.thehindu.com/news/national/is-this-law-necessary-sc-seeks-centres-response-on-pleas-challenging-sedition-law/article35336402.ece> (last visited on

Sedition law has always remained controversial. The law which was passed during the Colonial era to has become a weapon in the hand of government to cause hindrance in freedom of speech and expression. It has become a draconian law to suppress the dissent. The constitutionality of sedition law was upheld in the famous *Kedarnath's case*. But having reference to the above mentioned recent impositions of sedition law upon the individuals clearly indicates that even if speeches or chanting of slogans which are not intended to cause public disorder or incitement or likelihood or tendency to create such public disorder then also people are being booked under sedition laws. We have observed that every government that comes into power uses this law to silence its critics and ultimately by way of this fulfilling their political motives. Many a times the issue of scrapping the sedition law has been raised but nothing has happened till now.

Justice Balbir Singh Chauhan, Chairman of 21st Law commission also said that "Law of Sedition requires reconsideration."<sup>53</sup> However, a positive transformation can be witnessed. The Law Commission of India, in its 267th report<sup>54</sup>, and the recent consultation paper published on

02.09.2021)

<sup>53</sup>Sedition Law needs relook: Balbir Singh Chauhan, Law Commissioner Chief, The Economic Times <https://economictimes.indiatimes.com/news/politics-and-nation/sedition-law-needs-relook-balbir-singhchauhan-law-commission-chief/articleshow/51511513.cms?from=mdr> (last visited 02.09.2021)

<sup>54</sup> Law Commission of India, "267th Report on Hate Speech", <https://lawcommissionofindia.nic.in/reports/Report267.pdf> (last visited on 02.09.2021)

sedition in the year 2018<sup>55</sup>, sought to restrict the wide scope of the term section 124A, by including only those cases within the meaning of sedition, where there is incitement of violence, with a specific intent to disrobe the government in power. Fact remains that the Law Commission of India, unlike the Law Commission of England has never suggested the repeal of sedition laws.

Considering the uprising misuse of sedition laws it is necessary to reform it or abolish it totally and then enact some new provision in such a fashion that the misuse is checked. If we talk about the data, then as per National Crime Records Bureau although growth in filing of sedition cases can be seen but the conviction rate is very low. There is a drop in the conviction rate to 3.3% in the year 2019<sup>56</sup>

So, we see can see that arbitrary application of this law by the governments is truly a matter of concern. There is need to have reform or abolish this colonial legacy.

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<sup>55</sup> Law Commission of India, "Consultation Paper on 'Sedition'" <https://lawcommissionofindia.nic.in/report-s/CP-on-Sedition.pdf> (last visited on 02.09.2021)

<sup>56</sup> Rahul Tripathi, Arrests under Sedition Charges rise but conviction falls to 3%, *The Economic Times*

<https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms?from=mdr> (last visited on 02.09.2021)