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Analyzing the Law of Sedition in India

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ABSTRACT

The law of sedition has been attracting criticism since its inception during the colonial times. The motive behind introducing the law by British was to suppress the voices and not promote the nationalist movements in India. However, post-independence, the law seems vague for a free speech is the soul of a democratic country. Moreover, the law has been misused by the government through the years. In the name of national security and integrity, the powerful authority has been mishandling the application of this law. The law is being used to suppress dissent and dissolve criticism. Sedition law is henceforth being considered as a violation of freedom of speech and expression though a balance was struck between them in the Kedarnath Judgement. The paper henceforth focuses on this issue and tries to provide suggestions for the same.

Keywords: *Freedom of Speech and Expression, Section 124A, Sedition.*

I. INTRODUCTION

India has been growing successfully in all aspects such as politically, economically, socially and culturally over the years. It has strived hard to achieve the ambitions it has been targeting and is still on the path of progress. Yet, the citizens of India are not satisfied with some of the governmental actions that had the capacity to encourage hatred and dissatisfaction towards the government of India.

The people claim that the government has been misusing the laws and shaping it based on their convenience and interest. This paper is based on the study of law of sedition in India. Among the various provisions mentioned for the sedition law, the paper aims to analyze section 124-A of the Indian Penal Code, 1860 and its applicability in the contemporary times. Before presenting the recent scenario of this law, the paper sheds light on its history in order to understand the rationale behind the introduction of such law. Then it moves further to explain the concept of sedition along with various judicial pronouncements. The paper also elucidates relevant incidents when the government used the law of sedition arbitrarily. Moreover, that paper analyzes whether the law comes under the reasonable restrictions provided under Article

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19 (2) of the Indian constitution or is actually violating the right of freedom of speech and expression under Article 19 (1) (a) of the Indian constitution. Henceforth, the following questions are to be answered in this study:-

- Whether the applicability of this law have been misused by the government of India;
- Whether the age old law infringe the right of freedom of speech and expression guaranteed under the constitution; and
- Whether the law of sedition is valid in the contemporary times.

(A) Meaning of Sedition

In the beginning, the offence of sedition was considered to be done against the 'Crown' and its subjects where former was considered as the supreme power and latter had to show their devotion by being loyal to the former. But this was before independence. Post-independence, the authority is derived now from the constitution. There is a difference between 'Government established by the law' and 'elected representatives and thus the offence of sedition threatening the existence of the 'state'.

The offence of sedition is against the state and is aimed at promoting hatred or ill will against the government. Section 124- A of the Indian Penal Code defines Sedition as "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 Govt. established by law, shall be punished, with imprisonment for life, to which fine may be added, with imprisonment which may extend to three years, to which fine may be added, or with fine."[2]

The essence of the offence is that the words spoken or written or expressed in any other forms should incite violence or create 'public disorder'. Mere usage of abusive words without any adverse outcome from the public does not constitute the offence of sedition.

Sedition can be described as 'disloyalty in action'.[3] The gist of the offence is to stir up the feeling of animosity in the minds of people against the incumbent government. Its motive is to create a strong opposition to the government by inducing hatred and discontent in people's minds. Moreover, the offence of sedition is not only considered against the government but also against the society since the result of its commission includes disturbance in the state or leads to civil war or promotes public disorder.[4]

[2] Indian Penal Code, § 124-A, (1860)
[3] Sudarshna Thapa, 'Law of Sedition in India', February 14 (2018), , https://blog.ipleaders.in/law-of-sedition/
[4] Nazir Khan v. State of Delhi, 8SCC 461, (2018)

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II. RESEARCH AND HYPOTHESIS

(A) Objectives of the Study

Based on the above research questions, the paper aims to fulfill the following objectives of the study:-

- To study the history and rationale behind the Law of Sedition in India.
- To study whether Law of Sedition is being misused in India.
- To have a Comparative study of the applicability of Law of Sedition between India and other countries.

(B) Hypothesis

The study is based on doctrinal research which aims to answer few research questions based on the research problem. The law of sedition has a good and bad impact on the citizens of India. The good impact is that the law helps in maintaining unity and stability in the country whereas the bad impact is the misuse of the law by government authorities in the name of national integrity and security that infringes the freedom of speech and expression guaranteed by the Indian constitution. Henceforth paper aims to answer questions such as, is the law of sedition partly or wholly curtailing the freedom of speech and expression.

(C) Research Methodology

This is a doctrinal research aimed to analyze the law of sedition in India. It also tries to bring about an international perspective by comparing the sedition law of various other countries. The study deals with existing laws and relevant cases. For this purpose, the research includes usage of secondary sources like scholarly articles, published research papers, journals and newspapers.

III. LITERATURE REVIEW

Nivedita Saxena & Siddharth Shrivastava (2014) in the paper titled 'An analysis of the modern offence of sedition' studies the evolution of the law from colonial rule to the present day. It analyzes the modification and development in the interpretation through landmark cases. The authors then move on to argue that the contemporary governments have been using the law to gain personal benefit. The law has been restricting the right to free speech which is soul of a democratic nation. Henceforth, the research concludes the law of sedition to be obsolete in the modern era.

Aishwarya Narayan (2015) in her study 'A theoretical analysis of the Law on sedition in

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India' expresses her views that the law has been used as a tool to restraint free speech in the country. The author finds the law archaic in nature which was introduced by the British to serve a specific purpose. After a thorough analysis of Section 124A of IPC, the author suggests few amendments by devising Austin"s Speech Acts Theory, Sorial's exposition based on Austin's theory and by accommodating the prevalent judicial interpretation into the existing provision.

Atul Dev (2016) in his article on the 'History of the Infamous section 124A' mentions series of case laws starting from the 'Banghobasi case' to the Kedarnath Judgement. The evolution of the law and the modern day definition of sedition has been examine thoroughly. The article also briefs about the present day applicability of the law in the Kanhaiya Kumar and Hardik Patel case. The arbitrariness in the application of the law has been condemned in this article.

Ashwani Kumar (2016) in their thesis on 'Law of Sedition: A Comparative Study' has explained by the concept of sedition in detail. The paper explains the historical background of the law of sedition and compares its understanding pre and post-independence. The distinguishing factors between the English and Indian rule related to sedition has been provided. The paper scrutinized the constitutional validity of the law while being in constant conflict the freedom of speech and expression. Furthermore, a critical analysis of the law of sedition has been done with the help of various case laws. Finally, comparative study between Sedition Law in India and other countries have shown the various interpretation of the law with respect to place.

Jhalak Shah & Shantanu Pichauri (2017) in their paper titled 'An Analysis of the Sedition Law in India' questions the validity of section 124A of IPC in a democratic country like India. The authors point out that various courts in their judgement have revealed that the law of sedition has been obsolete in the contemporary times and needs changes. The paper identifies the law's existence after independence too as unjustified and is of the opinion to repeal it for the best. Henceforth, the study aims to find the extent to which the reasonable restriction on freedom of speech and expression can be applied.

Suvir Raghuvansh (2017) in his essay 'Sedition Law in India' studies the concept of sedition and its meaning in depth. The essay provides all the essentials of the offence of sedition and punishment given to the guilty. The essay further examines the constitutionality of sedition law in India with various case laws and its conflict with the right to free speech. Moreover, it also distinguishes the sedition law with treason.

Nitya Nand Pandet (2018) has written a paper titled 'Sedition vis-vis Right to Speech' where it talks about the ongoing debate over the provisions related to freedom of speech and its

contradiction with section 124A of the IPC. The paper speaks about various incidents that incited protests in relation to criticizing the edition law such as speech given by JNU student Kanhaiya Kumar, protests held by Hardik Patel of Gujarat and so on. But the paper concludes by saying that although the citizens have been given the right to free speech they also have duty to respect and upheld the integrity of the nation and by no means violate it.

Kruthika Venkatesh (2018) has written a paper on 'The Applicability and Enforcement of Sedition Laws in India vis-à-vis the Right to Free Speech and Expression'. The paper focuses on section 124A of the IPC and section 95 of the CrPC to analyze the law of sedition in India. Further, the history, concept and applicability of the law has been explained in detail in the paper with the help of various case laws and incidents relevant to this law. The study aims to answer the question – "Whether a balance can be achieved between the usage and enforcement of sedition law by the government without infringing the fundamental right of speech and expression of the citizens."

Mahima Makhijaand & Asha Sundaram (2018) in their study titled 'The Sedition Laws in India with Special Reference to Shreya Singhal vs. Union of India, analyzes the Shreya Singhal case thoroughly along with the concept of sedition that applies to it. But the study also argues that the constitution guarantees the right to freedom of speech and expression under Article 19 (1) (a) which is in direct conflict with the section 124A of IPC.

Tanu Kapoor (2020) in her paper 'Sedition Law: A comparative view in India with other countries' studies the aim and origin of the sedition law in India. It describes Section 124 A of the IPC in violation with free speech in India and asserts that liberty should be given to the people to show their affection towards their country in their own way. The paper further assesses how the law is being misused and not applied genuinely by the government authorities and thereby curbing the rights of the citizens. Lastly, the paper compares the sedition law in India with other countries including United Kingdom, United States and Australia.

Yash Sinha & Kshitij Kasi Vishwanath (2020) in their study titled 'An Analysis of Section 124A Through a Contemporary Lens' asserts that the topic of Sedition in India today is one of sensitive nature. The paper aims to understand the provisions of sedition with respect to contemporary times and analyze Sedition through the lens of viability as well as constitutionality. Moreover, the paper, in view of achieving an international perspective, compares the Sedition Act of 1948 implemented in Malaysia to Section 124A in India. The paper has also traced the historical development of sedition in order to understand the rationale behind the law during its inception and in contemporary times as well.

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IV. STUDY AND FINDINGS

(A) History of law of Sedition in India

Section 124-A of the Indian Penal Code (IPC), the present provision for the offence of Sedition, was before section 113 of the Macaulay's Draft Penal Code of 1837-39. However, with the enactment of the IPC in 1860, the draconian law was omitted, which James Fitzjames Stephens, the founding father of the Indian Evidence Act, 1872, considers a result of mistake.[5]

The British government however found the need to suppress the dissent raised by the natives by reintroducing the law of sedition in 1870. The law basically referred as 'Legislative affection' stated that if you don't love the government, you got to jail. The main reason behind adding the law was the fear from the Wahhabi Movement that was gaining momentum in Bengal, Uttar Pradesh, and north western India.[6]

The very first case booked under this offence was the *Queen Empress v. Jogendra Chunder Bose*[7], famously known as the 'Bangobasi case', where the publisher, Jogendra Chandra Bose, was accused of inducing disaffection against the colonial state by publishing criticisms against the 'Age of Consent Bill'.[8] The publisher then apologized for his act resulting in the dropping of charges against him.

Many prominent leaders such as Bal Gangadhar Tilak and Mahatma Gandhi were charged with the offence of sedition to repress the dissenting voices.

The former was charged on two occasions: 1) for the speeches that allegedly incited violence and as a result death of two public officers and 2) His demand for 'self-rule' or 'Swaraj' and the wake-up call for all the revolutionaries in his daily newspaper 'Kesari. It was on this case that Justice James Strachey broadened the scope of section 124-A by ruling out that "disaffection" was equal to "disloyalty". Further he also interpreted the meaning of "feelings of disaffection" which is enmity, dislike, hostility, and any form of showcasing ill towards the government.[9] The case was also known as the 'Strachey case'. The sedition law was a tool used by the colonial government to target the nationalist leaders to not let them inspire and affect

[5] W.R. Donogh, A Treatise on the Law of Sedition and Cognate Offences in British India, Penal and Preventive with an excerpt of the acts in force relating to the press, the stage and public meetings 24 (1911).
[6] Tanu Kapoor, Sedition Law: A comparative view in India with other countries, International Journal of Law, (2020).
[7] (1892) ILR 19 Cal 35.
[8] Harshvardhan, 'The Great Repression': History of Sedition in India, (1st March 2020, 10:00AM), https://www.nationalheraldindia.com/reviews-recommendations/the-great-repression-the-history-of-sedition-in-india
[9] Atul Dev, A History of the Infamous Section 124A, (25 February 2016), https://caravanmagazine.in/vantage/section-124a-sedition-jnu-protests

the natives.

The latter was charged with sedition on the grounds of disloyalty, and generating disaffection towards the British government through his articles in 'Young India'. Mahatma Gandhi also referred to section 124 A as the "prince among the political sections of the IPC which was designed to suppress the liberty of the citizen." Upon being charged with the offence, Mahatma Gandhi asserted that "affection cannot be measured 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".[10]

Henceforth, to distinguish between the sedition law under the British rule and the present definition, it can be said that the former definition was restricted to "punish exciting or attempting to excite feelings of disaffection towards the government" whereas the latter also added "bringing or attempting to bring into hatred or contempt towards the government of India as punishable under the offence".

(B) Laws relating to Sedition in India

The Indian legislature deals with the law of sedition in various statute books. As mentioned above, the offence of sedition is defined in section 124 A of the IPC. But that's one of the provisions dealing with this offence. The concept of sedition and the punishments are prescribed in the following provisions:-

1. Indian Penal Code, (IPC) 1860

Section 124 A defines the offence of Sedition and forms the main section which can be referred to for this crime. The maximum punishment that can be given to an offender under this section is imprisonment for life.

2. Code of Criminal Procedure, (CrPC) 1973

Section 95 of the CrPC gives the government the power to seize or forfeit any publication in violation of section 124 A of the IPC.[11] Moreover, the government can also issue search warrant for the purpose regarding the forfeiture of the publication. In order to implement this law, it requires two conditions to be fulfilled: (1) the material should be punishable under Section 124A and (2) the government must give reasons for its opinion to forfeit the material so punishable.

3. Unlawful Activities Prevention Act, 1967

[10] Id.
[11] Code of Criminal Procedure, Act No. 2, § 95, (1974).

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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".[12] Further, section 13 mentions the punishment for the offence which extends up to seven years of imprisonment along with fine.[13]

4. Prevention of Seditious Meetings act, 1911

The Act came into existence during British rule and continues to stay as a part of our legislation. Under Section 5 of the Act, the District Magistrate/ Commissioner of the Police is given the powers to prohibit a public meeting in a proclaimed area if according to their belief or thinking, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquility. [14]

(C) Sedition vis-a vis Freedom of Speech

Since the inception of the law of sedition, it has been in conflict with the right to freedom of speech and expression under article 19 (1) (a) of the Indian constitution. After independence, the framers of the constitution were not in agreement with the existence of law of sedition as it restricted the right of freedom of speech and expression. However, it remained in penal statute till three landmark judgements considered it: *Romesh Thappar v. State of Madras*[15], *Tara Singh Gopi Chand v The State*[16], and *Ram Nandan v. State*[17].

Romesh Thappar v. State of Madras[18] was the first case to consider section 124 A of IPC post-independence. The Supreme Court held that an act will fall within the ambit of Article 19 (2) of the constitution only if the freedom of speech and expression have the tendency to threaten the 'security of or tend to overthrow the State'. For this purpose, amendment was bought to Article 19 (2), where 'friendly relations with state' and 'public order' was added. Henceforth, only those actions that had the tendency to create serious public disorder and endanger the national security were not given protection under freedom of speech and expression.

In the case of *Tara Singh Gopi Chand v The State*[19], the section was declared unconstitutional by the Punjab High Court for it contravened the freedom of speech and expression under article 19 (1) (a) of the constitution. The court further remarked — "a law of sedition thought

[12] Unlawful Activities (Prevention) Act, Act No. 37, § 2(o), (1967).
[13] Unlawful Activities (Prevention) Act, Act No. 37, § 13(b), (1967).
[14] Prevention of Seditious Meetings Act, Act No. 10, § 5 (1911).
[15] AIR 1950 SC 124.
[16] AIR 1951 Punj. 27.
[17] AIR 1959 All 101.
[18] Id at 14.
[19] Id. at 15.

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necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about."[20]

In the case of *Ram Nandan v. State*[21] too, the Allahabad High court also declare section 124A unconstitutional and void by giving reason that the ministers in the government play the role of framing policy and hence requires strong resistance as opposition. The court even quoted Pandit Jawaharlal Nehru statement that referred the section as 'highly objectionable and obnoxious'.

The court also observed that in a democratic set up, there must be space given to criticize the policies. It held that "if such criticism without having any tendency in it to bring about public disorder, can be caught within the mischief of Section 124-A of the Indian Penal Code, then that Section must be invalidated because it restricts freedom of speech in disregard of whether the interest of public order or the security of the State is involved, and is capable of striking at the very root of the Constitution which is free speech (subject of limited control under Article 19(2))."[22]

The constitutional validity of the sedition law under section 124A of IPC was then proved in the landmark judgement of *Kedarnath Singh v. State of Bihar*[23]. The court helped distinguish between 'Government established by the law' and 'the persons for the time being engaged in carrying on the administration' asserting that the former is a visible symbol of the State and henceforth the existence of the sedition law is necessary condition for the stability of the State.

The court further bought a balance between the right to free speech and expression and the applicability of the offence of sedition. It stated that "the right to freedom speech and expression is *sine quo non* of a democratic form of Government and hence must be protected. But it is also essential to guard this right against becoming a license for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder."[24]

So, fair criticism of the government policies and actions, no matter how strongly worded, without the tendency to incite violence was not punishable under this offence. In the famous case of *Shreya Singhal v. Union of India*[25], the Supreme Court laid down three principles to

[20] Tara Singh Gopi Chand v. The State, SC 124 AIR (1950).
[21] Id. at 16.
[22] Ram Nandan v. State, All 101 AIR (1959).
[23] AIR 1962 SC 955
[24] Kedarnath Singh v. State of Bihar, SC 955 AIR (1962).
[25] (2015) 5 SCC 1

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test the freedom of speech and expression: (a) Debate, (b) Advocacy and (c) Incitement.[26] 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).

(D) Misuse of the Sedition Law

Since independence, the law of sedition has been gone through various interpretations and implications and also passed the test of constitutionality in the Kedar Nath judgement. Yet, it still acts as a tool for the present day governments to curb the freedom of the citizens and suppress the dissent just like the British. Moreover there has been no uniformity in the cases related to sedition and the judgement varies depending on the case.

In the contemporary times, a person can be charged with sedition on flimsy grounds. For instance, F.I.R was filed against Muhammed Ali, a native of Eloor, charging him under sedition for allegedly 'liking' a photo saying 'I Love Pakistan'.[27] Congress MLA Digvijay Singh was booked under the offence of sedition, the complaint which was even accepted in a local court, for his criticizing comments against the yoga guru expert Baba Ramdev and allegedly describing him as a 'fraud'.[28] Charges of sedition were filed against a group of students merely cheering for the Pakistan team in a cricket match.[29]

Sanskar Marathe v. The State of Maharashta & Anr.[30], a case that attracted lots of criticism from the public shows the arbitrary use of the law by the police. Aseem Trivedi, a famous cartoonist, was arrested by the Mumbai police for publishing some comic cartoons referring to the then chief minister of the state in the newspaper. Though the police charged him under sedition, the court did not convict him and upheld that a citizen has the right to say or write whatever he feel about the government, regardless of how strongly its worded, unless it incites any sort of violence or creates public order. In fact, the court even laid down few guidelines for the police before invoking section 124A of IPC.

[26] Nitya Nand Pandey, 'Sedition vis-vis Right to Speech, International law journal (2018)
[27] Mahir Haneef, Facebook 'like' case: No evidence of sedition, govt tells HC, The Times of India (Jan. 30, 2004, 2:56 P.M.), http://timesofindia.indiatimes.com/city/kochi/Facebook-like-case-No-evidence-of-sedition-govt-tellsHC/articleshow/18254753.cms?from=mdr.
[28] Sedition charge against Digvijay over remark against Ramdev, The Indian Express (June 06, 2011, 12:12 P.M.),http://www.indianexpress.com/news/sedition-charge-against-digvijay-overremark-against-ramdev/799912.
[29] Samira Shaikh, Outrage over Sedition Charges against Students who cheered Pakistan, NDTV, (Mar. 06, 2014, 3:58 P.M.), http://www.ndtv.com/article/india/outrage-over-sedition-charges-againststudents-who-cheered-pakistan-492250.
[30] 2015 Cri LJ 3561.

In 2014 alone, 47 sedition cases were reported across nine states, confirmed a report of National Crime Records Bureau (NCRB). But many of these cases did not even include any incitement of violence. Around 58 people that were arrested in connection with these cases, only one of them was convicted by the court.

Similarly in the year 2018, according to NCRB report, 90 cases of sedition were charged, but only 2 were convicted throughout the year. This shows the misuse of power by the police authority, who does not apply the law appropriately and tries to curb the freedom of the citizens in the name of national security and integrity.

The data above show that not all cases of sedition filed are convicted by the law of courts. Yet, a person charged with sedition suffers a lot to lead a normal life. They face issues in travelling abroad, exclusion from the society and face the stigma, get barred from government jobs and also have to produce themselves before the court regularly and pay the legal fees. This shows that even though they might be saved from the legal punishment, but the process to prove their selves not guilty is in itself a punishment. Henceforth, a person arbitrarily charged with section 124 A of IPC has to bear it throughout their life.

The main issue pertaining to the country regarding the law of sedition is people are scared to voice out their contentions in public. Where dissent should be an integral part of a democratic society, there seems dissolution of the criticism of the state. The courts have time and again tried to draw the line between free speech and the offence of sedition trying their best to balance it out. But in reality, the law is being misused for political purpose and fulfilling the personal agenda of the political class.

(E) Comparing the Law of Sedition with other countries

It is clear from the history of the sedition law in India, this draconian law was indeed forced upon us by the British Raj to suppress the voice of our freedom fighters like Mahatma Gandhi and Bal Gangadhar Tilak. Surprisingly, after independence too, the law continues to exist as an offence under the IPC.

It should also be noted that the law which was enacted during the colonial times by the British no longer exists in United Kingdom as an offence. In 2009, United Kingdom abolished the sedition laws which undoubtedly impacted the citizens of India too. The same year, Arundhati Roy, an Indian author, was charged with sedition for criticizing the atrocities of the armed forces in the north east.

The sedition law varies with time as we have witnessed its evolution in India. But the law is not uniform throughout the world. Different countries interpret and apply the law of sedition

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based on their perspectives and it greatly varies with place too. Some of the examples will be covered below.

1. United Kingdom

The origin of the law of sedition in UK dates back to the Statute of Westminster 1275, a time when the king was considered the supreme and holder of the divine right. The law was established primarily to protect the crown then the government from any imminent threat of being overthrown. The case that firmly introduced the concept of seditious libel in UK was The 'De Libellis Famosis[31]'. Intention behind the commission of the offence of sedition was also considered by the court of law. Actions that were considered seditious in nature and had the tendency to incite violence were:-

- causing hatred against the crown or the government or the constitution or any house of the parliament or the administration of justice;
- an attempt to unlawfully incite subjects to bring change in the matters relating to church or state established by law;
- any act that disturbs the public peace and tranquility and causes disaffection towards the subject of the Crown; and
- yield any ill-will or disaffection between different social classes of the subjects of the Crown.[32]

The punishment for the commission of the offence of sedition would either steep up to life imprisonment or could be fine. However, in the ancient days, the punishment was much harsher where the ear of the culprits would be cut off for the first time and if the criminals reoffended they would be given death penalty.

It was when the world started to consider the law obsolete and in derogation with the Human Rights, UK considered abolishing it. Finally in the year 2009, section 73 of the Coroners and Justice Act abolished the common law offences: sedition and seditious libel.

Under the Human Rights Act, 1998, UK protects the right of free speech, freedom of thoughts and expression of the people. The law of sedition violated these rights and was also considered arcane in the present society. The rationale behind the abolishment of the sedition law and seditious libel was given by the then Parliamentary Under-Secretary of State at the Ministry of Justice of the United Kingdom. He stated that:-

[31] 77 Eng, Rep. 250 KB, 1606.
[32] Clare Feikert-Ahalt, Sedition in England: The abolition of a law from a bygone era, (Oct 2, 2012), https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/.

"Sedition and seditious and defamatory libel are arcane offences - from a bygone era when freedom of expression wasn't seen as the right it is today… The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom… Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech."[33]

2. Australia

The provisions of the offense of sedition were comprehensively explained for the first time in the Crime Act 1920. It contained definitions of the concept which were broader than the common law understanding; subjective intention and incitement to violence or public disturbance were not the sine qua non for conviction under these provisions.[34]

In 1991, the definition of sedition was however reviewed and narrowed down to acts that incited violence for the purpose of disturbing or overthrowing constitutional authority. In the landmark case of Burns v. Ransley[35], the constitutional validity of the sedition law was upheld by the high Court of Australia. The court adjudged that Commonwealth Governmental institutions were also under the protection from seditious words as a part of Commonwealth legislative power. It clearly observed that their constitutional framework must be protected from any violence or imminent threat and thus the law of sedition must be retained.

There were amendments made in the Anti-Terrorism Act (No. 2) 2005. Schedule 7 of the act observed these amendment where the sedition definition of Crime Act was repealed and new sedition offences titled as 'treason and sedition' were headed. The new offences of sedition were as follows:-

- Section 80.2 (1) stated that "Urging another person to overthrow by force or violence the Constitution or the Government of the commonwealth a state or a territory";
- Section 80.2 (4) stated that "Urging another person to interfere by force or violence in parliamentary elections";
- Section 80.2 (5) stated that "Urging a group or groups (whether distinguished by race, religious, Nationality or political opinion) to use force or violence against another

[33] PA Media Lawyer, Criminal libel and sedition offences abolished, (Jan. 13, 2010), https://www.pressgazette.co.uk/criminal-libel-and-sedition-offences-abolished/
[34] Tanu Kapoor, Sedition Law: A comparative view in India with other countries, International Journal of Law, (2020).
[35] (1949) HCA 45; 79 CLR 101; (1949) ALR 817

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groups, where that would threaten the peace, order and Good Government of the commonwealth";

- Section 80.2 (7) stated that "Urging another person to assist an organization or country that is at war with the commonwealth (whether declared or undeclared)"; and
- Section 80.2 (8) stated that "Urging another person to assist those engaged in armed hostilities with the Australian defense force".[36]

The punishment for each of the above mentioned offences is maximum penalty for 7 years in comparison with penalty for three years for other existing offences in federal crimes.

The implementation of the recommendation of the Australian Law Reform Commission (ALRC) was done in the National Security Legislation Amendment Act 2010, by replacing the word 'sedition' describing the above offences to 'urging violence offences'.

3. Malaysia

The law of sedition, like India, was enacted by the British colonial government in Malaysia. It was introduced to curb the freedom people and overpower the momentum gained by nationalist movements in the country. In the year 1948, the British found the need to introduce this draconian law, the Sedition Act, in Malaysia too in order to withstand the spread of communist ideologies throughout the country.

Section 3(1) of the Sedition Act 1948 defines Seditious Tendency as the act of inducing contempt or disaffection against the government, rulers of states and/or courts as well as promoting violence and hatred between different groups.[37]

Like India, though the reason behind the origin of the law does not exist anymore, the law still has its place in the crime books of Malaysia, used by the authorities to silence the critics. The present understanding of the concept of sedition is any act such as speech and/or publication which brings hatred or contempt towards the nine royal sultans of Malaysia and also prevents and protects the law against the incitement of hatred against members of different races and religions.[38]

The Sedition Act of Malaysia has gained wide criticism with respect to the provisions made within the legislation which prevents non-ethnic Malay Citizens from questioning the special

[36] Anti-Terrorism Act (No.2) 2005, Act No. 144, § 80.2, (2006).
[37] Sedition Act, § 3(1), (1948).
[38] Jennifer Park, What is Malaysia's sedition law?, (Nov. 21 2014), https://www-bbc-com.cdn.ampproject.org/v/s/www.bbc.com/news/amp/world-asia-29373164?usqp=mq331AQHKAFQCrABIA%3D%3D&amp_js_v=0.1#aoh=16061086618393&referrer=https%3A%2F%2Fwww.google.com&amp_tf=From%20%251%24s&ampshare=https%3A%2F%2Fwww.bbc.com%2Fnews%2Fworld-asia-29373164

position of the Ethnic Malays and the native residents of Sabah and Sarawak.[39] There were several instances when the law was misused by the authorities. For example, in the 1969 General elections, the ruling party oppressed the opposition when the latter called for reforms and amendments to the Sedition Act in order to reduce the elitism and privileges that the Malays had in order to seek greater equality.

When we compare the provisions of Sedition in India to Malaysia, we see that Malaysia has a broader and stricter provision which encompasses sedition as an offence.[40] The Sedition Act of 1948 that is prevalent in Malaysia is controversial as it prevents non-local citizens from criticizing the actions and privileges of the local Malay population. When juxtaposed to India, this provision seems draconian as the Indian Sedition law is limited to crimes and criticisms against the state and does not favor a particular community or creed.

V. CONCLUSION AND SUGGESTIONS

The above analysis concludes that though there is a need of the section124A of IPC in India in order to maintain public order and national integrity, the provisions of the section must be reconsidered. The abolition of this section would simply lead to members of society indulging beyond their Freedom of Speech restricted reasonably.

Though it has been noted that in certain cases, the police arrest the accused on alleged counts of sedition and hence the author believe that these arrests must be made only when there is no reasonable doubt of commission. The author further suggests that the scope of section 124A should be narrowed down for its illegitimate use by the powerful authorities.

Further, the government has numerous provisions such as Section 505 of the IPC which deals with public mischief, the Prevention of Damage to Public Property Act, 1984 among others to hold people liable for the damage caused to the public. In light of these provisions existing, the need for Section 124-A is diluted and thus must be used only in the rarest of rare cases which in essence is the government not misusing its powers.

Thus, we can conclude by saying that the application of sedition does not infringe the rights of citizens as it is checked by Article 19 of the Indian Constitution. Although the provision exists to check the excess use of freedom of speech and expression, there is a need for checks on the use by the government.

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[39] Yash Sinha & Kshitij Kasi Vishwanath, An analysis of section 124A through a contemporary lens, (2020)
[40] Id.

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