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# Examining the Desirability of Sedition Laws in India vis-à-vis Era of Majoritarian Authoritarianism

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## ABSTRACT

*In May 2022, the Supreme Court of India put section 124A of Indian Penal Code, 1860 in abeyance. While abeyance itself does not guarantee the omission of the section, it is still a step in the right direction. In this paper, the author examines the desirability of sedition laws in India, with primary focus on how the misuse of law becomes particularly threatening when there is rising majoritarian authoritarianism around the world. The author also explores the conundrum of how social identity affects the chances of getting booked for sedition. Lastly, author argues that in even if these tendencies and Section 124 A are not totally abandoned, the section could be limited instead with the help of American and European jurisprudence.*

**Keywords:** Sedition, Majoritarianism, Authoritarianism, Minority.

## I. INTRODUCTION

Sedition and its constitutionality remain one of the most debated topics in the Indian populace. The law that should have ceased to exist after independence, continues to haunt journalists, dissidents and anyone who has a voice that is not merely an echo of the establishment. This essay aims to plunge into majoritarian authoritarianism and its deeply rooted implications as to how modern India views ‘sedition.’

The author wishes to argue that in this age of majoritarian authoritarianism, the idiosyncratic nature of sedition cases shows that lo and behold, the fallacious narratives of nationalism are getting increasingly distorted and dastardly with the passage of time and tide. Furthermore, the author explores the sphere of identity politics and its intertwining with sedition, an aspect that demands immediate deletion of section 124A.

Section 124A of the Indian Penal Code (hereinafter “IPC”) defines sedition as following:

124A. Sedition. —Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or

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attempts to excite disaffection towards, Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

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

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

Explanation 3. —Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Notably, sedition is a cognizable, non-compoundable, and non-bailable offence.

## II. HISTORICAL OVERVIEW OF SEDITION IN INDIAN CONTEXT

The term ‘sedition’ is derived from the Latin word *sedition* which translates into ‘riot’.<sup>2</sup> To understand how the concept of sedition has unfolded itself in a democratic country like India, it is essential to get an overview in terms of historical timelines. The history narrates an enthralling tale.

### 1. Incorporation of s.124A in IPC

When Thomas Macaulay enacted the Indian Penal Code in 1860, sedition was not included in the draft.<sup>3</sup> A decade later, in 1870 British politician James Fitzjames Stephen introduced 124A through an amendment, the real reason of the amendment being the expansion of Wahabi Movement.<sup>4</sup> Stephen believed in Jeremy Bentham’s principles of codification,<sup>5</sup> while arguing with a pro-monarchical notion that the British government was justified in using force to prevent subject demographics from descending into a supposed anarchy.<sup>6</sup> And so, section 124A was added in the Indian Penal Code.

The first case of sedition was a trial of Jogender Chunder Bose,<sup>7</sup> heard in the Calcutta High Court in 1891. Therein, Calcutta HC bifurcated a distinction between the term ‘disaffection’ and ‘disapprobation,’ with a great sense of legal acumen. Disaffection, considered to mean ‘a feeling contrary to affection, in other words dislike or hatred,’ was given a liberal and broad

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<sup>2</sup> CHITRANSHUL SINHA, *THE GREAT REPRESSION* 40 (2019).

<sup>3</sup>*Id.*, 1

<sup>4</sup> CHITRANSHUL SINHA, *THE GREAT REPRESSION* 46 (2019).

<sup>5</sup> CAROLINE ELKINS, *LEGACY OF VIOLENCE: A HISTORY OF THE BRITISH EMPIRE*, 63-63 (2022).

<sup>6</sup> James Fitzjames Stephen, [https://en.wikipedia.org/wiki/James\\_Fitzjames\\_Stephen](https://en.wikipedia.org/wiki/James_Fitzjames_Stephen),

<sup>7</sup> *Queen Empress v. Jogendra Chunder Bose* (1892) ILR 19 Cal 35 (India)

interpretation, whereas disapprobation meant disapproval. More essentially, the court recapitulated that “it is quite possible to disapprove of a man's sentiments or action and yet to like him.”<sup>8</sup> Simple disapproval was thus neither recognised as a misdemeanour, nor as a felony.

In a rather predictable turn of events, the next three decades highlighted the real motives behind the amendment of 1870 as the draconian nature of the law unveiled itself. Nationalist Indian leader Lokmanya Bal Gangadhar Tilak was twice prosecuted and convicted for sedition. In 1897, he was sentenced with imprisonment for twelve months for exciting disaffection through an article he published in a Marathi newspaper named Kesari.<sup>9</sup> In 1908, he was sent to Mandalay in Burma for six years of imprisonment for writing in favour of the Bengal revolutionaries.<sup>10</sup> Similarly, the following years saw arrests of many Indian leaders. Maulana Abdul Kalam Azad and Gandhi were convicted respectively in 1921 and 1922. Maulana Azad's remarks on sedition as a felony are noteworthy: “Since people in India lacked the power to set right the wrongs being done by the government, they adopted the second course to which they are entitled, namely to condemn the wrongs.”<sup>11</sup>

## **2. How Sedition Became a Self-inflicted Post- Independence Tragedy**

After independence, a draft of Constitution of India contained ‘sedition’ in Article 13 (which later became Art.19) as a restriction on freedom of speech and expression.<sup>12</sup> Congress leader and educationist KM Munshi, however, moved an amendment to drop sedition and libel altogether as a basis to restrict free speech and expression.<sup>13</sup> KM Munshi's reasoning for dropping sedition demonstrates the Constituent Assembly's visionary disposition. He contended two main points. First, that sedition was used by Britishers to suppress Indian dissent and second, that national integrity could be protected by replacing the word sedition with the words “which undermines the security of, or tends to overthrow, the State.”<sup>14</sup> Criticism of the government is the very foundation and essence of democracy, and thus sedition was removed from the draft of the constitution.

One would think that considering the archaic and oppressive nature of the colonial-era law, it would be repealed or else amended in a way that was consistent with democratic values. But

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<sup>8</sup> *Id.*, 7

<sup>9</sup> *Queen-Empress v. Bal Gangadhar Tilak* (1897) I.L.R. 22 Bom. 112, 151

<sup>10</sup> *Emperor vs Bal Gangadhar Tilak* on 22 July, 1908 (1908) 10 BOMLR 848

<sup>11</sup> Mahtab Alam, *On His Birth Anniversary, Remembering What Maulana Adul Kalam Azad Said About Sedition* On His Birth Anniversary, Remembering What Maulana Abul Kalam Azad Said About Sedition (thewire.in)

<sup>12</sup> Vineeth Krishna, *Why India's Constitution Framers Hated the Sedition Law* [https://www.constitutionofindia.net/blogs/why\\_india\\_s\\_constitution\\_framers\\_hated\\_the\\_sedition\\_law\\_](https://www.constitutionofindia.net/blogs/why_india_s_constitution_framers_hated_the_sedition_law_)

<sup>13</sup> The Print, *How Our Constitution Makers Debated and Rejected Draconian Sedition Law* <https://theprint.in/opinion/how-our-constitution-makers-debated-rejected-the-draconian-sedition-law/183548/>

<sup>14</sup> Constituent Assembly Debates, Volume VII, December 1, 1948 speech by KM Munshi.

ironically, sedition, a non-cognisable offence till then, was made cognisable in 1974.<sup>15</sup> Thus, 124A became an iron-fisted law that sovereign India inflicted upon itself and a leeway was given to the political regimes.

### III. ANAND BAZAR TO KEDAR NATH: LOST OPPORTUNITIES

In current times when autocratic figures are on the rise in democracies around the world<sup>16</sup>, the judgement in Anand Bazar Patrika case<sup>17</sup> is vital. The Calcutta HC Held that a “government established by law” refers collectively to the body, and even strong criticism of administrating individuals would not attract sedition.<sup>18</sup> In 1935, in matter of Kamal Krishna Sircar vs Emperor,<sup>19</sup> the bench stipulated three important criteria for exertion of s.124A. Two key takeaways from this judgement are that intention is a substantial element of establishing seditious charges and that an executive not agreeing with the ideology of the accused is no reason to hold someone guilty of sedition.<sup>20</sup>

Moreover, in Kedar Nath v. State of Bihar<sup>21</sup> 124A was held constitutional. *Kedar Nath* emphasized that the ‘tendency to disturb public order’ is an essential element of sedition. Secondly, it remarked that criticism on political matters is not of itself sedition. The contribution of Kedar Nath is its attempt to restrict misuse of the section by giving it narrowest interpretation while trying to demarcate the difference between which acts amounted to sedition and which ones did not.<sup>22</sup>

The commonality between these cases is that all the three judgements elucidate the acts for which a person cannot be ‘convicted’ of sedition. But none established that these are the acts for which a person mustn’t be ‘prosecuted’ for sedition. These were the lost opportunities, and even though the judgements contributed enormously in preventing the abuse of sedition laws, multitude of loopholes were left. These slightly myopic judgements couldn’t foresee the probability of how the misuse of the law will manifest itself into reality and how these exact loopholes will be exploited in future.

After plethora of debates and dreadful abuse of sedition law, a writ petition challenging s.124A

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<sup>15</sup> Abhinav Chandrachud, *Freedom from Sedition*, <https://www.thehindu.com/opinion/freedom-from-sedition/article35916113.ece>

<sup>16</sup> Thomas J. Scott, *Does the Rise of Autocratic Leaders Signal the End of Democracy?* <https://truthout.org/articles/does-the-rise-of-autocratic-leaders-signal-the-end-of-democracy/>

<sup>17</sup> Ananda Bazar Patrika” v. Unknown AIR 1932 Cal 745,140 Ind Cas 5 (India)

<sup>18</sup> Id at 16

<sup>19</sup> Kamal Krishna Sircar vs Emperor AIR 1935 Cal 636, 158 Ind Cas 204

<sup>20</sup> SINHA, SEE SUPRA NOTE 1

<sup>21</sup> Kedar Nath Singh vs State Of Bihar 1962 AIR 955, 1962 SCR Supl. (2) 769

<sup>22</sup> Id at 20

was filed before the Supreme Court, and consequently the sedition law has been put in abeyance with the government disallowed to register any new cases.<sup>23</sup> From the history, it is necessary to learn, that what was struck down by the Constituent Assembly was repeatedly upheld by the courts.

#### IV. RELEVANCE OF SEDITION LAWS IN MODERN INDIA

The desirability of sedition in modern India cannot be analysed in a vacuum without taking into consideration the collective characteristics of modern India. Many governments time and again have used the sedition law, but what is an exclusive modern-day phenomenon, is the sudden rise in the number of prosecutions under sedition.

National Crime Records Bureau (NCRB) Report<sup>24</sup> suggests an increasingly alarming trend. In 2014, forty-seven cases of sedition were registered. In 2015, the number fell to 30 and to 35 in 2016. Consecutively, in 2017, total 51 cases were registered. The number rose to 70 in 2018 and to 93 in 2019. From 2016-2019, the 160% increase in the number of cases registered is coupled with a gradual decrease in conviction rate from 33% to 3.3%.<sup>25</sup> Number of cases registered grew exponentially, while only a microscopic minority was convicted for sedition.

This trend elucidates two things. First, that without a deliberate intention of actual conviction, the law is being misused by the government to create fear and second, that the current Indian government is growing increasingly insensitive to criticism. Thus, one must ask the question: What might explain the sudden increase in number of cases? The author believes that the answer to this question is deeply rooted in the rise of majoritarian authoritarianism.

##### (A) Sedition in the Age of Majoritarian Authoritarianism

Sedition has long been known as a tool in the hands of political regimes, used to criminalize political opposition. As a response to globalization and rising inequality, democracies around the world saw a pattern of increasing majoritarian authoritarianism.<sup>26</sup> This trend brought a gradual substantial change on how democracies function and citizens interact. In the last decade, India underwent a change in political order with the upheaval of 'majoritarian

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<sup>23</sup> The Print, *SC keeps in abeyance sedition law till review; asks Centre, States not to register cases* <https://theprint.in/india/sc-keeps-in-abeyance-sedition-law-till-review-asks-centre-states-not-to-register-cases/951387/>

<sup>24</sup> Ministry of Home Affairs, National Crime Records Bureau, Indian Penal Code, *Cases Registered & their Disposal Under Sedition Law during 2014-19*.

<sup>25</sup> Economic Times, *Arrests under sedition charges rise but conviction falls to 3%* <https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms?from=mdr>

<sup>26</sup> The Geopolitics, *Growing Trend of Majoritarian Authoritarianism in South Asia* Growing Trend of Majoritarian Authoritarianism in South Asia - The Geopolitics

authoritarianism.<sup>27</sup>

Generally speaking, ‘majoritarian authoritarianism’ is an amalgamation of two theories. ‘Majoritarian’ denotes the rule by a majority, with the belief that those constituting a majority should rule make the rules for all members of a nation.<sup>28</sup> Authoritarianism, on the other hand, is a much-debated concept.

In their paper titled ‘Cultural Backlash: Trump, Brexit, and Authoritarian Populism’ authors Pippa Norris and Ronald Inglehart lay out, inter alia, following three important features of authoritarianism<sup>29</sup>:

- 1) the importance of security against risks of instability and disorder (‘outsiders’ creating turbulence, terrorists threatening the safety of nation),
- 2) the value of conformity to preserve conventional traditions and guard our way of life (defending ‘Us’ against ‘Them’),
- 3) and the need for loyal obedience towards strong champions who protect the group and its customs (‘I alone can fix it’, ‘Are you on my team?’).

Author J Morelock, notes in his book<sup>30</sup>, that these ideologies shape the reality with social movements fuelled by prejudice and led by charismatic leaders that seek to increase governmental force to combat difference. To understand how this further manifests in a socio-legal-political sphere, in his article, Thierry Chopin lays down following nuances<sup>31</sup>, namely, authoritarian leaders avoiding their power being questioned, controlling politics by reducing the electoral competition, the weakening of opposition forces to maintain domination, intervention in the media to control information and communication, and the reduction of academic freedom. To add on to Chopin’s accurate analysis of typical symptoms of an majoritarian authoritarianism, it would not be far-fetched to say that in current India, all of this is often accompanied by proclivity of divisive politics, inter alia, political polarization, religion-oriented patriotism, and targeting minorities to weaken the opposition.

These nuanced changes contribute in manufacturing a pro-government manual for nationalism and even a minor fluctuation in that suffers the risk of amounting to sedition. As a result,

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<sup>27</sup> Niranjan Sahoo, *Mounting Majoritarianism and Political Polarization in India* <https://carnegieendowment.org/2020/08/18/mounting-majoritarianism-and-political-polarization-in-india-pub-82434>

<sup>28</sup> <https://www.dictionary.com/browse/majoritarianism>

<sup>29</sup> Pippa Norris & Ronald Inglehart, New York: Cambridge University Press, 2018 *Cultural Backlash* Chapter 1 (un.org)

<sup>30</sup> J Morelock, *Introduction: The Frankfurt School and Authoritarian Populism – A Historical Outline*. In: *Morelock, J. (ed.) Critical Theory and Authoritarian Populism*. 13–38. (2018)

<sup>31</sup> Thierry Chopin, *ILLIBERAL DEMOCRACY” OR “MAJORITARIAN AUTHORITARIANISM”?* *CONTRIBUTION TO THE ANALYSIS OF POPULISMS IN EUROPE* "Illiberal Democracy" or "Majoritarian Authoritarianism"? Contribution to the analysis of populisms in Europe - Institut Jacques Delors (institutdelors.eu)

criticising the government or individuals that form a government, ideological opposition to the government, and many such instances are outrightly considered seditious. Creating a distorted version of political opposition and refashioning the stance of political opposition in a way that suits the pro-government nationalistic ideas are the enablers that underlie these narratives. This, however is not merely an indulgence into theoretical explanations, some recent cases and instances show how this theory manifests itself in the reality.

In such times journalistic liberty allures a great amount of scrutiny. Vinod Dua was booked for sedition in 2021 for making comments on the lack of preparedness regarding COVID 19 of the Government of India. He was also alleged for making personal comments and criticising the Prime Minister. He was acquitted later and the bench delivered an astonishing judgement, touching ambits of several freedoms and rights. The court re-iterated that criticism on political matters is not of itself sedition.<sup>32</sup> Furthermore, a Malayali journalist named Siddiq Kappan was directly arrested by the Uttar Pradesh Police while he was reaching the site of a gangrape of a young Dalit woman in a village called Hathras- a case that apparently involved several local politicians. He was put in jail for sedition and for allegedly promoting religious enmity.<sup>33</sup> Appallingly, this took place even before commission of any kind of seditious activity.

Both these cases decipher many things as to the way state-machinery works and thinks in the majority authoritarian era. In *Vinod Dua*, an argument of the prosecution pointed out that Dua had a leaning against the government.<sup>34</sup> This argument considered in light of Kappan's arrest for simply wanting to cover an incident speaks volumes about the ease with which sedition law is used.

Firstly, it demonstrates that apprehensions about a person's political stance play a larger role than the actual crime. That Dua had a leaning against argument is a logically fallacious argument because it actually assumes what it sets out to prove. This form of circular reasoning ends up presuming the seditious nature of the act in question.

Secondly, *Kedar Nath* elucidated that every journalist is entitled to protection under Kedar Nath. Despite this judicial pronouncement, what's being done with the journalists is exactly what the Britishers did with Tilak. Not only is this the continuity of an archaic law but also the continuance of the oppressive tendency and intimidation.

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<sup>32</sup> Vinod Dua vs. Union of India & Ors, *Writ Petition (Criminal) No.154 of 2020 filed by Vinod Dua*

<sup>33</sup> New Indian Express, *Siddique-kappans-incarceration-his-wife-and-children-feel-helpless-yet-keep-their-hopes-alive* <https://www.newindianexpress.com/states/kerala/2021/nov/16/siddique-kappans-incarceration-his-wife-and-children-feel-helpless-yet-keep-their-hopes-alive-2384302.html>

<sup>34</sup> Live Law [Vinod Dua Case] 'Violence Not A Sine Qua Non For Sedition, There Can Be Public Disorder Without Violence': Mahesh Jethmalani Tells SC (livelaw.in)



Furthermore, in *Sanskar Marathe* case,<sup>35</sup> a circular was prescribed to police personnel, making it abundantly clear that the words, signs or representations showing disaffection to the Government (Central or State) must also be an incitement to violence or must be intended or tend to create public. Siddiq's incident demonstrates a way of pre-censoring journalists which severally undermines the *Brij Bhushan* judgement,<sup>36</sup> wherein the SC upheld the liberty of the press and declared that pre-censorship violates the fundamental right of freedom of speech and expression.

Cases like these demand safeguards for the protection of right to freedom of speech and expression. To protect journalists from such disproportionate punishments, a judgement of European Court of Human Rights is pertinent here. In *Erbakan v Turkey*,<sup>37</sup> the court asserted that burden must lie on the State to demonstrate that no other alternative remedies were available other than slapping a criminal case on the person.<sup>38</sup> Furthermore, in case of *Castells v. Spain*,<sup>39</sup> the court declared that right of freedom of expression also entails ideas that offend, shock and disturb because such are the demands of pluralism, tolerance and broadmindedness necessary for a democracy.<sup>40</sup> The Court also noted that the limits of permissible critics are wider with respect to the Government than in relation to a private citizen, or even a politician.<sup>41</sup>

Such instances elucidate that the process is the punishment. By pushing the critical voices in a legal dungeon and by exploiting their resources, misuse of sedition laws in modern India is creating a havoc.

### **(B) Identity Imbroglia and Dissent as Sedition:**

Section 124A becomes even more menacing in public discourse when the ideal of nationalism ceases to be a discrete one and is attached to religion-orientated nationalistic sentiment. It is when these two things overlap that the human rights and rights to freedom are in jeopardy. When such narratives are pandered to the lowest common denominator, masses believe that the support to the government is the only way of exhibiting nationalism and supporting the integrity of the nation. As a result, demographics equate nationalism with various factors like ideology of a political party, supporting the ruling party and religion as the litmus test of patriotism.

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<sup>35</sup>*Sanskar Marathe v. State of Maharashtra & Others* 2015 (2) RCR (CRIMINAL) 351, 2015 ALLMR (CRI) 4637, 2015 CRILJ 3561, 3 (2015) CCR 63 (India)

<sup>36</sup> *Brij Bhushan And Another v. The State Of Delhi* 1950 AIR 129, 1950 SCR 605 (India)

<sup>37</sup> *Erbakan v. Turkey* App. No(s). 59405/00, E.C.H.R., 2006

<sup>38</sup> *Financial Express, Scrapping Sedition Law the Only Solution* <https://www.financialexpress.com/opinion/sc-rapping-sedition-law-the-only-solution/2524103/>

<sup>39</sup> *Castells v. Spain* Case No 11798/85, E.C.H.R. 1992

<sup>40</sup> *Media's Power* <https://journalism-edu.org/sessions/5-freedom-of-expression-as-a-human-right/annex-2-examples-of-cases-heard-by-the-european-court-of-human-rights-for-group-work.html>

<sup>41</sup> *Id.*,39

The functioning of a majority authoritarian regime also entails targeting minorities simply because they are the “others” or because they don’t agree with the nationalistic narrative that the government finds “acceptable.” A recent survey shows that in India the Hindus tend to see their religious identity and Indian national identity as closely intertwined; as nearly 64% Hindus say that it’s pivotal to be Hindu to be “truly” Indian.<sup>42</sup>

India has a long history of protests that have truly shaped the nation. Booking dissidents for sedition is the oldest trick in the book for governments to bring the situation under control. Violent, uncontrollable protests in some cases come under the purview of sedition, but in modern India, literally any form of dissent is labelled as seditious.

The Anti- Citizenship Amendment Act (CAA) protest in 2019-20 took place because the CAA was inconsistent with the secularist value of India as it introduced class legislation that excluded Muslims. Naturally, a large number of Muslims across the cities participated in the dissent. For this particular protest, 27 cases of sedition were registered and nearly 4000 protesters were booked.<sup>43</sup> Furthermore, in Karnataka a Muslim school teacher was arrested as the students in school performed an ‘offensive’ anti-CAA play.<sup>44</sup> Even if the dialogues said by students are considered ‘defamatory,’ the play had not exhibited even a single ingredient necessary for it to be sedition. Additionally, a database shows that from 2010 – 2021, nearly 90% of Muslim accused in sedition cases were charged after 2017.<sup>45</sup> As a result of religious national fanatics, blasphemy too is considered sedition, as there is intertwining of s.295A and s.124A, which is constitutionally incoherent, because the State has no religion.

A classic example of the considering criticism disguised as sedition is the FIR lodged against 49 celebrities who wrote a simple letter to the government with concerns over increasing incidents of mob lynching in the country.<sup>46</sup> The celebrities were said to be seditious, because by highlighting the hate crimes in the country, they were threatening the image of the nation.

In another instance in Jharkhand, nearly 3300 tribals were booked for sedition in 2018 for wanting autonomy over their lands. The Adivasis engraved the constitutional provisions for

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<sup>42</sup>Pew Research Centre, *Religion in India: Tolerance and Segregation* <https://www.pewresearch.org/religion/2021/06/29/religion-in-india-tolerance-and-segregation/>

<sup>43</sup> Article 14, *A Decade of Darkness*, <https://sedition.article-14.com/>

<sup>44</sup>The Quint *Bidar School Teacher, Parent Arrested for Staging Anti-CAA Play* <https://www.thequint.com/news/india/bidar-school-mgmt-booked-for-sedition-for-staging-anti-caa-play-modi>

<sup>45</sup>Article 14, *The Law As A Communal Weapon Of The State: Why UP’s Muslim CAA Protestors Face Sedition Cases* <https://www.article-14.com/post/the-law-as-a-communal-weapon-of-the-state-why-up-s-muslim-caa-protestors-face-sedition-cases--62008af59e173>

<sup>46</sup> The Wire, *Sedition-Case-for-Open-Letter-Over-180-Personalities-Endorse-Statement-Condemn-Charges* <https://thewire.in/rights/sedition-case-for-open-letter-over-180-personalities-endorse-statement-condemn-charges>

tribals on large rocks, and were booked for “wrongly interpreting the constitution.”<sup>47</sup> With such faulty assertions, the police and state authority seem to be operating under the assumption that the tribals who still continue to live a rural lifestyle have no understanding of the constitution, simply because they are opposing the government.

The coupling of identity politics and sedition is outrightly dangerous in the age of digital surveillance and media trials. Even posting, sharing, liking, commenting, retweeting, or changing their profile photos/status messages on WhatsApp, Facebook and Twitter can attract libel.<sup>48</sup> This however, is just the tip of the iceberg. Several incidents show the prejudiced police personnel intentionally and illegally framing people for sedition without any speech or writing or visible representation taking place.<sup>49</sup> Many countries like USA, Australia including third world countries like Ghana, Nigeria have scrapped the sedition law. United Kingdom itself, has abolished the law in 2008.<sup>50</sup> The Law Commission Report in 2018, too, indicates the emergency of scrapping sedition to prevent the crumbling fragmentation of Indian democracy.<sup>51</sup>

India is a party to the International Covenant on Civil and Political Rights. Sedition, vehemently used to restrict free speech is a violation of mandates of Special Rapporteur. Arbitrary arrests and preventive detentions for alleged sedition violate the mandate that says “restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.”<sup>52</sup>

To quote Yuval Noah Harrari,<sup>53</sup> “Propaganda and manipulation are nothing new. But whereas in the past they worked like carpet bombing, now they are becoming precision-guided munitions.” Sedition in the age of majoritarian authoritarianism is being used for categorical exclusion and implicit repression. As the repercussions, citizens are losing objectivity and argumentum ad populum i.e., defending something only because it’s liked by the majority is becoming a legitimate way of assessing governments actions.

<sup>47</sup> Aljazeera, <https://www.aljazeera.com/features/2018/9/30/in-jharkhand-a-tribal-assertion-met-with-fierce-police-crackdown>

<sup>48</sup> Article 14, A Decade of Darkness, <https://article-14.com/post/a-decade-of-darkness-our-new-database-reveals-how-a-law-discarded-by-most-democracies-is-misused-in-india-61fcb8768d15c>

<sup>49</sup> See supra note 47

<sup>50</sup> India Today, *How various countries have junked sedition law* <https://www.google.com/search?q=countries+that+abolished+sedition&oq=countries+that+abolished+sed&aqs=chrome.2.69i57j33i16012.7021j0j15&sourceid=chrome&ie=UTF-8>

<sup>51</sup> Law Commission of India, Consultation Program on Sedition, 30 August 2018, <https://lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf>

<sup>52</sup> International Covenant on Civil and Political Rights (April 23, 2020) <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25196>

<sup>53</sup> Yuval Noah Harrari, *The Myth of Freedom* <https://www.theguardian.com/books/2018/sep/14/yuval-noah-harrari-the-new-threat-to-liberal-democracy>

## V. SUGGESTIONS

The Supreme Court temporarily suspended the sedition law in 2022 for the Government to review the legislation. While this is still a very cardinal step, ‘abeyance’ itself doesn’t guarantee rescinding the law. Ideally the law should be abrogated but even if it is not, there could be some remedies that would help prevent the abuse of the section.

Firstly, there are several tests for sedition laid down by the American Judiciary. The Brandenburg Test extradited in *Brandenburg v. Ohio*<sup>54</sup> primarily consists of two parts: 1. The speech is “directed to inciting or producing imminent lawless action,” and 2. The speech is “likely to incite or produce such action. This test’s been accepted in India in the *Arup Bhayan* case<sup>55</sup> and as an extension of this, the clear and present danger test must be applied to show that the threat is practically eminent and real; and it is not just the government’s wounded ego.

Secondly, an originalist interpretation must be given to 124A. Originalist interpretation would unabashedly imply that the reason behind bringing this statute was security and stability of British regimes against ‘Indians.’ Even in America, the Espionage Act followed by sedition law was enacted to prosecute the European immigrants.<sup>56</sup> To sum up, these laws were used to prosecute foreign nationals, and not the citizens of one’s own country. *Kedar Nath* has narrowed down the scope of section 124A but it can be further narrowed down by adopting the same approach as that of the United Kingdom - sedition can be applied only to alien enemies.

Furthermore, and most essentially, the word disaffection should be deleted. The word ‘disaffection’ operates under the presumption that government is entitled to affection, which is the antithesis of democracy. Secondly, prosecution because of showing disaffection shows that government is insensitive to anything that is ‘not affection.’ This poses the risk of getting political atmosphere getting totalitarian. The word could instead be replaced with subversion.

Moreover, sedition should be strictly limited to the subversion of government body and mustn’t be applied to defaming a government officer. As affirmed in *New York Times Co. v Sullivan*,<sup>57</sup> for public officials to show they are libelled, two things should be proven: That the statement is false and the intent is deliberately malicious. In such cases truth as defence can play a part.<sup>58</sup>

The offence should be immediately made non-cognisable. This will put limits on pre-trial

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<sup>54</sup> *Brandenburg v. Ohio* 395 U.S. 444 (1969), United States Supreme Court, 1969

<sup>55</sup> *Arup Bhuyan Vs. State of Assam* reported in 2011 (2) Scale 210 = 2011 AIR SCW 976

<sup>56</sup> Jack Miller Centre <https://jackmillercenter.org/cd-resources/espionage-sedition-acts/?category=sedition-incident>

<sup>57</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), U.S. Supreme Court 1964

<sup>58</sup> Jack Miller Centre, <https://jackmillercenter.org/cd-resources/people-v-croswell-1804/?category=sedition-incident>

detention. If dissidents are sent to rot in jail only for voicing their opinions, then a quasi-judicial body should be created for speedy trials; which in turn would make sure that governments aren't using the law to intimidate via legal processes. The main clause can be narrowed by adding provisos. Like Spanish law, differentiation can be made between 'sedition,' 'rebellion,' and 'disobedience.'<sup>59</sup>

## VI. CONCLUSION

Critics of the anti-sedition movement argue that abrogating s.124A would create anarchial situation by giving a play-ground to "anti-national" elements. History, however, tells us that presence of oppressive governments is unfailingly followed by dystopia that overthrows an establishment. It is paramount that we criticize the government, because time and again social and political reforms have been brought about by the seditionists that paved the way for betterment of the country. Sedition law in modern India is not only threatening the democracy, but also tearing the social fabric apart. As a result, we no longer have a shared understanding of what 'nationalism' really means. It is about time the law is abolished, because increasing misuse of sedition laws faces a momentous risk of getting Orwellian and Orwellian rarely ends well.

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<sup>59</sup> Elnacional.cat [https://www.elnacional.cat/en/politics/sedition-rebellion-disobedience-spanish-law-catalan-trial\\_428411\\_102.html](https://www.elnacional.cat/en/politics/sedition-rebellion-disobedience-spanish-law-catalan-trial_428411_102.html) Last