DISSERTATION

Sedition Law: A Weapon against Freedom of Speech and Expression – A Critical Analysis.

SUBMITTED TO

INSTITUTE OF LAW, NIRMA UNIVERSITY

AS A PARTIAL FULFILLMENT OF REQUIREMENT FOR THE

DEGREE OF MASTER OF LAWS (LL.M)

UNDER THE GUIDANCE OF

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TABLE OF CONTENTS

DECLARATION

I, Anamika Tyagi, bearing roll no. 19ML003, do hereby declare that the dissertation submitted is original and is the outcome of the independent investigations/ research carried out by me and contains no plagiarism. The dissertation is leading to the discovery of new facts/ techniques/ correlation of scientific facts already known. This work has not been submitted to any other University or body in quest of a degree, diploma or any other kind of academic award.

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This is to certify that the dissertation entitled "Sedition Law: A Weapon against Freedom of Speech and Expression– A Critical Analysis" has been prepared by Anamika Tyagi under my supervision and guidance. The dissertation is carried out by her after careful research and investigation. The work of the dissertation is of the standard expected of a candidate for Master of Laws [LLM] in Constitutional Law and I recommend it be sent for evaluation.

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"If Liberty means anything at all,

it means the Right to tell people what they do not want to hear."

- George Orwell

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ABSTRACT/SUMMARY

The present research is based on qualitative aspect covering the topic. It is a critical review of Sedition Law and its impact on Indians. As it is relic of colonial rule, the discussion has also dwelt on the Freedom of Speech and Expression including how Sedition curtails it. The study discusses about Sedition law being contrary to public interest. It analyses the intention of British in enacting the Sedition Law. How the British Empire misused it during many epidemics and in trials of freedom fighters have been dealt with in detail.

The research traces the origin and development of Freedom of Speech and Expression, especially emphasis laid by framers of the Constitution on preserving such freedom. Also, the study analyses reasonable restrictions imposed on such freedom and how Sedition Law inspite of such restrictions remains subservient to Freedom of Speech. It has also been discussed that Right to Information Act is very much integral to Freedom of Speech and Expression.

The research also deals with the issue of Public Interest and as to how Sedition Law is not in accordance with "*Salus Populi Suprema Lex*". The Sedition Law has adversely impacted the lives of people. It is an archaic law which interferes with peaceful enjoyment of life. The law continues to be in statute inspite of its colonial past. The research has emphasized on the need to send it to bin, especially when it has been abolished in most modern societies and democracies of the world.

The study concludes that dissenters who dare to speak must be protected. The higher ideals of human spirit can be realized only if Freedom of Speech and Expression is unbounded and law such as one on Sedition cannot curtail it.

LIST OF ABBREVIATION

AIR: All India Reporter	H.R.: Human Right
Art.: Article	I.L.R.: International Law Reports
Bom.: Bombay	I.P.C.: Indian Penal Code
BOMLR: Bombay Law Reporter	IT Act: Information Technology Act
C.r.P.C: Criminal Procedure Code	J&K: Jammu and Kashmir
CAA: Citizenship Amendment Act	Ltd.: Limited
Co.: Company	NCRB: National Crime Records Bureau
COVID19: Corona Virus Disease 2019	Ors.: Others
CriLJ: Criminal Law Journal	P.N.J.: Principle of Natural Justice
Ed.: Edition	RTI Act: Right to Information Act
Etc.: Et cetera	S.C.: Supreme Court
F.R.: Fundamental Right	SCR: Supreme Court Reports
FIR: First Information Report	Sec.: Section
G.G.: Governor General	U.O.I: Union of India
Govt.: Government	U.S.: United States
H.C.: High Court	Vs./V.: Versus

TABLE OF CASES

TABLE OF FIGURES

CHAPTER 1: INTRODUCTION

1.1. Literature Review

This research is based on the qualitative aspect of the topic. The colonial history behind the sedition law has been studied in detail in the research. The impact of sedition law during British times and its continuance in free India has also been carefully studied. Its impact upon the modern society has made it necessary to preserve freedom of speech and expression. The thesis delves into the need for restoring such freedom for peaceful enjoyment of human life.

Resources Used:

The following paragraphs have been extracted for the purpose of literature review on the topic titled ***"SEDITION LAW: A WEAPON AGAINST FREEDOM OF SPEECH AND EXPRESSION"***

I. *Legislative Measures in India for Restraining the Freedom of the Press*, 1 Jurist Q.J. Juris. & Legis. 74, 75 (1827).

   The paper discusses in great detail the origins of Censorship in colonial India. It is an interesting read to understand how censorship since its inception seems to have been an illegal weapon in the hands of the executive. The paper helped researcher form a crucial link between suppression of Free Speech and Expression by the British through simple Governor General circulars to enactment of a draconian Sedition Law.

II. Reba Chaudburi, *The Story of the Indian Press*, Econ Polit Wkly 292, 347 (1955).

   The article details the use of *Press censorship* to kill any and all forms of Nationalist Movement in India. It discusses in depth the contributions of our

then leaders Raja Ram Mohan Roy, Mahatma Gandhi, etc. to unite the people of India through their newsprint articles and how the British used the tool of ***Sedition*** to limit freedom of speech of prominent Indian leaders. This paper helped researcher conclude that *Free Press* was synonymous with *Freedom of Speech & Expression*, the way it is understood even today.

III. Philip Hamburger, *The Development of the Law of Seditious Libel and the Control of the Press*, 37 STAN. L. Rev. 661, 672 (1985).

This article presents as to how Sedition Law evolved from 16th century to 18th century. It relates about relation that existed between Press and the Government. It traces the erosion that took places of legal Institution that enacted law of Sedition to curb freedom of press. In mid-16th century, the kingship used treason law, heresy Scandalum Magnum, etc to deal with press. The court proceedings and opinion of people, over the year, forced state to abandon all Seditious laws one after other.

IV. Stuart Roberts, *A Tryst With Destiny*, THE UNIVERSITY OF CAMBRIDGE (Feb. 24, 2020, 11:09 PM), https://www.cam.ac.uk/files/a-tryst-with-destiny/index.html.

"Before the attainment of freedom, we had undergone all the pains of labor such that our hearts start grieving. Nevertheless, the past is gone, and it is the future that beckons to us now, etc." - excerpt from the book. The book focuses on the uniqueness of Free Speech. The paragraphs become relevant for studying advent and development of freedom of speech & expression while also understanding its values. However, focus would not only be on history but also on the abuse of power by the state in current scenarios wherein, free speech of Indians are curtailed many a times. The extracted work has been derived from

a website that is very much limited to history and does not provide any information about and is not a research material for modern times, which as per the understanding of researcher is a negative point. However, it is important for linking or connecting it with lost concept of freedom of speech and expression.

V. Davidus, *Salus populi suprema lex*, MEDIUM (April 15, 2020, 3:17 PM) https://medium.com/the-jurisprude/salus-populi-suprema-lex-f6360fd10f1.

The article gives an interesting account about evolution of Cicero's philosophy of '*Salus Populi Suprema Lex*' and how the philosophy evolved to drive better governance over centuries amongst states.

VI. David Fate Norton, *Salus Populi Suprema Lex*, 308 FORTNIGHT 14, 16 (1992).

This article traces and debates the role of *Salus Populi Suprema Lex* philosophy in the governance of a state. The author of the article gives details of how the philosophy should be implemented and also the treatment that should be meted to the governments that should fail to implement it for the benefit of the people. It is a thought provoking read on how the legal maxim could possibly be used to curtail the government's abuse of authority.

VII. Anthony Lester, *The Overseas Trade in the American Bill of Rights*, 88 Colum. L. Rev. 537, 555 (1988).

This article details how the framers of the U.S. Constitution helped emerging countries of those times in Europe and Asia in their understanding of common law, which was enshrined in the Bill of Rights. The articles discusses in detail how the fair decisions that the Judiciary of America took to uphold the rights of American citizens, inspired countries around the world. The researcher finds

this article intriguing during her research and found it useful to understand the specifics related to researcher's area of study on 'Sedition Law'.

1.2. About the Study

Due to the advent of technology, cyberspace, globally, and intellectual advances; a modern society has emerged in the country and has resulted into innovative age; wherein there is a need for better understanding among the citizens. Researcher does a critical review of sedition law's impact on Indians, especially during the current times. The sedition law is a relic of colonial rule, while dissent is a part of vibrant democracy. These laws are not in vogue in Britain, wherein they have been totally dismantled. Furthermore, the terms such as ***"disaffection"***, ***"hatred"***, etc. continue to haunt those who dare to be critical of the government. Additionally, this law is not at all required as armed rebellion, overthrow of government, violence, terrorism, etc., are already covered in different laws as well as under other provisions of IPC.

1.2.1. <u>The objectives of the study are as follows:</u>

1. To study the purpose of enactment of Sec. 124 A in the Indian Penal Code, 1860
2. To trace the historical perspective of Sedition Law
3. To describe the advent and development of Freedom of Speech in India including its value in a democratic society
4. To study misuse of the Law of Sedition during the British times and in modern or independent India
5. To determine the impact of sedition law on Indian psyche
6. To analyse the need for scrapping the law of Sedition

1.2.2. <u>Research Questions are as under:</u>

1. Whether freedom of speech & expression is an absolute fundamental right or not?

2. Whether Sedition Law is an antithesis to Freedom of Speech or not?
3. Is Sedition Law contrary to Public Interest?

1.2.3. Hypothesis is as follows:

Researcher presumes that discussion on Sedition Law would be fruitful if and only if apolitical platform is used to critically analyse its merits and demerits from public interest perspective.

1.2.4. Conceptual Framework:

Readers would be inclined towards freedom of speech and expression, wherein this paper could help them in developing an understanding about how sedition law curtails this freedom. The age old saying ***"Old wine in a new bottle"*** comes out true about efforts to retain Sedition Law. The freedom was remembered and understood by the researcher through the following golden words of freedom fighters:

- ***"Swaraj is my birth right and I shall have it"***- Bal Gangadhar Tilak,
- ***"Give me blood and I will get you freedom"***- Subash Chandra Bose.

Poeticization of the law does not take away the essence of the law. Literature is reflection of society and does find its way in law. This unique blend between law and literature is essential for developing a conceptual framework. In furtherance to the above, the researcher is keen to recall the golden words of Pt. Nehru's popular midnight ***"Tryst with Destiny"*** speech. These quotes give an insight into the minds of our freedom fighter leaders and help in understanding, the nature, meaning and conceptual understanding of freedom of speech and expression would be cleared to the readers. This paper provides the reader with Freedom of speech and expression and its importance in giving birth to doctrine of public interest.

1.2.5. Methodology:

The thesis focusses on following methodology:

Data Collection:

a. Doctrinal Research would be the approach for making an effort for evaluatory, evolutionary descriptive, exploratory, explanatory, descriptive, remedial & analytical research. Qualitative approach would be resorted to all through.
b. Experimenting through two variables, Sedition law which is an independent variable and public interest which is the dependent variable.
c. Literature Survey of the study of case analysis would be done.
d. Secondary Data Review through books, cases, available content online, etc. would be carried out.

Data Analysis/Discussion:

Researcher is analysing the data through contemporary approach and unearthing the crux of freedom of speech and expression. Discussion & descent on the subject, would be done and conclusions drawn.

1.3. Understanding intentions of British Empire

The law on Sedition, simply, a remnant of British legacy as the codification of this law was done in India after the first freedom struggle in 1857. To curb dissent arising out of freedom struggle, the British thought of bringing the code. It is pertinent to note that this first freedom struggle was termed as '*1857 Mutiny*' by the British. In 1858, Queen's Charter came into being for suppressing the revolts for achieving freedom. An age old adage, popularised by the British ***"Sun never sets on the Empire";*** was passed on to Indians for insubordination to the British. Laws were codified thereafter and Indian Penal Code came into being in 1860. In 1870, Section 124A of

IPC was inserted for the purpose of stifling the voice of dissent of Indians, and was infamously termed as Draconian law.

This law was born out of Lord Macaulay's loyalty to Her Majesty Queen of England. Sedition law was used as a weapon by the British with an aim to make people obey the authorities. Disobeyance was considered as a social stigma. Furthermore, people who raised their voices against the establishment were termed as traitors, the ones who were waging war against the government. This all was done in the name of security, unity, fraternity, integrity and dignity of India. They termed the so called ***'Seditionists'*** as criminals or offenders. At times, a group of citizens or a community were also grouped in as criminals. This thesis intends to bring out the offbeat impious manner in which the British wanted to control the thought process of Indians, while having complete disregard for their culture.

The present time of COVID-19 pandemic across the world, reminds one of the past when the State had gone on to curb restrictions on '*Free Press*'. In 1897, the Bombay High Court booked Bal Gangadhar Tilak under Sedition Law, Sec. 124A of IPC. In British India, he was the first person who was held guilty for sedition during the times of Indian plague pandemic. It was the fear of Tilak's articles in the Marathi newspaper '*Kesari'* that the British thought could inspire the people to start a revolt.

A major lesson from this event for the Government of the day- the Governments must be careful not to initiate disproportionate steps in curbing liberties of the people especially in times of crisis.

1.3.1. <u>The Epidemic Diseases Act (1897)</u>

It was in January 1897 that Sir John Woodburn, a member of Viceroy's council proposed a bill to help government combat plague. The main objective was to curb the plague from spreading to other parts of the country so that foreign countries do not ban

British Indian ships from docking at their ports. The Foreign nations were alarmed at the possible infection from India. Especially, Russia had declared India to be infected. The Act was thus safeguarding commercial interests of colonial rule by allaying fears of foreign countries.

This Act of 1897 provided the council of Viceroy powers to prevent any epidemic disease. This led to creation of regulations in Bombay, which provided the municipal commissioner with the power to bring down unhygienic buildings. Passengers were deboarded from trains and checked by medical officers on the stations. Those who were suspected of having plague were held. People were asked to submit details of their travel plans to village headman, who was to observe the subject and report on the health.

Indians then were suspicious of hospitals. Hence, the officials would visit homes and forcibly send plague patients for treatment. Families concealed their sick. In Poona, the Army was used by plague commissioner to carry out house to house search much to the resentment of people. Army personnel violated the modesty of women.

1.3.2. The trial of Tilak

It was in those times that Tilak's Marathi newspaper, *Kesari*, carried articles, two in number on 15 June 1897, wherein he glorified the personality of Shivaji, while lamenting the prevalent situation in the country. He focused on the relentless death and spread of epidemics /diseases in the country. The article read, ***"In Shivaji's time, no man could have dared to cast an improper glance at the wife of another, whereas now, opportunities are availed of in railway carriages, and women are dragged by the***

hand". The second article was full of praise of Shivaji for killing Afzal Khan, citing Krishna in Gita.[1]

Later on, after *Kesari* articles appeared, plague commissioner Walter Rand got killed by Damodar Chapekar. Assuming these articles instigated the murder, the government arrested Tilak under sedition. His prosecution took place in the Bombay High Court in 1897.

Bubonic plague was issue of discussion during Tilak's trial. Advocate General Basil Lang submitted to the court that Tilak spoke ***"at a time when much excitement and distress existed"*** due to the famine. He argued that government measures were needed to prevent the spread of plague. Tilak's advocate pleaded that he had cooperated with the government in their measures against the plague and did not intend to cause ***"disaffection"***.

Justice Arthur Strachey stated before the Jury that ***"a man was not free to strongly condemn the government's attempts to suppress the plague"***. This was sedition as as a journalist he intended to make his readers hate the government. The Justice felt that an article ***"published at a time of profound peace, prosperity and contentment"*** may be ignored, but not the one ***"at a time of agitation and unrest"***. He felt that Tilak's comments were on government measures in ***"violent and bitter"*** words, so much so that ***"ignorant people at a time of great public excitement"*** may ***"not be keen to obey / support the Government"***. This he felt, amounted to sedition. He further stated that the readers of the *Kesari* were neither English nor Parsi nor cultivated /philosophic Hindus, but they belong to Deccan or Konkan regions or are Marathas. This was in a way, the British style to look down upon its subjects.

[1] See Generally, STANLEY WOLPERT, REVIVAL AND FREEDOM IN TILAK AND GOKHALE: REVOLUTION AND REFORM 96-99 (2d ed. 1977).

The Jury pronounced him guilty by a 7-2 verdict. He was jailed for 18 months. It was a first-ever conviction for sedition in British India.

Justice Strachey felt that sedition meant the ***"absence of affection"***[2] towards the government, making listeners hate the government. This ruling had a long term impact and scores of Indian freedom fighters were sent to prison on this ground.

When the Federal Court of India wanted to define Sedition in India as it was in England, the Privy Council in London reversed the court's decision. Thus, the rights, available to Indians at that time were inferior to those available to the British. This, further, indicated that the Sedition Law was drafted with a colonial mind set. It was much later after Independence in 1962 that Apex Court held that Sedition could be meaningful only if public disorder, violence or disturbance of public peace was there. This position exists even today.

1.4. Conceptual Understanding

The provisions of the law of 1860 continues to be used in 21st century. However, the first amendment to US Constitution which was brought in 1791, is a part of Bill of rights imposing restriction on government to regulate all sorts of freedoms that included Freedom of Speech and Expression. India still lags far behind as far as freedom of speech is concerned. The current Indian government has also been walking the path treaded by the British, which amounts to abuse of power by the State. Many platforms have got politicized, the voices are now suppressed through political influence and pressure. In the case of the State of Jammu & Kashmir, despite not having any authority and without providing the people with prior notice; which is required to be given under Sec. 144 of CRPC, 1973; the State arbitrarily decided to impose the internet ban. The principle of natural justice is not being afforded as nobody is bestowed with the fair

[2] *Id. at* 101.

opportunity of being heard. In such a scenario, civil society and youth have peacefully protested against Draconian law that is nothing but merely a section.[3] This provision of IPC reads as follows:

> ***"Any person by words, either spoken / written, / by signs, / by visible representation, or otherwise, brings or attempts to bring into hatred / contempt, / excites / attempts to excite disaffection towards that Indian government which is established by law."*** [4]

1.5. Understanding the essentiality of research

The belief in the supremacy of constitution and its primacy over other laws leads one to conclude that Sedition Law must go. Constitution is supreme law of the land in the country that implies that there exists rule of law. So, laws not in consonance with the provision of the constitution must be removed from the statute either by the Government or held anti-constitutional by Apex Court.

[3] *Advocate Khoj*, THE ADVOCATE KHOJ (Feb. 25, 2020, 11: 00 PM), https://www.advocatekhoj.com/library/bareacts/indianpenalcode/index.php?Title=Indian%20Penal%20Code,%201860.

[4] DHIRAJLAL KESHAVLAL THAKORE, RATANLAL RANCHHODDAS, et al., OF OFFENCES AGAINST THE STATE IN RATANLAL & DHIRAJLAL THE INDIAN PENAL CODE 224-225 (1st ed., 2014).

CHAPTER 2: ORIGIN AND DEVELOPMENT OF FREEDOM OF SPEECH & EXPRESSION

In the famous Romesh Thappar v. State of Madras (1950), [5] Justice Shastri of Supreme Court of India, while pronouncing judgement ruled -

> ***"Freedom of speech and of press is at the foundation of all democratic institutions, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is feasible "***[6]

This judgement was complete in itself; as it went on to explain the intention of framers of the Constitution who had upheld citizens' right to freedom of speech, thought and expression. Furthermore, this is thought essential for a citizen's growth together along with progress of a nation.

This article about Freedom of Speech and Expression empowers citizens of the country considerably and many a times led to the state to curb them leading to Judicial review of State action.

This Right to Freedom of Speech and Expression had led to very first judicial review and the First Amendment to Indian Constitution right after independence, giving the nation the Article 19 (2) and imposing curbs on the absolute freedom proclaimed under Article 19(1). This amended Article, specifically, empowers the Sedition Law i.e. Section 124(A) of IPC.

[5] Romesh Thappar v. State of Madras, 1950 AIR 124, 1950 SCR 594.
[6] *Ibid.*

In order to arrive at the true nature of this right, it is would be necessary to trace the reasons behind imposition of first restrictions and the consequent landmark judgements passed over the years.

In this Chapter, we try to carry out an analysis and develop an understanding of evolution & development of 'Free Speech' in India through related legislative debates, discussions & policies; which interestingly also placed restrictions over the same.

For the ease of discussion as also details, the journey of Free Speech in country was analysed over following two periods:

1. Prior to Independence: Before 1947
2. After Independence: 1947 Onwards

2.1. Analysis of Freedom of Speech and Expression through Constitution of India

Before independence in British India, Free Speech, had become synonymous with Press Freedom. It was so, as only literate Indians opposed the restrictions on the press and the British rule. Journalism became a tool in their hands to oppose the government policies. The Press also vehemently supported the movement for freedom.

It was Lord Wellesley[7] who first brought in restrictions on press. He became a self-appointed 'Censor', who had the power to strike out all content that was against the British in the newspapers. He directed that none of the parts could go in the print without sanction of state[8]. The disobedience was arbitrarily punished, which was defined as 'immediate banishment from the country'[9]. There was no law on censorship and it was carried out through an executive order. No judicial review was permitted.

[7] *Legislative Measures in India for Restraining the Freedom of the Press*, 1 JURIST Q.J. JURIS. & LEGIS. 74, 75 (1827).
[8] *Ibid.*
[9] *Ibid.*

This censorship through circular continued to remain in place at the pleasure of the Governor General till the year 1823[10].

Later, series of laws were enacted with an aim to restrict Free Press as also to suppress the Nationalist movement in India. The following were the acts brought in by British Government -

- Vernacular Press Act (1878) – To suppress 1857 types of revolts against the British[11]
- Press Emergency Act (1931) – brought in to suppress Salt Satyagraha started by Mahatma Gandhi and other future nationalist movements[12]

As already mentioned in Chapter 1 (**1.3. Understanding the intentions of the British**), these revolts also brought into force the dreadful Sedition Act, codified under Section 124A of IPC, primarily to undermine the voices of dissent of Indian Nationals.

Bal Gangadhar Tilak, was booked under Sedition, for expressing his ***"dissatisfaction"*** with government of that time through means of the Newsprint. The following cases help comprehend the infringement related to curtailment of Free Speech by imposing law on Sedition.

- Emperor v. Bal Gangadhar Tilak (1909)[13]
- B. G. Tilak (1897) I.L.R. 22 Bom. 112,151[14]
- Emperor v. B.G. Tilak (1916) [15]

Mahatma Gandhi was charged with sedition and imprisoned for a period of six years for his articles in ***'Young India'***. These articles primarily focused on challenging the British and hence they ordered stopping of circulation of the journal. Gandhi said ***"It***

[10] *Ibid*.
[11] Reba Chaudburi, *The Story of the Indian Press*, ECON POLIT WKLY 292, 347 (1955).
[12] *Id.* at 348.
[13] THE INDIAN KANOON (May 19, 2020, 11:30 AM), https://indiankanoon.org/doc/1430706/.
[14] *Ibid*.
[15] THE INDIAN KANOON (May 22, 2020, 12:00 PM), https://indiankanoon.org/doc/1188602/.

was his privilege to be charged with sedition"[16]. He was also of the opinion that people should be allowed to freely express their disaffection towards the government unless when the intention is to incite violence.

The more were the curb imposed on Freedom of Speech and Expression, the more was the realization among the Freedom Fighters about the importance of 'Free Speech' for the citizens.

The demand for free speech was first put forward by Bal Gangadhar Tilak[17] in 1895, as part of the 'Swaraj Bill', also known as The Constitution of India Bill, which envisaged complete freedom from Britain. From then on, he was supported by the Indian National Congress, which also resolved to guarantee it as one of the Fundamental Rights in the Constitution of India.

The Sapru Committee deliberated on the subject in the year 1944-45[18] and it was reflected in the Constitution of India in 1950, which guaranteed it as part of the Fundamental Rights.

2.1.1. Is Article 19(1) 'Free, Fair and Liberal'?

The Article 19(1) of the Constitution Of India provides that –

"(1) All citizens enjoy the rights related to

a- freedom of speech and expression;

b- assemble peaceably and without arms;

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[16] *Statement in the Great Trial of 1922*, MKGANDHI.ORG (May 15, 2020, 9:30 PM), https://www.mkgandhi.org/speeches/gto1922.htm#:~:text=Great%20Trial%20of%201922%20%7C%20Famous%20Speeches%20by%20Mahatma%20Gandhi&text=%5BThe%20historical%20trial%20of%20Mahatma,18th%20March%201922%2C%20before%20.

[17] TERENCE C. HALLIDAY, LUCIEN KARPIK, et al., PRIESTS IN THE TEMPLE OF JUSTICE: THE INDIAN LEGAL COMPLEX AND THE BASIC STRUCTURE DOCTRINE IN FATES OF POLITICAL LIBERALISM IN THE BRITISH POST-COLONY 115 (Cambridge University Press, 2012).

[18] *Sapru Committee Report (Sir Tej Bahadur Sapru, 1945)*, CAD INDIA BLOG (July 1, 2020, 4:00 PM), https://www.constitutionofindia.net/historical_constitutions/sapru_committee_report__sir_tej_bahadur_sapru__1945__1st%20December%201945#:~:text=The%20Report%20had%20a%20section,press%2C%20religious%20freedom%20and%20equality.

c- form associations or unions"[19]

Article 19(1) is the most important fundamental right of the Constitution of India. This article allows an individual to express his opinions, ideas, aspirations, etc. without any sort of inhibition. This freedom however turned out to be a short lived promise as within a few months of the Constitution of India coming into force – the Free Speech was sought to be curtailed in the cases of ***Romesh Thappar v. State of Madras***[20] and ***Brij Bhushan v. State of Delhi***.[21]

Romesh Thappar v. State of Madras (1950): Romesh Thappar, a noted communist and editor of English weekly *Cross Roads*, made allegations in the weekly against the Government of Madras. He alleged that the Madras Government was restricting free speech by banning *Cross Roads* circulation and declaring communists as anti-nationals.[22]

Brij Bhushan v. State of Delhi (1950): A Delhi based English weekly, *Organiser*, published a few articles on Partition. The Chief Commissioner of Delhi prohibited the weekly on the pretext that the articles were inflammatory in nature. [23]

Both the States of Delhi and Madras justified these bans on grounds that the newsprints disturbed *public safety* and *public order*. The Supreme Court, however, held that the limitations to Freedom of Speech and Expression provided under Article 19(2) could not curbed in the name of '*public safety'* and '*public order';* thus declaring the State acts as unconstitutional – upholding right to Free Press encompassed in Freedom of Speech and Expression.

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[19] P.M. BAKSHI, THE CONSTITUTION OF INDIA 34-35 (New Delhi: Universal Publishing Co. Pvt. Ltd., 10th Ed., 2010).
[20] Romesh Thappar v. State of Madras, 1950 AIR 124, 1950 SCR 594.
[21] Brij Bhushan v. State of Delhi (1950), 1950 AIR 129, 1950 SCR 605.
[22] Romesh Thappar v. State of Madras, 1950 AIR 124, 1950 SCR 594.
[23] Brij Bhushan v. State of Delhi (1950), 1950 AIR 129, 1950 SCR 605.

However, such judgements led to introduction of restrictive clauses to Article 19(1) i.e. Article 19(2). In 1951, very **1st Amendment in Indian Constitution** was introduced by Home Ministry of our then Prime Minister Pandit Nehru.

Amendment brought into Article 19(2):

- Word 'reasonable' inserted before 'Restrictions'
- Syntax "Friendly relations with foreign state" and "Public Order" made grounds for placing restrictions

The Article 19(2) of the Constitution Of India provides–

> ***"(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."***[24]

2.1.2. Freedom of Speech includes Freedom for Publication

The Constitution of India guarantees the Right to 'Free Press' under the Right to Freedom of Speech and Expression.

Sakal Papers (P) Ltd. and Ors. v. Union of India (1961)[25]: Sakal Papers challenged the Newspaper (Price Page) Act (1956) & Daily Newspaper (Price and Page) order (1960) which basically allowed the Central Government to regulate the cost of newsprints with respect to the number of pages, size and allocation of advertisement space.

Bennett Coleman & Co. v. Union of India (1973)[26]: Bennett Coleman & Co. challenged the News Print Policy (1972-73).

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[24] P.M. BAKSHI, THE CONSTITUTION OF INDIA 34-35 (New Delhi: Universal Publishing Co. Pvt. Ltd., 10th Ed., 2010).
[25] Sakal Papers (P) Ltd. and Ors. v. Union of India, 1962 AIR 305, 1962 SCR (3) 842.
[26] Bennett Coleman & Co. v. Union of India (1973), 1973 AIR 106, 1973 SCR (2) 757.

Indian Express v. Union of India (1984)[27]: The Indian Express Newspaper opposed the imposition of too high a custom duty since it unfavourably affected the costs and circulation.

The Supreme Court of India came to the rescue of the press in all three cases.

In Sakal Papers v. Union of India, the interrelationship amongst Art. 19 (1)(a) and Art. 19(1)(g) was established. The newspaper Act of 1956 and 1960 were declared *ultra vires* as the Government was carrying out arbitrary pricing of the newspaper on basis of pages, sizes and advertisement allocation space. [28]

In Bennett Coleman & Co. v. Union of India, the emphasis was on quantity (of circulation) and quality (of content), implying explicitly that freedom of press is both qualitative and quantitative in nature.

In Indian Express v. Union of India, the ***"direct effect test"*** was considered important. 'Free Press' was essential to Freedom of Speech and Expression then and now. The Court had observed that the pretext of scarcity of newsprint leading to fixing of quotas, was an indirect way of curtailing the freedom of speech and expression. The direct effect of this would require the newspaper to either bear economic losses due to drop in advertisements or reduction of content.

In all three cases, we see that the government used its power to curtail free press and thus in turn restricted freedom of speech and expression through imposition of taxes arbitrarily, deciding newsprint costs, etc.

Thus, when the government became the judge in its own cause by not allowing dissent, the court came to the rescue for protecting the true spirit of Article 19 (1)(a) and played the role of a watchdog of the Constitution of India.

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[27] Indian Express v. Union of India (1984), 1986 AIR 515, 1985 SCR (2) 287.

[28] Anthony Lester, *The Overseas Trade in the American Bill of Rights*, 88 COLUM. L. REV. 537, 555 (1988).

2.1.3. Freedom of Speech & Expression is Freedom from fear of detention

Detention in cases of Sedition becomes unlawful detention and thus violates Article 19 of the Constitution of India. Arriving at an in-depth understanding and analysis of lawful or unlawful detention is out of the scope of this study. However, it is extremely important to understand its impact with respect to Law of Sedition and it's disassociation from Article 19.

The case of Ram Singh v. Union of Delhi (1951) [29] presented the judiciary with the challenge of identifying 'wrongful or rightful detention' and if it falls within the ambit of Freedom of Speech and Expression (i.e. Article 19 (1)) – considering once under confinement an individual loses his/her right to Freedom of Speech and Expression.

Ram Singh v. Union of Delhi[30]: Hindu Mahasabha members were detained (under the Preventive Detention Act, 1950) for making provocative speeches which could likely cause tensions between Hindu and Muslim community members. The petitioner claimed that his speech was prejudged while invoking "*public order*", which could not be valid reason for detention.

The Supreme Court held that, though through preventive detention, the accused are at a loss of rights not only under Art. 19(1), but also under Art. 21 and Art. 22, which have to be read together to understand the impact on the infringement of personal liberty with respect to preventive detention.

The Article 19(1) provides for freedoms related to expression, speech, act, assembly, etc. which are absolute for the citizens unless in a situation the restrictions called out in Article 19(2) come into existence.

[29] Ram Singh vs. Union of Delhi, 1951 AIR 270, 1951 SCR 451.
[30] *Ibid*.

And the specific personal liberty right finds its place in Art. 21. In case, Art. 21 is invoked, Article 22 comes into force guiding the executive in their next steps.

The Article 21, Constitution Of India, states –

> ***"No person shall be deprived of his life or personal liberty except according to procedure established by law"***[31]

The Article 22, Indian Constitution, reads –

> ***"(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice***
> ***(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate***
> ***(3) Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention***
> ***(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months ..."***[32]

In Ram Singh v. Delhi State, appeal was on grounds of infringement of right of Freedom of Speech and Expression. The court held that even in case of Sedition, personal liberty as laid out in Article 21 and 22 remains unaffected and Article 19(1) needs to be read with these two articles.

In yet another case **State of Rajasthan v. Balchand (1977),** Justice Krishna Iyer, held

> ***"The basic rule may perhaps be tersely put as bail, not jail".***[33]

2.1.4. <u>Freedom of Speech & Expression gets curtailed due to Article 19(2) & 368</u>

The Article 368 of the Constitution Of India provides that –

> ***"(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation***

[31] P.M. BAKSHI, THE CONSTITUTION OF INDIA 46 (New Delhi: Universal Publishing Co. Pvt. Ltd., 10th Ed., 2010).
[32] *Ibid.*
[33] State of Rajasthan v. Balchand, 1977 AIR 2447, 1978 SCR (1) 535.

> ***or repeal any provision of this Constitution in accordance with the procedure laid down in this article***
> ***(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended …"***[34]

Article 368 of the Constitution of India empowers the Parliament to amend, repeal, or alter any provision of the Constitution of India. The use or misuse of this article affect the freedom that the citizens of the country enjoy.

In recent times, the Citizenship Amendment Act (CAA) was passed and enacted, which triggered a nation-wide protest and eventually led to arrest of many on the grounds of Sedition.

Many a times, debate is that curtailment of freedom of speech and expression is due to Art. 19(2). Article 19(2) is invoked as a result of abuse of power by the state. The demand of the state for absolute power curtails the absolute right of the citizens. Lord Acton once wrote, ***'Power corrupts and Absolute power corrupts absolutely'***. This has been oft proved by Governments across the world, who repeatedly abuse powers.

The freedoms enshrined under Article 19 have been defined comprehensively but the Governments through lawful means have made amendments to impose restrictions on the same in the name of friendly relations with foreign nations, violence incitement, law and order, etc. Any amendment to Constitution under Article 368 needs to follow the vision and higher ideals envisaged by the framers of the Constitution.

The very first amendment to the Constitution of India brought into force the Article 19(2), which in turn fortified Section 124 A of the IPC imposing restrictions on

[34] P.M. BAKSHI, THE CONSTITUTION OF INDIA 304-305 (New Delhi: Universal Publishing Co. Pvt. Ltd., 10th Ed., 2010).

Freedom of Speech and Expression, making verbal or written communication against the state as seditious.

The noted expert Mr. Krishnamachari[35] did not support the addition of the word '***reasonable'*** before restrictions, as it would open door for legal suits. In the debates of 1951, Mr. Kameshwar Singh, supported free speech and felt that the Government **was sowing the seed of executive despotism**. Dr. Rajendra Prasad in a striking note had said,

> ***"Whether an assent could be provided to a legislation which is unconstitutional and when one is obliged by his oath to preserve, protect and defend the constitution."***[36]
>
> ***How one can be placed behind the bars for exercising his free speech?***

2.1.5. Freedom of Speech & Expression: India and other Democracies

In the pre-independent and post- independent India, the law makers of India always drew inspiration from the precedents set by the Unites States of America and Ireland and also their Rule of Law – especially the Bill of Rights.

In the very first case that came up before the Apex Court in Independent India, *Romesh Thappar v. State of Madras*[37] and later on in *Brij Bhushan v. State of Delhi*[38], the Court can be said to have ruled along the lines of the landmark judgement in United States *Marbury v. Madison (1803)*[39]. The Apex Court had held that 'public order' and 'public safety' are not implied state powers.

India had always been inspired by the First Amendment to the U.S. Constitution. However, the balance between Free Speech and Internal Security continues to be

[35] THE INDIAN KANOON (July 7, 2020, 10:47 AM), https://indiankanoon.org/doc/1389880/.
[36] KALIKINKAR DATTA, THE CIVIL DISOBEDIENCE MOVEMENT IN BUILDERS OF MODERN INDIA: RAJENDRA PRASAD (Publications Division, 1974).
[37] Romesh Thappar v. State of Madras, 1950 AIR 124, 1950 SCR 594.
[38] Brij Bhushan v. State of Delhi (1950), 1950 AIR 129, 1950 SCR 605.
[39] Marbury v. Madison (1803), 5 U.S. 137 (1803).

maintained even today. In the *New York Times Company v. US*[40] case the pertinent question was *in case the information was obtained unlawfully and published*, will the Government be able to punish for 'unlawfully procurement of information' or 'publication'. The Apex Court of the U.S. ruled it to be ***not unlawful***.

These decisions, however, were not arrived at by the Courts in the U.S. when India brought in the First Amendment – restricting Free Speech & Free Press rights; providing needed impetus to Sedition Law and legalizing Preventive Detention under the ambit of preventing the same in Article 22.

Over the years the censorship and restriction on dissent has been increasingly imposed by the executive on pretext of national interests – which is in contrast to what they have in the US and to whom we have always looked up to. India has been witness to censorship and restrictions in all its forms – news media, news print, movies, online content, books – all in the name of national interests. In 1988, India banned *The Satanic Verses*[41], by Salman Rushdie along with the Muslim nations for reasons not related to '*national interest*'. In the year 2016, CBFC denied a rating for the movie *Mohalla Assi*[42], as the movie was about commercialisation of the pilgrim city of Varanasi.

In the year 2020, Reporters Without Borders (here and after to be referred as 'RSF'), which is an advocacy group of press, ranked India **142 out of 180** for the *World Press Freedom Index*[43]. India ranked below –

- the monarchies of UAE (Rank:131) and Qatar (Rank:129),
- the new democracy of Afghanistan (Rank: 122),
- Palestine (Rank:137)

[40] The New York Times Co. v. United States, 403 U.S. 713 (1971).
[41] *Salman Rushdie: India banned Satanic Verses hastily*, BBC (May 28, 2020, 11:45 PM), https://www.bbc.com/news/world-asia-india-19566894.
[42] *Mohalla Assi banned by the censor board*, IMDB (May 28, 2020, 11:00 PM), https://www.imdb.com/news/ni59698781.
[43] REPORTERS WITHOUT BORDERS (May 22, 2020, 11:40 PM), https://rsf.org/en/ranking_table.

- Nepal (Rank: 112)
- Sri Lanka (Rank: 127)
- China (Rank: 117)

But just above Pakistan (Rank: 145)

The United States of America ranked 45th and the United Kingdom ranked 35th.

In the year 2019, India slid from the 140th position[44]. This further decline in Press Freedom in India does not augur well for a democratic nation like ours. The popular opinion of Indian nationals is that they fair better in terms of Freedom of Speech, Expression and thought when compared to other nations.

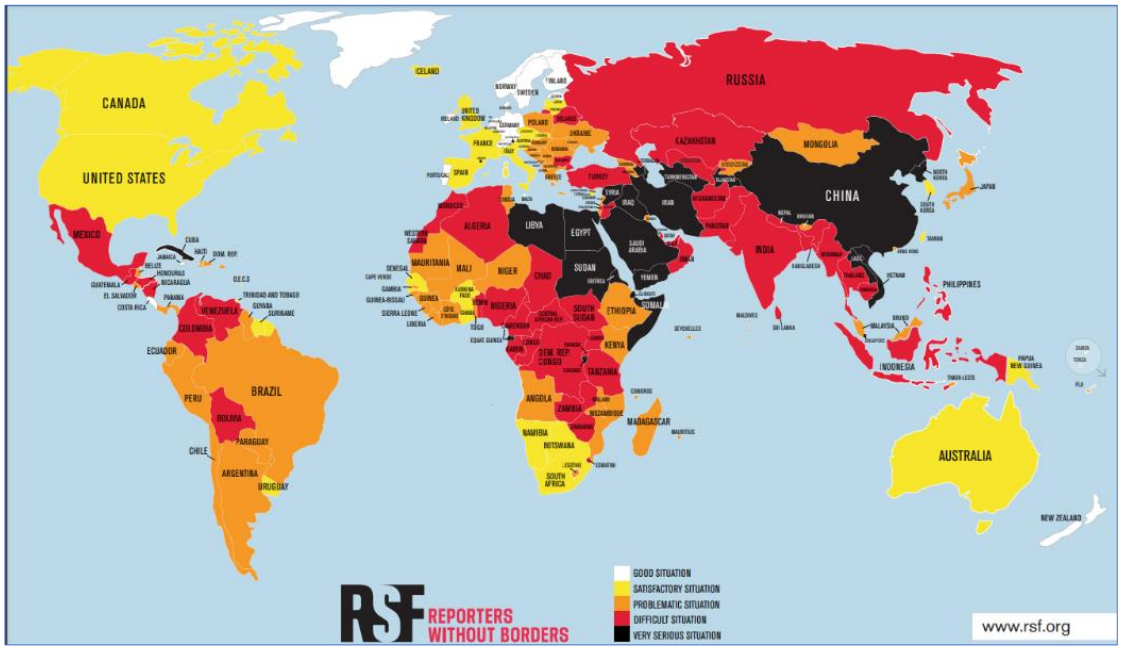

Figure 1: State of World Press Freedom

(Source: World Press Freedom Index 2020 Report https://rsf.org/en/ranking)

However, the above depiction by RSF clearly places 'Press Freedom' in India in a ***'Difficult situation'*** (second worse on the scale) along with Algeria, Russia, Kazakhstan, Pakistan, Turkey, South Sudan, Mexico, Venezuela and other such

[44] *Ibid.*

nations. Interestingly, Brazil, Chile, Ethiopia, Kenya, Mongolia, Malaysia and Japan fair better than us in terms of Freedom of Press.[45]

The pertinent question then would be, ***Is Freedom of Speech & Expression in India a myth or reality?***

2.1.6. Article 19(2) & Section 124-A: Are they compatible or contradictory?

The Sedition Law of India as enshrined under Section 124A of IPC appears to be *ultra-vires* to the Constitution of India as it infringes the rights of citizens of our country, provided as part of Fundamental Right in Article 19(1) (a).

The validity of Sedition Law does not get established simply because it is claimed to be applied as and when necessary by the executive order ***'in the interest of public order'***. However, the Section 124A of IPC continues to be in force since the meaning of ***'in the interest of public order'*** is not restricted to *'violence'* but also includes *'undermining the government or its authority through acts of hatred, contempt or disaffection towards it'*.

Sagolsem Indramani Singh & Ors. v. State of Manipur (1954)[46]: Indramani and group who had organized a meeting, wherein demand for an Independent State of Manipur was discussed and pamphlets highlighting shortcomings of the then State Government were circulated.

The Court held that Sedition Law i.e. Section 124A of IPC is partly valid and partly void. Exciting the sentiment of mere disaffection or carrying out any attempt to cause disaffection is *ultra vires*. However, the restrictions imposed on excitement of hatred or contempt against the Government of India, is also valid under Article 19(2) of the Constitution of India.

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[45] *Ibid.*

[46] Sagolsem Indramani Singh & Ors. v. State of Manipur, 1955 CriLJ 184.

Kedar Nath v. State of Bihar (1962)[47]: The appellant was charged on grounds of Sedition for his speech, in which he criticized the then ruling party and favoured a Communist Party instead.

The Court here ruled that "***incitement of violence"*** is a key factor when proving Sedition. It is also important to help arrive at the constitutional validity of Section 124A and Article 19(1)(a). The Court observed that Security of State is an important factor which could make Section 124A constitutionally valid. Mere strongly worded speech which is made to express dissatisfaction towards the present or previous Governments, does not amount to Sedition. The Court further held that, ***"Citizens have right to speak / write regarding the Government, or its measures, by way of criticizing /commenting, until he doesn't incite violence with intention of creating public disorder against the Indian Government established by law."***[48]

This was a landmark judgement with essential ingredients of modern day Law of Sedition found in the case. Also, the court took a balancing view between acts affecting the Security of State and acts of citizens that empowered them to peacefully participate in the process of democracy.

R.M.D. Chamarbaugwalla v. Union of India[49]: The Apex Court arrived at a similar view and gave judgement as in the case of Kedar Nath.

Shreya Singhal v. Union of India (2015)[50]: Shreya Singhal is a prominent lawyer who filed a Public Interest Litigation in the Supreme Court in the year 2012 raising concerns against Section 66A of Information Technology Act, 2008.

[47] Kedar Nath v. State of Bihar, 1962 AIR 955, 1962 SCR Supl. (2) 769.
[48] *Ibid.*
[49] R.M.D. Chamarbaugwalla v. Union of India, 1957 AIR 628, 1957 SCR 930.
[50] Shreya Singhal v. Union of India, AIR 2015 SC 1523.

Understanding that Section 66A was majorly a duplicate of Section 124A of IPC in disguise, the Supreme Court of India, struck down this Section 66A in the year 2015.[51] The Court held that the Section 66A of IT Act was contrary to the Freedom of Speech and Expression. Further, the Court held that the 'public order' related restrictions under Article 19(2) are eligible only in case of ***"incitement"*** and not in case of ***"advocacy"***. The Court also stated, ***"Intelligible differentia is clear. Internet is an open platform /social media company for all individuals to express their perspective".***[52] This is a landmark case for Modern India, where the Judiciary, upheld the Fundamental Rights of Freedom of Speech and Expression and in turn provided for ***'Free online speech'*** without any arbitrary restrictions.

Freedom of Speech and Expression in our country is not absolute. Our Constitution does guarantee freedom of speech and expression but applies "reasonable restrictions" on the free speech that is a basic human right.

Earlier, online and offline speech were considered to be different under law. As per Section 66A of the Information Technology Act, 2008, any person who posted material that was offensive, inconvenient, injurious, menacing in character or insulting, could be jailed up to three years.[53] The Section 124A of IPC when read together with Section 66A of IT Act reveals the intention of the government invoking Sedition instead of Section 66A to silence dissent.[54] This provision was declared *ultra vires* by Supreme Court in 2015 in Shreya Singhal's case.

Apex Court had held that Free Speech is the basic right of the person including the platforms such as Search Engines and Social Media websites. It absolved such content

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[51] *Ibid.*
[52] *Ibid.*
[53] *Ibid.*
[54] DHIRAJLAL KESHAVLAL THAKORE, RATANLAL RANCHHODDAS, et al., OF OFFENCES AGAINST THE STATE IN RATANLAL & DHIRAJLAL THE INDIAN PENAL CODE 224-225 (1st ed., 2014).

posting platforms from constantly monitoring their platforms for illegal content and enhancing the safe harbor protection. The Supreme Court held that only authorized Government agencies and the Court could direct internet platforms to take down contents not found to be appropriate. It also held that content posting platforms were the "***gatekeepers of digital expression"*** and it was turning platform in India's online free speech regime.

Despite the landmark judgment in Shreya Singhal's case, the authorities have continued their misuse of Section 66A and other measures to curb online speech. A youth from U.P was booked under this Section for criticizing the Chief Minister on the Facebook in 2017. Similarly, a journalist was arrested for his tweets on sculptures of Sun Temple in Konark while another from Manipur was booked under National Security Act and jailed for uploading a video allegedly derogatory towards the Chief Minister.

While there is a need to control the spread of unverified information, rumors and fake news; the various judicial pronouncements including by the Supreme Court of India have held that-

a. The Information Technology provides for safe harbor provisions which implies harmonious construction of Section 79 and 81. [55] This would enable ease of doing business in the country and free speech unabated.
b. In case of any illegal, unwanted material on the Social Media site i.e. unverified information, rumors and fake news can be taken down by the intermediaries on the direction of either the Court or the state authorities.

The government has brought an amendment so as to prevent dissemination of fake news and restrict obscene and illegal content on social sites to mandate the use of automated filters for content take downs on the platforms.

[55] Shreya Singhal v. Union of India, AIR 2015 SC 1523.

In many a case, the messaging applications such as Whatsapp, Facebook, etc. have been often arbitrary and inconsistent. These content sharing and Social Media companies at times have taken down content not in tandem with the standards and terms & conditions listed down by the Social Media Federations.

The blocking of one of the Journalist Barkha Dutt and a social media journalist Dhruv Rathi are case in point. While Twitter had brought down the details of threats made to Ms Dutt, it did not block the obscene content directed at her. The Apex Court's decision diluted liability of the platforms so as not to undermine free speech and privacy, rights of the citizen in the online world has helped in furtherance of the Free Speech & Expression in the country. In case the Social Media sites are directed to tackle the unverified information not at the insistence of the government or the judiciary, it is likely to promote private censorship by the companies in the country.

In Shreya Singhal v. Union of India, [56] the Supreme Court had championed the cause of Free Speech and expression. In this regard, while upholding the free speech it is necessary to tackle the menace of rumors and fake news especially in communally sensitive situations and therefore the platforms must do the following –

1. Platforms hosting the content must have a policy of 100% transparency, especially about political advertisement and law enforcement. In this regard, the decision of Facebook recently to stay away from the political advertisement during U.S. election is a case in point.
2. The Social Media platforms must ensure that self-initiated content take downs are not arbitrary but subject to criticism by the users. The owners of the platform must act as per the directives of the court or the government in identifying misinformation.

[56] Shreya Singhal v. Union of India, AIR 2015 SC 1523.

In order to have transparent policy in this regard the Government and the platforms must adhere to constitutionally mandated principles.

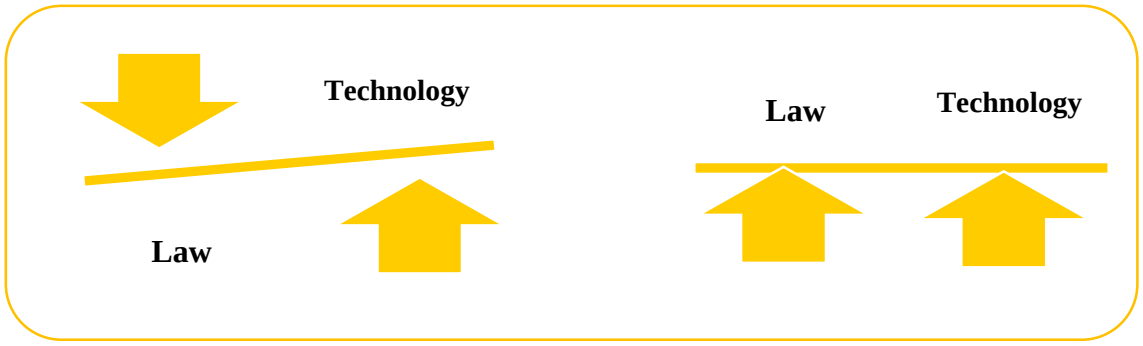

Figure 2: Maintaining equilibrium between Law & Technology

(Source: Academia Research Paper https://www.academia.edu/38221465/IPR_ENFORCEMENT_IN_DIGITAL_MUSIC_INDUSTRY_10-2018_1_.docx)

There is a need to maintain a balance between application of Law on use of Technology. This is because at first Section 66 A of IT Act, 2008 was used to restrict online speech but when it was struck down as unconstitutional then the government started imposing Section 124 A of IPC for cyberspace under the garb of Sedition. This section of Indian Penal Code was inserted in 1870, at a time when there was no cyberspace or internet. The law should keep pace with technology. So, this is crystal clear that it is being arbitrarily applied as a weapon against Freedom of Speech and Expression and there is non-application of mind by the Government. In a nutshell, this is simply the case of abuse of power by the state.

The Case of Kanhaiya Kumar (2016)[57]: It was alleged that Kanhaiya Kumar, while protesting against the arrest of Afzal Guru, raised 'anti India' slogan in an on-campus rally in JNU. Delhi Police arrested him on the grounds of Sedition. The Delhi High Court, however, acquitted and released him in a matter of few weeks since the videos that were produced as evidence were found to be doctored.

[57] THE INDIAN KANOON (May 12, 2020, 9:30 AM), https://indiankanoon.org/doc/77368780/.

Javed Habib v. The State (NCT) of Delhi (2007) [58]**:** Javed Habib, was the publisher at *Hazoom*, an Urdu weekly. A particular article, *'Arrest Muslims fighting for their right Secret Government Service'*, by Qurban Ali in the weekly was found to be Seditious by the then Government. The appellant was tried under Article 124A of IPC and 503 of IPC. The Court held that though the title of the article appears seditious, the contents did not criticize or offend the then Government. In fact, it criticized the leader who was the head of the current Government. The Court further held that- ***"Being critical of the Government or of the Prime Minister of the nation does not amount to Sedition".*** The Court drew a line between speech empowering the citizens and the nation and a speech that is seditious.

Sanskar Marathe v. State of Maharashtra & Ors (2015) [59]**:** In this case the Court re-iterated that differentiation between **'*Strong criticism*'** and **'*Disloyalty*'** is important and needs to be done.

> ***"Being disloyal to Government of India cannot be considered to be the same as making strong statements on the governance acts of the Government and it's related agencies. Strong criticism may be required to improve the state of the people of the country or to cancel/change the acts of the Government that fall short of good governance – without inciting enmity feelings, disloyalty that disturbed order or caused violent acts."***

Law Commission of India provided the following directions for using Sedition Law in the right manner in one of its reports:

[58] THE INDIAN KANOON (June 27, 2020, 2:30 PM), https://indiankanoon.org/doc/908777/.
[59] THE INDIAN KANOON (June 21, 2020, 4:42 PM), https://indiankanoon.org/doc/57916643/.

"The Section 124-A of IPC must be read with Article 19(2) of Fundamental Rights. It is important that the Section is scrutinized based on circumstances and facts." [60]

At the stroke of mid night on 15th August, 1947, Pandit Jawaharlal Nehru while addressing the Constituent Assembly had made his famous "*Tryst with Destiny"* speech; which goes as below-

"Long back, we made a tryst with our destiny. This is the time for redeeming our pledge, neither wholly nor in full measure, but very substantially. At the stroke of midnight, when the world is sleeping, we Indians are awakening to the life and freedom …" [61]

"The moment which arrives rarely in history, when we shift from old to new … when the age ends and when nation's soul is long suppressed, finds utterance. It is necessary that at this solemn point of time we take an oath of dedicating over selves to the service of India, and her people, and to the still larger humanity…" [62]

The researcher understands that this speech reinforced the belief of Indians that dawn of Freedom had come and they would be able to peacefully enjoy their lives. It was a culmination of efforts made by the likes of B.G. Tilak who had resolved to fight till India gets freedom.

"Swaraj is my birth right and I shall have it".

Netaji Subash Chandra Bose, who was instrumental in forming the Indian National Army in true spirit had given the slogan, which says it all-

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[60] Raghav Ohri, *Law Commission submits consultation paper on sedition*, ET (May 28, 2020, 10:45 PM), https://economictimes.indiatimes.com/news/politics-and-nation/law-commission-submits-consultation-paper-on-sedition/articleshow/65611851.cms?from=mdr.

[61] Stuart Roberts, *A Tryst With Destiny*, THE UNIVERSITY OF CAMBRIDGE (Feb. 24, 2020, 11:09 PM), https://www.cam.ac.uk/files/a-tryst-with-destiny/index.html.

[62] *Ibid.*

"Give me blood and I will get you freedom"

Thus, the speeches of our freedom fighters and the '*Tryst with Destiny'* underlined the concept of freedom in Free India. The researcher has delved into the golden words of the great men from freedom struggle.

2.2. RTI is Inbuilt within Right to Freedom of Speech and Expression

In 2019, Bombay High Court ruled that the "***Right to Information (RTI) is an implicit and inbuilt Right under Freedom of Speech and Expression***" [63] as declared per the Article 19 (1)(a) of the Constitution of India.

Public Concern for Governance Trust (PGT) v. State of Maharashtra[64]: A Public Interest Litigation (PIL) was filed by PGT to effectively enforce and implement the RTI Act in the State of Maharashtra**.** The Court ordered the State government of Maharashtra for filling up vacant posts of Information Officers without which information would not be easily accessible, thereby affecting the Right to Know, which is integral to Freedom of Speech and Expression.

The HC ruled that only on filling up of vacancies, the State Government can make information accessible to public on anything that is otherwise available to public at large.

Under the Right to Information Act (2005)[65], "right to information" implies the right to access information, which is under the control of any administrative authority and is inclusive of following rights –

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[63] *Bom HC | Right to free speech and expression includes within it the right to information; RTI is implicit and inbuilt under Art. 19(1)(a) of Constitution*, SCCONLINE (Apr 29, 2020, 11:37 AM), https://www.scconline.com/blog/post/2019/12/11/bom-hc-right-to-free-speech-and-expression-includes-within-it-the-right-to-information-rti-is-implicit-and-inbuilt-under-art-191a-of-constitution/.

[64] THE INDIAN KANOON (June 21, 2020, 5:55 PM), https://indiankanoon.org/doc/404911/.

[65] P.M. BAKSHI, THE CONSTITUTION OF INDIA 34-35 (New Delhi: Universal Publishing Co. Pvt. Ltd., 10th Ed., 2010).

(i) To carry out inspection of records, documents, etc.

(ii) To take down notes or to get extracts or certified of such extracts,

(iii)To get samples of any material duly certified,

(iv) To get information available in computer form, electronic mode, print outs or information available in other devices.[66] [67]

Right to Information is understood to be derived from RTI Act, 2005 but in fact it is inbuilt in the Right to Freedom of Speech and Expression which is provided in Constitution under Art. 19 (1) (a).

Relationship between Right to Freedom of Speech & Expression & Right to Know, as understood by the researcher below, is key to grasp the broader scope of Free Speech- Freedom of Speech and Expression thus is inclusive of rights such as a) to publish, b) to information, c) to know, d) to use sign language, e) to protest peacefully, etc.

Further, Freedom of Speech and Expression must cover Right to Vote as well. This right further includes Right to Know details and this in turn leads to Right to Query the authority.

Hence, all citizens have the Right to Know all details necessary and then with sound judgement assess the governance activities and functions of the present or past Government(s).

Furthermore, Freedom of Speech and Expression also includes Freedom to have an Opinion, which is arrived at upon assessing the government and its subsidiary's activities. Opinion may be formed in various contexts, some are defined as follows -

- ***Opinion of law or necessity: Opinio juris sive necessitates***
- ***Opinion of layman: sentential laico***

[66] *Ibid.*
[67] DR. J. N. PANDEY, THE CONSTITUTIONAL LAW OF INDIA (Central Law Agency, 48th Ed., 2011).

- ***Opinion of opposition: Contra sententiam***
- ***Opinion of parliamentarian: sententia parliamentarian***
- ***Opinion of media: media sentential***[68]

Opinions may translate into thoughts, beliefs, values, etc.; which varies from individual to individual, profession to profession, occupation to occupation, business to business. The *Right to Know* is not merely for satisfying curiosity or thirst for knowledge, however it is important for the effective functioning of democracy so as to bring - transparency and accountability in a real democratic society.

There are evidences that even the Courts treat all three Fundamental Rights – Right to i) Publish, ii) Freedom of Speech & Expression and iii) Information – equally.

Shailesh Gandhi, Former Chief Information Commissioner and RTI activist, once stated–

> ***"Any restriction that applies on one should apply on all and any enhancement of one should apply on all."***[69]

The researcher summarises the *'Right to Know'* from constitutional framework as - the Citizen derives his/her *'Right to Know'* from all the following and NOT just RTI Act:

- Freedom of Speech and Expression – Art. 19 (1)(a)
- Right to Life and Personal Liberty – Art. 21
- Right to Information (RTI) Act, 2005

2.3. Understanding through specs of Layman

People on the streets or layman can have divergent views on the subject. To sum up; some of the reactions have been as follows:

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[68] LATIN IS SIMPLE (July 14, 2020, 2:48 PM), https://www.latin-is-simple.com/en/vocabulary/noun/272/.
[69] Shailesh Gandhi, *RTI Amendment Bill: Former Central Information Commissioner Shailesh Gandhi Urges President To Not Sign The Bill*, THE LOGICAL INDIAN (July 11, 2020, 10:04 PM), https://thelogicalindian.com/story-feed/awareness/shailesh-gandhi-president-rti/?infinitescroll=1.

a) At present it is not noteworthy to talk about anything except lockdown guidelines. We may deliberate on freedom once we are able to survive and come out of Coronavirus epidemic.

b) It would be pertinent to understand as to how laws that were enacted earlier during crisis have been applied without context once these laws outlived their utility. Keeping British Government's intention out of purview, in interpreting and defining important subjects such as sedition, a long term view of the entire issue must be taken bearing in mind the future consequences. Sedition law should be diluted with lesser punishment.

c) Meeting and slogans that exhort people to break the country, while eulogising terrorists and foreign enemy countries should not be permitted. Any law including Sedition law if it permits such a thing should be amended. Such slogan shouting on university campus shouldn't be tolerated.

d) India is a democratic country with separation of powers of Judiciary and executive. For the development of human mind; it is necessary to have liberal society with free speech. The sedition law must thus go.

CHAPTER 3: SALUS POPULI SUPREMA LEX

3.1. Crux of Public Interest

- **'*Salus populi suprema lex'***

  A Legal Latin Maxim, which was given by Cicero as a piece of advice to the Future Statesmen of the world and conveys "maximum in minimum possible words". When translated into English it has the following meaning:

  "Let the welfare of the people be the supreme law"

  John Locke thought very highly about this legal maxim, which does lot of public good. In Chapter 13 of his *Second Treatise*[70], he says:

  "This maxim is certainly so just and fundamental a rule, that he, who sincerely follows it, cannot dangerously err".[71]

  While being a legal maxim; *"Salus populi suprema lex"* acts as a guidance for those in the governance of the nation.

- ***'Salus populi suprema lex esto'***

  This is yet another version of the aforesaid maxim, wherein the word "esto" has been suffixed and translates into "to be" or "exist". In English, this means:

  "The health of the people, whether it is welfare or good or salvation or felicity, should be the supreme law" *OR*

  "Let the good of the people be the supreme or highest law" *OR*

  "The welfare of the people shall be the supreme law" [72]

[70] Davidus, *Salus populi suprema lex*, MEDIUM (April 15, 2020, 3:17 PM) https://medium.com/the-jurisprude/salus-populi-suprema-lex-f6360fd10f1.
[71] *Ibid.*
[72] *Ibid.*

3.2. Understanding the 'Public Interest'

In English and subsequently in India law; the above Latin maxim has been used sparingly and it is the "Public Interest" that is more in vogue. This syntax finds reference in most case laws in India. The following are the case laws in which essence of "Salus Populi Suprema Lex" and concept of "Public Interest" is invoked:

- State Of Punjab v. Baldev Singh (1999) [73]
- Sarju @ Ramu v. State Of U.P. (2009) [74]
- Shri D.K. Basu, Ashok K. Johri v. State Of West Bengal, State Of U.P (1996)[75]
- Charan Lal Sahu etc. v. UOI & Ors. (1989) [76]

In noted cases such as State Of Punjab v. Baldev Singh (1999) and Sarju @ Ramu v. State Of U.P. (2009) and in case of D.K. Basu; the Supreme Court referred to the observation of the Supreme Court of the United States of America in Miranda v. Arizona : ***The Latin maxim salus populi suprema lex which implies "the safety of the people is the supreme law" together with salus republicae suprema lex which implies "safety of the State is the supreme law" do exist simultaneously.*** They are not only relevant but also lie at the heart of the doctrine that denotes the welfare of an individual. The State should conduct right, just and fair act – to be able to protect society from criminals. If the criminals are let go because of the lack of evidence, the societal safety will suffer, we should avoid inappropriate procedures and should give preference to the procedure prescribed by the statute. The official who fails to follow these prescribed practices should be held accountable by higher authorities.

[73] State Of Punjab v. Baldev Singh, (1999) 6 SCC 172.
[74] THE INDIAN KANOON (June 21, 2020, 5:55 PM), https://indiankanoon.org/doc/1450627/.
[75] THE INDIAN KANOON (June 21, 2020, 11:21 PM), https://indiankanoon.org/doc/501198/.
[76] Charan Lal Sahu Etc. v. Union Of India and Ors, 1990 AIR 1480, 1989 SCR Supl. (2) 597.

Charan Lal Sahu case helped comprehend the maxim "S*alus Populi Suprema Lex"* with perspective of **"*public welfare is the highest law".*** It was held that this is not a rule but an evolution.

3.2.1 Salus Populi Suprema Lex part of the foundation of Law

The concept of *'Salus Populi Suprema Lex'* philosophy has helped in evolution of law throughout the world. It reminds one of ***'Sociological School of Jurisprudence'***, wherein ***'Society'*** is at the heart of law. Roscoe Pound, a well-known American Legal Scholar, came out with a statement ***'Law is a tool of social engineering'***. Thus, the basic objective of law was to bring about social change. Changes in society, structurally or culturally, must be reflected through changes in Law, so that it stays relevant. Technological advancement brings about change in society, which in turn must lead to change in law. The pertinent examples in this regard were various judgments pronounced in MC Mehta case.

In a progressive society, laws and judiciary must keep pace with the modernization and advancement of the society. A careful reading of Directive Principles of State Policy in our Constitution reveals that they are based on principle of *Salus Populi Suprema Lex.* Furthermore, the researcher wants to draw attention of readers to the case of MC Mehta, wherein P.N. Bhagwati vide his judgment made India a progressive society by invoking the principle of Absolute Liability and setting aside the principle of Strict Liability.

The principles of 'Environmental Law' themselves find their basis in sociological jurisprudence as well as *Salus Populi Suprema Lex,* also because the Apex Court in its various pronouncements have equated Right to Life (Article 21) with Right to Good Environment, thus, highlighting importance of *Salus Populi Suprema Lex*.

Jeremy Bentham's Theory of Utilitarianism is similar to ***'Salus Populi Suprema Lex'***. It identifies good with pleasure. The theory states-

"Greatest amount of good for the greatest number"

and aims at maximizing the good.

The Bhutan Government's concept of '**Gross National Happiness**' also aligns well with the philosophy of *Salus Populi Suprema Lex.*

Salus Populi Suprema Lex: the foundation

The Maxim as stated earlier has helped in evolution of law. Law, that is essence of achieving justice for the society, is a tool that provides an insight into the society and about actual governance. Thus, it has a long lasting impact on society.

3.3. The flame for Freedom burns within

We do understand that any Government of the day is *of people of India,* it is elected *by the people* and *for the people*. The "sovereignty of citizens" finds a mention in the Preamble at the beginning of Constitution of India - which begins with "WE THE PEOPLE OF INDIA."

The following pre-independence or recent cases/scenarios highlight how the previous and current Governments of India have continued to rely on this anti-democratic Sedition Law to harm the Freedom of Speech and Expression of citizens. These cases lead us to further impress upon the fact that Sedition Law is definitely an antithesis to public interest and there is a need to scrap it.

a) In the year 1916, Annie Besant published a number of articles critical of the governance of the then Government. She was tried in the Madras High Court for such publications. Justice Strachey in his judgement convicted her on the charges of Sedition and also held her in offence of The Press Council Act.[77]
b) In January 2020, an exercise by a school in Karnataka to help students obtain an in depth understanding of the Citizenship Amendment Act (CAA) led to

[77]Mrs. Annie Besant v. The Government of Madras, (1916) 37 Ind Cas 525 (India).

leveling of sedition charges against the school authorities and the parents of a student.

Shaheen School's teachers decided to hold an activity to engage with the students and their parents and help dispel any misunderstandings around the CAA law, which was then recently enacted by Parliament. The students having researched thoroughly came prepared with artistic presentations on the topics of - CAA, National Register of Citizens and National Population Register.[78]

On the day of the event, students of standard 4th, 5th and 6th performed a play highlighting the sense of insecurity about the Act among a particular community. Later on, a right-wing activist from Bidar got a case of sedition registered against the school authorities and the parents of a student. Bidar Police arrested the individuals.

c) In February 2020, at an event in Bengaluru organized as part of countrywide protests opposing Citizenship Amendment Act and National Register of Citizens, a teenage girl (19 years age), Amulya, was booked under sedition for uttering, ***'Long Live Pakistan'***.[79] The event organizers were quick to disown her views.

What she actually said was –

'Longlive Hindustan! Longlive Pakistan! Longlive Bangladesh! Longlive Sri Lanka! Longlive Nepal! Longlive Afghanistan! Longlive

[78] Akshata M., *Karnataka school play: Police say court will take a call on sedition charge*, ET (March 30, 2020, 10:11 AM), https://economictimes.indiatimes.com/news/politics-and-nation/shaheen-school-play-bidar-police-say-sedition-charges-booked-as-per-sc-directions/articleshow/73963783.cms.

[79] Darshan Devaiah BP, *Explained: Who is Amulya Leona, the girl arrested in Karnataka for 'pro-Pakistan' slogans?*, ET (March 30, 2020, 03:57 PM), https://indianexpress.com/article/explained/who-is-amulya-leona-the-girl-arrested-for-her-pro-pakistan-slogans-6279898/.

China! Longlive Bhutan! the countries do not matter – Long live all nations.'[80]

Amulya said or did nothing that was remotely seditious. Also, her speech did not spread any hate or cause violence. Probably, she made a mistake by proceeding with Pakistan instead of India or any of the other countries in her 'zindabad' or 'longlive' statement.

Those who defend argue that even Jawaharlal Nehru once called China a friend. He was the one who had coined the slogan, 'Hindi-Chini bhai-bhai', meaning in English that we Indian and Chinese have brotherhood. The quote of Pandit J.L. Nehru promoted brotherhood amongst Indians and Chinese. This, they feel, was more fulsome than 'Long live slogans. However, no one ever called 'Hindi-Chini bhai-bhai' seditious.

d) In July 2019, MDMK leader Vaiko, was convicted by a Sessions Court in Chennai on charges of Sedition and sentenced to one year jail. The conviction related to a speech Vaiko had delivered in the year 2009, in the aftermath of killing of Prabhakaran, the LTTE leader. In his speech, he allegedly held the Indian State responsible for the atrocities inflicted upon the Sri Lankan Tamils during the Civil War.[81]

The Sessions Court contrary to Supreme Court directions had held that irrespective of whether 'inflammatory speech' of Vaiko led to violence or not, he was guilty.

[80] *Ibid.*

[81] *MDMK chief Vaiko convicted in 2009 sedition case*, ET (March 29, 2020, 02:14 PM), https://economictimes.indiatimes.com/news/politics-and-nation/mdmk-chief-vaiko-convicted-in-2009-sedition-case/articleshow/70085984.cms.

The Constitution of India draws from the Maxim '*Salus Populi Suprema Lex*', that implies that *Welfare of the People is Supreme Law*[82]. This philosophy is also soul of the Preamble of our Constitution.[83]

Researcher believes that scrapping of arbitrary Section 124A of IPC will be beneficial in obtaining true free speech for the citizens of the country. Since there is non-application of mind on the part of the Government, while charges are framed without understanding the gravity of the act.

If the Right to Freedom of Speech and Expression is provided without bounds then it empowers the citizens of the country to truly critically analyse the state power abuses – for example events in which state was oblivious to Terrorism or violence, etc. For example: Sikh riots of 1984, Godhra riots of 2002, etc.

Almost all Governments have used the Law of Sedition primarily for their benefit and in doing so the governments have not protected the interest of the people – this provides ground for Section 124A of IPC to be declared as *ultra vires* and to question the intent of such an abuse of power.

[82] David Fate Norton, *Salus Populi Suprema Lex*, 308 FORTNIGHT 14, 16 (1992).
[83] Hemant Singh, *What is the Preamble of Constitution of India*, THE JAGRAN JOSH (Feb. 26, 2020, 1:30 PM), https://www.jagranjosh.com/general-knowledge/preamble-of-the-constitution-1434782225-1.

CHAPTER 4: IMPACT OF SEDITION LAW

A noted English writer Samuel Johnson had once said -

"***Patriotism is a last refuge of the scoundrel"***

Under the garb of Nationalism and Patriotism, the State often justifies action against those who are opposed to its ideologies.

The Sec. 124(A), IPC reads as follows –

> ***"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, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years.***
> ***The explanations to this section defines following expressions:***
> ***a. Expression of Disaffection includes disloyalty & encompasses all feelings of enmity***
> ***b. Expression of Disapprobation of measures of govt. through means of law with no attempt to excite contempt, hatred or disaffection is not an offence***
> ***c. Expression of disapprobation of administrative action without contempt, hatred or disaffection is not an offence."***[84]

It would be pertinent to understand, through lens of the researcher, the meaning of the keywords of Section 124A of IPC:

- **Disaffection:** a sentiment of being dissatisfied, chiefly with the authority or empowered people or system of control.

  When the parliamentarians get dissatisfied and pass a no confidence motion against Prime Minister, they do not do Sedition.

  When citizens are dissatisfied with the performance of the Government, they intend to provide some sort of feedback. They are not being Seditious.

- **Hatred:** Intense dislike or hate

[84] DHIRAJLAL KESHAVLAL THAKORE, RATANLAL RANCHHODDAS, et al., OF OFFENCES AGAINST THE STATE IN RATANLAL & DHIRAJLAL THE INDIAN PENAL CODE 224-225 (1st ed., 2014).

The Opposition Parties in the Parliament play a key role in carrying out constructive criticism of the ruling party –Opposition leaders do use strong words while opposing the government. This criticism of the Government is in a way essence of Democracy, which prevents the Government from abusing its position.

In summary, importance of Criticism, Dissent, Opposition can be highlighted as below:

1. To do away with the principle of ***'King can do no wrong'***
2. To curb the absolute power of the government
3. To revive the ideals of framers of the Constitution of India

Any dissent cannot be termed as disaffection or hatred and does not become Seditious.

Before getting into a detailed analysis, it is important we understand how we imported[85] the Sedition Law into India in the colonial era and how we have managed to retain it in Modern India.

4.1. Limits of Nationalism- Promoting Humanism

The origins of Sedition Law are found way back in the 13th century of England[86]. The printing press was used increasingly to highlight the inefficiency or gaps in the governance of the Monarch and its' associates. The rulers, thus started to perceive, the free press to be a danger to their sovereignty[87].

To restrict the 'Free Press' a set of statutes were brought into force, categorized under two heads –

[85] HALLIDAY, *supra* note 17, at 12.
[86] Philip Hamburger, *The Development of the Law of Seditious Libel and the Control of the Press*, 37 STAN. L. REV. 661, 672 (1985).
[87] *Id*.

- *Scandalum Magnum – addressed spread of 'false news' regarding the 'Majesty', in written format or through speech*[88]
- *Offences of Treason – addressed spread of 'false news' regarding the 'Majesty's' Government or any person in his/her Government*[89]

Despite these restrictive measures in place, the Monarch continued to see dissent and were unable to completely curb 'Free Speech'. Apart from the legislative challenges seen in obtaining convictions, the rulers were also looking to prevent the act of dissent altogether. This led to the invention of *Seditious Libel* in the Star Chamber in de Libellis Famosis[90].

The offence of seditious libel was primarily created to overcome any gaps that were identified in the multiple statues under Scandalum Magnum and Offences of Treason. This in turn ensured that people respect/spoke good of the Government – even if this happened simply out of fear of the law.

From the time it was first enacted till 18th century, Seditious Libel was considered to be a brutal act that suppressed the dissenters of the Crown. And it goes without saying, that during enactment of IPC for India, the Seditious Libel was imported in the Code.

4.1.1. 'Colonial History' of Sedition Law in India

Law of Sedition first came into being during colonial rule in the year 1837, in the then drafted Indian Penal Code's Clause 113 that was suggested by T.B. Macaulay.[91] Twenty years later when the 'Indian Penal Code' was codified, the section on Sedition was not included.

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[88] *Id* at 668.
[89] *Id* at 666.
[90] De Libellis Famosis, (1606) 5 Co. Rep. 125a.
[91] ARAVIND GANACHARI, EVOLUTION OF THE LAW OF 'SEDITION' IN THE CONTEXT OF THE INDIAN FREEDOM STRUGGLE (1837-1922) IN NATIONALISM AND SOCIAL REFORM IN A COLONIAL SITUATION 54 (Kalpaz Publications, 2005).

This omission was referred to as an ***'unaccountable mistake'*** by Sir James Stephen[92] (known as the Architect of the Indian Evidence Act (1872)). There are many theories around this omission, one of them being - the British wanting to bring in more comprehensive and stronger regulatory methods.

Around the turn of 20th century, the British recognized a wave of nationalism, starting from the 1857 Mutiny (as termed by the British). This led to the incorporation of Sedition Law in the IPC as '*Section 124A'*. This version of Sedition Law drew inspiration from the '*The Treason Felony Act'* of Britain.

This inclusion of Sedition Law remained in force for over 27 years i.e. November 25, 1870 to February 18, 1898. The British throughout this period continued to strengthen the law, by adding two supporting Acts[93] –

- Vernacular Press Act (1878)
- Dramatic Performances Act (1876)

The increasingly volatile atmosphere in the years 1897-98 brought multiple amendments to the Criminal Procedure Code (Cr. P.C.) and Indian Penal Code (I.P.C.). These amendments were directed to suppress sedition and thus gave extensive authority to the executive and judiciary.[94]

Section 124 A of IPC introduced in British India barred speeches which "***brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection against GOI***." The penalty for causing sedition was decided up to life imprisonment.

Queen Empress v. Jogendra Chunder Bose (1891)[95]: Jogendra Bose was accused of inciting violence by writing an article in his own magazine *'Bangobasi'***.**

[92] *Id.* at 56.
[93] *Id.* at 57.
[94] *Id.* at 63.
[95] Queen Empress v. Jogendra Chunder Bose, (1892) ILR 19 Cal 35.

It was in this case that the Court took to draw out a clear distinction between 'disaffection' and 'disapprobation'.

The definition of *'disaffection'* as given by the Court was – ***"use of speech or written words to create a disposition in the minds of those to whom the speech or text is intended for or disobey /resist government authority."***

The Court also held that -

"It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people, and that they were used with an intention to create such feeling."

This case also holds historic importance, in terms, that this is the very first recorded case on Sedition.

The distinction of words 'disaffection' and 'disapprobation' were further explained in case of **Queen v. Ramchandra Narayan[96].**

Tilak**,** who dreamt of self-rule for the Indians, was charged with sedition and imprisoned for a period of six years. He was charged with sedition thrice, in 1897, 1909 and 1916. Though he was convicted he always maintained he was innocent.

His cases have become the basis of understanding the Sedition law -

- Emperor v. Bal Gangadhar Tilak (1909)[97]
- B. G. Tilak (1897) I.L.R. 22 Bom. 112,151[98]
- Emperor v. B.G. Tilak (1916) [99]

[96] Queen Empress v. Ramchandra Narayan, (1931) 33 BOMLR 1169.
[97] THE INDIAN KANOON (May 19, 2020, 11:30 AM), https://indiankanoon.org/doc/1430706/.
[98] *Ibid*.
[99] THE INDIAN KANOON (May 22, 2020, 12:00 PM), https://indiankanoon.org/doc/1188602/.

Pandit Nehru, the then Prime Minister of India, was one of the bitter critics of this law. In the pre-independent India, the British would charge every criticism of their actions or governance under the ambit of Section 124 A of IPC.

His tremendous speech in the debate of Parliamentarians (1951) should be recalled and always remembered wherein, he had said sedition law ***"is very much objectionable and obnoxious…the sooner we get rid of it the better"*** [100]**.**

4.2. Sedition Law- In Independent India

As already established in Chapter 2 and 3 of this study, the suppression of nationalistic rebellion was the key motive of the British for creating, bringing into force and charging key personalities with Sedition Law during the colonial era.

A proposal for imposing limitations to Freedom of Speech and Expression was placed on the grounds of 'libel', 'slander', and 'defamation', 'matters undermining security of state', etc. There was a complete consensus amongst the member of the Constituent Assembly to drop 'Sedition' from the exceptions to Freedom of Speech and Expression (at the time this right was provided under Article 13) – due to the oppressive nature of the law. The leaders had experienced misuse of Sedition Law and thus they ensured the citizens of the country get unrestricted access to Free Speech as part of Fundamental Rights[101].

Still, Modern India has not been free from the evil of Sedition Law. There are a plethora of cases where the citizens of India have experienced restrictions to their Free Speech due to the brazen Law of Sedition.

Aseem Trivedi Case (2015)[102]: Mr. Aseem Trivedi, a political cartoonist, was charged by the Government with sedition for the cartoon series that he had drawn

[100] 2 JAWAHARLAL NEHRU SELECTED SPEECHES: VOLUME 2: 1949-1953 (Publications Division, 2017).
[101] Lester, *supra* note 28, at 538.
[102] THE INDIAN KANOON (June 21, 2020, 4:42 PM), https://indiankanoon.org/doc/57916643/.

and published on his website. Mr. Trivedi, in one of his cartoons, had modified the national emblem by replacing the four lions by blood thirsty wolves and changing the national motto from "Satyamev Jayate" to "Bhrashtamev Jayate". The Government also accused him of insulting National Emblems and infringing Information Technology Act.

The Court had held that differentiation between 'Strong criticism' and 'Disloyalty' needs to be done very carefully. Mr Trivedi was eventually acquitted.

Binayak Sen v. State of Chattisgarh (2010)[103]: Dr. Binayak Sen was arrested and charged under Sedition for allegedly having links with Maoists. It was also alleged that he was assisting Maoists in their fight against the State.

In the year 2010, the Additional Sessions and District Court of Raipur sentenced Sen to life imprisonment on the basis of these charges. However, in 2011 the Supreme Court of India granted him bail due to lack of evidence.

The case of Binayak Sen points to blatant misuse of Sedition Law to silence those who dissent.

Masarat Alam v. State (High Court of J&K (2008-2015)*[104]*: The High Court of J&K cancelled the order detaining Masarat Alam, a separatist leader. He continued to be under detention from 2008 to 2015 and was charged 37 times in 25 years under the Public Safety Act. The Court held that the government had malicious intention and detention was unlawful and against the Principles of Natural Justice: *Audi Alteram Partem* - ***"No person shall be condemned unheard".***[105]

[103] THE INDIAN KANOON (July 12, 2020, 10:30 AM), https://indiankanoon.org/doc/94313095/.
[104] Masrat Alam Bhat vs. State, HCP No. 64 of 2015.
[105] *J&K High Court quashes detention of Masarat Alam under PSA*, EXPRESS NEWS NETWORK (July 15, 2020, 11:01 AM), https://indianexpress.com/article/india/jk-high-court-quashes-detention-of-masarat-alam-under-psa-5741402/.

Therefore, we see that the Public Safety Act or Section 124A of IPC are used interchangeably, without application of mind. Both laws are misused and the orders passed are unlawful, arbitrary and vague.

Justice Rashid Ali Dar, had made the following observations in Masarat Alam's Case:

"The order of detention impugned does not sustain on the above referred grounds alone, therefore, other grounds projected in petition are not required to be dealt with."

This implies that other grounds could also have been held as void.

Raghavendra Ganiga v. State of Karnataka (March, 2020)[106]: A 43 year old, Raghavendra Ganiga was arrested on sedition charges for allegedly raising 'Pakistan Zindabad slogans' in the corridors of Vidhana Soudha in Karnataka's Udupi district.

Vinod Dua v. Union of India (June, 2020)[107]: A renowned Journalist Vinod Dua, was booked under Sedition Law, for accusing Prime Minister on his YouTube channel for using death threats and terror attacks to obtain votes.

This is a very recent and high profile case. The Supreme Court (as of 15th June, 2020) has refused to stay the FIRs (in multiple states) and has set a next hearing date.

The case of arrest of a school principal and a parent on charges of sedition by Bidar Police in Karnataka (**mentioned in detail under Section 3.3.-The flame for Freedom burns within**) is another case of misuse of Sedition Law in an absolutely anti-democratic manner.

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[106] *Karnataka: Man booked for sedition for 'pro-Pakistan' slogan, family says he is mentally unstable*, SCROLL (July 12, 2020, 1:25 AM), https://scroll.in/latest/954989/karnataka-man-booked-for-sedition-for-pro-pakistan-slogan-family-says-he-is-mentally-unstable.

[107] *Sedition case: SC grants interim relief from arrest to journalist Vinod Dua, refuses to stay probe*, THE INDIAN EXPRESS (July 15, 2020, 1:45 AM), https://indianexpress.com/article/india/vinod-dua-sedition-case-6458027/.

4.2.1. NCRB Data says it all: Sedition Cases

National Crime Records Bureau (NCRB), which has been collecting data on Sedition cases separately since 2014 show that the number of 47 cases of Sedition in 2014 increased to 70 in 2018.[108]

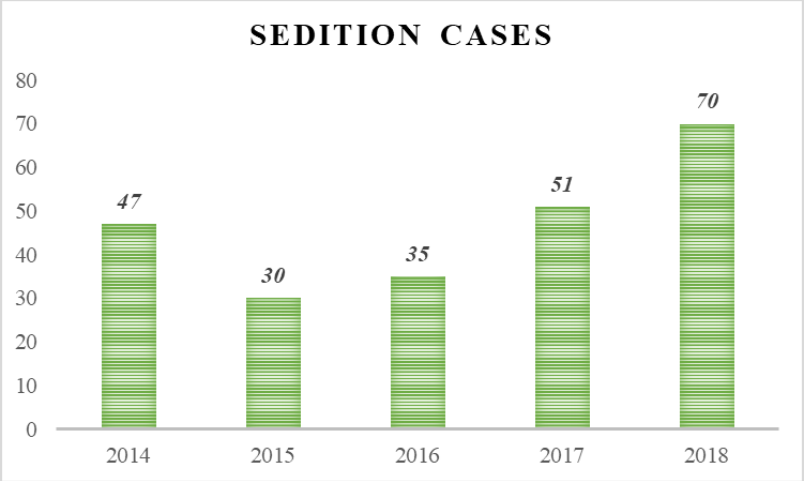

Figure 3: Rise in Sedition Cases

(Source: NCRB 2018 data https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf)

Though sedition remains a rare crime that accounts for 0.01% of all crimes; in certain states such as Assam and Jharkhand the cases have mounted, with 37 sedition cases each between 2014-2018. Convictions however, are too few as compared to the new or pending cases. Since 2016, as per the data, only 4 convictions have taken place.

[108] *Crime in India 2018 Statistics Volume I*, NCRB REPORT (April 11, 2020, 8:48 PM), https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf.

Details \ Year →	2016	2017	2018
Reported Cases per year	35	51	70
Total Cases under Investigation (New + Pending)	86	156	190
Cases for Trial	16	27	38
Conviction that Year	1	1	2

Figure 4: Status of Sedition Cases

(Source: NCRB 2018 data https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf)

In 1967, the Parliament passed the Unlawful Activities (Prevention) Act. This was a very specific law to further impose reasonable restrictions on Freedom of Speech in interest of integrity & sovereignty of India. In 2018, 1,182 cases were registered under this act, most of which were concentrated in five states - Assam, J&K, Manipur, Jharkhand and Uttar Pradesh. Therefore, the existence of sedition when UAPA is in force for similar offence, does not make sense.

Act / Year →	2016	2017	2018
Prevention of Damage to Public Property Act	5,825	7,910	7,127
Unlawful Activities Act	922	901	1,182
Section 121-123 IPC	209	109	79
Sedition (i.e. Section 124A IPC)	31	51	70
Official Secrets Act	30	18	40
Imputation, Assertions Prejudicial to National Integration (Section 153B IPC)	31	29	38

Figure 5: Offences against the State (2016-2018)

(Source: NCRB 2018 data https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf)

It is important to note that numerous Citizenship Amendment Act (CAA) protesters have been booked under sedition. Plenty cases have been filed since 11th December, 2019, when compared with the number in the last three years. National Crime Record Bureau (NCRB) data reveals that a total of 3,000 protesters[109] – who protested against CAA passed by Parliament – were charged under Section 124A of IPC in January, 2020 alone.

While analysing all the above cases, it is pertinent that the Apex Court continues to reiterate the following points even today as it did when India became Republic –

- ***"There has to be a direct incitement to violence."***
- ***"There is a need for sedition to be treated as a specific and serious offence."***
- ***"It must not be used to silence and terrorise citizens who dare to bring out their grievances or hold dissenting opinions."***

[109]Pooja Dantewadia, *Sedition cases in India: What data says*, LIVEMINT (June 5, 2020, 3:31 PM), https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html.

As per the researcher's understanding, the Judiciary needs to also establish the following important points –

- ***"An act of treason shall be against the nation and not against the government"***
- ***"An act of treason shall not be confused with sedition"***

4.3. Modern Analysis and interpretation of the case laws

The upsurge in arrests of cartoonists, teachers, parents, student activists, etc. on the charges of sedition and then being labelled as *'anti-nationalists'* has led to this much desired debate in India -

"Does Independent India need a sedition law at all?"

Prominent leaders of the Indian National Congress led the anti-colonial struggle through active contributions. After Independence, the leaders through extensive discussions drafted the Constitution for sovereignty of the people of India - which aligned with the vision of empowering the people of India from '*oppressed subjects to autonomous citizens*'.

However, since the post-constitutional era, the state has tried to suppress the Freedom of Speech and Expression guaranteed to citizens of nation, since day one on pretext of 'national interest' and later on 'public order'.

This is sad to note that even after so many years of independence, Indians are struggling due to this '*colonial continuity'*. In the British era, there was a complete disengagement with the Indians and disregard of their fundamental rights for the benefit of only the British – this sadly continues to be the state of affairs even today. People get charged with or arrested under the Sedition Law for simply expressing their dissenting or conflicting opinions about the actions or policies of the Government of the day in any of the forms – whether verbal, visual or creative.

Considering the brutality of the Law of Sedition and an inhumane approach adopted by the Executive in such cases – the aggrieved **citizens turn to the Judiciary for a fair analysis** of the facts and circumstances and to re-assert the true spirit of Freedom of Speech & Expression as enshrined under Article 19(1)(a) of the Constitution of India.

Tara Singh v. The State (1950) [110]: Master Tara Singh was charged with Sedition for the speeches he delivered in Karnal and Ludhiana.

The Apex Court, in this case, quashed the charges against Tara Singh and ordered that he be set free immediately.

Superintendent, Central Prison, Fategarh v. R. M. Lohia (1960)[111]: Dr. Ram Manohar Lohia - General Secretary, Socialist Party of India - was charged with Sedition for making instigating speeches in front of general public against UP government's act of increasing the irrigation rates.

In this case the Apex Court constructed a ***'strict test of proximity'*** involving the speech and its consequent effect. It held that the 'intention or tendency' of speech needs to be understood. If it disturbs public disorder, then only it could be prohibitive and consequently 'seditious".

Balwant Singh v. State of Punjab (1995)[112]: Balwant Singh was an assistant in D.P.I Punjab's office in Chandigarh. He was charged with Sedition for raising the slogans such as:

- ***'Raj karega Khalsa'***
- ***'Khalistan Zindabad'***
- ***Hindus must leave Punjab, this is time to setup own rule[113]***

[110] Tara Singh v. The State, 1951 CriLJ 449.
[111] Superintendent, Central Prison, Fategarh v. Ram Manohar Lohia, 1960 AIR 633, 1960 SCR (2) 821.
[112] Balwant Singh v. State of Punjab, 1995 (1) SCR 411.
[113] *Ibid.*

The Apex Court had, in this case, ruled that raising of lonesome slogans, that too few times does not result into hatred or contempt against that particular government, established by law nor did it amount to creating animosity between the two communities.

The early landmark judgements by the Supreme Court in the cases of *Romesh Thappar*[114] and *Brij Bhushan*[115] **(already discussed in detail in Chapter 2 – 2.1.1. Is Article 19(1) 'Free, Fair and Liberal'?)** and speeches delivered in Constituent Assembly by the framers of the constitution - set a precedent for the High Courts for the above mentioned and other Sedition cases.

The High Courts were bound to hold Section 124A as unconstitutional. The Courts have time and again held that in case incitement to violence is not there, then even ***'revolutionary speech exhorting people to overthrow the state'*** was acceptable under the provisions of Article 19(1)(a).

4.3.1. Sustained Impact of 1st Amendment to the Constitution

First Amendment to Indian Constitution (1951) was brought forward by our then Prime Minister Pandit Jawaharlal Nehru to address the challenges of identifying true cases of Sedition and not restrict constructive criticism from the people of India. However, unfortunately in India it has in a way fortified Sedition Law.

Despite Supreme Court's initial pronouncement guaranteeing constitutional protection for Free Speech in *Kedar Nath v. State of Bihar*[116]; it restated that the test of 'incitement to violence' has to be done. In later judgments, the direct precedent laid in *Superintendent, Central Prison, Fategarh v. R.M. Lohia*[117] was also not considered.

[114] Romesh Thappar v. State of Madras, 1950 AIR 124, 1950 SCR 594.
[115] Brij Bhushan v. State of Delhi (1950), 1950 AIR 129, 1950 SCR 605.
[116] Kedar Nath v. State of Bihar, 1962 AIR 955, 1962 SCR Supl. (2) 769.
[117] Superintendent, Central Prison, Fategarh v. Ram Manohar Lohia, 1960 AIR 633, 1960 SCR (2) 821.

Article 19 (2) was updated as follows - replacement of 'security of the State' and substituting it with 'public order', addition of 'incitement to offence' and inclusion of 'reasonableness'.

Since the Executive holds wide and concentrated discretionary powers with regards to Sec. 124A of IPC, time and again we observe abuse of law by mere mentioning protection of state. It is important to measure the state action against the Freedom of Speech and Expression when applying Sedition Law to ensure no executive orders refute the central principle in a constitutional democracy.

This is only possible if the citizens of the country continue to participate in democracy – renegotiate with the state, exercise the freedoms granted to him/her in the Constitution of India and employ the same to effectively limit the power of state. Noted civil lawyer, K.G. Kannabiran, says the same through –

> ***"It is a very long journey from being a slave to being a subject and to finally being a citizen."***

In India, we do see State use their free hand in imposition of '*prior restraint on free speech'*. Very recent examples can be seen in management of COVID-19:

- Maharashtra government issued notification stating that COVID-19 information cannot be published or circulated through newsprint or online media without prior clearance from government officials[118].
- Gujarat government booked an online news portal editor for Sedition for publishing the possibility of replacement of the Chief Minister of the State[119].

[118] *COVID-19 : Maharashtra Cyber Police Warns of Action Against Fake News and Rumors*, PUNEKAR NEWS (May 25, 2020, 11:01 AM), https://www.punekarnews.in/covid-19-maharashtra-cyber-police-warns-of-action-against-fake-news-and-rumors/.

[119] Nandini Oza, *Gujarat: Editor of news portal arrested for sedition over article on BJP changing CM*, THE WEEK (May 25, 2020, 11:57 AM), https://www.theweek.in/news/india/2020/05/12/gujarat-editor-of-news-portal-arrested-for-sedition-over-article-on-bjp-changing-cm.html.

4.3.2. Sedition or Treason?

There is a huge difference between 'Sedition' and 'Treason'. However, when interpreting the Section 124A of IPC, it is important to assess and correctly identify the fine line where the acts get termed as 'treasonous'.

The definition of 'Treason' as defined by the researcher–

"Aiding, instigating or provoking or attempting or committing any act which is a sign of disloyalty to the nation or country or state as a whole instead of an individual political establishments or social establishments or cultural establishments, etc.; amounts to the act of Treason".

Sedition may or may not be identified as an offence, because an act or speech or writing may not amount to Sedition – if the Government adopts a fairly liberal approach and allows criticism and 'Free Speech'. Thus, it actually depends on the kind of Government that is in power.

It needs to be understood that "*waging war against the government*" should be interpreted as "*waging war against the people of India*" and NOT "*waging war against any national party which may be in charge then"* –as we are not a monarchy but a republic.

Hence, interpretation of statute is of utmost importance.

The researcher feels there is a need to understand that the elements of Article 19(2) are for the offence of treason and not for sedition. The learned judges of our Apex Courts also through the use of Article 142 of the Constitution need to draw this line between Sedition and Treason. If an individual is not loyal to the Government, that doesn't amount to an offence because loyalty to a political party is not what the framers of the constitution envisioned or aimed at. Rather, the Government is the body or the authority, which is as discussed, actually elected "***by the people, for the***

people and must take care of the people". If an individual is not loyal to the Nation, that amounts to an offence because disloyalty to the nation is paramount. However, the ***People Of India*** should be the focal point of the Constitution of India and not a Government in power.

4.3.3. Sedition: India and other Democracies

As mentioned earlier in the chapter, India imported the Sedition Law from the United Kingdom. The Sedition Law in UK is claimed to have been much wider in scope as compared to India. In modern UK with the development of laws, the law of Sedition became outdated and it is stated that in the last century they only had handful of Sedition cases.

The United Kingdom after a thorough study abolished the 'Seditious Libel' in 2009 on the following grounds –

- Inconsistent with England's international human right obligation
- Acts punishable under Sedition are punishable under other active laws[120]

The commonwealth nations, Kenya and Uganda, Constitutional Courts have also struck it down. Australia is another nation, where the law was defunct for over a century and in the year 2010 the country's legislature went onto formally remove 'the offense of sedition' from statute book.

India has inspite of this continued to validate Sedition Law and in recent years is seen carrying out blanket stifling of any form of dissent through its use. Sometimes, prevalence of hyper-nationalism with majoritarian narration is observed. The State

[120] Prasoon Sonwalkar, *Sedition law in UK abolished in 2009, continues in India*, HT (July 10, 2020, 1:03 PM), https://www.hindustantimes.com/world/sedition-law-in-uk-abolished-in-2009-continues-in-india/story-Pkrvylv6J0T3ddY8uqvKsO.html.

has been misusing Sedition law in the name of security of the state and nationalism to defend itself against complex questions.

4.3.4. State's attempts to retain the Out-dated Law

The year 2011 saw an attempt to quash the ever-controversial Sedition Law i.e. Section 124A of the Indian Penal Code. However, the Bill was a private member bill and did not receive the necessary support.

The Sedition Law has evolved as a tool for any Government of the day to essentially curtail free speech and free thought – under the garb of *'public order'* and *'national interest'*. With this law in place, a possibility of life sentence, silences a credible critic of the government.

There are evidences of government employing technology for carrying out surveillance of people in the name of security, which is done to monitor communications. This has given wide powers to authority, which uses it to criminalize speeches that have political overtones.

As part of the ongoing COVID-19 pandemic, the Government of India launched the Aarogya Setu application for contact tracing. However, experts raised major concerns around the application being used as a surveillance tool by the Government.[121]

The Law Commission in its consultation paper in 2008 stated the law should not be misused as a tool to curb free speech.[122]

It is also observed that the Government is seldom interested in convictions. Instead, they use this law as a tool, placed effectively in the hands of policemen, to set

[121] *Interview: Is Aarogya Setu a tool for Covid-19 contact tracing or mass surveillance?*, ET (July 15, 2020, 12:45 PM), https://scroll.in/article/960566/interview-is-aarogya-setu-a-tool-for-covid-19-contact-tracing-or-mass-surveillance.

[122] Raghav Ohri, *Law Commission submits consultation paper on sedition*, ET (May 28, 2020, 10:45 PM), https://economictimes.indiatimes.com/news/politics-and-nation/law-commission-submits-consultation-paper-on-sedition/articleshow/65611851.cms?from=mdr.

examples by charging a few key dissenters and ensuring that the rest fall in line too. Many cases that come up before the court do not lead to conviction; if Section 124A, as defined by Apex Court in Kedar Nath Singh (1962), is applied in true spirit.

We have already discussed in previous chapter about National Crime Record Bureau (NCRB) data that reveals that though the number of cases registered have gone up considerably in the last four years, only a handful of convictions actually took place.[123] The conviction rate is low because cases are registered for political appeasement.

The opposition to the law is mainly due to implementation/usage of Section on Sedition as tool to curb dissent of all forms. The 'autonomous executive machinery' and 'an opportunistic state' is unfortunately seen time and again employing this 'lawless law' and misusing 'exceptions in the law' to persecute the dissenters.

[123] Pooja Dantewadia, *Sedition cases in India: What data says*, LIVEMINT (June 5, 2020, 3:31 PM), https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1. Recalling the Salient Points in Thesis

The researcher, to start with, has reviewed 8 books, 34 case laws, 8 journal articles and 17 internet links to present this research paper. The case laws are as old as 1891 Empress v. J.C. Bose and famous De Libellis Famosis case of U.K.of 1606 and Marbury v. Madison of USA of 1803. The cases pertain to curb of Freedom of Speech and Expression and subsequent action under law of Sedition are as late as of current year (2020). The books on Constitutional Law and IPC have been referred for understanding the intentions of framers of Constitution and enactment of Sedition Law in IPC. Books showing historical perspective of Sedition Law have also been reviewed and referred to. The struggle of our freedom fighters against the draconian law of Sedition and their belief in Freedom of Speech and Expression has been captured through various books, articles, case laws, etc.

The researcher has traced the intentions of British in enacting Sedition. The emphasis was on to continue British rule in India without any hindrance. For this, critics were silenced by law of Sedition. Restrictions were imposed on press and people's rights were curtailed during epidemic.

The Tilak's trial brought into focus the malicious intentions of the British. The resistance provided by freedom fighters including by Mahatma Gandhi to Sedition law was noteworthy.

A conceptual understanding of Sedition law was done by the researcher; hypothesis and research questions decided and answers sought to them

This research paper has traced the origin and development of Freedom of Speech and Expression in pre and post independent India. Free Speech is important for functioning

of all democratic institutions and that of government in any country. The Apex Court in India has been at forefront of upholding the freedom, while in British India the freedom was curbed by imposing restrictions on the press. In colonial era, Judicial Review of such curbs was not permitted. The Vernacular Press Act 1878 and Press Emergency Act 1931 were aimed at suppressing popular movement. The provisions of these acts together with Sedition Law was invoked to jail freedom fighters.

In Independent India, the Art. 19(1) in Constitution laid ground for a Free, Fair and Liberal political system. However, it turned out to be short lived affair as within few months of constitution coming into force, the first amendment provided for "reasonable restrictions" in Article 19(2). The Apex Court came to rescue by liberal interpretations of both the subsections to include only Security of State, inciting of violence, etc. as reasonable grounds for imposing restrictions.

The Apex Court in its various pronouncements has held Freedom of Speech to include Freedom of publications thus providing relief to Press and making it free from governmental controls and restrictions. The Court declared Newspaper Act of 1956 and 1960 *'ultra vires'* in this regard. It also brought in the concept of ***"Direct Effect Test"*** while ruling on such cases.

The Freedom of Speech and Expression does afford protection from unnecessary fear of detention. The invocation of Article 21 and Article 22 of the Constitution were held to be valid by Supreme Court in cases of detention due to Sedition or other cases. Inspite of all these saving elements, the Freedom of Speech often gets curtailed due to Article 19(2) and Article 368 i.e. wrong executive interpretation of reasonable restrictions and amendment to Constitution which restricts freedom.

The researcher has analysed the Freedom of Speech & Expression in ours and other countries. While we always looked upto the USA and applauded them for absolute

Freedom of Speech due to the first amendment; our own first amendment has imposed **'reasonable restrictions'** on freedom guaranteed by Constitution framers. Such is the state due to this that India is ranked 142, out of a total of 180 countries as per **'World Press Freedom Index'**.

The Art. 19(2) and Sec. 124A of IPC seem, therefore, compatible. The Apex Court while holding Section 124A to be partly valid has struck off Section 66A in Information Technology Act 2008, that curbed free speech by the governments of the day. The Supreme Court has emphasized on **'Safe Harbour Provisions'** and made intermediaries free from unverified information unless directed by Court or authorities. Inspite of all such pronouncements, the law of Sedition and other laws continue to be misused by government and the Champions of the cause have to move Apex Court to get relief.

The Right to Information Act, 2006 is an extension of Freedom of Speech and Expression. Various Judicial pronouncements have held that for Right to Information to become effective, there should be free access to information. The Free Speech is possible only if one has right to publish, having access to information, to know, to protest, etc. This all helps one to develop an opinion necessary for good functioning of the democratic society. The Freedom of Speech and Expression thus encompasses Art. 19(1)(a), Article 21 and Right to Information.

"Salus Populi Suprema lex" comes as an advice to the leaders and Statesmen of all nations. In its various forms, it implies that the welfare of the people must be the Supreme consideration. It has been synonymously used with 'Public Interest'. However, the Supreme Court has invoked this maxim in various judgments initially borrowing the concept from Miranda vs. Arizona in the US.

"Salus Populi Suprema lex" is thus one of the foundations of law and is similar to Jeremy Bentham's theory of utilitarianism. The maxim lay emphasis on law being tool of **"Social Engineering"** as propounded by Roscoe Pound.

In cases where Freedom of Speech and Expression was championed during pre and post-independence; the Supreme Court has indirectly upheld this principle. The Sedition law must therefore be construed as against the principle. Whether it is a case of Annie Beasant (pre independence) or recent Amulya Leona and Bidar cases; the law of Sedition interferes with Public Interest and right of people to peacefully protest.

The Sedition Law has adversely impacted the progress of our nation towards a free democratic society. Since it continues to be on statute of law; the terms such as "Disaffection" and "Hatred" have been used by governments of the time to silence the critics.

The Law of Sedition, though purportedly intended to promote the cause of patriotism has harmed the cause itself. It is a law that is against humanism and deletion of this law from statute will promote nationalism in true spirit.

During the British rule, our freedom fighters fought relentlessly against this law. Inspite of the conviction by the then Courts, they did not budge from their stand and many of them wanted it to go as law.

Unfortunately, however, cases under this law have been piling up. At times, relief is not granted by the Apex Court as well. The National Crime Records Bureau data shows that the conviction rate under Sedition is 2%. Furthermore, when laws such as UAPA are in force, the Sedition law becomes redundant.

Supreme Court in its various pronouncements has held that the Freedom of Speech and Expression is subject to only certain restrictions and those too in limited way. However, cases continued to be filed even without pursuing them after filing as is seen from

NCRB data. The intention thus seems to be to harass persons and silence them. This is the sustained impact of First Amendment to Indian Constitution.

There is a need to sift sedition from treason. Only provisions such as "waging war against nation" and "incitement to violence" need to be retained but Sedition law must go as there are other sections in IPC and other laws as well.

Most developed countries of the world such as UK, Australia have removed Sedition from the statute. Even countries such as Kenya and Uganda have not retained this law. In such a situation the attempt of State to retain this law is questionable. If not removed now, it will criminalize all sort of political and apolitical free speech in times to come.

5.2. Concluding the Thesis

As we draw close to concluding the thesis, I would recall the Hypothesis that I wished to prove. The hypothesis put forward was to study the law of sedition from purely an apolitical point of view and with public interest perspective. There were three parts in the hypothesis-

1. Whether freedom of speech & expression is an absolute fundamental right or not?
2. Whether Sedition Law is an antithesis to Freedom of Speech or not?
3. Is Sedition Law contrary to Public Interest?

The research paper has conclusively proved that Freedom of Speech and Expression is an absolute Fundamental Right. The journey of Freedom of Speech and Expression was traced from British rule todate. The researcher has been able to prove the absoluteness of Fundamental Right on the following counts:

A. ***Whether freedom of speech & expression is an absolute fundamental right or not?***

1. The struggle that our freedom fighter leaders had to undergo while resisting various laws including Sedition Law. The fight for free Press was integral to Freedom of Speech and Expression, which was necessary to obtain independence. All prominent national leaders including Mahatma Gandhi's Freedom of Speech and Expression was sought to be curtailed and they were prosecuted under law of Sedition. Ultimately, India could win freedom only because of relentless and untiring efforts of our leaders. This makes Freedom of Speech and Expression important and absolute Fundamental Right.
2. The Constitution envisages Free, Fair and Liberal Society; which gave all its citizens Freedom of Speech and Expression. The First amendment insertion into Constitution of India did affect the absolute freedom, however, the landmark judgment in Kedar Nath v. Union of India (1962); set the ball rolling for absolute Freedom of Speech and Expression in India.

   Later efforts to curb Freedom of Speech and Press/Publication were set aside by the Apex Court. Furthermore, freedom from fear of detention led to invocation of Article 21 together with Article 22 in cases of Freedom of Speech and Expression.

   The primacy of Article 21 was recognized over all other fundamental rights and accordingly the invocation of the Article together with Article 22 is considered necessary in cases of Freedom of Speech and Expression as well as Sedition.
3. The researcher has put forward the view that Freedom of Speech and Expression get curtailed due to restrictions imposed by Article 19(2) and power of the parliament to amend constitution under Article 368. Amendments to Constitution giving wide powers to state to curtail Freedom of Speech and

Expression and keep them in detention has adversely impacted the journey towards free and democratic society.

4. The Freedom of Speech and Expression has been uninhibited and absolute in many democracies of the world. While Marbury v. Madison (1803) judgement in US and First amendment to US Constitution have guided and inspired Indian efforts to have Freedom of Speech and Expression; the 1st amendment to Indian Constitution gave a blow to such efforts. Time and again the efforts have been made by the State to ban films, books and free speech in general in India. Because of restriction on free speech; India ranked low in World Press Freedom Index.
5. Freedom of Speech and Expression gets reinforced through acts such as RTI. The various pronouncements on the subject by various courts have held that RTI is an extension of Freedom of Speech and Expression. This is so because RTI leads to not only access to information giving Right to Knowledge but also to Publish and use such information for raising questions on individual/public interest. The access to information leads to forming an opinion based on assessment of the action of authority. These opinions translate into thoughts, belief and values; which are necessary for free speech.

   The Freedom of Speech and Expression should not be restricted to Article 19(1)(a) but is inclusive of Article 21 and acts such as RTI, 2005.

   The Freedom of Speech & Expression is thus an Absolute Fundamental Right.

B. Whether Sedition Law is an anti-thesis to freedom of speech or not?

1. The researcher has conclusively stated that Article 19(2) reinforces the provisions of Section 124A. The discretionary and many a times unexplainable

executive order not in the name of 'public order', 'incitement to violence' but 'acts of "hatred", "contempt", "disaffection", etc. against the state' validates Sedition Law. The higher ideals of Freedom of Speech and Expression thereby go for a toss. Because of these provisions; the aggrieved person has no option but to rush to court each time he/she is charged under the Sedition Law. Despite landmark judgments, the executive continues to misuse the Sedition Law violating Freedom of Speech and Expression and consequently Apex Court's directives.

2. The Law of Sedition has been misused on account of certain words such as "Disaffection", "Hatred", etc., which have been used to charge the dissenters of the government. While the Kingship has long ago gone away; the concepts such as "***King can do no wrong***" continue to prevail in a democratic society. People are dragged to the court even today the way it was done during colonial rule. However, during the colonial rule, the intention was to stop dissemination of news about King; and continuance of British rule in India. The NCRB data from 2016 to 2018 has revealed that conviction rate is as low as 2% with only 20% of the cases coming up for trial. This goes on to show that the state effort is aimed at silencing its critics.
3. There is a need to sift Sedition from Treason as there are different laws for both. However, since the state wishes to misuse Sedition; it does take up such cases on charges of treason.

Sedition Law is thus antithesis to Freedom of Speech and Expression.

C. Is Sedition contrary to public interest?

1. The Latin maxim "*Salus Populi Suprema Lex*" is in tune with the public interest. Since the welfare of the people is supreme; the maxim has been often invoked

by the constitutional authorities to move forward towards a progressive society. The maxim is in accordance with Roscoe Pound's theory of "law being a tool of Social Engineering" and not "a tool of oppression" persecuting people under acts such as Sedition.

2. While the founding fathers of our Constitution lay emphasis on "We the People of India"; law of Sedition and efforts to curb Freedom of Speech and Expression has taken us backwards. The application of law of Sedition by Britishers to extend their rule may have been justified from their point of view, but invoking sedition law in cases such as Amulya Leona, Bidar Police, Vaiko, etc. in free India is beyond comprehension.

Thus, we see that Sedition Law is contrary to Public Interest.

5.3. PostScript

In the words of Mark Twain –

"Loyalty to the country is forever; but loyalty to the government, only when it deserves it."

The Sedition law i.e. Section 124A of IPC continues to govern the Indian Citizens by virtue of Article 372 of Indian Constitution, as it was not repealed. The law has been rampantly misused, abused or misinterpreted and its history has been discussed at length.

Prior to Independence, it was misused by British Government against Dr. Abdul Kalam Azad, Ms. Annie Besant, Aurobindo Ghosh, Lala Lajpat Rai, M.K. Gandhi, B.G Tilak and others. In 1922, Gandhi's trial, Gandhi stated that: ***"Under it some of the most beloved of India's fighters have been convicted. It is a privilege."*** Although Nehru criticized it as ***"highly objectionable and obnoxious"***; yet the then Government did not take an action to repeal it.

This study was carried out with the objective to highlight how much 'anarchist' and 'obsolete' is this age old Law of Sedition for the Modern India. While, the Governments in power time and again have misused the law and upheld its validity – the India of today requires free thought, speech and expression more than ever.

I would like to re-iterate and re-emphasize, the need to do away with the Sedition Law through the following points -

- **Section 124 A of IPC is too broad and too vague to have been correctly understood**

  The Sedition Law since its inception has had a vague scope and definition. This is the major reason why we have seen it being applied non-uniformly.

The Supreme Court of India did try to restrict its scope and provide it more specific meaning as early as 1950s/ 1960s in the cases of Romesh Thappar, Brij Bhushan, the landmark case of Kedar Nath, etc. However, despite multiple discussions and struggles around correct interpretation of the law, no clarity about the law is still there, which is evident from Kedar Nath judgement analysis.

- **No Violence, No Sedition**

  The provision states:

  'Words or signs or visible representations, which intend to cause hatred or contempt against government would be sedition'

  Punishment for same is life imprisonment.

  The literal interpretation of the statute highlights that the provision is intimidating and undemocratic without doubt. It assists in unfairly branding all feeble criticism also to be seditious.

  However, in Kedar Nath case, the Supreme Court significantly while upholding the constitutional validity of Section 124 A of IPC and stated that ***"comments, however strong in criticism and that they express disapprobation of government, without triggering the sentiments that generate public disorder leading to violence, is not seditious"***.

  The Supreme Court ruled that strong criticism, whether in written or spoken form, **"*will be outside the scope of the section*"**.

  In case of Balwant Singh, the Apex Court clearly stated that the act of raising slogans itself is not seditious if it does not incite violence.

  "If an act does not incite violence, it is not seditious"

Further, in the Kedar Nath case there is an apparent ambivalence creating a danger around "***textual reading***" or "***motivated invocation***" of law by prosecuting authority and law and order machinery.

This in itself makes for a big argument for scrapping of the law by Apex Court or it to be repealed by legislature.

- **India's founding fathers envisioned governance of the country through 'Salus Populi Suprema Lex'**

  As mentioned before, the welfare of the people is the highest law, especially in a democracy like India – the same gets reflected in Preamble of Constitution. Looking at history of interpretation and implementation of the Seditious Libel/ Sedition in India it is evident that it does in no way uphold or even comply with the principle of *Salus Populi Suprema Lex.*

  This thus makes Section 124A of IPC (or Sedition Law) *ultra vires* to the Constitution of India. This provides the necessary grounds for striking down the Law of Sedition – in a manner similar to case, wherein Apex Court scrapped the Section 66A of Information Technology Act, 2008 as part of the ruling in Shreya Singhal v. UOI (details described previously in **Chapter 2: 2.1.6. 'Article 19(2) & Section 124-A Are they compatible or contradictory?'**)

- **Thin line between Sedition and Treason**

  It is important to understand that, though we continue to apply the restrictions under Article 19(2) to Sedition but these reasonable restrictions are meant for assessing treason instead. It is not an overstatement to make, that the government is misusing the law and may be creating confusion between 'Sedition' and 'Treason' for the purposes of killing any form of dissent against it.

This is even more a reason that we protect the citizens of the nation by getting rid of such a vague and draconian statute.

- **Countries worldwide have abolished the Law**

  The Great Britain abolished the law in 2010 – primarily since it wasn't in tune with its Human Rights obligation at a national and international level.

  Australia, Canada, New Zealand and US have either removed it or categorically decided to put it to disuse. The Arthur Nwankwo case of Nigeria is a much-noted case of scrapping off this provision. In India, the sedition law continues to be misused as a weapon against innocent and vulnerable Indians.

- **More Relevant Laws in place to take care of 'public order'**

  As stated earlier, the Indian law on sedition is too vague and broad providing the Government of the day an opportunity to misuse it at its whim. And there do exist provisions in Indian Penal Code that adequately deal with offences against Government of India.

  - Waging War against the Govt. related offences - Sections 121, 121A and 122 of the IPC
  - Laws on terrorism and antinational activities

  We need to perhaps take a cue from the British who got rid of the Sedition Law through creating and using other specific laws in place to maintain 'public order'.

  India needs to take a similar decision for good of the people and upholding the Right to Freedom of Speech and Expression.

- **Duty to protect even ones who dare to dissent**

In a landmark judgement given in the case of **Texas v Johnson (491 U.S. 397 (1989)),** in the United State of America, the US Supreme Court Justice Anthony Kennedy said-

"It is poignant but fundamental that the flag protects those who hold it in contempt".

Thus, the Supreme Court upheld the right to burn flag – in a way stating that **no restriction is above free speech**.

In India, it is required that people, who pay their obeisance to the flag of the country and hold Constitution in high esteem are not treated as culprits.

Recommendations

The impact of first amendment to Constitution is being felt even after 69 years have elapsed. The amendment fortified the law of Sedition in the name of reasonable restrictions. The Supreme Court has stepped in many a times to provide relief in individual cases while directing executive to act without bias. However, discretionary power of executive continues unabated. The removal of Sedition Law from Statute will end all miseries caused to the people while curtailing unbounded discretionary power of State.

It is therefore recommended-

1. **The Law of Sedition should be removed from Statute book and Sedition 124A, IPC should be deleted.**
2. **Cases of "inciting violence", "exciting hatred", "treason" need to be tried under relevant acts enacted for the purpose.**
3. **The primacy of Freedom of Speech and Expression must be established to full.**

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