ISSUES AND CONCERNS OF SEDITITION LAW AND PREVENTIVE DETENTION LAW IN INDIA: CONTEMPORARY DEVELOPMENTS

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"The use of sedition is like giving a saw to the carpenter to cut a piece of wood and he uses it to cut the entire forest itself."

—Chief Justice N. V. Ramana

Abstract—The law of sedition is an artifact of the colonial age. Mahatma Gandhi described Sedition as the "prince among the political sections of the Indian Penal Code (IPC) designed to suppress the liberty of the citizens." The sedition law was initially designed to control the freedom of speech and expression during the British rule in India. Even after independence, it has been used by political dispensation for such identical purposes. The abuse of the sedition law has ruined numerous lives. The right to peacefully protest and the right to freedom of speech are at the center of human freedoms. There has been constant demand for abolishing of law of sedition due to mounting evidence of its misuse over the years. This paper will focus on the relationship between sedition law and preventive detention law in India in their various issues and concerns in the light of recent socio- legal developments and judicial pronouncements.

Keywords: Sedition, Seditious Acts, Freedom of Speech And Expression, National Security Act

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I. INTRODUCTION

Freedom of speech forms one of the most significant ideals of democracy. The underlying principle of freedom of speech is to allow an individual to help in attaining self-fulfillment, discovery of truth, strengthen the capacity of a person to make decisions and facilitate a balance between stability and social change.[1]Accordingly, the freedom of speech and expression is primary and foremost human right,statue of liberty, mother of all freedoms as it leads to a meaningful life. This freedom is recognised as a core of free society.[2] The freedom of speech and expression has been considered as aessential fundamental right of all human beings under the preamble and Article 19 of the Universal Declaration of Human Rights, 1948.[3]

The concerns for freedom of speech many a times raises some tough questions and one of the leading question is what is the extent to which state can regulate citizens conduct? The freedom of speech and expression provides a platform for citizen's autonomy; therefore, any restriction on this freedom must be made subject to high scrutiny. However, this freedom is not absolute and reasonable restrictions can be imposed on the exercise of freedom to ensure equal and rational exercise of freedom of speech and expression by all citizens.[4] The freedom of speech and expression can be controlled by providing restrictions on its exercise by laying down laws. However, such restrictions should be necessary for national security, public order, morality, health or for respecting the rights or reputations of others.[5]

The word 'Sedition' has originated from Latin word 'Seditio' which is combination of two words namely 'sed'- apart and 'itio'- going. Thus it means something which is 'going away from'. According to Oxford Dictionary, "Sedition means a conduct or speech inciting people to rebel against the

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1 Stephen Schmidt, Mack C. Shelly et al., *American Government and Politics Today* 11 (Cengage Learning, USA, 2014).

2 Law Commission of India, Government of India, *Consultation Paper on 'Sedition'* para 1(30th August, 2018).

3 *See* also Article 19 of International Covenant on Civil and Political Rights, 1966 (ICCPR); Article 9 of African Charter on Human and Peoples' Rights, 1981; Article 10 of European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; Article 13 of American Convention on Human Rights, 1969.

4 S. Shivakumar, *Press, Law and Journalists* 18-20 (Universal Law Publishing Co. Lexis Nexis, 2015).

5 International Covenant on Civil and Political Rights, 1966, Article 19(3). It reads as: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary
(*a*) For respect of the rights or reputations of others;
(*b*) For the protection of national security or of public order (order public), or of public health or morals."

authority of a state or monarch."[6] Similarly, Black Law Dictionary defines sedition as "an insurrectionary movement tending towards treason but wanting an overt act; attempts made by meetings or speeches or by publication to disturb the tranquility of the State."[7] This word sedition has been used to refer to practices which tend to disturb internal public tranquility by deed, word or writing but which do not amount to treason and are not accompanied by or conducive to open violence.[8] Sedition is considered to be a crime against the state.[9] The term sedition may be understood to mean an act which incites or causes contempt or hatred towards the established government of the state.[10]

The word 'Sedition' was defined by Justice Fitzgerald in an early (1868) case of *R.* v. *Sullivan*,[11] as:

> "Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavor to subvert the Government and the laws of the Empire. The objects of sedition generally are to induce discontent and insurrection and to stir up opposition to the Government and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion."

The concept of sedition has a very wide scope, and it includes every act which may incite contempt, hatred, violence or even treason against the government. The seditious acts may be committed by either publication of seditious materials either online or offline mode, visual representations, sale or distribution of seditious materials etc. The main motive for committing of seditious act is to overthrow or remove from power the established government.[12]

II. INTERNATIONAL POSITION OF SEDITION LAW

The law of sedition in India is an antiquated piece of law which was originated by the Britishers in the 13th Century.[13] In **United Kingdom**, the British rulers considered the printing press as a danger to their sovereignty. The

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6 Oxford Dictionary , *available at*: <https://www.lexico.com/definition/sedition> (Accessed on 9 May 2022).

7 *Black Law Dictionary* 1067 (2nd edn., 1910).

8 *Encyclopaedia of Social Sciences*, Vol. 13, 634 (1934 edn., Reprint, 1951).

9 B.M. Gandhi, *Indian Penal Code* 181 (Eastern Book Company, 3rd edn., 2014).

10 Ankit Singh, "Revisiting the Law of Sedition in India: A Critical Study in the Light of the JNU Fiasco" 7 RMLNLUJ 112(2015).

11 (1868) 11 Cox CC 44, p. 45.

12 *Ibid.*

13 Nivedita Saxena and Siddhartha Srivastava, "An Analysis of Modern Offence of Sedition" 7 NUJS Law Review 121(2014).

extensive use of the printing press led to a sequence of measures to control the press and the broadcasting of information in the post half of the century. These measures broadly included the collection of acts concerning *Scandalum Magnatum* and the offence of Treason. Whereas the former redressed the act of speaking ill of the King, the second was a straighter offence "against the person or government of the King."[14]

It is pertinent to mention here that there had been two ways to restrict freedom of speech and expression in England. The first was seditious libel and second being treason. These measures were in addition to *Scandalum Magnatum.* [15]However, the offence of sedition was embodied in the Statute of Westminster, 1275 under which the King was possessed of the Divine rights.[16] Intention was relied upon to establish the charge of sedition in order to discard the defense of the truth of the speech. The crime of sedition was initially created to prevent speeches which were 'inimical to a necessary respect to government'.[17] Further, the Treasons Act, 1351 was passed to punish wrongdoings or offences which were directed against the authority of the King. The act of giving prediction of the death of the emperor was considered as a crime.[18] Later on, The Treasons Act, 1696 was enacted to provide relaxations to the offenders and this Act also incorporated 'due process law.' This development can be considered as a way towards liberty.[19]

The first case relating to seditious libel was namely the De Libellis Famosis[20] under which seditious libel was punished. This case resulted in establishment of seditious libel in United Kingdom and the court held that a right condemnation of government has a great capability to denigrate the respect commanded by the government which may result in disorder. Consequently, it requires high extent of embargo.[21] The court condemned the criticism of the government and its officials and emphasized that any criticism of the government and its officials would in still disregard and disrespect for public authority. As the purpose of the crime of sedition was to cultivate respect for the government in power, thus, truth was not regarded as a defense. Therefore, the crime of seditious libel was used as a ruthless tool for prohibiting of any speech detrimental to the government.[22]

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[14] William T. Mayton, "Seditious Libel and a Lost Guarantee of a Freedom of Expression" 84 Columbia Law Review 92 (1984).

[15] Aditi Richa Tiwary, "The Crime of Sedition in India: An Archaic Colonial Repression- Is Stringency Enslaving The Right to Free Speech?" ILI Law Review (2020).

[16] *See* English PEN, "A Briefing on the Abolition of Seditious Libel and Criminal Libel" (2009).

[17] *Supra* note 14 at 3.

[18] John Barrell, *Imagining the King's Death: Figurative Treason, Fantasies of Regicide* 754 (OUP 2000).

[19] *Supra* note 15.

[20] (1606) 5 Co Rep 125a: 77 ER 250.

[21] *Supra* note 14 at 3.

[22] Mathew Hale and George Wilson Thomas, *The History of the Pleas of the Crown* 125 (Vol. 159, 1st edn., 1800).

The offence of seditious libel was defined in 'the Digest of Criminal Law'. It was widely applied in the 18th and 19th centuries in opposition to social activists who contended freedom of speech and expression when criticizing the government and its officials.[23] In 18th Century, the crime of seditious libel was regarded as harsh and unjust law and this offence was applied by the government to squeeze any condemnation of the crown.[24] Although, the offence of sedition was considered as a appropriate instrument in the hands of the government and therefore, the Britishers kept law of seditious libel in the Indian Penal Code, 1860 for colonial India to suppress opposition.[25]

The crime of seditious libel was not used during 20th century as British democracy was liberalized. The last prosecution made under this law was in the year 1970.[26] In 1977, The United Kingdom Law Commission in its report[27] while examining the issue of relevance and need of seditious libel in modern democracy recommended that there has been no requirement for an offence of sedition in the British Penal Code. The common law offence of seditious libel was unnecessary, ill-defined and redundant for almost 150 years.[28]This report set up foundation for the movement of abolishment of seditious libel in England. In 1998, the British Parliament ratified the European Convention on Human Rights, 1950 and hence enacted the Human Rights Act, 1998. The provisions of this Act were in direct conflict of law of seditious libel. Therefore, in 2009, both houses of British Parliament passed the bill namely the Coroners and Justice Act, 2009 to abolish the law of sedition or seditious libel in United Kingdom.[29] The offence of seditious libel was repealed by section 73 of this Act.[30] Lord Lester of Herne Hill, Judge, House of Lords[31] remarked about seditious libel as:

> "It is my understanding that...Secretary of State for Justice, agrees that there is no basis for keeping the laws of seditious libel...on the statute book and that there would be a benefit in setting an example to oppressive regimes which use similar

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23 Clare FeikertAhalt, Sedition in England: The Abolition of a Law from Bygone Era" (2012).

24 Roger B. Manning, "*The Origins of the Doctrine of Sedition*, 12(2) ALBION 675 (Summer 1980).

25 *Supra* note 13 at 126.

26 Rakesh Kumar Sahoo and Shivani Kapoor, "Sedition on India: A Comparative Study Proposing Abolition of the Colonial Law" 11 Pen Acclaims 1, 7(2020).

27 The Law Commission, Treason, Sedition and Allied Offences EWLC C72 (1977).

28 *Ibid*.

29 "Criminal Libel and Sedition Offences Abolished," *Press Gazette* (January 13, 2010).

30 Section 73 reads:– " Abolition of common law libel offences, etc.: The following offences under the common law of England and Wales and the common law of Northern Ireland are abolished—
(*a*) the offences of sedition and seditious libel;
(*b*) the offence of defamatory libel;
(*c*) the offence of obscene libel."

31 HL Deb, 9 July 2009, cols 843.

> offences to silence dissent by repealing these antique and out-of-date laws."

Similarly, Lord Baroness D'Souza, Judge, House of Lords[32] observed that: -

> "The power to express forcefully political discontent is the cornerstone of democracy and lies with the people. The ability of individuals to criticize the state is crucial to maintaining freedom in this day and age, when we have so many journalists, bloggers and so forth who give us their views all the time. Conversely, it is not therefore in the power of government to criminalise this expression. The fundamental rights of UK individuals would be better protected by removing the offence of seditious libel from the statute book."

In **United States of America**, the law of sedition and its punishment was laid down under the Sedition Act, 1798.[33] This Act was abolished in the year 1882.[34] The law of sedition was again laid down by enacting the Sedition Act, 1918. The US Congress passed this law to safeguard the US interest in First World War.[35] However, it is pertinent to mention here that the Constitution of United States forbids the state to make any law which will restrict the first amendment- right to speech and expression. There have been serious doubts among the scholars and jurists regarding the issue whether the guarantee provided under the first amendment abolished seditious libel in United States.[36]

In reality, the law of sedition exists in United States despite of the fact that there have been many attempts by the judicial courts to narrow the scope of sedition and it has been rarely used in United States in recent years.[37] In the case of *Schenck* v. *United States*,[38] the Supreme Court of America whilst determining the legality of the Sedition Act, 1918 founded 'the clear and present danger test' for confining freedom of speech and expression. The Court observed that:

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[32] HL Deb, 9 July 2009, cols 848.

[33] The Sedition Act, 1798, S. 2. Section 2 reads:– "Sedition means to write, print, utter or publish, orcause it to be done, or assist in it, any false, scandalous, and malicious writing against the government of the United States, or either House of Congress, or the President, with intent to defame, or bring either into contempt or disrepute, or to excite against either the hatred of the people of the United States, or to stir up sedition, or to excite unlawful combinations against the government, or to resist it, or to aid or encourage hostile designs of foreign nations."

[34] *Supra* note 2 at 6.

[35] *Ibid*.

[36] *Supra* note 2 at 5.

[37] *Ibid*.

[38] 1919 SCC OnLine US SC 62: 63 L Ed 470: 249 US 47 (1919).

> "Words which, ordinarily and in many places, would be within the freedom of speech protected by the First Amendment may become subject to prohibition when of such a nature and used in such circumstances as to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent."

Similarly, in *Arahams* v. *United States*,[39] the Supreme Court accepted the above test and held that the First Amendment can not protect the activities involving distribution of circulars appealing for strike in factories to discontinue manufacturing of machineries to be used to squeeze Russian activists.[40]

Further, sedition was stated as an offence under the Alien Registration Act, 1940 (popularly known as Smith Act) which provided punishment for activities advocating overthrowing of government by using violence.[41] Again, the constitutional validity of this Act was challenged in *Abrams* v. *United States*[42] and the Supreme Court applied the 'clear and present danger test' and upheld its constitutional validity. However, in subsequent cases, the Supreme Court has narrowly interpreted the restriction on freedom of speech and expression.[43] Thus, the restrictions on freedom of speech and expression have been made subject to extreme scrutiny pursuant to these judgments and every advocacy or criticism must direct to encouragement of immediate lawless action in order to meet the requirements for reasonable restriction of first amendment.[44]

Therefore, in conclusion, it becomes apparent that though the Constitution of United States prohibits placing restrictions on freedom of speech and expression given in first amendment, however, the U. S. Supreme Court has evolved various tests and theories to control and restrict hate speech. These include 'present danger test', 'reasonable listeners test', 'fighting words' etc.[45]

In **Australia**, the offence of sedition was mentioned under the Crime Act, 1920. The provisions of sedition under this Act were extensive than the law of sedition in common law countries because incitement to violence or public disturbance and subjective intention were not the sine qua non for punishment under these provisions.[46] The Australian government was recommended by the Hope Commission constituted in 1984 that the definition of sedition in

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[39] 1919 SCC OnLine US SC 213: 63 L Ed 1173: 250 US 616 (1919).
[40] *Ibid*.
[41] *Supra* note 2 at 6.
[42] 1919 SCC OnLine US SC 213: 63 L Ed 1173: 341 US 494 (1951).
[43] *See Yates* v. *United States*, 1957 SCC OnLine US SC 96: 1 L Ed 2d 1356: 354 US 298 (1957); *New York Times Co.* v. *L.B. Sullivan*, 1964 SCC OnLine US SC 43: 11 L Ed 2d 686: 376 US 254, 273-76 (1964); *Brandenburg* v. *Ohio*, 1969 SCC OnLine US SC 144: 23 L Ed 2d 430: 395 US 444 (1969).
[44] *Supra* note 2 at 8.
[45] *Ibid*.

the Australian definition of sedition should be similar as compared with the Common wealth definition.[47] Later on in 1991, the law of sedition was again reviewed by the Gibbs Committee and the Committee recommended that whereas the offence of sedition should be continued, the punishment sought to be restricted to actions that encouraged violence for the purpose of overthrowing or disturbing constitutional authority. In the year 2005, amendments were made in Schedule 7 of the Anti-Terrorism Act (No 2) 2005, together with the sedition as an offence and defenses in sections 80.2 & 80.3 of the Criminal Code Act 1995. The sedition law was reviewed by the Australian Law Reform Commission to see whether the term 'sedition' was suitable to name the offences provided under the 2005 Amendment.[48] This Commission submitted its report suggesting that "the Australian Government should remove the term 'sedition' from Federal Criminal Law."[49] This recommendation was accepted by the Australian Government and enacted the National Security Legislation Amendment Act, 2010, which replaced the word 'sedition' by 'urging violence offences'.[50]

The countries of **New Zealand, Indonesia, South Korea, Canada,** and **Malaysia** have also done away with their laws of sedition on the ground of unconstitutionality.[51]

III. SEDITION LAW IN INDIA

The origin and development of law of sedition in India has to be elaborated in two phases namely British Period and After Independence period. As the Britishers ruled India for almost 200 years and established the present Indian legal system and governing laws therefore, the history of sedition law has to be traced to British Period.

During **British Period**, the Britishers brought law of sedition in colonial India to restrain those actions of the Indian people that could criticize the poor governance by the Crown. The dominant purpose behind this law was to suppress the voice of Indian people and fortify colonial rule.[52]

The British government started the process of enacting penal code for India in 1837. Macaulay prepared Draft Penal Code, 1837- 39 which consisted of section 113 dealing with sedition. The punishment for sedition was proposed for life imprisonment. This section 113 corresponded to section 124A of the Indian

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47 Royal Commission on Australia's Security and Intelligence Agencies, "Report on the Australian Security Intelligence Organization (1985) cited in Australian Law Reform Commission ―Reporton Fighting Words: A Review of Sedition Laws in India" (July 2006).

48 *Supra* note 2 at 8.

49 *Supra* note 47.

50 *Supra* note 2 at 9.

51 *Supra* note 26 at 8.

52 *Supra* note 15 at 2.

Penal Code, 1860 which deals with law of sedition in India. However, it was omitted from the Penal Code when the Indian Penal Code was enacted in the year 1860 for unaccountable reasons.[53] James Fitzjames Stephens who drafted Criminal Procedure Code has been quoted saying this omission was the consequence of a mistake.[54] Thereafter, he rectified his mistake as the colonial government was feeling urgent need to enact a specific section to deal with sedition. Accordingly, the offence of sedition was incorporated under section 124A by passing the IPC (Amendment) Act, 1870 (Act XXVII of 1870).[55] This section 124A was on similar lines with the Treason Felony Act, 1848[56] providing punishment for seditious expressions.[57] Later on, section 124A was replaced with minor changes by passing IPC (Amendment) Act, 1898 (Act IV of 1898).[58] Thereafter, some inconsequential changes have been made by the Adoption of Laws Order issued in 1937, 1948 and 1950 and by the part B States (Laws) Act, 1951.[59]

Meanwhile, some other sedition laws were also enacted during British period. The Prevention of Seditious Meetings Act, 1907 was enacted by the West Minster Parliament to stop public meetings likely to cause disturbance or offence of sedition. Later, this Act was repealed and replaced by the Prevention of Seditious Meetings Act, 1911. This Act also was repealed by the Repealing and Amending (Second) Act, 2018.[60]

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53 K.I. Vibhute, *PSA Pillai's Criminal Law* 375 (13th edn., LexisNexis, 2017).

54 W.R. Donough, *A Treatise on the Law of Sedition and Cognate Offences in British India* (Thakkar, Spink and Co., 1911). <http://archive.org/details/onlawofsedition00dono/page/n3/mode/2up?view=theater>. (Accessed on 31 March 2022).

55 *Supra* note 2 at 9.

56 Treason Felony Act, 1848, S. 3. Section 3 of reads:— "If any person whatsoever shall, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our Most Gracious Lady the Queen, from the style, honour, or royal name of the imperial crown of the United Kingdom, or of any other of her Majesty's dominions and countries, or to levy war against her Majesty, within any part of the United Kingdom, in order by force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both Houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other of her Majesty's dominions or countries under the obeisance of her Majesty, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable to be transported beyond the seas for the term of his or her natural life."

57 *Supra* note 2 at 10.

58 *Supra* note 53 at 375. The comparison of old and new provision of sedition under Section 124-A discloses that in the former the offence consisted in exciting or attempting to excite 'feelings of disaffection to the government established by law' however in the letter bringing or attempting to bring in to 'hatred or contempt towards the government established by law' is also made punishable.

59 *Ibid*.

60 *Supra* note 2 at 11.

Section 124A of the Indian Penal Code, 1860 deals with the offence of sedition in India.[61] This section was based on framework imported from many sources namely the English law relating to seditious words, the common law of seditious libel and the Treason Felony Act operating in Britain. The common law of seditious libel applied to both words and actions which were related to the government and citizens, along with between communities of people.[62] The offence of sedition enumerated under section 124A is a very serious crime; therefore, it has been positioned in the center of Chapter VI of the Indian Penal Code, 1860.[63] Chapter VI deals with 'Offences against the State' which consists of serious offences together with waging war against the state. This section provides punishment for the offence of sedition which may extend from three years imprisonment to life imprisonment along with additional fine[64] and the charge of sedition is cognizable, non-bailable and non-compoundable offence triable by Court of Session. The first explanation defines disaffection as all feelings of enmity and disloyalty.[65] The feelings of disaffection may be existing between 'the ruler' and 'the Ruled'. The ruler ought to be accepted as a ruler any feeling of disaffection, which is the contrary of that feeling, is the negation of that spirit of acceptance of a particular government as ruler.[66] Further, this section expressly distinguishes between disapprobation against the state and bringing into hatred or contempt, or exciting or attempting to excite disaffection towards the government established by law.[67] The second explanation of this section makes disapprobation permissible when it is done with a view to obtain alteration of government policies or decisions by using lawful means.[68] The word 'disapprobation' means disapproval. Explanations 2 and 3 provide that as long as a person does not excite or attempt to excite hatred, contempt or disaffection, then expressing disapproval of the acts of the government in

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[61] Indian Penal Code, 1860, S. 124-A. Section 124-A reads:- "Sedition—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine;

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity;

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

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

[62] *Supra* note 54.

[63] Siddharth Narrain, "Disaffection' and the Law: The Chilling Effect of Sedition Laws in India" XLVI No. 8 *EPW* 33(2011).

[64] Indian Penal Code 1860, S. 124-A.

[65] *Ibid*.

[66] *Emperor* v. *Bhaskar Balvant Bhopatkar*, 1906 SCC OnLine Bom 41: (1906) 8 Bom LR 421.

[67] *Ibid*.

[68] Indian Penal Code 1860, S. 124A.

order to bring about change by lawful means or criticizing or disapproving the administration, does not constitute an offence under this section.[69]

The British government rigorously applied sedition law enumerated under section 124A to curb political dissent in colonial India.[70] The case of *Queen Empress* v. *Jogendra Chandra Bose*[71] was the first case of trial for sedition. The accused criticized the negative economic impact of British Colonization and the Age of the Consent Bill, and he was charged for sedition. The Court held that a person who excites or attempts to excite a feeling contrary to affection is liable for sedition.[72] The Court made the distinction between 'disapprobation' and 'disaffection'. The Court observed that "disaffection means the use of written or spoken words to form a disposition in the minds of people to whom the words are addressed, not to obey the lawful authority of the government or to resist that authority."[73] However, the jury did not deliver judgment in this case because lack of consensus among Jury Members and charges of sedition on accused were withdrawn on his tendering apology.[74]

Another leading case was of *Queen Empress* v. *Bal Gangadhar Tilak,*[75] Bal Gangadhar Tilak was charged for the offence of sedition on the grounds that he published an article in his newspaper- Kesari invoking the Maratha Warrior Shivaji to rouse overthrow of British rule. The Court held that "the offence of sedition provided under section 124A consists in 'exciting or attempting to excite in others certain feelings towards the government' and not in 'the exiting or attempting to excite mutiny or rebellion or any sort of actual disturbance, great or small."[76] Therefore, this decision enlarged the scope of sedition by laying down that the existence of feelings was supreme and mere attempt to excite such feelings was sufficient to constitute the offence. The intensity of disaffection and gravity of the action was not the test to prove charges of sedition.[77]

The ratio of this case was also followed in two other cases namely *Queen Empress* v. *Ramchandra Narayan*[78] and *Queen Empress* v. *Amba Prasad*.[79] In *Amba Prasad* case, the Allahabad High Court interpreted "the word 'disaffection' not as meaning mere absence or negation of love or goodwill, but a positive feeling of aversion, which is akin to ill- will, a definite insubordination of authority or seeking to alienate the people and weaken the bond of allegiance, a feeling which tends to bring the government in to hatred and discontent by imputing base and corrupt motives to it." Thus 'disaffection' will comprise of not only 'absence' or 'negation' of affection but also a 'positive feeling of

69 *Supra* note 53 at 383.
70 *Supra* note 2 at 11.
71 (1892) ILR 19 Cal 35 .
72 *Ibid*.
75 ILR (1897) 22 Bom 112.
78 (1898) ILR 22 Bom 152.
79 (1897) ILR 20 All 55.

aversion' against the government.[80] These decisions created ambiguity in interpreting the term 'disaffection'. Therefore, Explanation 3 to this section was added to give clarity to the meaning of word disaffection in 1898.[81]

Further, in the case of *Niharendu Dutt Majumdar* v. *King Emperor*,[82] the accused was charged for offence of sedition on the ground that he delivered provocative and violent speech in the Bengal Legislative Assembly by making statements that state government had failed to maintain law and order in the aftermath of Dacca riots. The Federal Court of India (Sir Maurice Gwayer, CJ) held that the essence of the offence of sedition is incitement to violence and mere abusive words are not enough. The words or acts complained of must incite public disorder or must cause reasonable anticipation or likelihood of public disorder to constitute disaffection.

However, the ratio of this case was not accepted in the next case of *King Emperor* v. *Sadashiv Narayan Bhalerao*[83] and the Judicial Committee of Privy Council held that the case of Niharendru Mazumdar was decided on the basis of wrongful construction. The literal interpretation given in Tilak and other cases was approved by the Privy Council.

In **Post Independence Period**, as India got independence in the year 1947, therefore, the process for preparing Constitution for free India also started. The freedom of speech and expression was originally provided in Art. 13 of the Draft Indian Constitution. However, a proposal was placed before the Constituent Assembly to permit imposition of restrictions on this right by the state on the ground of slander, libel, defamation, offences against decency or morality or sedition or the matters pertaining to security of the state. During Indian movement for independence against British rule, the law of sedition was used by the Britishers as a tool to curb dissent during their rule in India. Therefore, after independence, the Constituent Assembly unanimously resolved for deleting the word 'sedition' from Art. 13 of the Draft Constitution. Almost all the members of the Constituent Assembly had clear consensus about oppressive nature of seditious laws and they were not ready to include the word 'sedition' as a ground for restriction on the freedom of speech and expression.[84] The words 'public order' and 'sedition' were deleted due to keen efforts by K. M. Munshi in the debates of Constituent Assembly.[85] However, the offence of sedition remained operative under section 124A of the Indian Penal Code, 1860.

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[80] *Ibid*.

[81] *Supra* note 2 at 13.

[82] 1942 SCC OnLine FC 5: AIR 1942 FC 22.

[83] 1947 SCC OnLine PC 9: (1946-47) LR 74 IA 89.

[84] Constituent Assembly of India, 2nd December 1948; Constituent Assembly Debates Official Report, Vol. VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014.

[85] *Supra* note 63 at 35.

Thereafter, when the Constitution of India came in to operation, the constitutionality of section 124A of the IPC was challenged on the ground that it contravenes the fundamental right of freedom of speech and expression guaranteed under Art. 19(1)(a) of the Constitution of India.

In *Tara Singh* v. *State*,[86] the Supreme Court had occasion to check the constitutional validity of Section 124-A of the IPC in the light of freedom of speech and expression guaranteed under Art. 19(1)(a) of the Constitution of India. The East Punjab High Court declared Section 124-A ultra vires to the Constitution as it curtailed freedom of speech and expression under it. The Court observed that:

> "India is now a sovereign democratic state. Governments may go or be caused to go without the foundations of state being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come out."

This approach of Tara Singh case was followed by the Allahabad High Court in the next case of *Ram Nandan* v. *State of U.P.*[87] in spite of insertion of words 'in the interest of' and 'public order' under Art. 19(1)(a) of the Constitution of India through the Constitutional First (Amendment) Act, 1951. The court held that the restrictions imposed on freedom of speech and expression under Art. 19(1)(a) can not be said in public interest.

Finally, the decision of Supreme Court through Constitutional Bench in the case of *Kedar Nath Singh* v. *State of Bihar*[88] laid down the interpretation of law of sedition under section 124A of the IPC, which remains operative till date. The Constitutional Bench declared section 124A of the IPC to be valid and constitutional as it could fall under the category 'public order' permissible for reasonable restrictions under Art. 19(2) of the Constitution of India. The Court observed:

> "Government established by law' is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the State. Hence any acts within the meaning of Section 124-A which have the effect of subverting the Government by

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86 1950 SCC OnLine Punj 113: AIR 1951 P&H 27.
87 1958 SCC OnLine All 117: AIR 1959 All 101.
88 AIR 1962 SC 955.

> bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence."

The Supreme Court tried to make a balance between the freedom of speech and expression and reasonable restrictions as mentioned under Art. 19 of the Constitution of India. The Court held:

> "The security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the *sine quo non* of a democratic form of Government that our Constitution has established. … But the freedom has to be guarded against becoming a license for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder."

Therefore, the Supreme Court accepted the interpretation given by the Federal Court in the case of *Niharendru Majumdar* and said that the incitement to violence, creation of disorder, disturbance of law and order must be considered as an essential ingredient of the offence of sedition.

The ratio of *Kedar Nath* Case has been followed in several subsequent cases.[89] Accordingly, Law commission of India in its 39th, 42nd, 43rd, 267th Reports and Consultation Paper on Sedition, 30th August 2018 have also recommended to the government of India to make changes in law of sedition in consonance with the ratio of this case.[90]

Again, the constitutionality of offence of sedition under section 124A of the Indian Penal Code, 1860 has been challenged before the Supreme Court in

[89] *See Raghubir Singh* v. *State of Bihar*, (1986) 4 SCC 481: AIR 1987 SC 149; *Bilal Ahmad Kaloo* v. *State of A. P.*, (1997) 7 SCC 431: AIR 1997 SC 3483; *Nazir Khan* v. *State of Delhi*, (2003) 8 SCC 461: AIR 2003 SC 4427; *Vinayak Binayak Sen* v. *State of Chhattisgarh*, 2011 SCC OnLine Chh 30; *Common Cause* v. *Union of India*, (2016) 15 SCC 269; *Kanhaiya Kumar* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 1362: (2016) 227 DLT 612.

[90] *Supra* note 2 at 2- 3.

the case of *S.G. Vombatkere* v. *Union of India*.[91] A three judge Constitutional Bench comprising of Chief Justice N. V. Ramana, Justice Surya Kant and Justice Hima Kohli heard this case and passed interim order son dated 11.05.2022 suspending the operation of law of sedition in India. The Supreme Court in its order has put on abeyance all proceedings, pending trials and appeals relating to charges under the sedition law under section 124A of the Indian Penal Code, 1860 till the time the Central Government make review of the provisions of this offence. The Bench said that, "it hopes and expects states and Centre will refrain from registering any fresh FIR, continue with investigation or take any coercive measure by invoking section 124A of IPC, while the law is under consideration. Further, If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India."[92]

Therefore, the Supreme Court has finally stopped the applicability of law of sedition in India in its order dated 11.05.22 and given time to the Central Government to re- examine this law and to repeal it to make a balance between security interests and integrity of the state and civil liberties of the citizens.

IV. THE NATIONAL SECURITY ACT, 1980: SALIENT FEATURES

Every democratic country makes effort to protect its sovereignty and integrity. India has passed several national security laws with the aim of combating terrorism and other forms of external and internal threats. It has passed some anti- terrorism laws including preventive detention laws.

The term preventive detention has not been defined under Indian laws, however this term was used by British Law Lords with reference to detention made under Regulation 14- B, the Defence of Realm Act, 1914 after the First World War. The same language was used the primary purpose of preventive detention laws is to observe precautions to avoid commission of crime by a suspect. Under preventive detention law, the administration determines the circumstances leading to suspicion, probable and reasonable cause of impending act and justification for detention. The word 'preventive' is used in opposition to the word 'punitive'. The[93] Lord Finley in the case of *King* v. *Halliday*[94] observed that "the measure is not punitive but precautionary." The objective of preventive detention is not to punish a man for having done something but

[91] (2022) 7 SCC 433.
[92] *Ibid*.
[93] Mahendra Pal Singh, *V. N. Shukla's Constitution of India* 240 (13th edn., EBC, 2019).
[94] 1917 AC 260.

to intercept him before he does it and to prevent him from doing it. Neither charge is formulated, nor any offence is proved.[95]

The Constitution of India authorizes the legislature to make laws for national security under Art. 247 read with entry 9 of List- I (Central List) and entry 3 of List- III (Concurrent List) and legalize preventive detention laws.[96] Further, Art. 21 and 22 of the Constitution of India empowers the parliament to enact preventive detention laws and various safeguards to these laws.[97] The necessity of passing such legislation was emphasized by the Supreme Court in the case of *A. K .Gopalan* v. *State of Madras*.[98] The Supreme Court (Patanjali Shastri, J.)observed:-

> "This sinister- looking feature, so strangely out of place in a democratic constitution which invests personal liberty with the sacrosanctity of a fundamental right and so incompatible with the promises of its preamble is doubtless designed to prevent the abuse of freedom by anti- social and subversive elements which might imperil the national welfare of the infant republic."

Therefore, the parliament enacted a preventive detention law namely the National Security Act, 1980 (hereinafter to be called as NSA) to prevent persons from acting against the interest of state and to maintain public as well as actions which may threaten the 'security of India', or the "security of the State Government', or are 'detrimental to the preservation of public order.'[99] This Act received the assent of the President of India on the 27thDecember, 1980 and notified in the Gazette of India on this date.[100]

The history of preventive detention can be traced back to the Bengal State Prisoners Regulation, 1818. This law remained operative even post constitution era except the years January 1977- May 1978 and March 1977- September 1980. Later, an Ordinance namely the National Security Ordinance, 1980 was promulgated by the President of India which was replaced by the National Security Act, 1980.[101]

The NSA is a small Act containing only 18 sections. The policy of the NSA is "to provide for preventive detention in certain cases and for matters connected therewith."[102] The NSA is applicable to whole of India excluding State

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95 *Supra* note 91.
96 *Ram Bali Rajbhar* v. *State of W.B*., (1975) 4 SCC 47: (1975) 3 SCR 63.
97 Constitution of India, Arts. 21 and 22.
98 AIR 1950 SC 27.
99 The National Security Act, 1980 (NSA).
100 *Ibid*.
101 *Supra* note 91 at 241.
102 The National Security Act, 1980.

of Jammu and Kashmir.[103] The term 'detention order' means an order made under section 3 of the NSA.[104] The preventive detention order under section 3 can be made by either Central government or State government.[105] The appropriate government (Central or State government) has the power to make orders for preventive detention of certain persons on the grounds of security of India, the relations with foreign countries, defense or safety or security of India, maintenance of public order or maintenance of supplies and services.[106] Such

[103] *Id*., S. 1(2).

[104] *Id*., S. 2(1)(*b*).

[105] *Id*., S. 2(1)(*a*).

[106] The National Security Act, 1980, s. 3. Section 3 reads:- "Power to make orders detaining certain persons**:-**(1) The Central Government or the State Government may -

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defense of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, It is necessary so to do, make an order directing that such person be detained;

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained;

Explanation.- For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980, and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act;

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section: Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time;

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government: Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted;

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order".

preventive detention orders can be made against foreigners to ensure their presence in India or expulsion from India. The power to make preventive detention order can also be exercised by the District magistrate or Commissioner of Police within their local limits of jurisdiction. The preventive detention orders must be made in writing clearly stating grounds of arrest by the Central or State government or District Magistrate or Commissioner of Police. When such orders are made by the District Magistrate or Commissioner of Police, then the approval from state government should be taken by such authorities. Such preventive detention order can be made by the State government for a maximum period of three months in first instance. However, the preventive detention orders made by the District Magistrate or Commissioner of Police will remain valid for initial fifteen days. Further detention can be made only after seeking approval from appropriate government by the concerned authorities.[107]A preventive detention order can be executed in any part of India like a warrant of arrest issued in accordance with the Code of Criminal Procedure, 1973.[108]The State government will have the power to regulate place and conditions of detention such as discipline, punishment for breaches of discipline and conditions as to maintenance.[109] The Preventive detention orders shall be valid irrespective of extra territorial jurisdiction.[110] The appropriate government or authority shall have power to execute their preventive detention orders in cases where suspected person absconds or hides in similar manner as per provisions 82, 83, 84 and 85 of Code of Criminal Procedure, 1973. Any person who contravenes the orders made under this section shall be punished with imprisonment for a term of one year and this will be regarded as cognizable offence.[111] The appropriate government or authority has to disclose in writing to the detained person the grounds of his arrest within 10 days maximum and the concerned detainee will be afforded opportunity to make representation against such arrest before the appropriate government.[112] The Central government and State Governments will have to constitute Advisory Boards consisting of three members who are or have been qualified to be High Court Judge and one of them shall be nominated as Chairperson of such Board.[113] The Advisory Board shall make scrutiny of preventive detention orders made by the appropriate government or authorities and submit its report within seven weeks to the concerned government.[114] The Appropriate government has to consider such report while deciding continuation of preventive detention orders.[115] A preventive detention duly approved by the appropriate government can remain operative for a maximum period of 12 months and such orders can be modified

[107] *Ibid.*
[108] The National Security Act, 1980, S. 4.
[109] *Id.*, S. 5.
[110] *Id.*, S. 6.
[111] *Id.*, S. 7.
[112] *Id.*, S. 8.
[113] *Id.*, S. 9.
[114] *Id.*, Ss. 10, 11.
[115] *Id.*, S. 12.

or revoked during this period. Further, the detainee may be temporarily released on with or without conditions by such authority.[116]

V. ISSUES AND CONCERNS OF SEDITION LAW AND PREVENTIVE DETENTION LAW

The law of preventive detention is authorized by our Constitution presumably because it was foreseen by our Constitution makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subvert or disrupt the basis of an established order may outweigh the claims of personal liberty.[117]

Though the Constitution recognizes the necessity of laws as to preventive detention, however, it also provides in Art. 22 (4) to (7) of the Constitution of India certain safeguards to mitigate their harshness by placing fetters on legislative power conferred on the legislature and to prevent misuse of the power by the executive.[118] One of the major problems which have been experienced by several countries is that though the preventive detention laws have been passed to prevent commission of crime by a suspect, however, these laws have not been followed in their true letter and spirit. Such laws have been used as a tool for oppression and suppression by the governments and their law enforcement agencies causing distress to individual's rights, liberties, and justice. Indian position regarding preventive detention laws is no exception to it.

There have been various implications of NSA in matters of human rights as well as fundamental rights of the citizens. It is to be pointed that the NSA does not provide adequate procedural safeguards and it empowers the government to arrest a person and keep him in custody if in the opinion of the state government, such preventive detention will prevent him from committing acts prejudicial to the security of India or to the maintenance of the order.[119] The NSA authorizes preventive detention of certain individuals in order to prevent activities which may cause threat to 'public order' and 'national security'. Although, these words have neither been defined under the Constitution of India nor the NSA and there is no guidance regarding the issue that what acts will result in threat to national security or public order in a particular matter.[120]

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[116] *Id*., Ss. 13, 14, 15.

[117] *Ram Bali Rajbhar* v. *State of W.B*., (1975) 4 SCC 47: (1975) 3 SCR 63.

[118] *Supra* note 91 at 241.

[119] *See* South Asia Human Rights Documentation Centre, *Government Decides to Play Judge and Jury* 103- 104 (2001).

[120] Derek P. Jinks, "The Anatomy of an Institutionalised Emergency: Preventive Detention and Personal Liberty in India" 22nd edn., *Mich. J. of International Law* 311, 330 (2001).

The Supreme Court in the case of *Ram Manohar Lohia* v. *State of Bihar,*[121] tried to differentiate between the concepts 'public order', 'security of State' and 'law and order'. Justice Hidayathullah held that only the most severe actions would justify use of preventive detention:

> "One has to imagine three concentric circles. Law and order represent the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."[122]

The constitutionality of the NSA was challenged in the case of *A.K. Roy* v. *Union of India*[123] and the Supreme Court held that the Act did not violate the Constitution of India. Nevertheless, the court emphasized that the extraordinary power of preventive detention must be narrowly construed. In view of wide misuse of power of arrest and detention including custodial deaths the Supreme Court in the case of *D.K. Basu* v. *State of W.B.* has given detailed directions of arrest and detention in police custody to be followed by the concerned authorities. Court has also recognized the right of arrestee against torture and entitlement of compensation for its violation.[124]

Therefore, it becomes clear from the above cases that though the Indian Courts are not ready to declare preventive detention laws as unconstitutional, however they are trying to ensure that appropriate restrictions and safeguards should be imposed on the use of such laws.[125]

India has inherited from Brishers many laws and some of them are controversial like law of sedition. This law has been interpreted and modified to include safeguards so it may pass the test under Ar. 14, 19 and 21. However, this law has been used as an effective means by the contemporary governments for reasons that are arguably like those of our former oppressive rulers to restrict freedom of speech and expression guaranteed under Art. 19(1)(a). Though the law of sedition under section 124A of Indian Penal Code, 1860 has already been interpreted and applied by the courts even after it was laid down in *Kedar Nath* v. *Union of India*, however, it is debated that it is vague and indeterminate by its very character and cannot be applied uniformly. Further, this law was enacted by British regime for oppression and suppression of voices of dissent of Indian citizens during colonial era, which cannot

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[121] AIR 1966 SC 740.

[122] *Ibid.*

[123] (1982) 1 SCC 271: (1982) 2 SCR 272.

[124] (1997) 1 SCC 416.

[125] *See* C. Raj Kumar, "Human Rights Implications of National Security Laws in India: Combating Terrorism While Perserving Civil Liberties" 33 Denv. J. Int'l L. & Pol'y 213(2005).

be operative after independence as per the provisions of Constitution of India. Justice D.Y. Chandrachud being part of a three-judge bench headed by Chief Justice Dipak Misra in Bhima- Koregaon violence case said that "Dissent is the safety valve of democracy. If dissent is not allowed, then the pressure cooker may burst."[126] An examination of the cases of sedition before the Supreme Court and High Courts and Law Commission Reports reveals that the offence of sedition has been gradually becoming obsolete. The threats of public order, which this law supposedly addresses, can instead be addressed by other laws enacted for that specific purpose.

Further, the Central and State governments have repeatedly abused sedition laws and continued to register charges of sedition against media practitioners, journalists and human right activists and any person who dares to show dissent. In 2008, Bharat Desai, editor, Times of India along with a reporter and journalist were charged for the offence of sedition. The accused persons had published articles in the newspaper questioning the appointment of the city police chief and alleging that he related to erstwhile don.[127] The law enforcement agencies has been mechanical in their process of filing sedition charges against people they wish to target and there has been conviction of the accused persons on sedition charges in flimsy manner. The alarming effect of sedition laws threatens to destabilize, and steadily destroy, the legitimate and constitutionally guaranteed right to dissent, protest or criticize the government.[128] Some of the recent cases namely NDTV Journalist Vinod Dua case,[129] Disha Ravi in the Greta Thunberg case,[130] Farooq Abdullah case[131] etc. also highlight the rampant misuse of sedition laws by the state law enforcement machinery.

The law of sedition along with preventive detention law has been used to oppress the voices of dissent by the state governments in recently in many cases. Keeping all such instances of cases of glaring misuse of law of sedition in India, the Supreme Court has finally suspended the operation of section 124A of the Indian Penal Code, 1860 in its interim order dated 11.05.2022 till the time of re- examination of this law by the Central Government.

VI. CONCLUSION

Freedom of speech and expression constitutes an important element of the fundamental rights guaranteed under the Constitution of India. There has been very little scope for outdated and oppressive British legacies to continue in

[126] <https://timesofindia.indiatimes.com/india/sc-gives-arrested-activists-a-breather-says-dissent-is-safety-valve-of-democracy/articleshow/65595981.cms>. (Accessed on 5 April 2022).

[127] *Supra* note 63 at 36. *See* also the case of Lenin Kumar (2008); E. Rati Rao (2010); Ahmad Kaloo (1997).

[128] *Supra* note 63 at 36.

[129] *Vinod Dua* v. *Union of India*, 2021 SCC OnLine SC 414.

[130] *State* v. *Disha A. Ravi*, Bail Application No. 420 of 2021, decided on 23-02-2021.

[131] *Rajat Sharma* v. *Union of India*, (2021) 5 SCC 585: 2021 SCC OnLine SC 162.

India while considering the enormous progress in thought and expression of citizens, and its consequential manifestation under the Indian laws. However, the Parliament and the states legislatures ruled by different ideologies never ever tried to abolish the ancient offence of sedition, manifested in many laws in many forms. Even, the Law Commissions in their several reports did not make recommendations for repeal of sedition laws in India. It is pertinent to mention here that the Constituent Assembly did not aim to confine the freedom of speech and expression in such stringent forms, although it did not favor absolutism of freedom like those of the United States. Further, the offence of sedition has itself been abolished in the United Kingdom in the year 2009along with a message by the Parliament, for other nations to do so, and adhere freedom of speech and expression in its true sense. Nevertheless, it is contended that the United Kingdom has integrated far more stringent laws in its anti-terrorist legislations. This is a high time for a healthy debate on the future of sedition laws in India. Recently, the Supreme Court of India has also raised various concerns regarding the law of sedition and passed interim orders for the suspension of section 124A during re- examination of this law by the Central Government.[132]

Therefore, sedition laws and their increasing misuse by all governments are matters of serious concern. The abuse of preventive detention laws in matters involving sedition charges create great hardship, oppression, suppression and victimization of the accused persons. The government of India has to strike a balance between two competing interests. On one side, it is required that the national security, sovereignty and public order have to be kept intact and good and on another side, the citizens fundamental rights, human rights are also to be protected and respected. The National Security Act, 1980 is needed to maintain public order, national security, relations with foreign nations etc. and it is a good law. However, as like other penal laws, there have been problems in implementation of this law. Therefore, procedural and other safeguards should be provided whenever, the state or its law enforcement agencies are authorized to take recourse of this law.

[132] *Supra* note 91.