Sedition under Section 124-A of the Indian Penal Code: An Analysis

Prenavpreet Kaur
University Institute Of Legal Studies, Panjab University,
Chandigarh, India

ABSTRACT:

Freedom of speech is one of the most important aspect of a democracy. The law of sedition under section 124 of Indian Penal Code violates this very fundamental freedom. This section has been used by British administration for stifling freedom fighters' voices and one would hope that it would not make its way into the independent India. However it still found its way through Indian Legal system. Indian judiciary has tried to limit its ambit and interpret it in a constitutional manner. Regardless, the government has launched unnecessary proceedings against innocent individuals due to political vendetta. The suffering of these individuals caused by harassment under this section is blatant violation of human rights and is testimony why this law needs to be repealed. Furthermore, Indian laws provide sufficient safeguards for maintaining security and sovereignty of the state.

I. INTRODUCTION

John Stuart Mill once said, "If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."

Such is the importance of freedom of speech of an individual in the society. The Indian Constitution guarantees this freedom of speech to Indian citizen so that they can fulfill their potential and reach their highest selves. It also protects state from encroaching upon this right of an individual. Indian judicial system acts as a safeguards and provider of remedies against any arbitrary administrative containment of these rights. The problem arises when state encroaches upon this sphere by protecting itself from judicial scrutiny. This is made possible by various oppressive and regressive laws which enable the state to act in a capricious manner.

Sedition under S.124-A is such a law which needs a full discussion in today's time. This law of colonial times was used to curb people's freedom, it is being utilized in the same way in independent India the only difference being nature of the state. We need to understand the history of this law, how its application has troubled innocent people and why it needs to be omitted from the Indian Penal Code.

II. HISTORICAL BACKGROUND

Law in England

Originally, the common law principles regarding sedition evolved from some of Britain's oldest laws, such as the Statute of Westminster 1275, when the divine right of the King and the principles of a feudal society were

not questioned. Seditious libel was established by the Star Chamber case De Libellis Famosis of 1606. Not only was truth no defense, but intention was irrelevant, as was the actual harm (reputational or otherwise) done by the libel. Later, the Criminal Libel Act 1819 made statutory provisions for the seizure, confiscation and destruction of all seditious materials. Before 1832, the English law of "seditious libels" was actually quite expansive. A person could be convicted for sedition for saying anything that brought the Government into "hatred or contempt" or even for merely raising "discontent or disaffection" against the government. In other words, it was not necessary for a person to say something that was actually likely to make people take up arms against the government. Seditious libel and Criminal libel are common law offences in the United Kingdom. A seditious libel is a statement which brings into "hatred or contempt" the Monarch, her heirs, the Government or its officials.

The definition of sedition in Stephen's *Digest of the Criminal Law* is a widely cited text:[1]

Sedition consists of any act done, or words spoken or written and published which:

- has or have a seditious tendency and;
- is done or are spoken or written and published with a seditious intent. A person may be said to have a seditious intent if he has any of the following intentions, and acts or words may be said to have a seditious tendency if they have any of the following tendencies:
    - an intention or tendency to bring into hatred or contempt, or to excite disaffection against the person of,
    - her Majesty, her heirs or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, [or to incite any person to commit any crime in disturbance of the peace] or to raise discontent or disaffection among Her Majesty's subjects, or to promote feelings of ill-will and hostility between difference classes of such subject.

However, this changed after 1832. In his authoritative 19th century treatise on the history of English criminal law, Sir James Fitzjames Stephen wrote that prosecutions for sedition in England since 1832 were "so rare that they may be said practically to have ceased". "In one word," he wrote, "nothing short of direct incitement to disorder and violence is a seditious libel." Ironically, Stephen was the Law Member of the Viceroy's Council who would introduce sedition into the IPC.

[1] Stephen, Digest of the Criminal Law, Art. 114 (9th ed.).

Law in India under the British Administration

The original draft of the IPC was drawn up in 1837 by the Indian Law Commission headed by **T.B. Macaulay.** Macaulay's Draft Penal Code 1837 consisted of section 113 that corresponded to section 124-A IPC. Section 113 of this draft made it an offence to "excite feelings of disaffection against the government". Macaulay's definition of sedition was not as broad as the pre-1832 English law of seditious libels. For instance, Macaulay did not make it an offence to excite hatred, contempt or ill will against the government, choosing only the vague word "disaffection" to describe sedition. The punishment proposed was life imprisonment. **Sir John Romilly,** Chairman of Second Pre-Independence Law Commission commented upon the quantum of the punishment proposed for sedition, on the ground that in England the maximum punishment had been three years and he suggested that in India it should not be more than five years.[2] However, this section was not included in the IPC when it was enacted in 1860. This omission was attributed to a clerical error. This was surprising for many. **Mr**. **James Stephens** when asked about this omission referred to the letter written by Sir Barnes Peacock to Mr. Maine, where he had remarked that:

―I have looked into my notes and I think the omission of a section in lieu of section 113 of the original Penal Code must have been through mistake […] I feel however that it was an oversight on the part of the committee not to substitute for section 113.[3]

Mr. James Stephen thereafter set out to rectify this omission. An amendment was introduced to the IPC in 1870, and Section 113 of Macaulay's draft was inserted into the code as Section 124-A. There is some evidence to suggest that sedition was finally made an offence in British India because the colonial government feared a Wahabi uprising. While introducing the amendment to the Viceroy's Council, Law Member Stephen made a specific reference to a man who had preached "jehad or holy war against Christians in India" and of how the man had been in the habit "for weeks and months and years, of going from village to village, and preaching in every place he came to that it was a sacred religious duty to make war against the Government of India". Later, in 1898, the Lieutenant Governor of Calcutta similarly said that it was "the Wahabi conspiracy and the open preaching of jehad or religious war against the government" in 1870 that had prompted the introduction of sedition into the IPC.[4]

Consequently, sedition was included as an offence under section 124A IPC through special Act XVII of 1870. This section was in line with the Treason Felony Act 1848 that penalized seditious expressions. One of the reasons cited by Mr. Stephen for introducing this section was that in the absence of such provision, this offence

[2] 2 Dr. Hari Singh Gour, Penal Law of India, 1232, (Law Publishers (India) Pvt. Ltd., 11th ed.).
[3] Law Commission of India, Consultation paper on "Sedition" (Aug30, 2018).
[4] Abhinav Chandrachud, *History of Sedition*, FRONTLINE (Sept 16, 2019), https://frontline.thehindu.com/the-nation/history-of-sedition/article9049848.ece.

would be penalized under the more severe common law of England.[5] Therefore, the adoption of this section was projected as an obvious choice for protecting freedom of expression from the stricter common law. According to Mr. Stephen, the adopted clause was much more compressed, much more distinctly expressed, and freed from great amount of obscurity and vagueness with which the law of England was hampered. The "intent" of the section was to punish an act of exciting feelings of disaffection towards the government, but this disaffection was to be distinguished from disapprobation. Thus, people were supposedly free to voice their feelings against the government as long as they projected a will to obey its lawful authority. However, Macaulay's draft did not reflect the current state of the law in England either, according to which only direct incitements to violence against the state were considered seditious. Hence it was misconstrued greatly by the Courts and used as an instrument to oppress Indians and to cause a hindrance in the freedom struggle.

Section 124A IPC was amended in 1898 by the Indian Penal Code (Amendment) Act 1898 (Act V of 1898) providing for punishment of transportation for life or any shorter term. While the former section defined sedition as exciting or attempting to excite feelings of disaffection to the Government established by law, the amended section also made bringing or attempting to bring in hatred or contempt towards the Government established by law, punishable.[6]

The West Minster Parliament enacted the Prevention of Seditious Meetings Act, 1907, in order to prevent public meetings, likely to lead the offence of sedition or to cause disturbance as in many parts of India, meetings were held against the British rule, with the main objective of overthrowing the Government.

The Prevention of Seditious Meetings Act, 1911, repealed the Act 1907. Section 5 thereof enabled the statutory authorities to prohibit a public meeting in case such meeting was likely to provoke sedition or disaffection or to cause disturbance of public tranquility. Violation of the provisions of the Act was made punishable with imprisonment for a term, which could extend to six months or fine or both.

The history of enactment of **Sedition** shows that it was clearly meant to suppress the voices of freedom fighters and anyone who dared raise their voice against the inhumane, exploitative and structurally discriminatory practices against Indian people. Even though the provision under **IPC** allowed for disapprobation of the government but any serious disapprobation or criticism of the government was construed as disaffection. The term "disaffection" was given a very wide meaning. This was seen in various pre-Independence hearings where biases of various Judges were used to Indian's disadvantage.

It was hoped that once India gained independence and the Constitution comes into force, all the draconian laws

[5] Queen Emperess v. Jogendur Chandra Bose (1892) 19 ILR Cal 35.

[6] K.I. Vibhute & P.S.A. Pillai's Criminal Law 335 (Lexis Nexis Butterworths, 2012).

forced upon the Indian populace would cease to exist. Freedom promised people not only a sovereign country but a democratic government; a government by and for the people remains open to criticism and performance analysis. However, **sedition** was still considered an offence under the **IPC** after independence. Even after seven decades of independence, sedition is still considered an offence under **s.124-A** of the Indian Penal Code.

III. Sedition Under Section 124-A Of The Indian Penal Code Under Current Indian Law

Section 124-A of the Indian Penal Code defines sedition. It states that 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. Sedition has been defined under many statutes but the general provision of law is similar in all the provisions and Section 124-A would suffice to our purpose.

The *Explanation* 1 to this section state that the expression "disaffection" includes disloyalty and all feelings of enmity. *Explanation* 2 reads that comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. *Explanation* 3 states that comments expressing disapprobation of the administrative or other action of Government without exciting or attempting to excite hatred contempt or disaffection, do not constitute an offence under this section.

Explanation 1 sets out the scope of disaffection and Explanation 2 and 3 state what is not considered sedition. The word sedition however does not occur in the body of the section. It finds place only as a marginal note. The section places absolutely on the same footing the successful excitation of disaffection and the unsuccessful attempt to excitation. The offence consists in making use of any means for the purpose of bringing Government into hatred or contempt.

Ingredients of Sedition

The following are the essential ingredients of the section,

- Bringing or attempting to bring into hatred against the Government;
- Exciting or attempting to excite disaffection against the Government of India;
- Such act or attempt may be done by words, either spoken or written , or by signs or by visible representation , and

- The act must be intentional[7]

Whoever – Apart from the composer or writer of the article alleged to be seditious, every other person who uses in any way, words or printed matter, for the purpose of exciting feelings of disaffection towards the Government is guilty under Section 124-A.

By words, either spoken or written, or by signs, or by visible representation or otherwise – In the word "written" print is included by the General Clauses Act (10 of 1986).the words "otherwise" indicate the universality of the means by which the offence may be committed. The offence may be committed by means of words spoken, written, or by visible representations such as pictures, or by dramatic performances even in dumb show, wh.ere no words are spoken, where the feelings of the audience are excited, any gestures and motions and dramatic actions of the performers.

Attempt – It is not necessary to bring the case within Section 124-A that it should be shown that the attempt was successful. Whether the attempt has achieved the result is immaterial.[8] The term "attempt" used in its ordinary connotation in Section 124-A means some external act, something tangible and ostensible which can be an act in the eye of law showing progress towards the actual commission of the offence. It does not matter that the progress was uninterrupted.[9]

'Hatred' or 'Contempt'- Hatred implies an ill will, while contempt implies a low opinion. The hatred and contempt in order to be punishable under this section must relate to the hatred and contempt of the State, or of the established form Government.

Government established by law - Government established by law" has to be distinguished from the person's for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State.[10] The word 'Government' denotes both State and Centre Government. The "Government established by law" means the existing political system as distinguished from any set of administration.[11] Government here does not mean an official of the government working in its capacity. It means all the officials working in their collective capacity. It does not refer to the person or persons exercising control or authority, rather it means the executive mechanism of the State itself.

Disaffection – *Explanation* 1 to **Section 124A** does not define the word disaffection. It only talks about its circumference by including disloyalty and all feelings of enmity. Disaffection is never used for individuals, and is always used for the government.

[7] K.D Gaur, Commentary on the Indian Penal Code, (Universal Law Publishing Co., 2nd ed.).
[8] Emperor v. Bhaskar, (1906) 8 BOMLR 421.
[9] Emperor v. Ganesh, (1910) 12 BOMLR 105.
[10] Kedar Nath v. State of Bihar, AIR 1962 SC 965: (1962) 2 Cr LJ 103.
[11] Queen Empress v. Bal Gangadhar Tilak, (1899) 22 ILR Bom 112.

The meaning of this word needs to be understood in order to assess whether a particular act is seditious or not. The courts have interpreted the word, 'disaffection'[12] widely as stated below:

1. It signifies political alienation or discontent, that is to say, a feeling of disloyalty to the Government or existing power, which tends to dispose a person not to obey, but rather to resist and attempt to subvert that Government or power. It cannot be construed to mean an absence or contrary of affection, or love, that is to say, dislike or hatred.

It is a positive political distemper, and not a mere absence or negation or love or goodwill. It is a positive feeling of aversion which is akin to disloyalty, a defiant insubordination of authority, or when it is not defiant, secretly seeks to alienate the people, and weaken the bond of allegiance, and prepossesses the minds of the people with avowed or secret animosity towards the Government, a feeling which tends to bring the Government into hatred or contempt by imputing base or corrupt motives, it makes men indisposed to obey or support the laws of the realm, and promotes discontent and public order.[13]

"There is a very wide difference between the meaning of the two words disaffection and disapprobation. Whenever the prefix 'dis' is added to a word, the word formed conveys an idea the opposite to that conveyed by the word without the prefix. Disaffection means a feeling contrary to affection; in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him."[14]

Intention – The essence of the crime of sedition consists in the intention with which the language is used[15], and such intention has to be judged primarily on the basis of the language used. In arriving at its conclusion as to the intention of the accused in making a speech, the Court must obviously have regard to the class of audience to which, and the circumstances in which, the speech was made and must then decide as to the probable effect of the speech, the speech must be read as a whole.[16] The Court should in every case consider the book or newspaper article as a whole, and in a fair, free and liberal spirit and not dwell too much upon isolated passages, or upon a strong word here or there, which may be qualified by the context, but endeavour to gather the general affect which the whole composition would have on the minds of the public.[17] The speech has to be seen as whole and not in pieces.

Liability of printer and publisher – the printer and publisher of a seditious act are also liable for sedition under Section 124A. It is not open for the publisher of seditious matter to contend that it is not my work. The

[12] Ratanlal and Dhiraj Lal, Law of Crimes, (24th edition).
[13] Emperor v. Ramchandra Narayan, (1887) 22 LLR Bom 152.
[14] Pethram, C.J. in Queen Empress v Jogendur Chander Bose (1892) 19 ILR Cal 35.
[15] Arjun Arora v. Emperor, AIR 1935 All 295.
[16] Fakrulal Islam v. Emperor, AIR 1943 All 246.
[17] Per Lord Kenyon, C.J. in R v. Reeves, 26 How St. Tr 592.

publisher is *prima facie* liable for whatever material appears in his paper and if he seeks to get rid of that liability, the onus lies on him. What is necessary for him to establish is that the article published was published without his knowledge or authority or consent or without any acquiescence or intention on his part. Mere absence is insufficient to state in answer for the charge.

Comments expressing disapprobation of the administrative measure, administrative and other action of the Government (*Explanation 2 and 3*) – Under *Explanations 2 and 3* to Section 124A, IPC, comments expressing disapprobation of the measures of the government with a view to obtain lawful means, and comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection towards the Government do not constitute an offence under this section. The object of this explanation is to protect the *bona fide* criticism of public measures and institutions with a view to their improvement, and to remedying of grievances and abuses. A mere criticism or denunciation of the Government established by law is not objectionable. It is not seditious to criticize administrative machinery, public measures or the officers of the Government within the limits of fair criticism.[18]

IV. JUDICIAL PERSPECTIVE ON AND INTERPRETATION OF S.124-A

Judicial interpretation of any legislation plays an imperative part in application of that legislation. It is the fine line between freedom as a right and freedom as an exception. Judicial interpretation of a time also gives the model of the nature of the state at the time, whether it is oppressive or progressive. This difference is mirrored in the Privy Council's interpretation of S.124-A and the Supreme Court of India after independence.

PRE-CONSTITUTIONAL HEARINGS

The British Government used S.124-A as one of its most potent weapons to silence the voices criticizing its inhumane actions and unparalleled suppression. It launched a crusade against freedom fighters advocating 'self government' which was assisted by biased laws blatantly suppressing free speech, one sided judicial decisions and institutionalized policies of oppression.

Emperor v Bal Gangadhar Tilak[19]

Bal Gangadhar Tilak's trial was one of the first cases to end in a conviction for sedition in India. Judicial bias, manipulation of the facts, censure of free speech on honest criticism of the Government are the elements which came together to bring Bal Gangadhar Tilak's speech under S.124-A. After being convicted by the District Magistrate, Tilak filed for a leave petition. His contentions read,

[18] Vishambhar Dayal v. Emperor, AIR 1941 Oudh 33.
[19] (1898) 22 ILR Bom 528.

"The learned Judge should have told the jury to keep in mind the question— was the spirit, in which the words were alleged to have been designed to engender, compatible or incompatible with the disposition to obey lawful authority? The contention now was that the articles, and the rhetorical verses, were merely intended as comments upon the course of Government, and upon the change in social habits and institutions which had been brought about since the days of Maratha rule; and that there was nothing to be found in the words used which necessarily tended to excite a disposition not to render obedience to lawful authority."[20]

Tilak faced two sedition trials, one in 1897 and the other in 1908. He was convicted in both. In 1897, Kesari, of which by that time Tilak was the publisher, proprietor and editor, carried an article called 'Shivaji's Utterances'. The paper had resurrected 17th century's iconic Hindu Maratha king Shivaji and recorded his putative statements at the existing state of affairs in colonial India. In 1894, a scholar called Prof RP Karkaria read a paper on Shivaji before the Royal Asiatic Society in Bombay. Two years later, the movement acquired shape of a festival to honour Shivaji. The Shivaji festival began in June 1897. Tilak presided over the festival and also spoke. A poem was also sung by someone. These were carried out as 'Shivaji's Utterances' in Kesari by Tilak. A week later, president of the Plague Relief Committee WC Rand and one Lt CE Ayerst were murdered at midnight while returning home. Media insinuated it to Tilak's speech and 'Shivaji's Utterances'. Interestingly at that time, the government had just confirmed his election to the Legislative Council. Within a month, the government gave sanction to Tilak's prosecution for sanction. The place of trial was chosen to be Bombay instead of Poona from where Kesari was published. The case was committed to sessions in the Bombay High Court. Advocate-General Basil Lang conducted the prosecution. Dinshaw D Davar appeared for the defense. The nine-member jury (as opposed to 12 in England) comprised of five European Christians, two Hindus, one Parsi and one European Jew. Justice Arthur Strachey at the Bombay High Court delivered the charge to the jury. The two charges against Tilak were publication of 'Shivaji's Utterances' in Kesari on 15 June 1897 and the report of the meeting on 13 June 1897. The meaning, scope and width of sedition were discussed at length. The Marathi translation caused a lot of furor because the majority of jurors did not understand or have any knowledge of the Marathi language. By a majority of 6:3, with all three Indians supporting Tilak, he was adjudged guilty. Interestingly, the then Criminal Procedure Code gave Indians the right to be tried by a jury consisting of a majority of Indian jurors. However, some cases were determined by the government discretionally and the trial judge could be tried by a 'special jury'. These special juries had a majority of non-Indian jurors on them. Furthermore, neither the judge nor the jurors knew Marathi. Justice Arthur Strachey readily accepted the jury's verdict and sentenced Tilak to 18 months' rigorous imprisonment. *Justice Strachey laid several grounds; including presumed intent, bad feelings, incitement not being mandatory,*

[20] (1898) 22 ILR Bom 534.

impact's inconsequentiality, class of readers, speech as a whole, immaterial truth and evidence for spoken word. Tilak was, however, persuaded to accept conditional release and was released on 6th September 1898. The ambit of S.124-A was widened by a few explanations by Justice Strachey himself by including the words, 'hatred' or 'contempt'. Tilak was convicted again in 1908.[21]

Tilak's reply to this conviction was, ***"All I wish to say is that, in spite of the verdict of the jury, I maintain that I am innocent. Here are higher powers that rule the destiny of things and it may be the will of Providence that the cause which I represent may prosper more by my suffering than by my remaining free."***

MAHATMA GANDHI's Trial for Sedition

The account of this trial is in substance taken from an admirable summary of it given by Sir Thomas Strangman in his book "Indian Courts and Characters".

On 29th September 1922, Gandhi published under his own name an article in his paper "Young India". "I have no hesitation in saying," Gandhi proceeded, "that it is sinful for anyone, either soldiers or civilian, to serve this Government which has proved treacherous to the Mussalmans of India, and which has been guilty of the inhumanities of the Panjab. I have said this from many a platform in the presence of sepoys". The sepoy has been used more often as a hired assassin than as a soldier defending the liberty or the honour of the weak and the helpless."

Gandhi wrote and published another article in his paper in which he answered Lord Reading, the Viceroy, who had, in a public speech, said that he felt perplexed and puzzled by the activities of a section of the Indian community. Lord Reading had stated: "I ask myself what purpose is served by flagrant breaches of the law for the purpose of challenging the Government and in order to compel arrest?" Gandhi's answer was: "We seek arrest because the so-called freedom is slavery. We are challenging the might of this Government because we consider its activity to be wholly evil. We want to overthrow the Government. We want to compel its submission to the people's will. We desire to show that the Government exists to serve the people, not the people the Government."[22]

Mahatma Gandhi read in his statement ,"***Section 124 A, under which I am happily charged, is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote,***

[21] Namit Saxena,*A look back at Tilak's sedition trials*, LIVE LAW.in (July 8, 2018, 1:20 PM) https://www.livelaw.in/a-look-back-at-tilaks-sedition-trials.

[22]*Trial of Mahatma Gandhi 1922,* https://bombayhighcourt.nic.in/libweb/historicalcases/cases/TRIAL_OF__MAHATMA_GANDHI-1922.html.

or incite to violence."[23]

POST- CONSTITUTIONAL HEARINGS

One had hoped that the section responsible for large scale suppression of voices for justice and against the British tyranny would not make its way to the independent India. But surprisingly, it not only made its way but once again became a weapon for bureaucracy to suppress any criticism rising against the Government. The judicial approach has, however, softened largely and acted as a shield and a savior from such unnecessary prosecution launched by the Government under S.124-A of the Indian Penal Code.

Kedar Nath Singh v. State of Bihar[24]

The decision in this case becomes very important in understanding the ambit of S.124-A in an independent democracy where rule of law prevails and no one is above the constitution. The Supreme Court considered the constitutionality of S.124, its interpretation while keeping in mind the history of this section. The head note of the judgment reads:

"Section 124A of the Indian Penal Code which makes sedition an offence is constitutionally valid. Though the section imposes restrictions on the fundamental freedom of speech and expression, the restrictions are in the interest of public order and are within the ambit of permissible legislative interference with the fundamental right. There is a conflict on the question of the ambit of s. 124A between decision of the federal Court and of the Privy Council. The Federal Court has held that words, deeds or writings constituted an offence under s.124A only when they had the intention or tendency to disturb public tranquility. to create public disturbance or to promote disorder, whilst the Privy Council has taken the view that it was not an essential ingredient of the offence of sedition under s.124A that the words etc, should be intended to or be likely to incite public disorder. Either view can be taken and supported on good reasons. If the view taken by the Federal Court was accepted s.124A would be use constitutional but if the view of the Privy Council was accepted it would be unconstitutional. It is well settled that if certain provisions of law construed in one way would make them consistent with the constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. Keeping in mind the reasons for the introduction of s.124-A and the history of sedition the section must be so construed as to limit its application to acts involving intention or tendency to create disorder, or disturbance of law and order; or incitement to violence."

This abstract principle found concrete application in-

[23] *Statement In The Great Trial Of 1922, March 18, 1922,* MANI BHAVAN GANDHI SANGRAHALYA http://www.gandhi-manibhavan.org/gandhicomesalive/speech3.htm.
[24] AIR 1962 SC 955

Balwant Singh & another v. State of Punjab[25]

The Supreme Court observed:

"It appears to us that the raising some slogan only a couple of times by the two lonesome appellants, which neither evoked any response nor any reaction from anyone in the public can neither attract the provisions of Section 124A or Section 153A IPC Some more overt act was required to bring home the charge to the two appellants, who are Government servants. The police officials exhibited lack of maturity and more of sensitivity in arresting the appellants for raising the slogans."

These cases limited the ambit of S.124-A clearly stating the situations in which it can be invoked. However, the Centre and State Governments in clear violation of the stated rules, continues to launch frivolous cases against people merely expressing their views. The court has thrown out majority of these cases while criticizing the Government numerous times. Even so, the harassment and mental trauma that innocent individuals face from arrest to trial is barefaced violation of human rights and freedom of speech and country, the likes of which no individual living in a sovereign democratic republic being run on the wheels of the constitution should have to face. Some of such unfortunate cases are discussed here-

Sedition case against AMNESTY INTERNATIONAL, INDIA (2016)

Amnesty International had organized an event in Bengaluru to seek justice for victims of human rights violations in Jammu & Kashmir. There were heated arguments between two groups which resulted in pro-azadi sloganeering. A police complaint was filed by an ABVP representative. The police charged Amnesty International with Sedition under S.124-A.[26]But the Court directed the case to be closed.

"A court order directing the closing of a sedition case filed against Amnesty India brings an end to a disgraceful attempt to stifle freedom of expression, the organization said today.

On 8 January, a trial court in Bengaluru ordered that the case filed against Amnesty India on 15 August 2016, on the basis of a complaint filed by a representative of the Akhil Bharatiya Vidyarthi Parishad (ABVP), be closed."[27]

Sedition case against Kashmiri Students cheering for Pakistan cricket team

"The police in northern India briefly filed sedition charges against 67 Kashmiri students after some of them cheered for the Pakistani cricket team during a televised match with India on Sunday night. The charges were

[25] 1995 (1) SCR 411
[26] *An Anachronistic law*, THE HINDU
(Aug 22, 2016, 12:50 AM)https://www.thehindu.com/opinion/editorial/An-anachronistic-law/article14582044.ece.
[27] *Sedition case against Amnesty India closed by Court*, AMNESTY INTERNATIONAL
(Jan 11, 2019, 12:45 PM)https://amnesty.org.in/news-update/sedition-case-against-amnesty-india-closed-by-court.

initially filed after an official complaint was lodged against the students by Manzoor Ahmed, vice chancellor of Swami Vivekanand Subharti University in Meerut, according to M. M. Baig, a Meerut police official. In addition to sedition charges, the students were charged with "instigating hate between two communities." But after the police and local officials reviewed the case, the sedition charges were dropped on Thursday, according to local media reports."[28]

Sedition case against cartoonist Aseem Trivedi

Aseem Trivedi was charged with sedition under the Indian Penal Code as well as with violating the Prevention of Insult to National Honour Act, 1971 and Section 66(A) of Information Technology Act, for displaying a number of cartoons at a public meeting organized by India Against Corruption on November 27, 2011, in Mumbai. Following an FIR lodged against him, he was arrested on September 8, 2012, and produced before a Metropolitan Magistrate. However, Trivedi refused to accept bail until the sedition charge was dropped. The judgment provided relief to the petitioner challenging the charge against the cartoonist. It further added- *'A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comments, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder', the judgment said, adding that the state Home Department must issue guidelines to the police, in the form of pre-conditions to the invoking of Sec 124 A only if words, signs or representations that bring the Government (Central or State) into hatred or contempt or must cause or attempt to cause disaffection, enmity or disloyalty to the Government 'must also be an incitement to violence or must be intended or tend to create public disorder or a reasonable apprehension of public disorder.'*[29]

V. SEDITION AND FREEDOM OF SPEECH

From the Constituent Assembly Debates it is understood that there had been serious opposition for inclusion of sedition as a restriction on freedom of speech and expression under the then Article 13 of the draft Indian Constitution. Such a provision was termed as a shadow of colonial times that should not see light of the day in free India. The Constituent Assembly was unanimous in having the word sedition deleted from Article 13 of the draft Constitution. During the discussions Shri M. Ananthasayanam Ayyangar said:

If we find that the government for the time being has a knack of entrenching itself, however bad its administration might be **it must be the fundamental right of every citizen in the country to overthrow that government without violence**, by persuading the people, by exposing its faults in the administration, its

[28] GARDINER HARRIS, *KASHMIRI STUDENTS BRIEFLY CHARGED WITH SEDITION FOR ROOTING FOR WRONG CRICKET TEAM*, NY TIMES, MAR 06, 2014.

[29] *MERE CRITICISM IS NOT SEDITIOUS: BOMBAY HIGH COURT ON ASEEM TRIVEDI'S CARTOONS*, THE HOOT (MAR 18, 2015) HTTP://ASU.THEHOOT.ORG/MEDIA-WATCH/LAW-AND-POLICY/MERE-CRITICISM-IS-NOT-SEDITIOUS-BOMBAY-HIGH-COURT-ON-ASEEM-TRIVEDI-S-CARTOONS-8177.

method of working and so on. As a result of the vehement opposition in the Constituent Assembly, the word sedition does not find a place in our Constitution.[30]

In the case of *Shreya Singhal* v.*Union of India*[31], section 66A of the Information and Technology Act, 2000, was declared unconstitutional on the ground that it was in direct conflict with the fundamental right of freedom of speech and expression. The Supreme Court held that under the Constitutional scheme, for the democracy to thrive, the liberty of speech and expression ―is a cardinal value and of paramount importance.

Similarly, in *Javed Habib* v. *State of Delh*[32]*i*, it was held: Holding an opinion against the Prime Minister or his actions or criticism of the actions of government or drawing inference from the speeches and actions of the leader of the government that the leader was against a particular community and was in league with certain other political leaders, cannot be considered as sedition under Section 124A of the IPC. The criticism of the government is the hallmark of democracy. As a matter of fact the essence of democracy is criticism of the Government.

VI. SUGGESTIONS FOR REVISING S.124-A

Various agencies and leaders have acknowledged that there needs to be revision in the Sedition law of the country. The Law Commission in its report on 'sedition' has also suggested for a revision in S.124-A.

In the year 2011, a private member Bill titled the Indian Penal Code (Amendment) Bill, was introduced in the Rajya Sabha by Mr. D. Raja. The Bill proposed that section 124A IPC should be omitted. It was reasoned that the British Government used this law to oppress the view, speech and criticism against the British rule. Thus, to check the misuse of the section and to promote the freedom of speech and expression, the section should be omitted.

Another Private member Bill titled The Indian Penal Code (Amendment) Bill, 2015, was introduced in Lok Sabha by Mr. Shashi Tharoor to amend section 124A IPC. The Bill suggested that only those actions/words that directly result in the use of violence or incitement to violence should be termed seditious. This proposed amendment revived the debate on interpretation of sedition. The courts through various judgments have settled that the language of this section does not imply that only words, either spoken or written, or signs, or visible representation that are likely to incite violence should be considered seditious.

VII. WHY SHOULD SEDITION UNDER S.124-A BE OMITTED: AN OPINION

The National Crime Records Bureau (NCRB) shows a rise in arrests for sedition between 2014 and 2016.

[30] Law Commission Of India, Consultation Paper on "Sedition", (Aug 30, 2018).
[31] AIR 2015 SC 1523.
[32] (2007) 96 DRJ 693.

Between 2014 and 2016, 179 people were arrested and 112 sedition cases filed with only two of the cases resulting in conviction. The point of the matter is that when a law instead of being constructively used is being misused by the authorities to marginalize their critics, such law should be deleted before it becomes a potent weapon of oppression. Most of the cases of Sedition do not make it to court, let alone result in conviction. While the Courts understand the exact principles under which S.124-A can be invoked, this has not stooped the Government from charging innocent individuals. Even though the authorities know that there case would not have a standing in Court, they use this opportunity to torture individuals with arrest and harassment, in malefic of setting a deterrent for anyone who dares speak against them. Majority of the cases reek of political propaganda under the garb of nationalism. One cannot be so naive to believe that S.124-A exists solely to protect the sovereignty of the country and to maintain public order. There are various other laws which fit the criteria, then what is the need of S.124-A particularly when its history is the witness of how potent it is to muffle the voices rising against injustices of the administration.

Reasonable restrictions provided under Article 19(2), Unlawful Activities (Prevention) Act, 1967, Sections 121,122,123,131,141,143,153-A, Contempt of Court Act, 1971 and Prevention of Insults to National Honour Act, 1971, provide more than enough safeguards for acts likely to come under Sedition. Then why is a draconian law of pre-independence era, under a false pretense, being used to hound the populace of an independent and democratic country. It is ironic that the country, England, which planted the seeds of S.124-A on Indian Soil, has since long repealed the same out of the fear of being associated to draconian laws.

S.124-A violates one of the basic facets of a democracy i.e., holding a government accountable. In a country where citizens cannot voice the criticism of their government's actions, demand accountability, raise questions and point at wrongdoings cannot, be a functional democracy. Citizens cannot be lulled into a false sense of security to enforce their fundamental rights and then be prosecuted for doing the same. This section is the fine line between a democratic and an authoritarian government and one incident in a charged political climate can change the setting. We must keep in mind that S.124 does not only violate freedom of speech but also aids the government in nakedly disenfranchising it political rivals and critics. As citizens, it is our responsibility to be aware of such political abuse and it is our duty to guard our own freedom.