THE CRIME OF SEDITION IN INDIA: AN ARCHAIC COLONIAL REPRESSION– IS STRINGENCY ENSLAVING THE RIGHT TO FREE SPEECH?

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Abstract

Freedom of speech and expression forms a significant part of the fundamental rights guaranteed by the Constitution of India. Considering the massive progress in thought and expression of individuals, and the resultant manifestation in Indian laws, there is little scope for archaic and repressive British legacies to persist. However, neither the Parliament, nor the states legislatures ruled by different ideologies, ever attempted to remove the archaic offence of sedition, manifested in many laws in multiple forms. It is interesting to note that the constituent assembly did not intend to restrict the freedom of speech and expression in such stringent forms, though it did not favour absolutism of freedom like those of the United States. Further, sedition, as an offence has been abolished in 2009in the United Kingdom(UK) itself, along with a message by the Parliament, for other nations to do so, and embrace freedom of speech and expression in its true sense, though it is argued that the UK has incorporated far more stringent laws in its counter terror legislations The present work revisits the constituent assembly debates in relation to freedom of speech and expression, continued by the judicial trends in relation to the balance between freedom of speech and reasonable restrictions, thereby narrowing the scope of sedition. Further, statistics reflecting massive differences between arrests and convictions have been depicted, to represent the minimal utility of such offences, which only leads to discomfort to citizens, curbing their right to free speech and expression. The journey of such laws in the UK, from their rise to abolition, has also been explicated. The work, wholesomely aims to inquire whether sedition such a law should be retained or repealed.

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I. Introduction

SEDITION IN India is considered as an offence even after the Constitutional provisions guaranteeing freedom of speech and expression. This law was brought in colonial India by British to curb those activities of the Indian population that could criticise the misgovernance by the Crown. One of the dominant purposes of section 124A was to strengthen colonial rule and to suppress the voice of Indian people. However, in contemporary India, while determining the fate of a citizen in terms of freedom of speech, the offence of sedition and other related offences play a crucial role. The balance between the fundamental right to speech and expression, and the offence of sedition can be contemporarily observed to incline towards the latter, and consequently, a significant dilution of the right to free speech and expression is observed. Such dominance by state in the arbitrary use of section 124A against the citizenry is gradually leading to a defeat of the idea of the constitutional framers.

The Indian state, on the other hand is adamant in this regard, and is reluctant to accept any view on changing the penal laws of sedition. The state and a substantially large group of experts claim that sedition type lawis essential for the unity and integrity of India. Such laws exist, as long as the nation persists. Absence of such laws would make the nation vulnerable, and prone to anti-national activities, which may later take an unprecedented shape, threatening national unity.

It is logical to think that colonial India was exceedingly different from contemporary India in terms of rights, duties and powers of state. Such laws imposing stringent restrictions on freedom of speech and expression are mere carriers of the dark colonial past, which thwarts the conscience of free individuals. The developed states, including UK no more recognise such regressive laws, but India, where individual liberty thrives at the core of the Constitution, has not yet manifested its intent of revisiting the laws declaring sedition a crime. However, it is equally true that the UK has repealed the law on sedition only after controlling the seditious tendencies (like those of Irish Republican Army)[1] while India is still struggling in a couple of regions.

Taking into account the reports of Law Commissions, 39th and 42nd report of the Law Commission of India aimed at retaining the provision. 39th Law Commission Report aimed at

[1]Paul Arthur, Kimberly Cowell-Meyers, "Irish Republican Army", *Britannica, available at* https://www.britannica.com/topic/Irish-Republican-Army (last visited on June 18, 2020).

retaining the punishment of life imprisonment for the offence of sedition,[2] whereas the 42nd Law Commission Report aimed at extending the scope of government to include executive and judiciary too.[3]

However, a positive transformation can be witnessed. The Law Commission of India, in its 267th report,[4] and the recent consultation paper published on sedition in the year 2018,[5] sought to restrict the wide scope of the term section 124A, by including only those cases within the meaning of sedition, where there is incitement of violence, with a specific intent to disrobe the government in power. Fact remains that the Law Commission of India, unlike the Law Commission of England has never suggested the repeal of sedition laws.

Further, contemporary youth can be seen to strongly advocate the right to free speech and expression.[6] The constitutionality of free speech and expression, superseding unnecessary curbs of sedition is strongly agreed by many writers of contemporary popularity, especially among youth.[7]Further, some authors are of the firm view that there needs to be a reconsideration of the contemporary executive actions curbing free speech, especially those that relate to such strong allegations as those of sedition. On a stark comparison with such laws in developed nations, possessing a liberal and democratic setup, as that of India, the Indian laws relating to sedition appear to be excessively stringent, and at times unreasonable.[8] Such authors can be seen to firmly oppose the contemporary use of laws relating to sedition, as this misuse leads to an inevitable restraint on freedom of speech.

However, the suggestions have not yet been taken into account. This again reflects the reluctance on the part of the legislature to accept a liberal outlook of the freedom of speech and expression.

II. Legislations Criminalising Sedition in India

[2]Law Commission of India "39th Report on punishment of imprisonment for life under the Indian Penal Code" (July,1968).
[3] Law Commission of India "42nd Report on the Indian Penal Code 1860" (June, 1971).
[4]Law Commission of India, "267th Report on Hate Speech" (March, 2017).
[5]Law Commission of India, "Consultation Paper on 'Sedition" (August 30, 2018).
[6]Hammurabi Tablet, *Freedom of Speech & Expression: Rendezvous with Abhinav Chandrachud*, 2017, *available at* :https://www.youtube.com/watch?v=LNsgpHrxwig (last visited on May 20, 2020).
[7]Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford Scholarship Online, Oxford, United Kingdom, 2016).
[8]Anushka Singh, *Sedition in Liberal Democracies* (Oxford University Press, New Delhi, 2018).

The primary legislation criminalising sedition in India is the Indian Penal Code, 1860. Section 124A of the Code defines sedition, and mentions the punishment associated with the same. The core elements of sedition are bringing or attempting to bring contempt, hatred or disaffection towards the government. Further, the explanations to the section clarify that mere disapprobation of measures or actions of government, intended to bring a constructive change by lawful means, without arising feelings of hatred, contempt or dissatisfaction does not amount to sedition. Following is the language of the section: [9]

> "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."

Further, section 95 of the Code of Criminal Procedure, 1974 empowers the government to forfeit any publication if it is found to be inappropriate. The grounds of forfeiture have been explicated further, where sedition, as described in section 124A is the first ground of such forfeiture. Following is the language of the relevant part of the section:

> "Where-
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> (a) any newspaper, or book, or

[9] The Indian Penal Code, 1860 (Act 45 of 1860), s. 124A.

> (b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub- inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.[10]"

Another Act is the Unlawful Activities (Prevention) Act, 1967[11] (UAPA), which criminalises events or actions aimed against the sovereignty, unity and integrity of India. There have been a series of amendments to the Act, which have added to its stringency, and widened the scope of state to restrict such activities.

Further, there is Prevention of Insults to National Honours Act, 1971[12] which curbs the right to free speech and expression if it violates the dignity of the nation. The Act also mentions draping of national flag in any form, embroidery on the flag, cushioning of flag, wearing of tricolour, covering speaker's desk with tricolour, or even printing of tricolour on handkerchiefs as a disrespect of national flag.The term flag includes any picture, photograph, or drawing of national flag. The Act imposes a maximum penalty of three years, or fine, or both.[13]
However, even after the presence of multiple legislations criminalising sedition in addition to the above mentioned laws, the definition, substance and content of section 124A of the Indian Penal Code remains the primary law penalising the offence of sedition. Further, the constitutionality of every law curbing free speech and expression under the garb of declaring it seditious stems from the fact that it is considered to be a reasonable restriction, whenever questioned in the court of law. Therefore, it is essential to revisit the essence of such restrictions by resorting to constituent assembly debates.

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[10] The Code of Criminal Procedure, 1974 (Act 2 of 1974), s. 95.
[11] The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967).
[12] The Prevention of Insults to National Honours Act, 1971 (Act 69 of 1971).
[13] *Id.*, s.2.

III. Revisiting Constituent Assembly Debates - The genesis of Right to Free Speech and Expression in India

Whenever it comes to defining the freedom of speech in India, or striking a balance between restrictions and rights, constituent assembly debates are the best resort. Such an approach is also called "originalist approach". This is simply because the founding fathers of the Constitution, with utmost deliberation have manifested the framework of rights of citizenry and the state. This manifestation is always relevant, as it reflects the intention of the framers of the Constitution while conferring these rights to state and citizenry. Further, these debates assist in drawing logical justifications of any power conferred upon citizens or state.

As far as the freedom of speech and expression in the Indian Constitution is concerned, charting out the logic behind the conferred powers and restrictions becomes equally pertinent, to ascertain the scope of curtailment of these rights by the state.

In India, article 19(1) (a) confers the freedom of speech and expression to the citizens, and clause 2 of the same deals with reasonable restrictions to be imposed on such a right. The grounds of reasonable restrictions on such freedom are sovereignty and integrity of India, security of state, friendly relation with foreign states, public order, or decency or morality or in relation to contempt of court, defamation or incitement of offence.[14]

However, it is crucially important to note that sedition was one of the grounds in the earlier version of the article. Before beginning of debate in relation to the restrictions, the draft in relation to the restrictions read as the following: [15]

> "Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State."

Thereafter, significant deliberation was done in relation to the restrictions that could be imposed to curb freedom of speech and expression. Sedition was removed as a ground to

[14]The Constitution of India, art . 19(2).
[15]Draft Constitution of India, art. 13(2).

restrict free speech and expression after relevant discussion. It, therefore, becomes significant to revisit the discussion in the constituent assembly.

On December 1, 1948, Shri Damodar S. Seth[16] mentioned that if sedition is provided as a ground to curb free speech and expression, then all the regressive Acts such as the Official Secrets Act, 1923 will remain intact. He further says that the freedom of speech and expression, which includes the freedom of press, will become virtually ineffective if sedition is mentioned as a ground for restriction of freedom of speech and expression.

Further, Shree K.M. Munshi[17] referred many incidents where mere criticism of government, or holding an ill-will against the government was termed as sedition. He went on to say that in a democracy, such terms are unwelcome, as criticism of government forms the foundation of a democratic setup of State.

The arguments of Sardar Hukum Singh[18] are very pertinent in this respect. He stated points which emphasized the role of judiciary. He mentioned that the restrictions on the freedom of speech and expression that are being proposed in our constitution have been borrowed from those countries where judiciary works under the principle of 'due process of law', and consequently, it has the power to adjudicate any legislation based on its merits. However, in India, the principle of 'procedure established by law' is followed, and the powers of judiciary are only restricted to the point of determining whether there is a law relating to sedition or not, if freedom of speech and expression of an individual is sought to be curbed. If there is a law, then the hands of the judiciary would be tied enough to be restricted and to adjudicate according to that law which curbs such freedom. Such a setup was therefore found unsuitable for a political structure as that of India.

Consequently, the term ''sedition'' and ''public order'' were removed from the grounds mentioned to restrict free speech in the Constitution. Further, to increase the ambit of the judiciary in matters of restriction of rights to freedom enshrined in the constitution, the term 'reasonable restrictions' was added, as proposed by Shri Das Bhargava.[19] This ensured a wide

[16]Constituent Assembly Debates on Dec. 1, 1948 *available at* :https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-01 (last visited on May 8, 2020).
[17]*Id.* at 7.64.167-7.64.168 .
[18]*Id.* at 7.64.176-7.64.180 .
[19]*Id.* at 7.64.228 .

ambition to the judiciary, which was otherwise not possible because of the limited reach of the principle of 'procedure established by law', as against 'due process of law'.

Therefore, the reasonability was now to be decided by the judiciary. If a law was found to be unreasonably restricting freedom of individuals, it could be declared unconstitutional. Therefore, even the legislature agreed that the power to restrict such a crucial right as that of freedom of speech and expression should rest with judiciary, not with legislature,[20] to ensure the rule of law.

IV. Explicating the Judicial Trends in Relation to the Crime of Sedition

The constitutionality of laws relating to sedition have been challenged in the apex court multiple times, however, the same series of precedents are relied upon, and there has been no attempt to view the term 'sedition' from the dynamic perspective of social change. There are some cases that form the series of determination of the constitutionality of legislations relating to sedition. These cases reflect the judicial trend in relation to the freedom of speech and expression, and the 'reasonable restrictions' associated. These are also helpful in determining when 'reasonable restrictions' can be used as a ground to restrict free speech and expression.

The first case is that of *Brij Bhushan* v. *State of Delhi.*[21]In the present case, constitutionality of section 7(1)(c) of the East Punjab Public Safety Act, 1949 was challenged. The Supreme Court held (5:1) that the provision was unconstitutional, because "sedition" and affecting public tranquillity are different terms, and the disturbance of public order and tranquillity does not necessarily mean that it is seditious, hence, a prior restraint cannot be imposed on the publications. Those days "public order" was not one of the restrictions under article 19(2). Therefore, the apex court for the want of restriction like "public order" considered the protection of right to free speech to occupy greater importance over restrictions imposed by the State to curb the same.

Second case is the case of *Romesh Thappar* v. *State of Madras.*[22] Constitutionality of section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 was challenged, and the provision was declared unconstitutional, where the court held (5:1) that unless a law restricting freedom

[20]*Ibid.*

[21]1950 SCR 605. In the present case, the petitioners were printers and publishers of an English weekly newspaper in Delhi, and they prayed for removal of unnecessary restraints which the mentioned sections of the mentioned Act imposed. The cases mentioned subsequent to this case also have similar facts, where there is a tussle between the right to freedom of speech and expression of individuals, and the authority of the state to restrict the same.

[22]1950 SCR 594.

of speech and expression is directed solely against the undermining of the security of State under article 19(2) of the Indian Constitution, such law cannot be declared to be seditious. Restrictions on free speech based on disturbance of public order could not be sustained because "public order" was not a part of article 19(2). Hence, the impugned provision was declared unconstitutional. The Supreme Court gave greater importance to free expression than to restrictions which the legislation aimed at imposing, under the garb of sedition.

Third case in the series of cases is the most significant one, the case of *Kedar Nath* v. *State of Bihar.*[23] It forms the primary precedent which is relied not only to adjudicate events of sedition, but also to define the essence of section 124A of the Indian Penal Code, 1860. The constitutionality of sections 124-A of IPC and section 505 of IPC was challenged, as it was contended by petitioners that these sections were against article 19(1) (a) of the Indian constitution.The constitution bench of Supreme Court unanimously held that it is the security of the State, which depends upon the maintenance of law and order and is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such legislation has to fully protect and guarantee the freedom of speech and expression, which is the *sine qua non* of a democratic form of Government that our Constitution has established. It was also held that such a restriction is necessary for the safety and integrity of the State. Accordingly, the Supreme held that sections 124-A and 505 of the Indian Penal Code were within constitutional limitations considering article 19(1) (a) read with article 19(2), only if it is suitably read into with "tendency test"

It was, therefore, held that the offence of 'sedition' under section 124A does need incitement to violence or tendency or intention to create public disorders by words spoken or written, which have the effect of bringing the government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the state. In other words, actual violence or disorder is not required for attracting section 124A.

Next significant case is the case of *Balwant Singh* v. *State of Punjab.*[24] In this case, applicability of sections 124A and 153A was discussed. The Supreme Court held that raising casual slogans by two individuals a couple of times without any other overt act and without intention to create disorder or to incite people to violence, does not attract sections 124A and 153A. However, if public disorder with an intent to incite violence is given way, then such slogans are

[23]1962 Supp 2 SCR 769.
[24](1995)3 SCC 214.

unconstitutional. Moreover, if the slogans are not casual but serious in nature, and are not spoken a couple of times but many times, the precedent of Balwant Singh will have little persuasive force. *Balwant Singh* case does not legitimize all types of slogans against the country.

Further, in the case of *Common Cause* v. *Union of India,*[25] it was held that authorities, while dealing with the offences under section 124A of the Indian Penal Code, will be bound by the principles laid down in the *Kedar Nath Singh* v. *State of Bihar*[26] case, and sedition charges cannot be invoked merely for criticising the government.

It is, therefore, important to consider that once an overwhelming material on record is available to establish the fact that there has been an attempt to create disaffection for the established government, coupled with an intention or tendency of creating public disorder or violence, only then can the charges of sedition stand in the court of law. In all other cases, however, strong disapprobation towards government is expressed; it does not amount to sedition if it does not intentionally incite contempt, dissatisfaction or hatred towards the government, along with a tendency to arise violence.

However, the executives are reluctant to accept the true definition and scope of the term sedition. Many cases reflect a misuse of the section, and there can be seen a rise in registration of cases relating to sedition under section 124A, regardless of the specific definition and scope decided by the judiciary.

V. Significant Incidents and Statistics in relation to the Crime of Sedition in India

As far as the crime of sedition is concerned, there is a rise in statistics of arrest across the years, as reported by the National Crime Records Bureau.Before getting into the statistical elucidation, it is significant to remember, that there have been cases registered against Indian freedom fighters like Bal Gangadhar Tilak, Mahatma Gandhi, Annie Besant, Hedgewar[27]under section 124A IPC, or under other laws for their actions against the British government. However, as far as the contemporary arrests are concerned, writers of repute, famous

[25](2016) 15 SCC 269.

[26]*Supra* note 23.

[27]Rajiv Tuli, "RSS imprint on India is deep, yet its founder Hedgewar is unknown to most Indians", *The Indian Express,* March 25, 2020*, available at*https://indianexpress.com/article/opinion/columns/rss-founder-keshav-baliram-hedgewar-swayam-sevaks-6330087/(last visited on June 18,2020).

cartoonists, public spirited social workers, political leaders, media reporters, and even students[28] can be easily observed to be restricted by the extravagant scope of this law.

To explicate recent instances, on October 2019, an FIR was lodged on the order of the subordinate court against 49 celebrities in India, including celebrities, writers and social workers of immense repute such as Mani Ratnam, Shyam Benegal, Ramchandra Guha *etc,* for writing to the Prime Minister against the mob-lynching incidents that were being observed frequently throughout the nation.[29] The reasons mentioned sedition as the primary offence committed by them. This was completely disregardful of the Supreme Court stance that sedition charges could only be framed when there is presence of specific intention to overthrow the government violently.[30] As there is no evidence found to provide basis for sedition against those 49 celebrities, a closure report post investigation was filed.[31] This meant that all the complaints were false, and were an unnecessary effort to pester those celebrities, suffocating their right to speak. Similarly section 124A was imposed on Arun Jaitley in 2016 when he was Union Minister in the central government. He wrote a very strong criticism of the Supreme Court pronouncement on NJAC,[32] where Arun Jaitley referred to the judgement as "tyranny of the unelected." However, it was quashed by the High Court of Allahabad.[33] Such instances are well enough to reflect the fact that the offence of sedition is only leading to an extravagant and unnecessary irksome atmosphere, especially to muzzle those, who criticize the government, or even reflect upon the wrongs taking place nationwide or even criticising the judiciary.

There are a lot of cases that can be contemporarily observed to be filed against students. Despite many cases of misuse of the law of sedition, there are a few instances where students, activists etc have crossed the boundary of free speech. Recently, in January 2020, Sharjeel Imam, a doctorate scholar at JNU, was arrested for his allegedly seditious speech, which he delivered

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[28] India TV, "Top 8 high-profile sedition cases in the history of Independent India", *India TV News Desk,* February 18, 2016, *available at* https://www.indiatvnews.com/news/india/8-high-profile-sedition-cases-in-history-of-independent-india-57728.html (last visited on May 27,2020).

[29]Scroll Staff, "Bihar: FIR filed against 49 writers and filmmakers who appealed to PM Modi to stop mob lynchings", Oct. 4, 2019, *available at* :https://scroll.in/latest/939416/bihar-fir-filed-against-49-writers-and-filmmakers-who-appealed-to-pm-modi-to-stop-mob-lynchings (last visited on June 18,2020).

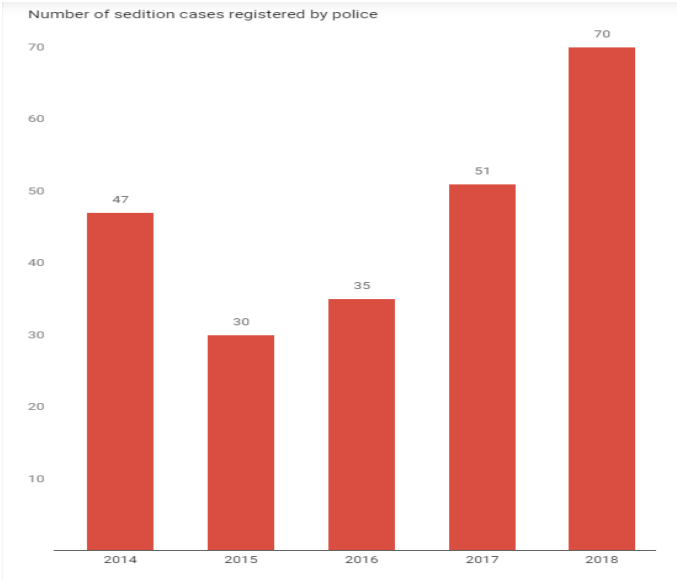
[30] Dipak Mishra, "Bihar lawyer behind FIR against 49 celebrities for Modi letter had targeted Bachchan, Lalu", *The Print*, October 5,2019, *available at:* https://theprint.in/india/bihar-lawyer-behind-fir-against-49-celebrities-for-modi-letter-had-targeted-bachchan-lalu/301494/ (last visited on June 5,2020).

[31] Debashish Karmakar, "Sedition case against celebrities for writing to PM found false", *The Times Of India*, October 10,2019, *available at:* https://timesofindia.indiatimes.com/india/sedition-case-against-celebrities-for-writing-to-pm-found-false-muzaffarpur-police/articleshow/71509933.cms (last visited on June 5,2020).

[32]*SCORA* v. *Union of India* ,2015 SCC OnLine SC 1322.

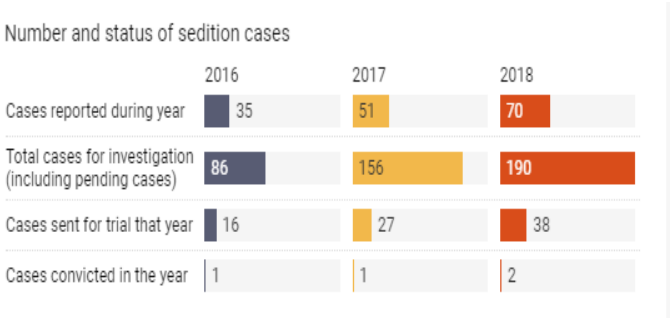
[33]*Arun Jaitley* v. *State of UP*, 2015 SCC Online All 6013.

as a criticism to governmental actions including CAA and NRC. However, his speech contains certain sentences which indicate he is suggesting to people that "'Aim is to cut Assam and Northeast from India'." His speech was not only inappropriate but his remarks created much hue and cry. The "tendency" test of section 124A seems to be justified here. He was also booked under Unlawful Activities (Prevention) Act, 1967, because his intention prima facie seems to be to challenge the territorial integrity of India and comments are about those regions which are deeply affected by insurgency.There are statistics which show a significant rise in the figures relating to sedition. Following is the graph depicting the number of cases in relation to sedition registered by police throughout the nation, as per the National Crime Records Bureau:



Graph 1: Statistics depicting rise in cases relating to sedition registered as per the National Crime Records Bureau. Source- https://ncrb.gov.in/crime-india-2018. The graph is *available at*: https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html

Further, it can be observed that investigation in cases relating to sedition takes years to reach a conclusion, and usually, either there is no ground of conviction found after investigation, or investigation is delayed for long years, resulting in unnecessary discomfort and trouble to the persons against whom such charges are framed. The massive difference between the rates of cases sent for investigation and those actually resulting in conviction, is well enough to depict the same. The following graph depicts those rates-



Graph 2: Statistics depicting the difference of cases sent for investigation, and the total number of convictions, as per the National Crime Records Bureau. Source- https://ncrb.gov.in/crime-india-2018. The graph can be found at: https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html

Taking into account the above statistics and events of arrest, it becomes pertinent to reconsider such laws curbing free speech and expression, especially in relation to developed nations, to ascertain the correctness of imposing such restrictions on free speech.

VI. Fate of Sedition in the United Kingdom

England, during the colonial rule in India, imposed many restrictions on the freedom of speech and expression, including restraints on publication, writings, acts, artistic works, literature and even education. There have been many restraints that were removed during the colonial rule itself, and further restrictions that were removed much later. However, the laws relating to sedition, even after much debate and deliberation still find room in the Indian civilization, regardless of them being abolished in the UK in the year 2009, which is the source of such a legacy. Today's India, which is liberal enough to accommodate freedom of speech and expression in the fullest sense possible, does not validate such regressive laws. In order to further understand the source of such stringency, it is significant to understand the journey of such laws in the UK.

In the UK, there were majorly two ways to restrict freedom of speech and expression. First one was treason, second being seditious libel. These were in addition to *Scandalum Magnatum* of 1275, which covered all the offences against the authority of government or that of the crown. Further, The Treasons Act was enacted in 1351.[34] This statute penalised all the offences directed against the authority of the king. Even prediction of the death of the king was

[34] The Treasons Act, 1351.

considered an offence.[35] Later, the Treasons Trial Act[36] provided certain relaxations to the accused, including 'due process of law'. This was a considerable progress towards liberty.

However, later, there came the offence of seditious libel, which was declared by the Court of Star Chamber in the case of *DeLibellisFamosis* v. *State.*[37] The offence was declared by the UK Court through this case, therefore, this offence was a result of the common law system. It was held that for seditious libel, it was essential for the material to be published, so that it is brought to the knowledge of at-least one person.[38] Further, if it was directed towards an officer, it should have been indirectly linked to derogation of the king.[39] Truth was no defence for the same.[40] The intention of sedition was required to prove the offence.[41] The perpetrators were consequently convicted.However, as far as the application of the case was concerned, whoever expressed sentiments against the ruling government was put behind bars. Even constructive criticism was a crime.[42]

Such a situation continued till Milton's Areopagitica[43] enlightened masses and towards the freedom of speech and expression which they were rightly entitled to. He gives examples of Greeks and Romans in his text, indicating his plea for the readers to decide what suits to their inner will. He argues not for an entirely ungoverned press, but for a press that is allowed to print materials that may be adjudicated post, rather than prior to publication. He also switches the focus of the audience to the Bible, discussing how parliamentarians could use the text of the Bible to present to the Catholic Church because some verses in the Bible are evil as well. This could be done only when the Bible was made available to the public. One of his most intriguing arguments occurs when he says that good and evil grow together. He calls them twins; adding that when Adam ate the forbidden fruit, it was only then when he realised the good that lay ahead of him. Therefore, good has no gravity without evil. To gain good,

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[35]John Barrell, *Imagining the King's Death: Figurative Treason, Fantasies of Regicide* 754 (Oxford University Press, Oxford, United Kingdom, 2000).
[36] The Treason Trial Act, 1696.
[37]*De Libellis Famosis* v. *State* (1606)5 Co. Rep. 125a, 77 ER 250.
[38]*Ibid.*
[39]William Blackstone, 152 *Commentaries on Laws of England*, (Clarendon Press, Oxford, 1769).
[40] Irving Brant, "Seditious Libel : Myth and Reality" 39 *New York University Law Review*, 18-19 (1964).
[41]*Ibid.*
[42] William Mayton, "Seditious Libel and the Lost Guarantee of Freedom of Expression" 84 *Columbia Law Review,* 104 (1984).
[43] John Milton, *Milton's Areopagitica* (Clarendon Press, Oxford, 1644).

knowledge of evil is crucially imperative, therefore, he indicates that the growth of government cannot take place unless it confronts the evil of criticism. He concludes by quoting: .[44]

> "If liberty of printing bereduc't into the power of a few; but to redresse willingly and speedily what hath bin err'd and in highest authority to esteem a plain advertisement more then others have done as sumptuous bribe, is a virtue answerable to your highest actions, and whereof none can participate but greatest and wisest men."

This indicates a humble plea before the English parliament; with a purpose to emphatically state that the parliament should not be blind and ignorant to adapt perspectives that humans may have. The speech still exists as eloquent and articulate as it was at Milton's era, exalting and lauding the freedom of speech and expression to augment a tactile comprehension of liberty.

However, the legislations criminalising sedition in the United Kingdom continued to be in place in some form or another. The Law Commission of England proposed repeal of sedition law in 1977. After 32 years of the recommendations, the Coroners and Justice Act, 2009 abolished sedition as an offence.The Act removed sedition and seditious libel as crimes. Presently, the UK has no law which declares sedition or seditious libels as crimes. However, in order to prevent the state from any terrorist activity, the United Kingdom Terrorism Act, 2000 has provided for stringent penal laws in relation to possession of any document or material directed against the security of the state. Further, the Act restricts accessing any information that could prove to be in violation of the state security.[45]

In regard to abolishing the archaic offence, the Parliamentary Under Secretary of State at the Ministry of Justice, Claire Ward was quoted:[46]

> "Sedition and seditious and defamatory libel are arcane offences – from a bygone era when freedom of expression wasn't seen as the right it is today… The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been

[44] *Ibid.*

[45] The U.K. Terrorism Act, 2000, s. 56,57,58.

[46] Clare Feikert Ahalt, "Sedition in England: The Abolition of a Law From a Bygone Era", Library of Congress, October 2, 2012, *available at* https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/ (last visited on May 20, 2020).

> actively used to suppress political dissent and restrict press freedom… Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech."

Such a statement is enough to reflect that contemporary polity does not require such stringency to restrict citizens from their freedom of speech and expression.[47] The statement also aims to set an example for other countries to abolish the same, so that such repressive laws find no space in the national progress. This statement also sufficiently reflects that such age old repressions that have been abolished from the source itself, find no utility in continuation. Therefore, it seems logical that these laws should also be reconsidered in contemporary India. Should it be repealed, retained or reformed is the moot question.

VII. Conclusion

The UK is not comparable to India because of different levels of threats. The legislative intention in India is to retain it because the Parliament has never attempted to repeal it. Indeed five private member Bills were presented in the Parliament. Four of them suggest reform but do not suggest repeal.[48] Even State legislatures, who are empowered to repeal section 124A have not yet done anything.[49] Law commission of India, an expert independent body desires to retain it in a different form. The views of experts and distinguished scholars are divided. The judiciary has already declared it constitutional with the "tendency" test. Experienced lawyers and jurists Soli Soli Sorabjee and Advocate J. Sai Deepak are of the view that there is a need of awareness among citizens, as well as executives, to realise the true nature of laws relating to sedition, to reduce the number of cases being registered unnecessarily, under the garb of sedition. Professor Subhash C. Raina, Former Dean, Faculty of Law, Delhi University also believes that the law enforcement agencies have a considerable role to play, when it comes to realisation of the true meaning of sedition, as defined by the judiciary. Professor Rajiv Sharma, a renowned political analyst believes that there is a need for such laws to be retained, however, there is a strong need of law enforcement agencies to materialise the true definition of sedition, before putting citizens behind bars, so abruptly as is happening

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[47] *Ibid.*

[48] Manoj K Sinha and Anurag Deep, *Law of Sedition in India and Freedom of Expression,* 227-235 (The Indian Law Institute, New Delhi, 2018).

[49] The Constitution of India, 1950, art. 254(2).

contemporarily. [50]It is necessary to reform it in such a fashion that the misuse is checked. It has been rightly suggested that section 108 of CrPC 1973 is a good answer to the issue of misuse of section 124A. The State governments should issue a direction to all Police stations to consider section 108 of CrPC 1973 before registering an FIR under section 124A of IPC and arresting a person.[51] Section 124A may also be suitably amended to make it non cognizable and bailable, if the case is registered by one individual complaint. This will also check misuse of the law, thereby preventing unnecessary arrests and other infringements of individual dignity and freedom of speech and expression.

[50]Rajya Sabha TV, *The Big Picture, Sedition Law and Debate*, February 12, 2019, https://www.youtube.com/watch?v=xa19FBoLb3E&feature=youtu.be (last visited on June 18, 2020).
[51]*Supra* note 48 at 167-169.