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GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

USAGE OF THE LAW OF SEDITION

Report No. 279

April, 2023

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The 22nd Law Commission was constituted by Gazette Notification for a period of three years vide Order No. FNo. 45021/1/2018-Admn-III(LA) dated 21st February, 2020 issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi. The term of the 22nd Law Commission was extended vide Order No. FA No. 60011/225/2022-Admn.III(LA) dated 22nd February, 2023.

The Law Commission consists of a Chairperson, three full-time Members, Member Secretary, two *ex-officio* Members and two Part-time Members.

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Hon'ble Justice Ritu Raj Awasthi

Full-time Members

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Shri Rishi Mishra
Shri Gaurav Yadav
Shri Shubhang Chaturvedi
Shri Davinder Singh

The Law Commission is located at:
2nd and 4th Floor, 'B' Wing
Lok Nayak Bhawan, Khan Market
New Delhi-110 003.

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Justice Ritu Raj Awasthi
(Former Chief Justice of High Court of Karnataka)
Chairperson
22nd Law Commission of India

न्यायमूर्ति ऋतु राज अवस्थी
(सेवानिवृत मुख्य न्यायधीश, कर्नाटक उच्च न्यायलय)
अध्यक्ष
भारत के 22वें विधि आयोग

सत्यमेव जयते

आज़ादी का अमृत महोत्सव

D.O. No. 6(3)/302/2016-LC(LS) **Date:** 24th May, 2023

Hon'ble Sri Arjun Ram Meghwal ji
Namaskar!

I am pleased to forward you **Report No. 279** of the Law Commission of India on **"Usage of the Law of Sedition".** The Law Commission received a reference from the Ministry of Home Affairs, Government of India, *vide* letter dated 29th March, 2016, addressed to the Department of Legal Affairs, Ministry of Law & Justice, for a study of the usage of the provision of Section 124A of the Indian Penal Code, 1860 (IPC) and suggest amendments, if any.

The constitutionality of Section 124A of IPC was challenged before the Hon'ble Supreme Court in *S.G. Vombatkere* v. *Union of India* [(2022) 7 SCC 433]. The Union of India assured the Hon'ble Supreme Court that it was re-examining Section 124A and the Court may not invest its valuable time in doing the same. Pursuant to the same and *vide* order passed on 11th May, 2022, the Hon'ble Supreme Court directed the Central Government and all the State Governments to refrain from registering any FIR or taking any coercive measures, while suspending all continuing investigations in relation to Section 124A. Further, it also directed that all pending trials, appeals, and proceedings be kept in abeyance.

The 22nd Law Commission, after the appointment of the Chairperson and other Members *vide* notification dated 7th November, 2022, immediately took up this reference and is submitting this final Report for your kind consideration. We undertook a comprehensive study of the law relating to sedition and its usage in India, tracing its genesis and development. The Commission also analysed the history of sedition, both in colonial and independent India, the law on sedition in various jurisdictions, and the various pronouncements of the Hon'ble Supreme Court and the Hon'ble High Courts on the subject-matter.

Consequently, the Law Commission is of the considered view that Section 124A needs to be retained in the Indian Penal Code, though certain amendments, as suggested, may be introduced in it by incorporating the *ratio decidendi* of *Kedar Nath Singh v. State of Bihar* [AIR 1962 SC 955] so as to bring about greater clarity regarding the usage of the provision. We further recommend that the scheme of punishment provided under the said section be amended to ensure that it is brought in parity with the other offences under Chapter VI of IPC. Moreover, cognizant of the views regarding the misuse of Section 124A, the Commission recommends that model guidelines curbing the same be issued by the Central Government. In this context, it is also alternatively suggested that a provision analogous to Section 196(3) of the Code of

कार्यालय पता : कमरा नं. 405, चतुर्थ तल, 'बी' विंग, लोक नायक भवन, खान मार्किट, नई दिल्ली–110003
Office Address : Room No. 405, 4th Floor, 'B' Wing, Lok Nayak Bhawan, Khan Market, New Delhi-110003
आवासीय पता : बंगला नं. 8, तीस जनवरी मार्ग, नई दिल्ली–110011
Residence : Bungalow No. 8, Tees January Marg, New Delhi-110011
email : rituraj.awasthi@gov.in Tel. : 011-24654951 (D), 24340202, 24340203

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Justice Ritu Raj Awasthi
(Former Chief Justice of High Court of Karnataka)
Chairperson
22nd Law Commission of India

न्यायमूर्ति ऋतु राज अवस्थी
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Criminal Procedure, 1973 (CrPC) may be incorporated as a *proviso* to Section 154 of CrPC, which would provide the requisite procedural safeguard before filing of a FIR with respect to an offence under Section 124A of IPC.

The reasons leading upto these recommendations have been deliberated over in detail in the enclosed Report and the Commission is of the firm belief that incorporating the same would go a long way in addressing the concerns associated with the usage of this provision.

With warmest regards,

Yours sincerely,

24.5.2023

(Justice Ritu Raj Awasthi)

Shri Arjun Ram Meghwal
Hon'ble Minister of State (Independent Charge)
Ministry of Law & Justice
Government of India
Shastri Bhawan
New Delhi -110001.

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Residence : Bungalow No. 8, Tees January Marg, New Delhi-110011
email : rituraj.awasthi@gov.in Tel. : 011-24654951 (D), 24340202, 24340203

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ACKNOWLEDGEMENT

Upon receiving the terms of reference for the subject-matter of this Report, the Law Commission held extensive deliberations with all the relevant stakeholders, scholars, academicians, intellectuals, etc. Pursuant to the preliminary research conducted on this subject, the Law Commission floated a Consultation Paper on "Sedition" on its website, inviting views and suggestions from the concerned intelligentsia and the public in general. We are much thankful to all the people who took out their valuable time to furnish their comments and submissions on the law relating to sedition.

Having taken into consideration the suggestions so furnished, the Commission held further consultations with professors and academic experts to unravel the intricacies of the subject-matter. We express our heartfelt thanks to all such individuals. In particular, we would like to express our gratitude to Prof. (Dr.) Anurag Deep, Indian Law Institute, New Delhi, for holding in-depth discussions with us on the subject at hand. His insightful inputs have helped us navigate through complex legal frameworks with ease.

The Commission gratefully acknowledges the commendable assistance rendered in the preparation of this Report by **Mr. Rishi Mishra, Mr. Gaurav Yadav** and **Mr. Shubhang Chaturvedi**, who worked as Consultants. We place on record our deepest adulation for their painstaking efforts in research and drafting of this Report.

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1. INTRODUCTION

A. Terms of Reference

1.1 The Law Commission received a reference from the Ministry of Home Affairs, Government of India, *vide* letter dated 29th March, 2016, addressed to the Department of Legal Affairs, Ministry of Law & Justice, with a copy to the Law Commission of India, for a study of the usages of the provision of Section 124A of the Indian Penal Code and suggest amendments, if any. The said letter also mentioned that since the Law Commission is already undertaking a comprehensive review of the Criminal Laws, it may also look into the issues relating to Section 124A of the IPC during the course of such review. Here, it is also pointed out that *vide* letter dated 7th July, 2010, the then Home Minister made a reference to the then Law Minister for a comprehensive review of the Criminal Laws by the Law Commission of India and accordingly, the Department of Legal Affairs sent this reference to the Law Commission *vide* letter dated 14th June, 2013 for a comprehensive review of the Criminal Laws.

1.2 As far as the comprehensive review of the Criminal Laws is concerned, it is pertinent to note that the 21st Law Commission started working on this project in piecemeal and submitted six Reports, namely, Report Nos. 264, 267, 268, 271, 273 and 277, covering various aspects relating to the Criminal Justice System.

1.3 The 22nd Law Commission, in its first meeting held on 17th January, 2023 discussed this issue of usage of the law of sedition and was of the

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considered view that it requires a detailed examination, keeping in mind the various developments in the recent past. In this regard, the Commission requested the Ministry of Home Affairs *vide* letter dated 16th January, 2023 to furnish their comments. Reminder letters were also issued by the Commission. However, looking into the urgency of the matter, the Commission has discussed this issue with various stakeholders and scholars and made a detailed research on the subject-matter, thus finalising this Report.

B. Genesis and Development of the Concept of Sedition

1.4 The origin of the law on sedition can be traced back to the English Law. In feudal England, 'sedition' comprised those libels and slanders that would alienate the rulers from their subjects.[1] Traditionally, the legal elements of 'sedition' were obscure and thus, failed to provide a precise definition. The offences which would now be classified as 'sedition' were prosecuted under 'treason' or under *scandalum magnatum* or even under martial law.[2]

1.5 At the end of the sixteenth century, a newer connotation for the term 'sedition' began to emerge – the notion of inciting by words or writings, disaffection towards the state or its constituted authority.[3] This secondary definition gave rise to an understanding of 'sedition' as being distinct from treason and not necessarily entailing direct involvement in violent actions, but rather serving as potential triggers for such acts.

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[1] Roger B. Manning, "The Origins of the Doctrine of Sedition" 12 *Albion: A Quarterly Journal Concerned with British Studies* 100 (1980).
[2] Australian Law Reform Commission, "104th Report on Fighting Words: A Review of Sedition Laws in Australia" 51 (July 2006) (hereinafter "Report on Fighting Words").
[3] *Id.* at 3.

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1.6 In 1606, the Court of Star Chamber in *de Libellis Famosis*,[4] outlined the essential elements of seditious libel, thus laying down the foundation of the offence of 'seditious libel' in the United Kingdom.[5] The Chamber defined 'sedition' as speaking of inflammatory words, publishing certain libels, and conspiring with others to incite hatred or contempt for persons in authority in which the truth and falsity of libel was immaterial.[6] This doctrine of seditious libel persisted even after the Court of Star Chamber's abolition in 1641 and influenced common law libel and slander doctrines for over two centuries. It emphasised that it was the mere tendency of criticism to undermine the government that rendered the conduct a criminal offence.

1.7 The classic definition of 'seditious intention' is found in Sir James Stephen's Digest of the Criminal Law, published in 1887:

> *"A seditious intention is an intention 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 amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects."*[7]

1.8 Keeping sedition in mind, Stephen classified three types of conduct. One, crime of treason; two, that penal conduct which involves force or violence; and third, the conduct which fell in between the two. This conduct, which falls short of treason, and on the other hand, does not

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[4] 77 Eng Rep 250 (KB 1606).
[5] William T. Mayton, "Seditious Libel and the Lost Guarantee of a Freedom of Speech" 84 *Columbia Law Review* 105 (1984).
[6] Anushka Singh, *Sedition in Liberal Democracies* 75 (Oxford University Press, New Delhi, 2018).
[7] James F. Stephen, *A Digest of the Criminal Law* 66 (MacMillan, London, 4th edn, 1887).

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involve the use of force or violence was intended to be the offence of 'sedition'.[8] Thus, sedition came to be interpreted as words that fell short of treason and did not directly involve, although they might lead to, acts of violence.[9]

1.9 Stephen's definition makes sedition a conduct crime as well as a consequence crime. When the conduct is unlawful display of dissatisfaction with the government, it amounts to sedition. At the same time, if the conduct by itself is not culpable, however, the natural consequence of the conduct is dissatisfaction with the government, it also amounts to sedition.[10]

C. Origin and Development of the Law of Sedition in India

1.10 The law of sedition has a very chequered history in India. Macaulay's Draft Penal Code (1837- 1839) provided for a Clause which incorporated the offence of sedition as follows:

> *"Section 113: Whoever by words either spoken on intended to be read, or by signs or by visible representations, attempts to excite feelings of disaffection to the Government established by law in the territories of the East India Company among any class of people who live under that Government, shall be punished with banishment for life or for any term, from the territories of the East India Company, to which fine may be added, or with simple imprisonment for a term which may extend to three years, to which fine may be added or with fine.*
>
> *Explanation. Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government against unlawful attempts to subvert or resist that authority is not*

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[8] H.J. Stephen & L. Crispin Warmington (eds.), IV *Stephen Commentaries on the Laws of England* 141 (Butterworth & Co., London, 21st edn, 1950).
[9] *Ibid.*
[10] *Ibid.*

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> *disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation is not an offence within this clause."* [11]

1.11 Ten years after the first draft, the Second Report on the Indian Penal Code was presented by the Law Commission in 1846. Even though there was opposition to the provision, the majority in the Law Commission did not accept the objections as, in comparison to documented writing, the influence of a speech by an expert speaker is easy, sudden and more dangerous.[12]

1.12 Sir John Romilly, the Chairman of the 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, thereby suggesting that in India it should not be more than five years.[13]

1.13 However, when the Macaulay's draft received its final shape in the form of enactment of the Indian Penal Code (hereinafter "IPC") in 1860, this section was not included. 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, wherein he had remarked:

> *"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".*[14]

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[11] A Penal Code prepared by the Indian Law Commissioners and published by the command of the Governor General of India in Council (Bengal Military Orphan Press, Calcutta, 1837) *available at:* https://play.google.com/books/reader?id=Q_pBAAAAYAAJ&pg=GBS.RA1-PA12&hl=en (last visited on Feb. 16, 2023).

[12] A Chandrachud, *Republic of Rhetoric: Free Speech and the Constitution of India* 5 (Penguin, 2017).

[13] Hari Singh Gour, II *Penal Law of India* 1232 (Law Publishers (India) Pvt. Ltd., Allahabad, 11th edn., 2011).

[14] Arvind Ganachari, *Nationalism and Social Reform in a Colonial Situation* 55 (Kalpaz, Delhi, 2005).

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1.14 Mr. James Stephen, thereafter, set out to rectify this omission. Consequently, sedition was included as an offence under Section 124A of IPC through the Special Act XVII of 1870. This section was in line with the Treason Felony Act, 1848 that penalised seditious expressions.[15] One of the reasons cited by Stephen for introducing this section was that in the absence of such provision, this offence would be penalised under the more severe common law of England.[16] Therefore, the adoption of this section was projected as an obvious choice for protecting freedom of expression from the stricter common law. According to 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".[17] 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 free to voice their feelings against the government as long as they projected a will to obey its lawful authority.[18]

1.15 Section 124A of IPC was amended in 1898 by the Indian Penal Code (Amendment) Act, 1898 (Act V of 1898), providing for punishment of

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[15] Treason Felony Act, 1848, *available at* https://www.legislation.gov.uk/ukpga/Vict/11-12/12/section/3 (last visited on Feb 16, 2023). Section 3 of the Act stipulated that:

> *"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."*

[16] *Queen Emperor* v. *Jogendra Chunder Bose*, (1892) 19 ILR Cal 35.

[17] W.R. Donogh, *A Treatise on the Law of Sedition and Cognate Offences in British India* 2 (Thacker, Spink and Co., Calcutta, 1911) *available at*: http://archive.org/stream/onlawofsedition00dono#page/2/mode/2up (last visited on Feb. 16, 2023).

[18] *Ibid.*

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'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.[19] The provision was amended by Act No. 26 of 1955, substituting the punishment as 'imprisonment for life and/or with fine or imprisonment for three years and/or with fine'.

1.16 The Westminster Parliament enacted the Prevention of Seditious Meetings Act, 1907, in order to prevent public meetings likely to lead to 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.

1.17 The Prevention of Seditious Meetings Act, 1911, repealed the Act of 1907. Section 5 thereof enabled the statutory authorities to prohibit a public meeting in case such a meeting was likely to provoke sedition or disaffection or to cause disturbance of public tranquillity. 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 said Act of 1911 stood repealed vide Repealing and Amending (Second) Act (Act No. IV of 2018).

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

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2. PREVIOUS REPORTS OF THE COMMISSION

2.1 The Law Commission has previously dealt with the issue of 'sedition'. In its 39th Report (1968) titled "The Punishment of Imprisonment for Life under the Indian Penal Code", the Law Commission recommended that offences like sedition should be punishable either with imprisonment for life or with rigorous or simple imprisonment which may extend to three years, but not more.[20]

2.2 The issue of sedition was further considered by the Law Commission in its 42nd Report (1971) titled "Indian Penal Code", wherein the Commission undertook a holistic review of Section 124A.[21] The Law Commission recommended that:

> *"6.16. The elements mentioned in this article which are relevant to the offence of sedition are integrity of India, security of the State and public order. The section has been found to be defective because "the pernicious tendency or intention" underlying the seditious utterance has not been expressly related to the interests of integrity or security of India or of public order. We feel that this defect should be removed by expressing the mens rea as "intending or knowing it to be likely to endanger the integrity or security of India or of any State or to cause public disorder.*
>
> *6.17. Another defect noticed in the definition of sedition is that it does not take into account disaffection towards (a) the Constitution, (b) the Legislature, and (c) the administration of justice, all of which would be as disastrous to the security of the State as disaffection towards the executive Government. These aspects are rightly emphasised in defining sedition in other Codes and we feel that Section 124A should be revised to take them in.*
>
> *6.18. The punishment provided for the offence is very odd. It could be imprisonment of life, or else, imprisonment upto three years*

[20] Law Commission of India, "39th Report on The Punishment of Imprisonment for Life under the Indian Penal Code" (July, 1968).
[21] Law Commission of India, "42nd Report on the Indian Penal Code" (June, 1971).

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only, but nothing in between. The Legislature should, we think, give a firmer indication to the Courts of the gravity of the offence by fixing the maximum punishment at seven years' rigorous imprisonment and fine."[22]

2.3 The Law Commission, thus, recommended that Section 124A of IPC be revised as follows:

"124A. Sedition - Whoever by words, either spoken or written, or by signs, or by visible representation, or other-wise, excites, or attempts to excite, disaffection towards the Constitution, or the Government or Parliament of India, or the Government or Legislature of any State, or the administration of justice, as by law established, intending or knowing it to be likely thereby to endanger the integrity or security of India or of any State, or to cause public disorder, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation 1: The expression "disaffection" includes feelings of enmity, hatred or contempt.

Explanation 2: Comments expressing disapprobation of the provisions of the Constitution, or of the actions of the Government, or of the measures of Parliament or a State Legislature, or of the provisions for the administration of justice, with a view to obtain their alteration by lawful means without exciting or attempting to excite disaffection, do not constitute an offence under this section."[23]

2.4 The 43rd Report of the Law Commission on "Offences Against the National Security" (1971), also dealt with 'sedition' as part of the National Security Bill, 1971. Section 39 of this Bill dealt with 'Sedition', which was merely a reiteration of the revised section as proposed by the 42nd Report.[24]

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[22] *Id.* at 149.
[23] *Ibid.*
[24] Law Commission of India, "43rd Report on Offences Against the National Security" (Aug., 1971).

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2.5 The 267th Report of the Law Commission on "Hate Speech" (2017), distinguished between 'sedition' and 'hate speech', providing that the offence of hate speech affects the State indirectly by disturbing public tranquillity, while sedition is directly an offence against the State.[25] The Report adds, that to qualify as sedition, the impugned expression must threaten the sovereignty and integrity of India and the security of the State.[26]

[25] Law Commission of India, "267th Report on Hate Speech" (Mar., 2017).
[26] *Id.* at 45.

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3. CONSTITUENT ASSEMBLY DEBATES ON SEDITION

3.1 Even though the rights to be included in the Constitution were considered to be fundamental and enforceable by the courts, the Constituent Assembly members very well realized that these rights cannot be absolute.[27] The two strongest advocates of the limitation of fundamental rights were Shri A. K. Ayyar and Shri K. M. Munshi. With one or two exceptions, their fellow members supported them in this endeavour.[28] Vehemently arguing his case for restricting the fundamental rights while referring to the then unrest in Assam and Bengal, and to the communal riots in the Punjab and NWFP, Shri Ayyar in one of his letters to Sir B.N. Rau, remarked:

> *"The recent happenings in different parts of India have convinced me more than ever that all the Fundamental Rights guaranteed under the Constitution must be subject to public order, security, and safety, though such a provision may to some extent neutralize the effect of the rights guaranteed under the Constitution."*[29]

3.2 It has been at times perceived in certain quarters that the offence of sedition is at loggerheads with the express intent of the framers of the Constitution, on account of being violative of the freedom of speech and expression under Article 19(1)(a) of the Constitution. Therefore, it is imperative for us to revisit the proceedings of the Constituent Assembly and the deliberations held therein regarding sedition. On 24th January, 1947, the Constituent Assembly voted to create an 'Advisory Committee' to prepare a report on fundamental rights. Sardar Vallabh Bhai Patel, the Chairman of the Advisory Committee, presented the 'Interim Report of the Advisory Committee on Fundamental Rights to the Constituent

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[27] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 68 (Clarendon Press, Oxford, 1966).
[28] *Id.* at 69.
[29] *Id.* at 70.

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Assembly of India' on 29th April, 1947.[30] *Clause* 8(a) of this Interim Report provided for the freedom of speech and expression. The *proviso* to this clause containing "publication or utterance of seditious matter", was made one of the grounds to restrict the freedom of speech and expression. The *proviso* to *Clause* 8(a) read as follows:

> *(a) The right of every citizen to freedom of speech and expression:*
> *...provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.*[31]

3.3 The aforesaid *proviso* to *Clause* 8(a) of the Interim Report corresponds to Article 13(2) of the Draft Constitution presented before the Constituent Assembly on 21st February, 1948. Thus, in the first reading of the Draft Constitution, sedition was provided as one of the restrictions on the fundamental right to free speech and expression. The said *Clause* 2 of draft Article 13 read as follows:

> *(2) 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.*

3.4 Dr B.R. Ambedkar, the Chairman of the Drafting Committee, while introducing the Draft Constitution, highlighted the nature of fundamental rights that were to be enshrined in the Indian Constitution and also those provided in the Constitution of the United States. During the discussion, Dr Ambedkar asserted that the fundamental rights in the US Constitution were not absolute and were subject to restrictions on the basis of various doctrines propounded by the US Supreme Court time and again.[32] He said:

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[30] Interim report of the Advisory Committee on Fundamental Rights to the Constituent Assembly of India, 1947; See III *Constituent Assembly Debates*, 399.
[31] *Id.* at 7.
[32] VII *Constituent Assembly Debates*, 40.

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*"**Dr B.R. Ambedkar:***

.....

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution. In Gitlow Vs. New York in which the issue was the constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said:

> *"It is a fundamental principle, long established, that the freedom of speech and of the press, which the Constitution secures, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."*

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.

.....

In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by

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limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every state has inherent in it police power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

> *"That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question. . . . . "*

What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute."

3.5 In the second reading of the Draft Constitution, the Constituent Assembly on 1st December, 1948, again debated the draft Article 13.[33] Shri Damodar Swarup Seth, criticizing the draft Article to have been clumsily drafted, said:

> *"**Damodar S. Seth**: Sir, this article 13 guarantees freedom of speech and expression, freedom to assemble peaceably and without arms, to form association and unions, to move freely throughout the territory of India, to sojourn and settle in any territory, to acquire and hold and dispose of property, and to practice any profession or trade or business. While the article guarantees all these freedoms, the guarantee is not to affect the operation of any existing law or prevent the State from making any law in the general interests of the public. Indeed, Sir, the guarantee of freedom of speech and expression which has been given in this article, is actually not to affect the operation of any existing law or prevent the State from making any law relating to libel, slander, defamation, sedition and other matters which*

[33] *Id.* at 711.

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offend the decency or morality of the State or undermine the authority or foundation of the State. It is therefore clear. Sir, that the rights guaranteed in article 13 are cancelled by that very section and placed at the mercy or the high-handedness of the legislature. These guarantees are also cancelled, Sir, when it is stated that, to safeguard against the offences relating to decency and morality and the undermining of the authority or foundation of the State, the existing law shall operate. This is provided for in very wide terms. So, while certain kinds of freedom have been allowed on the one hand, on the other hand, they have been taken away by the same article as I have just mentioned. To safeguard against "undermining the authority or foundation of the State" is a tall order and makes the fundamental right with regard to freedom of speech and expression virtually ineffectual. It is therefore clear that under the Draft Constitution, we will not have any greater freedom of the press than we enjoyed under the cursed foreign regime and citizens will have no means of getting a sedition law invalidated, however flagrantly such a law may violate their civil rights. Then, Sir, the expression 'in the interests of general public' is also very wide and will enable the legislative and the executive authority to act in their own way. Very rightly, Sir, Shri S. K. Vaze of the Servants of India Society while criticising this article has pointed out that if the malafides of Government are not proved--and they certainly cannot be proved--then the Supreme Court will have no alternative but to uphold the restrictive legislation. The Draft Constitution further empowers the President, Sir, to issue proclamations of emergency whenever he thinks that the security of India is in danger or is threatened by an apprehension of war or domestic violence. The President under such circumstances has the power to suspend civil liberty. Now, Sir, to suspend civil liberties is tantamount to a declaration of martial law. Even in the United States, civil liberties are never suspended. What is suspended there, in cases of invasion or rebellion, is only the habeas corpus writ. Though individual freedom is secured in this article, it is at the same time restricted by the will of the legislature and the executive which has powers to issue ordinances between the sessions of the legislature almost freely, unrestricted by any constitutional provision. Fundamental rights, therefore, ought to be placed absolutely outside the jurisdiction, not only of the legislature but also of the executive. The Honourable Dr Ambedkar, Sir, while justifying the limitations on civil liberties, has maintained that what the Drafting Committee has done is that, instead of formulating civil liberties

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> *in absolute terms and depending on the aid of the Supreme Court to invent the doctrine or theory of police powers, they have permitted the State to limit civil liberties directly.*
> *Now, if we carefully study the Law of Police Powers in the United States, it will be clearly seen that the limitations embodied in the Draft Constitution are far wider than those provided in the United States. Under the Draft Constitution the Law of Sedition, the Official Secrets Act and many other laws of a repressive character will remain intact just as they are. If full civil liberties subject to Police Powers, are to be allowed to the people of this country, all laws of a repressive character including the Law of Sedition will have either to go or to be altered radically and part of the Official Secrets Act will also have to go. I therefore submit that this article should be radically altered and substituted by the addenda I have suggested. I hope, Sir, the House will seriously consider this proposal of mine. If whatever fundamental rights we get from this Draft Constitution are tempered here and there and if full civil liberties are not allowed to the people, then I submit, Sir, that the boon of fundamental rights is still beyond our reach and the making of this Constitution will prove to be of little value to this country."*[34]

3.6 Shri Mahboob Ali Baig Sahib Bahadur moved the amendment for the deletion of *Clauses* (2) to (6) from the Draft Article 13 and to add a single *proviso* to *Clause* (1), which read, "*provided, however that no citizen in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquillity in the country.*"[35] While introducing this amendment, he said:

> "***Mahboob Ali Baig Sahib Bahadur***: "*Mr. Vice-President, Sir, to me it looks as if the fundamental rights are listed in clause (1) only to be deprived of under clauses (2) to (6), for in the first place, these fundamental rights are subject to the existing laws. If in the past the laws in force, the law-less laws as I would call them, the repressive laws, laws which were enacted for depriving the citizens of their human rights, if they have deprived the citizens of these rights under the provisions under clauses (2) to (6), they will*

[34] *Id.* at 712-13.
[35] *Id.* at 725.

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> *continue to do so. The laws that I might refer to as such are the Criminal Law Amendment Acts, the Press Acts and the several Security Acts that have been enacted in the Provinces. And these clauses (2) to (6) further say that if the existing laws are not rigorous, repressive and wide enough to annihilate these rights, the States as defined in article 7 which covers not only legislatures, executive Governments and also the local bodies, nay, even the local authorities can complete the havoc. I am not indulging in hyperbole or exaggeration. I shall presently show that there is not an iota of sentiment or exaggeration in making this criticism. Fundamental rights are fundamental, permanent, sacred and ought to be guaranteed against coercive powers of a State by excluding the jurisdiction of the executive and the legislature. If the jurisdiction of the executive and the legislature is not excluded, these fundamental rights will be reduced to ordinary rights and cease to be fundamental. That is the import, the significance of fundamental rights."*[36]

3.7 Amongst these concerns, Shri K.M. Munshi proposed an amendment to *Clause* (2) of the draft Article 13. The said amendment read as:

> *"(2) 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, or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."*[37]

3.8 Through this amendment, Shri K.M. Munshi sought to omit the word 'sedition' and substitute it with 'which undermines the security of, or tends to overthrow, the State'. He stated that the object of the amendment was to remove the word 'sedition', which was of doubtful and varying import and to introduce words which constituted the crux of an offence against the State. Thus, it can be safely concluded that Shri Munshi, while introducing this amendment, was expressly mindful of the origins of Section 124A and the judicial pronouncements by the Courts which had

[36] *Id.* at 728.
[37] *Id.* at 731.

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watered down the ambit of Section 124A. It is relevant to quote the observations made my Shri Munshi *in toto* for the present discussion:

> *"**K.M. Munshi**: Sir, the importance of this amendment is that it seeks to delete the word 'sedition' and uses a much better phraseology, viz. "which undermines the security of, or tends to overthrow, the State." The object is to remove the word 'sedition' which is of doubtful and varying import and to introduce words which are now considered to be the gist of an offence against the State.*
>
> *...*
>
> *I was pointing out that the word 'sedition' has been a word of varying import and has created considerable doubt in the minds of not only the members of this House but of Courts of Law all over the world. Its definition has been very simple and given so far back in 1868. It says "sedition embraces all those practices whether by word or deed or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to subvert the Government". But in practice it has had a curious fortune. A hundred and fifty years ago in England, holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards the Government, was considered sedition once. Our notorious Section 124A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore the word 'sedition' has been omitted. As a matter of fact the essence of democracy is Criticism of Government. The party system which necessarily involves an advocacy of the replacement of one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy. The object therefore of this amendment is to make a distinction between the two positions. Our Federal Court also in the case of Niharendu Dutt Majumdar Vs King, in III and IV Federal Court Reports, has made a distinction between what Sedition meant when the Indian Penal Code was enacted and Sedition as understood in 1942. A passage from the judgement of the Chief Justice of India would make the*

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position, as to what is an offence against the State at present, clear. It says at page 50:

> *"This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."*

This amendment, therefore, seeks to use words which properly answer to the implication of the word 'Sedition' as understood by the present generation in a democracy and therefore there is no substantial change; the equivocal word sedition only is sought to be deleted from the article. Otherwise an erroneous impression would be created that we want to perpetuate 124A of the I.P.C. or its meaning which was considered good law in earlier days. Sir, with these words, I move this amendment."[38]

3.9 Thus, a nuanced reading of the debates paints a clear picture that the rationale for the deletion of the word 'sedition' from *Clause* (2) of the draft Article 13 was that the founding fathers sought to employ words which in their understanding, properly incorporated the meaning of the offence of sedition in accordance with its correct interpretation rendered by the Federal Court in the case of *Niharendu Dutt Majumdar* v. *King*[39]. The mere deletion of the word 'sedition' brought no concrete change in the reasonable restrictions sought to be imposed on the freedom of speech and expression. The term 'sedition' was omitted from Article 19(2) because the framers of the Constitution had included terms with wider connotations, which very much included the offence of sedition along with other subversive activities which were detrimental to the security of the State. On 2nd December, 1948, Shri Munshi's amendment was

[38] *Ibid.*
[39] 38 FCR [1942].

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adopted by the Constituent Assembly. This draft Article 13 ultimately materialised into Article 19 of the Constitution.

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4. JUDICIAL INTERPRETATION OF SECTION 124A OF IPC

A. Judicial Decisions on Sedition Prior to Independence

4.1 Before independence, Section 124A of IPC was extensively employed by the British to suppress the Indian nationalist movement. In *Jogendra Chunder Bose,*[40] the accused was charged with sedition for criticising the Age of Consent Bill and the negative economic impact of British colonialism. While directing the jury on the case, the Court distinguished sedition as was understood under the law of England at that time, from Section 124A of IPC. It was observed that the offence stipulated under Section 124A of IPC was milder, as in England any overt act in consequence of a seditious feeling was penalised, however, in India only those acts that were done with an 'intention to resist by force or an attempt to excite resistance by force' fell under this section.

4.2 It was opined that Section 124A of IPC penalised disaffection and not disapprobation. Disaffection was defined as a feeling contrary to affection; like dislike or hatred and disapprobation as merely disapproval. The following interpretation was ascribed to the term 'disaffection' under Section 124A of IPC:

> *"If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them."*

No verdict was announced as the jury did not reach a unanimous decision.

[40] *Queen-Empress* v. *Jogendra Chunder Bose,* (1892) 19 ILR Cal 35.

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Later, the case was withdrawn after Bose had tendered an apology.[41]

4.3 In *Queen Empress* v. *Bal Gangadhar Tilak*,[42] the defendant was accused of sedition for publishing an article in the newspaper *Kesari*, invoking the example of the Maratha warrior Chhatrapati Shivaji to incite overthrow of British rule in India. In this case, Justice Strachey placed relevant materials before the jury for interpreting 'disaffection' by saying:

> *"It means hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite: he must not make or try to make others feel enmity of any kind towards the Government...the amount or intensity of the disaffection is absolutely immaterial... if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question... the section places absolutely on the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them..."*

4.4 The interpretation that only acts that suggested rebellion or forced resistance to the Government should be given to this section was expressly rejected by the Court.[43] This judgment influenced the 1989 amendment to Section 124A of IPC, wherein the added explanation defined disaffection to include disloyalty and feelings of enmity.[44]

4.5 Two important decisions pursuant to the *Bal Gangadhar Tilak* judgment were *Queen Empress* v. *Ramchandra Narayan*,[45] and *Queen Empress* v.

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[41] *Ibid.*
[42] ILR (1898) 22 Bom 112.
[43] K.I. Vibhute, *P.S.A. Pillai's Criminal Law* 335 (Lexis Nexis Butterworths, Nagpur, 2012).
[44] 77 Eng Rep 250 (KB 1606).
[45] ILR 1898 22 Bom 152.

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Amba Prasad.[46] In *Ramchandra Narayan*, attempt to excite feelings of disaffection towards the Government was defined as, "equivalent to an attempt to produce hatred towards the Government as established by law, to excite political discontent, and alienate the people from their allegiance."[47] However, it was clarified that every act of disapprobation of Government did not amount to disaffection under Section 124A of IPC, provided the person accused under this section is loyal at heart and is "ready to obey and support the Government".[48]

4.6 A similar interpretation was given to disapprobation in *Amba Prasad,* wherein the accused had been booked under Section 124A of IPC, for publishing an article in a newspaper called *Jami-ul-ulam*. The Court, after analysing the meaning of disaffection, held that any disapprobation will only be protected as free speech if it did not lead to disloyalty or subverting the lawful authority of the State. The Court remarked:

> *"... the disapprobation must be 'compatible' with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority."*

4.7 Following the literal interpretation of Section 124A of IPC, the Court categorically held that it is not necessary that an actual rebellion or mutiny or forcible resistance to the Government or any sort of actual disturbance was caused by the act in question.[49] Stressing this point, the Court remarked:

> *"(Sedition) makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action, such as rebellion or forcible resistance, the test*

[46] ILR (1897) 20 All 55.
[47] *Ibid.*
[48] *Queen Empress* v. *Ramchandra Narayan*, ILR 1898 22 Bom 152.
[49] *Ibid.*

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of guilt."[50]

4.8 These cases brought to light the ambiguity being created by the explanation in interpreting the term disaffection. In order to remove any further misconception in interpreting Section 124A, the legislature introduced Explanation III to the section, which excluded 'comments expressing disapprobation' of the action of the Government but not intending to lead to an offence under the section. The main intention behind adding another explanation was to make the law more precise. The Select Committee, while considering the law of sedition, explained this addition in the following words:

> *"We have added a further explanation to clause 124A. The second explanation was intended to protect fair and honest criticism which had for its object the alteration of the policy pursued by the Government in any particular case. Some people were apprehensive that the express declaration of this principle might be held impliedly to negative the right of people to criticise Government action when that criticism could not lead to a reversal of such action; for instance criticism on past expenditure, or criticism on an appointment which the critic may think objectionable. I think this apprehension was quite unfounded, but in order to allay it we have introduced the third explanation."*[51]

4.9 The discussions of the Select Committee indicate that the British Government was not keen on granting freedom of expression to Indians to the extent enjoyed in England. The British found it difficult to limit the scope of sedition to direct incitement to violence or to commit rebellion in view of the fact that the landscape was under foreign rule and inhabited by many races, with diverse customs and conflicting creeds.[52]

4.10 While the British Government was justifying enlarging the ambit of laws

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[50] *Ibid.*
[51] K.I, Vibhute, *P.S.A. Pillai's Criminal Law* 65 (Lexis Nexis Butterworths, Nagpur, 2012).
[52] *Id.* at 66.

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on sedition, the Court in *Kamal Krishna Sircar* v. *Emperor*,[53] refused to term seditious a speech that condemned Government legislation declaring the Communist Party of India and various trade unions and labour organisations illegal. It was opined by the Court that imputing seditious intent to such a kind of speech would completely suppress freedom of speech and expression in India. It was observed that:

> *"To suggest some other form of government is not necessarily to bring the present Government into hatred or contempt... That does not mean that one may not make speeches of this kind. I do not like quite a lot of things the people do constantly from day to day. That is no reason for suggesting that those people are guilty of sedition or of attempting to bring the Government into hatred or contempt."*

4.11 The aforesaid case reflects the tendency of the British government to use sedition to suppress any kind of criticism. Recognising this aspect of Section 124A of IPC, in *Niharendu Dutt Majumdar* v. *the King Emperor*[54], the Court digressed from the literal interpretation given to Section 124A in *Bal Gangadhar Tilak*. The Court held that the offence of sedition was linked to disruption of public order and prevention of anarchy and until and unless the speech leads to public disorder or a reasonable anticipation or likelihood of it, it cannot be termed seditious.[55] Thus, the crux of the defence argument in *Bal Gangadhar Tilak* was affirmed. The appellant was consequently acquitted by the Federal Court, with the Court opining that all unpleasant words cannot be regarded 'actionable'.

4.12 Later on, this definition was overruled in the case of *King Emperor* v. *Sadashiv Narayan Bhalerao*.[56] In this case, the reading of 'public order'

[53] AIR 1935 Cal 636.
[54] AIR 1942 FC 22.
[55] *Ibid.*
[56] AIR 1947 PC 84.

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in Section 124A of IPC in *Niharendu Dutt Majumdar* was not accepted and the literal interpretation in *Bal Gangadhar Tilak,* and later in *Ramchandra Narayan,* and *Amba Prasad,* was upheld.

B. Judicial Decisions on Sedition After the Enactment of the Constitution

1. <u>Rulings on Sedition Prior to *Kedar Nath Singh* Judgment</u>

4.13 After independence, although certain observations were made by the Court in *Romesh Thapar* v. *State of Madras*[57] and *Brij Bhushan* v. *State of Delhi*[58], the question of constitutionality of Section 124A did not directly arise before the Supreme Court until 1962. The judgments in both *Romesh Thapar* and *Brij Bhushan* were delivered on the same day. The majority in *Romesh Thapar* held that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the state or the overthrow of it, any such law restricting the same cannot fall within the reservations under Article 19(2).

4.14 The same majority in *Brij Bhushan* relied upon its decision in *Romesh Thapar* and struck down Section 9(1-A) of the Madras Maintenance of the Public Order Act, 1949, which had authorised the imposition of restrictions on the freedom of speech and expression for preventing or combating any activity prejudicial to the public safety or the maintenance of public order. The majority held that the impugned provisions were in excess of the powers conferred on the legislature by *Clause* (2) of Article 19 of the Constitution. However, Fazl Ali, J. while writing a dissenting opinion in both of these cases, delved into the nature and scope of the law of sedition and explained the rationale for not including the term 'sedition' in Article 19(2) of the Constitution. While quoting Stephen's

[57] AIR 1950 SC 124.
[58] AIR 1950 SC 129.

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Criminal Law of England, Fazl Ali, J. held that:

> *"This passage brings out two matters with remarkable clarity. It shows firstly that sedition is essentially an offence against public tranquillity and secondly that broadly speaking there are two classes of offences against public tranquillity: (a) those accompanied by violence including disorders which affect tranquillity of a considerable number of persons or an extensive local area, and (b) those not accompanied by violence but tending to cause it, such as seditious utterances, seditious conspiracies, etc. Both these classes of offences are such as will undermine the security of the State or tend to overthrow it if left unchecked, and, as I have tried to point out, there is a good deal of authoritative opinion in favour of the view that the gravity ascribed to sedition is due to the fact that it tends to seriously affect the tranquillity and security of the State.* ***In principle, then, it would not have been logical to refer to sedition in clause (2) of Article 19 and omit matters which are no less grave and which have equal potentiality for undermining the security of the State. It appears that the framers of the Constitution preferred to adopt the logical course and have used the more general and basic words which are apt to cover sedition as well as other matters which are as detrimental to the security of the State as sedition.*** "[59]

Thus, Fazl Ali, J. held that there were various degrees of gravity in the offence of sedition. The reasoning for the omission of 'sedition' from Article 19(2) according to him was the intent of the framers of the Constitution to include terms of wider connotation which included the activity of sedition along with other activities 'which are detrimental to the security of the State as sedition'.

4.15 The Punjab High Court in *Tara Singh Gopi Chand* v. *The State,*[60] while relying upon the majority opinion in *Romesh Thapar*, declared Section 124A unconstitutional, reasoning that it contravenes the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. The Court held:

[59] *Id.* at 133.
[60] AIR 1951 Punj 27.

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> *"It is true that the framers of the Constitution have not adopted the limitations which the Federal Court desired to lay down. It maybe they did not consider it proper to go so far. The limitation placed by Clause (2) of Article 19 upon interference with the freedom of Speech, however, is real and substantial. The unsuccessful attempt to excite bad feelings is an offence within the ambit of Section 124A. In some instances at least the unsuccessful attempt will not undermine or tend to overthrow the State. It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the constitution."*

4.16 The Parliament by the Constitution (First Amendment) Act, 1951 amended *Clause* (2) of Article 19 and inserted two additional restrictions – namely, 'friendly relations with foreign State' and 'public order'. The Statement of Objects and Reasons of the Constitution (First Amendment) Act, 1951 provided as follows:

> *"During the last fifteen months of the working of the Constitution, certain difficulties have been brought to light by judicial decisions and pronouncements specially in regard to the chapter on fundamental rights. The citizen's right to freedom of speech and expression guaranteed by article 19(1)(a) has been held by some courts to be so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence."*

Thus, the Parliament took note of the reasoning of the majority opinion in *Romesh Thapar*, which had held that freedom of speech and expression could be restricted on the grounds of threat to national security and for 'serious aggravated forms of public disorder that endanger national security' and not 'relatively minor breaches of peace of a purely local significance'. The Amendment echoed the statement of law as laid down in the dissenting opinion of Fazl Ali, J. in *Brij Bhushan*.[61]

4.17 Subsequent to the enactment of the Constitution (First Amendment) Act,

[61] Hari Singh Gour, II *Penal Law of India* 1224 (Law Publishers (India) Pvt. Ltd., Allahabad, 11th edn., 2011).

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1951, the Patna High Court in *Devi Soren* v. *State of Bihar*[62], dealt with the validity of the Section 124A. While upholding its validity, the High Court held that the scope of Article 19(2) has now been widened after the addition of 'in the interest of public order' as a reasonable restriction on freedom of speech and expression. The Court, while distinguishing the terms 'public order' and 'in the interest of public order', held that while the term 'public order' simpliciter might need evidence of incitement of violence or tendency of violence, the expression 'in the interest of public order' is wide enough to cover mere bad feelings without any proof of tendency to violence or disorder.[63]

4.18 The Constitution bench of the Supreme Court in *Ramji Lal Modi* v. *State of Uttar Pradesh*[64], dealt with the scope of words 'in the interests of public order' in Article 19(2). It was argued that Section 295A of the IPC covers both varieties of insults, i.e. those which may lead to public disorders as well as those which may not. It was argued that the law insofar as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of *Clause* (2) of Article 19, but insofar as it covers the remaining variety, it will not fall within that clause. It was, thus, argued that since the provision covers speech that doesn't create public disorder, it should be held to be unconstitutional and void. The Court, while declining to accept the argument, held that the phrase 'in the interests of public order', is of much wider connotation than 'for maintenance of public order'. The Court held that if, therefore, certain activities have a tendency to cause public disorder, a law penalizing such activities as an offence cannot but be held to be a law

[62] ILR (1953) 32 Pat 1104.
[63] *Id.* at 1119.
[64] 1957 SCR 860.

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imposing reasonable restriction "in the interests of public order", although in some cases those activities may not actually lead to a breach of public order. The Court further held that Section 295A punishes only the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises such activities, is well within the protection of *Clause* (2) of Article 19. Thus, the Court introduced two tests: 'aggravated form', which defines the criteria for what counts as an insult, and the 'calculated tendency' of the insult to disrupt the public order.[65]

4.19 The full bench of the Allahabad High Court in *Ram Nandan* v. *State*[66] dealt with the constitutionality of Section 124A. While declaring Section 124A unconstitutional, the Court held that Section 124A deals not just with the aggravated form of disaffection, but even for the mildest variety of hatred, contempt or disaffection. There could be instances where speech would contain the germs of an incitement to violence, and instances where it would not. Thus, even a mildest form of disaffection could be caught by Section 124A which would go against the scheme of Article 19(1)(a) of the Constitution.

4.20 In 1960, the Constitution bench of the Supreme Court in *Supdt., Central Prison* v. *Dr Ram Manohar Lohia*[67], had the occasion to interpret the words 'in the interest of public order' in Article 19(2) of the Constitution.

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[65] Lawrence Liang, "Free Speech and Expression", in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution* 827 (Oxford University Press, 2016), *available at* https://doi.org/10.1093/law/9780198704898.003.0045 (last visited on Mar. 22, 2023).
[66] 1958 SCC OnLine All 117.
[67] (1960) 2 SCR 821.

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After considering different judicial opinion, the court summarized the phrase in the following words:

> *"The foregoing discussion yields the following results : (1) "Public order" is synonymous with public safety and tranquillity: it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State; (2) there must be proximate and reasonable nexus between the speech and the public order; (3) Section 3, as it now stands, does not establish in most of the cases comprehended by it any such nexus; (4) there is a conflict of decision on the question of severability in the context of an offending provision the language whereof is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislation; one view is that it cannot be split up if there is possibility of its being applied for purposes not sanctioned by the Constitution and the other view is that such a provision is valid if it is severable in its application to an object which is clearly demarcated from other object or objects falling outside the limits of constitutionally permissible legislation; and (5) the provisions of the section are so inextricably mixed up that it is not possible to apply the doctrine of severability so as to enable us to affirm the validity of a part of it and reject the rest."*

2. ***Kedar Nath Singh* Judgment**

4.21 The challenge to the constitutionality of Section 124A came directly before the Supreme Court for the first time in *Kedar Nath Singh* v. *State of Bihar*[68]. The Constitution bench instituted for deciding the same upheld the validity of Section 124A. The Court, after taking a detailed account of the history of Section 124A, explicitly recognized that the State needs protection from the forces who seek to jeopardize the safety and stability of the State. The Court made the following observation:

> *"This offence, which is generally known as the offence of Sedition, occurs in Chapter VI of the Indian Penal Code, headed "Of Offences against the State" This species of offence against the state was not an invention of the British Government in India, but*

[68] 1962 Supp (2) SCR 769; AIR 1962 SC 955.

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> *has been known in England for centuries. Every State, whatever its form of government has to be armed with the power to punish those who, by their conduct, jeopardise the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder."*[69]

4.22 While distinguishing the phrase 'the Government established by law' from the persons for the time being engaged in carrying on the administration, the Court observed that:

> *"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 124A has been characterised, comes, under Chapter VI relating to offences against the State. Hence any acts within the meaning of Section 124A which have the effect of subverting the Government by 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. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts*

[69] *Kedar Nath Singh* v. *State of Bihar* AIR 1962 SC 955.

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> *or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence."*[70]

4.23 The Court, hence, struck a balance between the right to free speech and expression and the power of the legislature to restrict such right by observing thus:

> *"...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 qua non of a democratic form of Government that our Constitution has established. ... But the freedom has to be guarded against becoming a licence 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.*** *"*[71]

4.24 The Supreme Court in *Kedar Nath Singh* took note of its earlier decision in *Ramji Lal Modi* to observe that the latter judgment throws a good deal of light upon the ambit of the power of legislature to impose a reasonable restriction on the exercise of the fundamental right to freedom of speech and expression. The Supreme Court took note of the strict test of proximity as laid down in *Ramji Lal Modi* and reinterpreted in *Ram Manohar Lohia.* Thus, while laying down the test for sedition, the Court held that unless the words used or the actions in question do not threaten the security of the State or of the public or lead to any sort of public disorder which is grave in nature, the act would not fall within the ambit of Section 124A of IPC.

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[70] *Ibid.*
[71] *Ibid.*

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4.25 It is pertinent to note that as per the *Kedar Nath Singh* judgment, proof of violence is not essential for establishing the offence of sedition. As to the nature of test laid down in this case for determining the threat to violence, *Kedar Nath Singh* indeed approved the "tendency test" of the UK rather than relying on the "imminent danger test" of the USA.[72] This is so because throughout the judgment, focus is on the tendency or incitement to violence or disorder rather than actual violence or imminent threat of violence. That the accused Kedar Nath Singh was convicted and punished for his speech without any proof of direct incitement of violence or any imminent danger of public disorder is further testimony to the Court adopting the "tendency test" for interpreting Section 124A of IPC.[73] This objective test of tendency applied by the Court entails examination of alleged seditious material present before the Court, the circumstances and the conduct of the accused. This test need not necessarily inquire into the consequences of the alleged seditious expression like actual violence or real impact of the disputed material. If the speech or expression is deliberately made and the content is pernicious enough, there is no requirement of proof of any overt conduct to establish tendency of violence. In the absence of such an inference, the Supreme Court could never have upheld the conviction of Kedar Nath Singh.[74]

3. Rulings Post *Kedar Nath* Judgment

4.26 After the pronouncement in the case of *Kedar Nath Singh* by the Supreme Court, public disorder has been considered to be a necessary ingredient of Section 124A of IPC by the courts. The courts have been categorical in expressing that every criticism of the government does not amount to

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[72] Manoj Kumar Sinha & Anurag Deep, *Law of Sedition in India and Freedom of Expression* 248 (The Indian Law Institute, New Delhi, 2018).
[73] *Ibid.*
[74] *Ibid.*

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sedition and the real intent of the speech must be considered before imputing seditious intent to an act. The Supreme Court, in the case of *Raghubir Singh* v. *State of Bihar* [75], held that in order to constitute an offence of conspiracy and sedition, it is not necessary that the accused himself should author the seditious material or should have actually attempted hatred, contempt or disaffection.

4.27 In the case of *Balwant Singh* v. *State of Punjab*[76], the Court held that mere casual raising of slogans a few times against the State without any overt act, which neither evoked any response nor any reaction from anyone in the public, does not attract the provisions of Section 124A of IPC.

4.28 Briefly touching upon the issue of freedom of expression and its conflict with reasonable restrictions enumerated in Article 19(2), the Supreme Court in *S. Rangarajan* v. *P. Jagjivan Ram*[77], held that there has to be a balance between free speech and restrictions for special interest as the two cannot be balanced as though they were of equal weight. While invoking the analogy of *'spark in a powder keg'*, the Court held that exceptions have to be construed precisely as deviations from the norm that free speech should prevail except in exceptional circumstances.[78] The Court observed:

> *"There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-*

[75] AIR 1987 SC 149.
[76] (1995) 3 SCC 214.
[77] (1989) 2 SCC 574.
[78] Lawrence Liang, 'Free Speech and Expression', in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* 828 (Oxford University Press, 2016).

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> *fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a power keg'."*

4.29 In *Bilal Ahmed Kaloo* v. *State of Andhra Pradesh* [79], the Court quashed the charges under the said section, as it was not established before the Court that the appellant had done anything which would threaten the existence of the Government established by law or might cause public disorder. In *Nazir Khan* v. *State of Delhi*,[80] the court reiterated this principle by stating:

> *"Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder."*

4.30 A prayer was made in the case of *Common Cause* v. *Union of India*[81], to issue directions for review of pending cases of sedition in various courts, where a superior police officer may certify that the 'seditious act' either led to the incitement of violence or had the tendency or the intention to create public disorder. The court granted the prayer and directed the authorities that while dealing with Section 124A of IPC, they are to be guided by the principles laid down in *Kedar Nath Singh*.

4.31 In *Vinod Dua* v. *Union of India*[82], affirming the law laid down in *Kedar Nath Singh*, the Court held that a citizen has a right to criticize or

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[79] AIR 1997 SC 3438.
[80] AIR 2003 SC 4427.
[81] (2016) 15 SCC 269.
[82] 2021 SCC OnLine 414.

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comment upon the measures undertaken by the Government and its functionaries so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder; and that it is only when the words or expressions have a pernicious tendency or intention of creating public disorder or disturbance of law and order that Sections 124A can be invoked.[83]

4.32 In its order dated May 11, 2023, the Supreme Court in *S.G. Vombatkere* v. *Union of India*[84], directed all the State Governments and the Central Government to keep all pending trials, appeals and proceedings arising out of a charge framed under Section 124A to be kept in abeyance. The Court in its *prima facie* observation, opined that the rigours of Section 124A of IPC were not in tune with the current social milieu, and were intended for a time when this country was under the colonial regime.[85]

[83] *Ibid.*
[84] (2022) 7 SCC 433.
[85] *Id.* at 436.

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5. SEDITION VIS-À-VIS FREE SPEECH

5.1 Free speech is a hallmark of democracy. The purpose of this freedom is to allow an individual to attain self-fulfilment, assist in the discovery of truth, strengthen the capacity of a person to take decisions and facilitate a balance between stability and social change.[86] It finds mention in the Preamble and Article 19 of the Universal Declaration of Human Rights, 1948, (UDHR).

5.2 However, reasonable restrictions can always be imposed on this right in order to ensure its responsible exercise and to ensure that it is equally available to all citizens. According to Article 19(3) of the International Covenant on Civil and Political Rights, 1966 (ICCPR), this freedom may be subjected to restrictions, provided they are 'prescribed by law and are necessary for respecting the rights or reputation of others' or for the 'protection of national security, public order, public health or morals'.[87]

5.3 Similarly, Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression to all citizens. However, Article 19(2) provides for certain restrictions to which this freedom can be subjected to, namely, in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or

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

[87] Article 19 of the International Covenant on Civil and Political Rights 99 U.N.T.S. 171 (1966) 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, butthese 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."

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incitement to an offence.

5.4 The relevance of the offence of sedition provided under Section 124A of IPC is a subject of continuous and ceaseless debate. Those opposing it see this provision as a relic of India's colonial past. On the other hand, it is argued that amidst growing concerns of national security, this provision provides a reasonable restriction on utterances that are inimical to the security and integrity of the nation. Balancing freedom of expression with collective national interest is one of the key ingredients of this law. Indeed, dissent with the sole objective to unseat a government strengthens the democratic fabric so long as it does not use mischievous propaganda of extreme form or lead to tendency of violence or disorder or support disintegration of the country.[88] The purpose of sedition was not only to check the threat against the safety and stability of the State but also to ensure that valid criticism of the government was not eclipsed at the same time.[89]

5.5 As long as the means adopted by the protesting voices are constitutional and legal, criticism of the government would merely be disapprobation and not disaffection. However, the moment such disapprobation leads to incitement of violence or suggests incitement of violence as the only recourse available, the offence of sedition becomes operative.[90]

5.6 It is worthwhile to note that even in a state like the United States of America which proscribes the State from enacting any legislation curtailing the first amendment – right to free speech and expression, the

[88] Manoj Kumar Sinha & Anurag Deep, *Law of Sedition in India and Freedom of Expression* 188 (The Indian Law Institute, New Delhi, 2018).
[89] *Id.* at 6.
[90] *Kedar Nath Singh* v. *State of Bihar*, AIR 1962 SC 955.

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judiciary has invented the Doctrine of Police Power to protect laws made by the Congress. Thus, even in a State that follows the 'absolutism' model of 'freedom of speech', the said right is not absolute.

5.7 Further, the Constitution framers, while deliberating over what model to keep, ultimately decided to reject the 'absolutist' model and instead decided to adopt the 'expressly restrictive' model.[91] Dr Ambedkar noted:

> *"What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result, what one does directly, the other does indirectly. In both cases, the fundamental rights are not absolute."*[92]

5.8 The fundamental right to speech and expression in India is not only subject to the eight reasonable restrictions stipulated under Article 19(2), but it can also be suspended during emergency under Article 358 of the Constitution of India.[93] The intention of the Constituent Assembly and the Parliament was not just to distinguish it from the US model but also to keep it sufficiently away from it because of strong disintegrating and separatist tendencies.[94]

5.9 Article 19(1)(a) in the original Constitution guaranteed the fundamental right to 'freedom of speech and expression' subject to the qualifiers in *Clause* (2), i.e. the government's authority to legislate concerning libel,

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[91] Dr. Ambedkar, Motion Re Draft Constitution, VII *CAD* 4th November 1948, *available at*: https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-04 (last visited on Mar. 01, 2023).
[92] *Ibid.*
[93] The Constitution of India, Article 358.
[94] Manoj Kumar Sinha & Anurag Deep, *Law of Sedition in India and Freedom of Expression* 204-205 (The Indian Law Institute, New Delhi, 2018).

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slander, defamation, contempt of court, any matter offending decency or morality, or which undermines the security of or tends to overthrow, the State. Upset at a series of judgments[95] rendered by the Supreme Court and certain High Courts, Pt. Nehru wrote to Dr Ambedkar, expressing the view that the Constitution's provisions pertaining to law and order and subversive activities needed to be amended.[96]

5.10 Consequent to Dr Ambedkar's acquiescence, Prime Minister Nehru introduced the draft of the First Amendment in the Lok Sabha on the 12th of May, 1951. As to the inclusion of 'public order' and 'incitement to an offence' as grounds for restricting free speech, Pt. Nehru exclaimed that a Constitution should 'not limit the power of Parliament to face a situation'.[97] He further maintained that the 'concept of individual freedom has to be balanced with social freedom and the relations of the individual with the social group'.[98] Finally after its passage, the First amendment[99] retrospectively as well as prospectively empowered the government to impose 'reasonable restrictions' on the freedom of expression "in the interests of the security of the State (replacing the words 'tends to overthrow the State'), friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation (replacing the words 'libel' and 'slander'), or incitement to an offence."[100]

[95] *State of Bihar v. Shailabala Devi* 1952 (3) SCR 654; *In re Bharati Press* AIR 1951 Patna 21; *Romesh Thapar v. State of Madras* 1950 (1) SCR 602.
[96] Granville Austin, *Working A Democratic Constitution: The Indian Experience* 42 (Oxford University Press, New Delhi, 1999).
[97] *Id.* at 46.
[98] 12 Parliamentary Debates, part 2, cols. 8815-32 (16 May, 1951; Parliamentary Debates was the designation for Lok Sabha debates during the 'Provisional Parliament').
[99] The Constitution (First Amendment) Act, 1951.
[100] Granville Austin, *Working A Democratic Constitution: The Indian Experience* 49 (Oxford University Press, New Delhi, 1999).

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5.11 The Sixteenth Constitutional Amendment, 1963, further strengthened the reasonable restrictions on free speech by adding the expression 'the sovereignty and integrity of India' to Article 19(2).[101] The reasons for the same were many, with the most predominant one being the Chinese incursions on Indian territory ultimately culminating in the Indo-China War of 1962. Master Tara Singh's long fast for a Sikh state, Punjabi Suba, during mid-1961 and the Dravida Munnetra Kazhagam's (DMK) call for an entity separate from India called Dravidanad, comprising Madras, Mysore, Kerala, and Andhra, were issues of further concern.[102]

5.12 Faced with the Sikh agitation and aware of the DMK's proclivities, the Chief Ministers' Conference in August, 1961, unanimously recommended that advocacy of secession be made a penal offence. Accordingly, a National Integration Council was established. The Council's report recommended that any "demand for secession from the Centre be made unconstitutional."[103] The then Law Minister, Ashoke Kumar Sen, while introducing the Sixteenth Amendment Bill in the Lok Sabha on the 21st of January, 1963, said that its purpose was to give 'appropriate powers to impose restrictions against those individuals or organizations who want to make secession from India or disintegration of India as political purposes for fighting elections'. The amendment was passed unanimously. It was hailed as a great achievement by many, especially keeping in view the drastic change in DMK's stance as a result of the amendment when, later in that year, the DMK's senior figure, Dr Annadurai, 'unequivocally declared that the DMK once and for all gave

[101] The Constitution (Sixteenth Amendment) Act, 1963.
[102] This was stated in the DMK's election manifesto for the 1962 general elections, adopted in Coimbatore in December 1961.
[103] Granville Austin, *Working A Democratic Constitution: The Indian Experience* 51-52 (Oxford University Press, New Delhi, 1999).

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up the demand for Dravida Nadu and henceforth solidly and sincerely stood for the sovereignty and unity of India.'[104]

5.13 Thus, the entire objective of imposing one after another reasonable restrictions on the freedom of speech and expression, as is evident from the discussions held in the Constituent Assembly and the debates and deliberations preceding the First and Sixteenth Amendment to the Constitution, was to primarily safeguard the sovereignty, territorial integrity and security of India as well as securing the interest of public order. It is in this context that it becomes crucial to understand the true import of the offence of sedition in India. It is important to contextualise the need for the offence of sedition with the stark ground realities that are still existent. An attempt for the same is made in the next chapter.

[104] *Id.* at 52.

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6. THREATS TO INDIA'S INTERNAL SECURITY

6.1 Internal security of a country can be understood as securing the apparatuses involved in safeguarding its territorial boundaries and protecting its sovereignty.[105] The link between internal security and sovereignty is well established.[106] It is imperative that a country's internal security be shielded in order to enable it to exercise its sovereignty and protect its territorial integrity.

6.2 Further, any attack on the former is essentially an attack on the latter.[107] In a pluralistic society like India, with multiple religious, ethnic, regional, and linguistic identities and a unique geopolitical position in the subcontinent, internal security is a *sine qua non* for the nation's very existence.[108] The National Security Advisor (NSA), Mr. Ajit Doval, noted in his address to the 2014 Batch of Indian Police Services probation officers:

> *"We are now in the phase of fourth generation warfare, a difficult war against an invisible army, whether it is organised crime, terrorism, insurgency or foreign powers trying to meddle into our internal affairs."*[109]

6.3 Stressing on the increased focus on maintaining internal security, Shri Doval, in another address, commented:

> *"Wars ceased to become effective instrument to achieve political and military objectives. They are too expensive, unaffordable, and there's uncertainty about their outcome. It is the civil society that*

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[105] Social and Political Research Foundation, "Challenges to Internal Security in India" 1 (New Delhi, 2019) (hereinafter "SPRF").
[106] S.M. Makinda, "Sovereignty and Global Security" 29(3) *Security Dialogue* 281–292 (1998).
[107] *Ibid.*
[108] Sumit Ganguly, et al. (eds.), *The Oxford Handbook of India's National Security* (Oxford University Press, 2018).
[109] Press Trust of India, "Internal security going to be a big challenge for India: NSA Ajit Doval" (13 July, 2018), *available at* https://economictimes.indiatimes.com/news/defence/internal-security-going-to-be-a-big-challenge-for-india-nsa-ajit-doval/articleshow/49609461.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited Mar. 10, 2023).

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can be subverted, divided and manipulated to hurt the interest of the nation."[110]

6.4 The Ministry of Home Affairs (MHA) in its Annual Report of 2021-22 has recognised Maoist extremism in certain areas, insurgency in the North-East, terrorism in Jammu and Kashmir (J&K) and in the hinterland of the country, as prominent challenges for India's internal security establishment.[111]

A. Maoist Extremism

6.5 The Maoist insurgency led by the Communist Party of India-Maoist (CPI-Maoist) as well as various other such banned outfits is arguably the largest internal security threat in India as once declared by the former Prime Minister of India, Dr Manmohan Singh.[112] Having its genesis in the Naxalbari areas of West Bengal state in 1967, the Maoist insurgency has evolved through various forms and shades.[113]

6.6 The Maoists' objective is to seize political power and herald a 'New Democracy' through a protracted armed struggle. In doing so, they reject the parliamentary and democratic forms of governance in India by terming them to be a sham. It is through these ideological orientations and the romanticisation of 'revolutionary violence' that the Maoists, in their movement in last five decades, have been able to establish their presence

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[110] Times News Network, *Protect India from subversive forces, says NSA Ajit Doval to IPS Officers* (13 Nov., 2021) *available at*: http://timesofindia.indiatimes.com/articleshow/87674496.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited Mar. 10, 2023).

[111] Ministry of Home Affairs, "Annual Report 2021-2022" 6 (Ministry of Home Affairs, Government of India (2022) (hereinafter "MHA Report 2021-22").

[112] Anshuman Behera, "From Mao to Maoism: The Indian Path", in Narendar Pani and Anshuman Behera (eds.) *Reasoning Indian Politics: Philosopher Politicians to Politicians Seeking Philosophy* 182-204 (Routledge, London, 2018).

[113] *Ibid.*

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over 180 districts in ten States.

6.7 For over more than five decades of their existence, the Maoists/Naxalites, in the garb of advocating liberty and self-determination, demolish hospitals, burn schools, damage roads and kill people participating in electoral process. The real and imminent threat from these groups has resulted in mass scale violence, rape, targeted killings, etc. The following table offers testimony to this.

Table 1: Fatalities in Maoist Violence: 2004-2021

Year	Incidents	Deaths
2004	1533	566
2005	1608	679
2006	1509	678
2007	1565	696
2008	1591	721
2009	2258	908
2010	2213	1005
2011	1760	611
2012	1415	415
2013	1136	397
2014	1091	310
2015	1089	230
2016	1048	278
2017	908	263
2018	833	240
2019	670	202
2020	665	183

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2021	509	147
Total	23401	8529

Source: Ministry of Home Affairs[114]

6.8 By rejecting democracy and the constitutionally established form of governance, they have challenged the sovereignty of the Indian state. The brutal killings of civilians, government officials and the security forces by the Maoists reflect on this aspect of the security threat. Legitimising violence by non-state actors is another serious threat that the Maoists and their over-ground supporters pose to the Indian society and polity.

6.9 As one can observe a substantial fall in the Maoist related violent incidents over the course of past years, several leaders of the movement have been either neutralised or arrested. Even though the threat perception emanating from the Maoist insurgency has been contained to a significant extent, it refuses to die down altogether.

B. Militancy and Ethnic Conflict in the Northeast

6.10 The long-standing militancy and violent ethnic conflicts in some of the North-eastern states have been a serious internal security concern for the country. Contrary to a separatist position that conceptualises the violence and conflicts as 'freedom struggle' against the 'homogenizing state',[115] most of these conflicts are often guided by distorted sentiments emerging from certain vested interests, overshadowing the realistic issues. The MHA has put these conflicts in three broad categories, namely, separatist insurgencies demanding independence; autonomist insurgencies

[114] Ministry of Home Affairs, "Annual Reports" (Ministry of Home Affairs, Government of India, New Delhi, India) *available at*: https://www.mha.gov.in/en/documents/annual-reports (last visited on Mar. 25, 2023).
[115] Ajai Sahni, "Survey of Conflicts and Resolution in India's Northeast", 12 *Faultlines* (2002) *available at*: https://www.satp.org/satporgtp/publication/faultlines/volume12/article3.htm (last visited on Feb. 22, 2023).

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asserting sub-regional aspirations; and intra-ethnic conflicts among dominant and smaller tribal groups.[116] The table below illustrates the profile of violence in the North-east.

Table 2: Profile of Violence in North-East 2014-2021[117]

Years	Incidents	Extremists Killed	Extremists Arrested	Security Forces Killed	Civilians Killed	Persons Kidnapped/ Abducted
2004	1234	382	1099	110	414	225
2005	1332	406	1498	70	393	239
2006	1366	395	1406	76	309	306
2007	1491	514	1837	79	498	292
2008	1561	640	2566	46	466	416
2009	1297	571	2162	42	264	230
2010	773	247	2213	20	94	214
2011	627	114	2141	32	70	250
2012	1025	222	2145	14	97	329
2013	732	138	1712	18	107	307
2014	824	181	1934	20	212	369
2015	574	149	1900	46	46	267
2016	484	87	1202	17	48	168
2017	308	57	995	12	37	102
2018	252	34	804	14	23	117
2019	223	12	936	04	21	108
2020	163	21	646	05	03	69
2021	209	40	686	08	23	94

[116] Rajya Sabha, "Security Situation in the North Eastern States of India", Two Hundred Thirteenth Report 1-2 (Department-Related Parliamentary Standing Committee on Home Affairs, Rajya Sabha, 19 July, 2018).
[117] MHA Report 2021-22, at 18.

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6.11 The Ministry of Home Affairs has observed that insurgency related incidents have declined in the North-east and that the overall security situation has improved, with a reduction of 83% in civilian deaths and 40% in security forces casualties in 2017, compared to 2014.

6.12 Despite marked reduction in these activities over the course of past years, a complete wipe-out has not been achieved till date. The region has witnessed ethnic secessionist movements along with tribal and ethno-linguistic separatist conflicts. Nagaland, then part of Assam, was the first to experience militancy and soon similar movements in Mizoram, Tripura, Assam and Manipur followed.[118]

6.13 Moreover, the internal conflicts between the dominant and the minority groups often blame the Indian state as a common enemy and hold the latter responsible.[119] Apart from these, the external factors and their implications on the internal conflicts and militancy, in terms of sustaining them and providing them safe houses in their territories, have been instrumental in the survival of these subversive movements.

6.14 Separatist militant groups and terrorist organisations like the National Socialist Council of Nagalim (Khaplang) [NSCN/K][120] in Nagaland, the United Liberation Front (UNLF)[121] in Manipur, United Liberation Front of Assam (ULFA) in Assam, Garo National Liberation Army (GNLA) in Meghalaya, All Tripura Tiger Force (ATTF) in Tripura, etc. continue to challenge the sovereignty, unity and integrity of the nation. The sub-regional aspirations leading to violent conflicts among the ethnic groups

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[118] *Ibid.*
[119] Anshuman Behera, "India's Internal Security: Threat Perception and Way Forward" 15(2) *CLAWS Journal* 35 (Winter, 2021).
[120] Surinder Kumar Sharma & Anshuman Behera, *Militant Groups in South Asia* 90 (New Delhi: IDSA-Pentagon Press, 2014).
[121] *Id.* at 97.

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further dilutes the democratic and constitutional ethos of India.

C. Terrorism in Jammu & Kashmir

6.15 Kashmir continues to be a flashpoint on India's security agenda. The complexity of the situation, exacerbated by social and political fractures engendered by Pakistan through fanning radicalisation and facilitating terror has led to the gravest security threat being faced by India since independence.

6.16 The Ministry of Home Affairs (MHA), in its Annual Report 2021-22, notes that Jammu & Kashmir (J&K) has been affected by terrorist and secessionist violence, sponsored and supported from across the border, for more than three decades.[122]

6.17 The trends of terrorist violence in J&K are shown in the table given below.

Table 3: Fatalities in Jammu & Kashmir 2004-2021[123]

Year	Civilians Killed	Security Forces Killed	Total	Terrorists Killed
2004	707	281	988	976
2005	557	189	746	917
2006	389	151	540	591
2007	158	110	268	472
2008	91	75	166	339

[122] MHA Report 2021-22, at 218.
[123] Ministry of Home Affairs, "Annual Reports" (Ministry of Home Affairs, Government of India, New Delhi, India) *available at*: https://www.mha.gov.in/en/documents/annual-reports (last visited on Mar. 25, 2023).

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2009	78	64	142	239
2010	47	69	116	232
2011	31	33	64	100
2012	11	38	49	50
2013	15	53	68	67
2014	28	47	75	110
2015	17	39	56	108
2016	15	82	97	150
2017	40	80	120	213
2018	39	91	130	257
2019	39	80	119	157
2020	37	62	99	221
2021	41	42	83	180

6.18 The ongoing militancy in Jammu and Kashmir is linked with infiltration of terrorists from across the border, both from the "International Border" as well as the "Line of Control" in J&K.

6.19 The issues of separatism and terrorism in the state of J&K blur the distinction between external and internal aspects of security threats. The external dimension emanates from the direct involvement of Pakistan in harbouring and supporting the terrorist groups in its territory and supporting terrorist activities in J&K through direct funding and training. The internal dimension of the security threat can be linked to the religious radicalisation wrapped with fig leaf of Kashmir nationalism asserting for separate statehood. This complex interplay of several interconnected

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issues makes it difficult for the Indian state to deal with the security situation effectively.[124]

6.20 Apart from Pakistan, the role of China in sustaining these conflicts and violence cannot be ruled out. The episodes of the Chinese state issuing loose visas to the people of J&K can be seen as sinister attempts to dilute the sovereignty of India.[125] The recent tension and skirmishes at the Indo-China Border and the Line of Actual Control in the past few years further signals towards the Chinese hand in posing internal security challenges to India in J&K.

D. Secessionist Activities in Other Parts of the Country

6.21 Apart from the aforementioned threats to internal security, secessionist tendencies continue to be roused in different parts of the country. Amongst these, the movement for 'Khalistan', or a separate state for Sikhs is a prominent one. Over the years, multiple organisations have been at the forefront in the demand for a separate Sikh state. The inflection point came in 1984, post which, the movement eventually lost the already scant local support and was quelled in the 1990s. However, organisations spread across the Indian diasporas in Canada, Australia, United Kingdom, United State of America, etc. have been involved in mobilising it again.[126]

6.22 These organisations have time and again attempted to subvert the

[124] Abdul Hameed Khan, *Changed Security Situation in Jammu and Kashmir: The Road Ahead* 7 (IDSA Monograph Series No. 61, 2017) *available at*: https://www.idsa.in/system/files/monograph/monograph61.pdf (last visited on Mar. 02, 2023).

[125] Prashant Kumar Singh, "Revisiting China's Kashmir Policy", *IDSA Comment* (1 Nov., 2010) *available at*: https://www.idsa.in/idsacomments/ RevisitingChinasKashmirPolicy_pksingh_011110 (last visited on Mar. 02, 2023).

[126] Prema Kurien, "Shifting U.S. Racial and Ethnic Identities and Sikh American Activism", 4(5) *RSF: The Russell Sage Foundation Journal of the Social Sciences* 81–98 (2018).

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sovereignty and territorial integrity of India. In 2015, influenced by the Scottish independence referendum of the previous year, an organization known as Sikhs for Justice (SFJ), launched a Referendum 2020 movement, seeking to build support from Sikhs around the world for "India-occupied Punjab" to become an independent country. [127] Unofficial referendums seeking support for the creation of a separate state have been organised in Scotland, Australia, England, Canada, United States of America, etc. Taking note of its secessionist objectives, the Indian government classified SFJ as an unlawful association in 2019 and banned it accordingly.[128]

6.23 Similar subversive movements have been given air by different organisations across the country. Banned organisations like the Students Islamic Movement of India (SIMI), Jamat-ul-Mujahideen Bangladesh (JMB), Popular Front of India (PFI), Rehab India Foundation (RIF), Campus Front of India (CFI), All India Imams Council (AIIC), National Confederation of Human Rights Organisation (NCHRO), National Women's Front, Junior Front, Empower India Foundation and Rehab Foundation, Kerala, Indian Mujahideen (an offshoot of SIMI) etc. have been found to be involved in fomenting anti-national leanings within certain sections of the Indian populace and indulging in terrorist activities. In 2017, the SIMI chief along with ten other members, was convicted under Sections 124A, 122, 153A of the IPC, and other relevant provisions of the UAPA.[129]

[127] Gurpreet Singh Nibber, "Referendum 2020? Khalistan Divides, Unites, Sikhs Abroad", *Hindustan Times* (4 Aug., 2015) *available at:* https://www.hindustantimes.com/punjab/referendum-2020-khalistan-divides-unites-sikhs-abroad/story-QBIfntRdW0zF7kVpw9XgmN.html (last visited on Mar. 23, 2023).
[128] Gazette of India (10 July, 2019) *available at*: https://www.mha.gov.in/sites/default/files/SikhsForJustice_11092019_0.pdf (last visited Mar. 23, 2023).
[129] Press Trust of India, "Simi Chief, Ten Others get Life Sentence in Sedition" *available at*: https://www.livemint.com/Politics/vFhiSVwjf0nWPPFcD9iN7K/Simi-chief-ten-others-get-life-sentence-in-sedition-case.html (last visited on Mar. 26, 2023).

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6.24 Working either covertly or overtly towards the avowed goal of altering the constitutional framework of the country in accordance with their radical agenda and extremist ideology, umpteen groups and organisations such as these continue to pose herculean challenges for India's security establishment.

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7 ALLEGED MISUSE OF SECTION 124A OF IPC

7.1 It is often alleged that Section 124A of IPC is misused by the governmental authorities to quell political dissent. The provision has invited stringent criticism on account of being invoked by various State Governments against activists, detractors, writers, journalists, etc., seeking to silence political opposition by accusing the dissenters of promoting disaffection. One of the major grounds of objection to Section 124A is that a forceful censure of government policies and personalities and stinging denunciation of an unresponsive or insensitive administration are in all likelihood wrongfully treated to be seditious.

7.2 As per the data furnished by the National Crime Records Bureau (NCRB)[130], 399 sedition cases have been filed across the country, including a high of 93 in 2019, 73 in 2020 and 76 in 2021. Of the 322 cases filed between 2016 and 2020, chargesheets were filed in 144 of them, with as many as 23 cases being found to be false or a mistake of law and 58 cases having been closed for lack of evidence. Over the years, the conviction rate in sedition cases has fluctuated between 3% and 33%.[131]

7.3 While the political class may be accused of misusing the sedition law, the root of the problem lies in the complicity of the police. Sometimes, in an overzeal to please the political masters, the police action in this regard becomes partisan and not as per the law. Further, the erroneous

[130] Ministry of Home Affairs, "Crime in India 2021" 442-446 (National Crime Records Bureau, Ministry of Home Affairs, Government of India (2022) *available at*: https://ncrb.gov.in/en/Crime-in-India-2021 (last visited on Mar. 20, 2023).

[131] Deeptiman Tiwary, "399 sedition cases since 2014, pendency high" *The Indian Express*, May 31, 2022 *available at*: https://indianexpress.com/article/explained/sedition-cases-pendency-explained-7912311/ (last visited on Mar. 20, 2023).

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interpretation of the law on sedition by the police authorities is also what leads to its misuse. The invocation of Section 124A of IPC in any case very much depends on how the police whimsically interprets the language of this provision and the bearing that the alleged committed act has on public order. When a FIR regarding Section 124A is registered at a police station, as to how the concerned police officer apprehends a situation and imputes a law is entirely dependent on his own interpretation of the provision. This interpretation may further vary depending on whether the police officer incharge is a lower level or high-ranking officer.

7.4 Even though, in our considered opinion, it is imperative to lay down certain procedural guidelines for curbing any misuse of Section 124A of IPC by the law enforcement authorities, any allegation of misuse of this provision does not by implication warrant a call for its repeal. There are plethora of examples of various laws being misused by ill-intentioned individuals only to settle their scores in cases of personal rivalries and vested interests, with even the Supreme Court recognising the same in a number of decisions. Never has there been any plausible demand to repeal any such laws merely on the ground that they are being misused by a section of the populace. This is so because for every abuser of that law, there might be ten other genuine victims of any offence who direly need the protection of such a law. What is then required in such cases is only to introduce legal ways and means to prevent the misuse of such a law. In the same vein, while any alleged misuse of Section 124A of IPC can be reined in by laying down adequate procedural safeguards, repealing the provision altogether can have serious adverse ramifications for the security and integrity of the country, with the subversive forces getting a free hand to further their sinister agenda as a consequence.

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8 SEDITION LAWS IN OTHER COUNTRIES

A. United Kingdom

8.1 The offence of sedition can be traced to the Statute of Westminster, 1275, when the King was considered the holder of Divine right.[132] In order to prove the commission of sedition, not only the truth of the speech but also intention was considered. The offence of sedition was initially created to prevent speeches 'inimical to a necessary respect required to be paid to the government'.[133] The *De Libellis Famosis*,[134] case was one of the earliest cases wherein 'seditious libel, whether 'true or false was made punishable'. This case firmly established seditious libel in United Kingdom.[135] The rationale of this judgment was that a true criticism of government has a greater capacity to vilify the respect commanded by the government and cause disorder, and therefore needs a higher degree of prohibition.

8.2 Sedition was defined by Fitzgerald J. in *R. v. Sullivan*,[136] as:

> *"Sedition is a crime against society, nearly allied to that of treason, and it frequently preceded treason by a short interval. 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 tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the Empire. The objects of sedition generally are to induce discontent*

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[132] English PEN, A Briefing on the Abolition of Seditious Libel and Criminal Libel (30 June, 2009) *available at*: https://issuu.com/englishpen/docs/englishpen_seditiouslibel_2009 (last visited on Jan. 10, 2023).
[133] William T. Mayton, "Seditious Libel and the Lost Guarantee of a Freedom of Speech" 84 *Colum. L. Rev.* 91 (1984).
[134] 77 Eng Rep 250 (KB 1606).
[135] William T. Mayton, "Seditious Libel and the Lost Guarantee of a Freedom of Speech" 84 *Colum. L. Rev.* 91 (1984).
[136] *R* v. *Sullivan* (1868) 11 Cox C.C. 44, cited in United Kingdom Law Commission, "Codification of the Criminal Law: Treason, Sedition and Allied Offences", Working Paper No. 72, at 4, *available at*: http://www.lawcom.gov.uk/wp-content/uploads/2016/08/No.072-Codification-of-the-Criminal-Law-Treason-Sedition-and-Allied-Offences.pdf (last visited on Jan. 10, 2023) (hereinafter "Working Paper No. 72").

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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."

8.3 The United Kingdom Law Commission while examining the need of law on seditious libel in modern democracy,[137] in 1977 referred to the judgment of the Supreme Court of Canada in *R. v. Boucher*,[138] wherein it was opined that only those act that incited violence and caused public order or disturbance with intention of disturbing constitutional authority could be considered seditious.[139] The Commission, in its working paper remarked:

"Apart from the consideration that there is likely to be a sufficient range of other offences covering conduct amounting to sedition, we think that it is better in principle to rely on these ordinary statutory and common law offences than to have resort to an offence which has the implication that the conduct in question is 'political'. Our provisional view, therefore, is that there is no need for an offence of sedition in the criminal code."

8.4 This marked the beginning of the movement to abolish seditious libel in United Kingdom. With the enactment of the Human Rights Act, 1998, the existence of seditious libel, started being considered in contravention to the tenets of the Act and the European Convention on Human Rights.[140] The global trend has largely been against sedition and in favour of free speech. While abolishing sedition as an offence in 2009, the then Parliamentary Under-Secretary of State at the Ministry of Justice of the United Kingdom reasoned that:

"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

[137] Working Paper No. 72.
[138] [1951] 2 DLR 369.
[139] Working Paper No. 72.
[140] European Convention on Human Rights, 1950, 213 U.N.T.S. 221.

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> *this country had been used by other countries as justification for the retention of similar laws which have been 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.* "[141]

8.5 Finally, the seditious libel was deleted by Section 73 of the Coroners and Justice Act, 2009.[142] One of the reasons given for abolishing seditious libel was:

> *"Having an unnecessary and overbroad common law offence of sedition, when the same matters are dealt with under other legislation, is not only confusing and unnecessary, it may have a chilling effect on freedom of speech and sends the wrong signal to other countries which maintain and actually use sedition offences as a means of limiting political debate.* "[143]

8.6 Both the 1977 recommendation of the UK Law Commission to repeal the law on sedition and its final abolition in 2009 is based on two predominant reasons. The first being that there are 'sufficient range of other offences' to deal with sedition like offences and the second reason being the political nature of the offence of sedition.[144] What is most pertinent to note is that the UK abolished the offence of sedition more than three decades after it was recommended by the UK Law Commission, perhaps only after the threat of secessionist subversive activities from the Irish

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[141] PA Media Lawyer, "Criminal Libel and Sedition Offences Abolished", *Press Gazette* (Jan. 13, 2010) *available at:* https://pressgazette.co.uk/publishers/broadcast/criminal-libel-and-sedition-offences-abolished/ (last visited on Jan. 20, 2023).

[142] *Section 73: 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.

[143] Liberty's Report Stage Briefing and Amendments on the Coroners and Justice Bill in the House of Commons (March, 2009) *available at*: https://www.liberty-human-rights.org.uk/sites/default/files/liberty-s-coroners-and-justice-report-briefing-excluding-secret- inquests-.pdf (last visited on Jan. 25, 2023).

[144] Manoj Kumar Sinha & Anurag Deep, *Law of Sedition in India and Freedom of Expression* 222 (The Indian Law Institute, New Delhi, 2018).

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Republican Army (IRA) ceased to exist pursuant to the signing of the Good Friday Agreement in 1998 between the British and Irish Governments as well as most of the political parties in Northern Ireland.

8.7 Further, even before repealing the offence of sedition, the UK, from 2000 onwards, has passed numerous enactments dealing with seditious and secessionist elements, such as The Terrorism Act, 2000; The Anti-Terrorism, Crime and Security Act, 2001; Prevention of Terrorism Act, 2005; Terrorism Act, 2006; The Terrorism (United Nations Measures) Order, 2006 and 2009; The Counter-Terrorism Act, 2008; The Coroners and Justice Act, 2009; The Terrorist Asset-Freezing (Temporary Provisions) Act, 2010; The Justice and Security Act, 2013; The Counter-Terrorism and Security Act, 2015, etc. Sections 57 and 58 of the Terrorism Act, 2000 are comprehensive enough to punish the possession of any document or material which may be practically useful for any terrorist activity. There is no need for any other overt *actus reus*. There is no requirement of proving incitement of or tendency of violence or disorder. The only protection provided to the accused is a defence to establish his bona fides of such possession.[145] Thus, even though the UK may have abolished the traditionally existent offence of sedition, the current scheme of their laws is well adept to safeguard the security and integrity of the State, comprehensively covering any offence that has seditious undertones.

B. United States of America

8.8 The Constitution of the United States of America proscribes the State from enacting any legislation curtailing the first amendment – right to

[145] *Id.* at 223.

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expression. There has been a debate among the jurists whether first amendment guarantee was aimed at eliminating seditious libel.[146] It is argued by many that this doctrine 'lends a juristic mask to political repression'.[147] Despite the conflicting views and the attempts by courts to narrow the scope of sedition, it survives as an offence in the United States, though it is very narrowly construed and can even be said to have fallen in disuse.[148]

8.9 It is generally contended that the US Constitution follows the "absolutism" model of freedom of speech as there is no mention of any express restriction on this freedom in the US Constitution. It was argued by many that the first amendment aimed at abolishing seditious libel.[149] However, this view has been opposed on grounds that the first amendment does not protect speech of all kind; therefore, suggesting that law on sedition was abolished by it would amount to interpreting history through one's own civic sensibilities.[150] Speech is free but not absolute in nature as the judiciary has protected the laws made by the Congress from the first amendment of the Constitution by inventing the Doctrine of Police Power.[151]

8.10 Sedition was made a punishable offence in the United States through the Sedition Act of 1798.[152] This Act was repealed in 1820. In 1918, Sedition

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[146] William T. Mayton, "Seditious Libel and the Lost Guarantee of a Freedom of Speech" 84 *Colum. L. Rev.* 91 (1984).

[147] Judith S. Koffler & Bennett L. Gershman, "New Seditious Libel" 69 *Cornell L. Rev.* 816 (1984).

[148] Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore and Alternative Law Forum, Bangalore, *Sedition Laws and Death of Free Speech in India available at*: https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf (last visited on Jan. 30, 2023).

[149] William T. Mayton, "Seditious Libel and the Lost Guarantee of a Freedom of Speech" 84 *Colum. L. Rev.* 91, at 4-8 (1984).

[150] *Id.* at 6-8.

[151] Manoj Kumar Sinha & Anurag Deep, *Law of Sedition in India and Freedom of Expression* 204 (The Indian Law Institute, New Delhi, 2018).

[152] Section 2 of the Sedition Act, 1798 defines sedition as:

"*To write, print, utter or publish, or cause it to be done, or assist in it, any false, scandalous, and malicious*

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Act was again enacted by the U.S. Congress to protect American interests in the First World War.[153] The Espionage Act, 1917 contained many provisions similar to those of the Sedition Act, 1798. It became illegal to utter or print any profane language that interfered with the operation or success of the US military or criticized the Government or the Constitution with punishments of twenty years in prison. The US Courts have gone to the extent of declaring that a demand of referendum to participate in the war or not, cannot be protected under free speech at war time.[154] In *Earnest v. Starr*, a mob aggressively told E.V. Starr to kiss the US flag. He refused to do so by saying, "What is this thing anyway? Nothing but a piece of cotton with a little paint on it and some marks in the corner there. I will not kiss that thing. It might be covered with microbes." He was convicted by the Federal Court under Montana Sedition Law for the "contemptuous and slurring language about the flag" and "language calculated to bring the flag into contempt and disrepute."[155] The Court further observed that "patriotism is the cement that binds the foundation and superstructure of the State. The safety of the latter depends upon the integrity of the former. Like religion, patriotism is a virtue so indispensable and exalted, its excesses pass with little censure."[156]

8.11 In *Schenck v. United States*,[157] the Court led unanimously by Holmes J.,

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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."

[153] This Act was a set of amendments to enlarge Espionage Act, 1917.

[154] Anushka Singh, *Sedition in Liberal Democracies* 102 (Oxford University Press, New Delhi, 2018).

[155] Michael Welch, *Flag Burning: Moral Panic and the Criminalization of Protest* (Aldine de Gruyter, New York, 2000); see Manoj Kumar Sinha & Anurag Deep, *Law of Sedition in India and Freedom of Expression* 208 (The Indian Law Institute, New Delhi, 2018).

[156] Clemens P. Work, *Darkest Before Dawn: Sedition and Free Speech in the American West* 118 (The University of New Mexico Press, 2006).

[157] 249 US 47 (1919).

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while adjudging the validity of Sedition Act 1918, laid down the "clear and present danger" test for restricting freedom of expression:

> *"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."*

8.12 The US Supreme Court in *Abrams v. United States*,[158] held that distribution of circulars appealing for strike in factories to stop manufacturing of machineries to be used to crush Russian revolutionaries could not be protected under the First Amendment. Justice Holmes' dissenting opinion, however championed the wide ambit of free speech liberty in United States. He remarked:

> *"It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned."*

8.13 In *Gitlow v. New York*,[159] the accused printed 'Left Wing Manifesto' in his newspaper 'The Revolutionary Age' that advocated the violent overthrow of the US Government. Gitlow argued that "no violent action was precipitated by the article." He was duly convicted under the New York state law. Both his conviction and the law criminalizing such advocacy were challenged in the US Supreme Court, which therein invented the "bad (or dangerous) tendency" test and rejected the precedent of "clear and present danger" test established in *Schenck v. US*:

> *"The State cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in*

[158] 250 US 616 (1919).
[159] 268 US 652 (1925).

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its incipiency."

8.14 Sedition was also brought as an offence under Alien Registration Act, 1940 (also known as Smith Act) which penalized advocacy of violent overthrow of the government. The constitutional validity of this Act was challenged in *Dennis v. United States*.[160] Again applying the clear and present danger test, the court upheld the conviction on the grounds that:

> *"...the words [of the act] cannot mean that, before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required. The argument that there is no need for Government to concern itself, for Government is strong, it possesses ample powers to put down a rebellion, it may defeat the revolution with ease needs no answer. For that is not the question. Certainly, an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt."*

8.15 The restriction on free speech has, however, been narrowly construed in subsequent cases. In *Yates v. United S*tates,[161] the Supreme Court distinguished 'advocacy to overthrow' as an abstract doctrine from an 'advocacy to action'.[162] It was reasoned that the Smith Act did not penalise advocacy of abstract overthrow of the government and the *Dennis* did not in any way blur this distinction. It was held that the difference between these two forms of advocacy is that 'those to whom

[160] 341 US 494 (1951).
[161] 354 US 298 (1957).
[162] *Ibid.*

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the advocacy is addressed must be urged to do something, now or in the future, rather than merely to believe in something'.

8.16 In *New York Times v. Sullivan*,[163] the Supreme Court remarked that speech must be allowed a breathing space in a democracy and government must not be allowed to suppress what it thinks is 'unwise, false or malicious'.

8.17 In *Whitney v. California*,[164] the Supreme Court had held that "to knowingly be or become a member of or assist in organising an association to advocate, teach or aid and abet the commission of crimes or unlawful acts of force, violence or terrorism as a means of accomplishing industrial or political changes involves such danger to the public peace and the security of the State, that these acts should be penalised in the exercise of its police power." Legislations penalising such acts were not considered an arbitrary and unreasonable exercise of State power.

8.18 *Whitney* case was overruled by *Brandenburg v. Ohio*[165], wherein the Supreme Court categorically held that "freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

8.19 The ratio laid down in the *Brandenburg* case was that "mere abstract teaching of the moral propriety or even moral necessity for a resort to

[163] 376 US 254, 273-76 (1964).
[164] 274 US 357 (1927).
[165] 395 US 444 (1969).

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force and violence is not the same as preparing a group for violent action." Pursuant to this case, restrictions on expression are subject to intense scrutiny. Thus, criticism or advocacy must lead to incitement of immediate lawless action in order to qualify for reasonable restriction under the first amendment.

8.20 The U.S. Constitution though forbids apparent restrictions on speech, there are various doctrines that are practised to avert hate speech. The doctrines such as "reasonable listeners test", 'present danger test', "fighting words" are just examples. The chilling effect concept had been recognised most frequently and articulated most clearly in decisions chiefly concerned with the procedural aspects of free speech adjudication.

C. Australia

8.21 The first comprehensive legislation that contained the offence of sedition was the Crime Act, 1920. The provisions on sedition in this Act were broader than the common law definition as subjective intention and incitement to violence or public disturbance were not the sine qua non for conviction under these provisions. The Hope Commission constituted in 1984 recommended that the Australian definition of sedition should be aligned with the Commonwealth definition. [166] Subsequently, the provisions on sedition were again reviewed by the Gibbs Committee in 1991. It was suggested that while the offence of sedition should be retained and convictions should be limited to acts that incited violence for the purpose of disturbing or overthrowing constitutional authority. In 2005, amendments were made in Schedule 7 of the Anti-Terrorism Act (No. 2) 2005, including in the sedition as an offence and defences in

[166] Royal Commission on Australia's Security and Intelligence Agencies, "Report on the Australian Security Intelligence Organization" (1985), cited in Report on Fighting Words.

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Sections 80.2 and 80.3 of the Criminal Code Act, 1995. The Australian Law Reform Commission (hereinafter, ALRC) reviewed whether the use of the term sedition was appropriate to define the offences mentioned under the 2005 amendment. After a detailed study the ALRC Report suggested that:[167]

> *"The Australian Government should remove the term 'sedition' from federal criminal law. To this end, the headings of Part 5.1 and Division 80 of the Criminal Code (Cth) should be changed to 'Treason and urging political or inter-group force or violence', and the heading of s 80.2 should be changed to 'Urging political or inter-group force or violence."*

8.22 The Recommendation of the ALRC was implemented in the National Security Legislation Amendment Act, 2010, wherein the term sedition was removed and replaced with references to 'urging violence offences'. Someone commits an urging violence offence if they intentionally urge another person or group to use force or violence to: a). overthrow the Constitution, government or lawful authority; or b). against a group, or members of a group, that is distinguished by race, religion, nationality, national or ethnic origin or political opinion. Hence, even though the nomenclature of the new offence may have been changed but its essence more or less remains the same as sedition.

D. Canada

8.23 The English common law sedition offences in Canada had their origins in the Court of Star Chamber. The most important of these, seditious libel, was largely developed later by courts to limit civil liberties flowing from the Revolution Settlement.[168] Another offence related to criticism of

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[167] Report on Fighting Words.

[168] The Settlement of 1688-89 formally ended the English revolution and had at its core the Declaration of Rights which stated the terms on which the Crown was offered and accepted, established the supremacy of the acts of Parliament, as well as the liberties of the subjects as represented by Parliament, including freedom of speech. The

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authorities was *scandalum magnatum*, which permitted truth as a defence. However, no such defence was available to the defendant charged with sedition.[169] The said offence only entailed criticism that "scandalized" the government or brought the authorities into "disesteem." No proof of actions against the state was required. What is required was merely proof of an expression through spoken words, conspiracy, or written publication (libel), the nature of which was deemed to foster disaffection and the potential disturbance of the public peace.[170] Over the course of centuries, the law on sedition developed in accordance with the times.

8.24 Sedition, in modern day Canada, is the use of speech or words to incite others to rebel against the government or governing authority. According to Sec. 59 of the Criminal Code of Canada[171], it is a crime to speak seditious words, publish a seditious libel, or be part of a seditious conspiracy. The Supreme Court of Canada, in *Boucher v. The King*[172], has defined sedition as *"any practice whether by word, deed or in writing - calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire."* The Court added that the objective of sedition is to induce discontent and insurrection and bring the administration of justice into contempt.

8.25 As per Sec. 59(1) of the Criminal Code, 'seditious words' are those that "express a seditious intention."[173] The Supreme Court has ruled that

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settlement did not resolve all issues between the executive and legislature, giving rise to very different interpretations of its application. In this context, indirect limitations on criticism of the state emerged through executive control.

[169] Barry Wright, "Sedition in Upper Canada: Contested Legality" 29 *Labour/Le Travail* 14 (Spring, 1992).

[170] J.F. Stephen, II *A History of Criminal Law* 298 (London, 1883); T.A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury* 319 (Chicago, 1985).

[171] Criminal Code (R.S.C., 1985, c. C-46) *available at*: https://laws-lois.justice.gc.ca/eng/acts/c-46/section-59.html (last visited on Mar. 10, 2023).

[172] 1950 CanLII 2 (SCC); [1951] SCR 265.

[173] Criminal Code (R.S.C., 1985, c. C-46) *available at*: https://laws-lois.justice.gc.ca/eng/acts/c-46/section-59.html (last visited on Mar. 10, 2023).

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anyone can "freely criticize the proceedings of courts of justice and of individual judges - in a free, and fair, and liberal spirit. But it must be without malignity, and not imputing corrupt or malicious motives."

8.26 Sec. 59(2) of the Criminal Code defines 'seditious libel' as one "that expresses a seditious intention."[174] It has been stated by the Supreme Court to be a libel that "brings into hatred or contempt, or excites disaffection" with the government or the Crown through unlawful means.

8.27 A 'seditious conspiracy' is further defined in Sec. 59(3) of the Criminal Code as "an agreement between two or more persons to carry out a seditious intention."[175] According to the Supreme Court, this occurs when people work together to "raise discontent and disaffection and stir up jealousies, hatred and ill-will" against the government. A 'seditious intention', though not defined exhaustively in the Code, but section 59(4) establishes a presumption of seditious intention when anyone "(a) teaches or advocates, or (b) publishes or circulates any writing that advocates the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada".[176]

8.28 Sedition is treated as an indictable offence punishable by a maximum of 14 years imprisonment, as per Sec. 61 of the Criminal Code. However, peaceful and lawful protests against the government or its policies are not considered sedition.

[174] *Ibid.*
[175] *Ibid.*
[176] *Ibid.*

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9 CONCLUSION: GROUNDS FOR RETENTION OF SECTION 124A

9.1 Having discussed the nuances of the law of sedition in India extensively, the Law Commission is of the considered opinion that Section 124A of IPC should be retained. The reasons for the same are summarised hereunder:

A. To Safeguard the Unity and Integrity of India

9.2 As discussed at length in aforementioned Chapter 6, myriad threats to India's internal security exist. The Federal Court in *Niharendu Dutt Majumdar* observed that *"the right of every organised society to protect itself against attempts to overthrow is beyond denial."*[177] Fitzgerald states that *"the fundamental requirement of any society is the ability to protect itself against annihilation or subjection; and the chief duty of any government is to safeguard the State and its institutions against external and internal attack."*[178] He further observes that the precondition of enjoying freedom is to ensure the security of State because *"without such guarantee of stability the rest of the law, both civil and criminal, is for most part inefficacious."*[179] As B.P. Sinha, C.J., observes in *Kedar Nath Singh* : *"Every State, whatever its form of Government, has to be armed with the power to punish those who, by their conduct, jeopardise the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder."*

9.3 Even though there are Central and State laws to deal with terror cases

[177] AIR 1942 FC 22, at 48.
[178] P.J. Fitzgerald, *Criminal Law and Punishment* 83 (Oxford University Press, 1962).
[179] *Ibid.*

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(like the Unalwful Activities Prevention Act, 1967 and the Maharashtra Control of Organised Crimes Act, 1999, etc.), Section 124A of IPC serves to be the traditional penal mechanism to address the issue. Prompt and effective suppression of disintegrating tendencies is in the immediate interest of the nation. As Shri Soli J. Sorabjee once remarked in reference to Section 124A, *"The provision properly interpreted and correctly applied protects and preserves the integrity of the Indian State and is also a deterrent for persons who are minded to commit acts of incitement to violence and acts which cause disturbance of public order."*[180] The ever proliferating role of social media in propagating radicalisation against India and bringing the Government into hatred, many a times at the initiation and facilitation by adversarial foreign powers, all the more requires such a provision to be present in the statute. Section 124A of IPC has its utility in combating anti-national and secessionist elements as it seeks to protect the elected government from attempts to overthrow it through violent and illegal means. The continued existence of the government established by law is an essential condition for the security and stability of the State. In this context, it becomes imperative to retain Section 124A and ensure that all such subversive activities are nipped in their incipiency.

B. Sedition is a Reasonable Restriction under Article 19(2)

9.4 The contention that Section 124A is violative of Article 19(1)(a) of the Constitution does not hold any ground because of multiple reasons. First, as stated earlier in Chapter 3 of this Report, a perusal of the Constituent Assembly Debates shows that the Constituent Assembly substituted

[180] Soli J. Sorabjee, "The Limits of Freedom" *Indian Express* (Jan. 30, 2018) *available at*: https://indianexpress.com/article/opinion/columns/sedition-law-constitution-law-freedom-of-speech-5044091/ (last visited on Mar. 15, 2023).

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'sedition' with 'which undermines the security of, or tends to overthrow, the State', as it considered the latter phrase to be of wider import and more expansive. Second, the first Amendment of the Constitution incorporated the words 'public order', 'friendly relations with foreign states', and 'incitement to an offence' as further restrictions on Article 19(1)(a). The Supreme Court while dealing with the constitutionality of Section 124A in *Kedar Nath Singh* , held that Section 124A was constitutional as the restriction it sought to impose on the freedom of speech and expression was a reasonable restriction under Article 19(2). Third, as held by the Supreme Court in a catena of decisions, where two interpretations of a legal provision are possible, one which renders the concerned provision constitutional, and the other, which renders it unconstitutional, the former construction should prevail over the latter. The Supreme Court's observations regarding the same in *Janhit Abhiyan v. Union of India*[181], are reproduced below:

> *"610. The doctrine of reading down, has been employed by this court, in the past, in numerous cases; however, in each instance, it has been clarified that it is to be used sparingly, and in limited circumstances. Additionally, it is clear from the jurisprudence of this court that the act of reading down a provision, must be undertaken only if doing so, can keep the operation of the statute "within the purpose of the Act and constitutionally valid". In Delhi Transport Corporation v. DTC Mazdoor Congress Sawant, J recounted the position on this doctrine succinctly:*
>
> > *"255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that* ***when two interpretations are possible — one rendering it constitutional and the other making it unconstitutional, the former should be preferred.*** *The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The*

[181] 2022 SCC OnLine 1540.

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> *second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the subject of the statute, the context in which the provision occurs and the purpose for which it is made.....*"

C. Existence of Counter-Terror Legislations does not Obviate the Need for Section 124A

9.5 The Unlawful Activities Prevention Act, 1967 (UAPA) was enacted in view of various resolutions passed by the Security Council of the United Nations to prevent terrorist activities and to freeze the assets and other economic resources belonging to terrorists. The objective behind the same as explained in the Statement of Objects and Reasons had been to enable the State authorities to deal with subversive activities directed against the territorial integrity and sovereignty of India. The Act also deals with the demands/assertions of "cession of a part of territory of India from the Union."[182]

9.6 UAPA, 1967 was amended in 2004,[183] whereby certain provisions of Prevention of Terrorism Act, 2002 (POTA) were incorporated therein. In 2008, UAPA was further amended[184], whereby certain other provisions of POTA, and Terrorist and Disruptive Activities Act, 1987 (TADA) were added. UAPA was also amended in 2012, [185] removing the vagueness in the definition of 'terrorist act' to include offences which may threaten the economic security of the nation. Similarly, the National Security Act (NSA) was enacted in 1980 with the stated objective of providing a law for preventive detention.

[182] The Unlawful Activities (Prevention) Act, 1967, s. 2(i).
[183] The Unlawful Activities (Prevention) (Amendment) Act, 2004 (29 of 2004).
[184] The Unlawful Activities (Prevention) (Amendment) Act, 2008 (35 of 2008).
[185] The Unlawful Activities (Prevention) (Amendment) Act, 2012 (3 of 2013).

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9.7 While UAPA is a special law dealing with activities of a terrorist or subversive nature, NSA is a law only dealing with preventive detention. Generally speaking, special laws and anti-terror legislations dealing with national security such as these seek to prevent or punish the commission of offences targeted towards the State. On the other hand, Section 124A of IPC seeks to prevent the violent, illegal, and unconstitutional overthrow of a democratically elected government established by law. Hence, the existence of the former does not by implication cover all elements of the offence envisaged under Section 124A of IPC.

9.8 Further, in the absence of a provision like Section 124A of IPC, any expression that incites violence against the Government would invariably be tried under the special laws and counter terror legislations, which contain much more stringent provisions to deal with the accused.

D. Sedition being a Colonial Legacy is not a Valid Ground for its Repeal

9.9 It is often said that the offence of sedition is a colonial legacy based on the era in which it was enacted, especially given its history of usage against India's freedom fighters. However, going by that virtue, the entire framework of the Indian legal system is a colonial legacy. The Police force and the idea of an All India Civil Service are also temporal remnants of the British era. Merely ascribing the term 'colonial' to a law or institution does not by itself ascribe to it an idea of anachronism.[186]The colonial origins of a law are by themselves normatively neutral.[187] The mere fact that a particular legal provision is colonial in its origin does not *ipso facto* validate the case for its repeal. The requirement of any such legal provision in the light of present state of circumstances is what needs

[186] A Barra, "What is "Colonial" About Colonial Laws?" 31(2) *American University International Law Review* (2016).
[187] *Ibid.*

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to be critically analysed.

9.10 Further, a colonial government is essentially a foreign one, where the relationship between the ruler and the ruled is that of a master and servant. Contrarily, a democratic form of Government is based on the will of the people, wherein the ruler is only a servant of the people as it is the people who elect the ruler to his/her position.[188] Bereft of any alternative to their form of government, the colonial rulers had no choice but to penalise even harmless criticism of their government only to secure their own interests. However, people are at liberty to indulge in healthy and constructive criticism of their government in a democratic set-up. What Section 124A of IPC seeks to penalise is only the pernicious tendency to incite violence or cause public disorder in the guise of exercising right to freedom of speech and expression.

E. Realities Differ in Every Jurisdiction

9.11 Each country's legal system grapples with its own different set of realities. Repealing Section 124A of IPC on the mere basis that certain countries have done so is essentially turning a blind eye to the glaring ground realities existing in India. Further, as is pointed out by the comparative study of sedition laws in other jurisdictions, undertaken in Chapter 8 of this Report, it is evident that even in some of the most advanced democracies around the world, mere cosmetic changes have been affected in the law of sedition, without taking away the core substance of the offence. These comparative jurisdictions like the US, UK, etc. have their own history, geography, population, diversity, laws, etc. which are not comparable to Indian circumstances. Despite this, what

[188] Manoj Kumar Sinha & Anurag Deep, *Law of Sedition in India and Freedom of Expression* 187-188 (The Indian Law Institute, New Delhi, 2018).

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some of these countries have actually done is that they have merged their sedition law with counter terror legislations.

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10 RECOMMENDATIONS

A. Incorporation of Ratio of Kedar Nath Judgment in Section 124A of IPC

10.1 The test laid down by the Supreme Court in *Kedar Nath Singh* is a settled proposition of law. Unless the words used or the actions in question do not tend to incite violence or cause public disorder or cause disturbance to public peace, the act would not fall within the ambit of Section 124A of IPC. However, in the absence of any such express indication, a plain reading of Section 124A may seem to be vague and confusing, resulting in its misinterpretation and misapplication by the concerned authorities. Consequently, we recommend that the *ratio* of *Kedar Nath Singh* may be incorporated in the phraseology of Section 124A so as to bring about more clarity in the interpretation, understanding and usage of the provision.

B. Procedural Guidelines for Preventing any Alleged Misuse of Section 124A of IPC

10.2 In our considered opinion, to prevent any alleged misuse of Section 124A of IPC, it is suggested that a mandatory recourse similar to as provided under Section 196(3) of the Code of Criminal Procedure, 1973 (CrPC) should be undertaken prior to registration of a FIR with respect to commission of an offence under this section. This can be achieved by introducing certain procedural safeguards that can be laid down by the Central Government through issuance of model guidelines in this regard. Alternatively, an amendment may be introduced in Section 154 of CrPC by incorporating a *proviso* in the following manner:

> *"Provided further that no First Information Report for an offence*

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under section 124A of the Indian Penal Code, 1860 shall be registered unless a police officer, not below the rank of Inspector, conducts a preliminary inquiry and on the basis of the report made by the said police officer the Central Government or the State Government, as the case may be, grants permission for registering a First Information Report."

10.3 The said police officer, not below the rank of Inspector, shall conduct a preliminary inquiry within seven days for the limited purpose of ascertaining as to whether a *prima facie* case is made out and some cogent evidence exists. The said police officer shall record the reasons for the same in writing and only thereafter, permission shall be granted under the aforesaid proposed *proviso*. This safeguard is being recommended by the Law Commission taking into consideration the observations made by the Hon'ble Supreme Court in *S.G. Vombatkere* v. *Union of India.*[189]

C. Removal of the Oddity in Punishment Prescribed for Section 124A of IPC

10.4 The 42nd Report of the Law Commission termed the punishment for Section 124A to be very 'odd'. It could be either imprisonment for life or imprisonment up to three years only, but nothing in between, with the minimum punishment being only fine. A comparison of the sentences as provided for the offences in Chapter VI of the IPC suggests that there is a glaring disparity in the punishment prescribed for Section 124A. It is, therefore, suggested that the provision be revised to bring it in consonance with the scheme of punishment provided for other offences under Chapter VI. This would allow the Courts greater room to award punishment for a case of sedition in accordance with the scale and gravity of the act committed.

[189] (2022) 7 SCC 433. See para. 4.32 of this Report.

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D. Proposal for Amendment in Section 124A of IPC

10.5 The current Section 124A of IPC reads as follows:

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

10.6 In accordance with the aforesaid, we propose that Section 124A be amended as follows:

> *124A. Sedition.—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India,* ***with a tendency to incite violence or cause public disorder*** *shall be* ***punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.***
>
> *Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.*

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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.

Explanation 4.—The expression "tendency" means mere inclination to incite violence or cause public disorder rather than proof of actual violence or imminent threat to violence.

The Commission recommends accordingly.

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6.4.2023

[Justice Ritu Raj Awasthi]

Chairperson

[Justice K.T. Sankaran]

Member

[Prof. (Dr.) Anand Paliwal]

Member

[Prof. D.P. Verma]

Member

[Dr. Niten Chandra]

Member Secretary/Member (*Ex-Officio*)

[Dr. Reeta Vasishta]

Member (*Ex-Officio*)