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LEGALFOXES LAW TIMES

SEDITION LAW: LAST REFUGE OF THE GOVERNMENT?

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"Patriotism is the last refuge of the scoundrel",[1] rightly said by Samuel Johnson in 1775. It seems that the charge of sedition is the last refuge for the Government of India to silence the dissent. An analysis of the law of sedition reveals how state power is established by brandishing the ultimate political instrument in a democratic country i.e., 'public opinion'.

In the past few years we have witnessed many such instances as a horrendous example of authoritarian government stifling dissent on the garb of sedition. Few recent examples are firstly sedition charges filed against a teacher and a woman whose 6 years old child participated in a school play against CAA-NRC in Bidar, Karnataka[2]. Secondly, against Sharjeel Imam, an activist, for allegedly delivering inflammatory speeches at Aligarh Muslim University[3] and thirdly, against 50 students from Tata Institute of Social Sciences, Mumbai for raising slogans in support of Sharjeel Imam.[4] In this cases, sedition law have been misused in defiance of Supreme Court rulings or advisories clarifying their scope. In 1962, the Supreme Court ruled that action or speech constitutes sedition only if it incites or tends to incite disorder or violence. Yet government continue to charge people with sedition even when that standard is not met.

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The word 'Sedition' is thus extremely nuanced, and needs to be applied with caution. It is like a cannon that ought not to be used to shoot a mouse; but the arsenal also demands possession of cannons, mostly as a deterrent, and on occasion for shooting.

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[1] Boswell 1986, p. 182

[2] BBC News. 2020. *The School Play That Sent A Mother To Prison.* [online] Available at: <https://www.bbc.com/news/world-asia-india-51441549> [Accessed 23 March 2020].

[3] Desk, 2020. *Sharjeel Imam Row: Politics Heats Up As Police Arrest JNU Student From Bihar.* [online] India Today. Available at: <https://www.indiatoday.in/india/story/sharjeel-imam-row-politics-heats-up-as-police-arrest-jnu-student-from-bihar-1641073-2020-01-29> [Accessed 23 March 2020].

[4] Mumbai Live. 2020. *TISS Student Urvashi Chudawala, 50 Others Booked Under Sedition By Mumbai Police.* [online] Available at: <https://www.mumbailive.com/en/crime/fir-registered-against-activist-urvashi-chudawalaand50-others-under-ipc-sec-124a(sedition)-153b-505-34-at-azad-maidan-police-station-in-connection-with-raising-of-slogans-in-support-of-sharjeel-imam-44913> [Accessed 23 March 2020].

Since the law of sedition came into operation in 1870, it has continued to be used to stifle voices of dissent, protest or criticism of the government. While Indian courts have generally protected freedom of expression, their record is uneven. The equivocal invoking of the provision has put it in the question as well as the spotlight of media, yet there has been no effort in respect of its possible repeal by the government.

I. THE SEDITION LAW

Section - 124(A) of the Indian Penal Code explains "Sedition" in magnanimous and broad terms. It reads: " ―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 aims to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life."[5] While, it covers the crimes that come under the law it does not give a precise definition of the term 'sedition' itself.

Sedition: Meaning of - Sedition in the ordinary sense means a stirring up of rebellion against the Government. Sedition includes all the acts and practices which have for their object to excite discontent or disaffection towards the Constitution, or the Government, or Parliament to create public disturbance, or to lead to civil war, and generally all the endeavours to promote public discord or disorder. In *Rex v. Adler*[6] the court defined the law of sedition in the following words, "Nothing is clearer than the law on this head – namely, that whoever by language, either written or spoken incites or encourages other to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel. The word "sedition" in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form…"

SECTION - 124(A): A BRIEF HISTORY

The law of sedition as provided for in Section 124A of the Indian Penal Code, has undeniably had an extraordinary history. The sedition law was enumerated as an offence through clause 113 of the Draft Indian Penal Code by Thomas Macaulay in the year 1837, but it was only in 1870

[5] Section 124(A) of The Indian Penal Code,1872.
[6](1909) 22 CCLC 1.

that the provision for sedition was added by the IPC (Amendment) Act, specifically to deal with revolution and dissent against colonial rule. Gandhi noted in his trial that some of the most loved of India's patriots have been convicted[7] under Section 124A. Sedition in colonial India became synonymous with nationalism. This provision was later on replaced by the present Section 124A by an amending Act of 1898.

The first recorded state trial for sedition is that of *Queen Empress v. Jogendra Chunder Bose*[8]where Bose, the editor of the newspaper 'Bangobasi' wrote an article criticizing the 'Age of Consent Bill' for posing a threat to the religion and for its coercive relationship with the Indian Citizens.

This controversy and debate over the sedition law became most evident in the case of one of the most famous cases of sedition trails in the history of India, i.e. the case of Bal Gangadhar Tilak, who was booked under this law thrice.[9] In *Queen Empress v. Bal Gangadhar Tilak*[10], the British government claimed[11] that Tilak's speeches on the killing of Afzal Khan by Shivaji, had prompted the murder of two British officers in Pune. Newly promoted *Justice James Strachey* presided over this trial, and broadened the scope of section 124A in the proceedings by equating "disaffection" to "disloyalty". He interpreted that the term "feelings of disaffection" meant hatred, enmity, dislike, hostility, contempt, and every form of ill will towards the government[12].

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In 1922, Gandhi was brought to court for his articles in *Young India* magazine. While appearing in court, Gandhi famously denounced the law against sedition in the court and referred S.124(A)

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[7]The Wire. 2020. *Abolishing Sedition Would Be A Befitting Tribute To Gandhi's 150Th Birth Anniversary.* [online] Available at: <https://thewire.in/rights/abolishing-sedition-law-would-be-a-befitting-tribute-to-gandhis-150th-birth-anniversary> [Accessed 23 March 2020].
[8]ILR (1892) 19 Cal 35.
[9]National Herald. 2020. *'The Great Repression': The History Of Sedition In India.* [online] Available at: <https://www.nationalheraldindia.com/reviews-recommendations/the-great-repression-the-history-of-sedition-in-india> [Accessed 23 March 2020].
[10] ILR (1898) 22 Bom 112.
[11]Economic and Political Weekly. 2020. *'Disaffection' And The Law: The Chilling Effect Of Sedition Laws In India.* [online] Available at: <http://www.epw.in/journal/2011/08/perspectives/disaffection-and-law-chilling-effect-sedition-laws-india.html> [Accessed 23 March 2020].
[12]Dev, A., 2020. *A History Of The Infamous Section 124A.* [online] Caravanmagazine.in. Available at: <https://caravanmagazine.in/vantage/section-124a-sedition-jnu-protests> [Accessed 24 March 2020].

as the "prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen"[13].

Later, in constituent assembly debates as well the issue of sedition was anxiously discussed. After much discussion finally an amendment was moved to drop the word 'sedition' and not allow it to infringe upon freedom of speech and expression.

On 26 November 1949, when the constitution was adopted the word indeed disappear from the constitution, but the S.124A stayed in the Indian Penal Code. Then in 1950, two supreme court judgements[14][15] led the Nehru government to introduce much –maligned first amendment. Where, Jawaharlal Nehru. India's first prime minister, criticized the law during a parliamentary debate on free speech in 1951, in which he said: "Now so far as I am concerned that particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better."[16]

Yet 70 years later, the law remains on the books. Many dissenters, human rights activists, and those critical of the government have been charged under it, including in recent times.[17]

II. CONSTITUTIONALITY OF THE SECTION - 124(A): POST - INDEPENDENCE

In 1950's, three important judgements were passed with regards to sedition laws. These were *Tara Singh Gopi Chand v. The State*[18], *Sabir Raza v. The State*[19] *and Ram Nandan v. State*[20]*.The courts in the first two mentioned case i.e. the Tara Singh Decision and Sabir Raza Decision were*

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[13] Ibid.
[14] Brij Bhushan And Anr. v. The State Of Delhi, 1950 Supp SCR 245.
[15] Romesh Thappar v. The State Of Madras, 1950 AIR 124.
[16] Mitta, M. and News, M., 2020. *Jawaharlal Nehru Wanted Sedition Law Out As Early As 1951 | Mumbai News - Times Of India.* [online] The Times of India. Available at: <http://timesofindia.indiatimes.com/city/mumbai/Jawaharlal-Nehru-wanted-sedition-law-out-as-early-as-1951/articleshow/16343758.cms> [Accessed 18 March 2020].
[17] Menon, N., 2020. *Kafila*. [online] Kafila. Available at: <http://kafila.org/2010/12/02/kitne-aadmi-the-we-are-all-seditious-now/> [Accessed 18 March 2020].
[18] 1951 Cri LJ 449.
[19] Cri App No. 1434 of 1955.
[20] AIR 1959 All 101.

of the opinion that S.124A of the Indian Penal Code had become void on the enforcement of the Constitution of India.

It was *Ram Nandan v. State of U.P,*the first case to deal with the constitutionality of the S.124(A) where the Allahabad High Court held, "Section 124-A, Indian Penal Code, is ultra vires of Article 19(1) of the Constitution, both because it is not in the interests of public order as well as because the restrictions imposed thereby are not reasonable restrictions. This Section is, therefore, not saved by the reservations contained in Article 19(2) of the Constitution, and should be declared to be void."[21]

But this decision of the Hon'ble High Court was overruled by the Hon'ble Supreme Court in the case of *Kedarnath Das v. State of Bihar*[22], and held Section 124-A, intra vires. The judgement outlined that - "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 or measures by lawful means".

The five-judge decision, clarified the law on sedition by clearly stating that "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."

In September 2016, the Supreme Court had reiterated these necessary safeguards and in the case of *Shreya Singhal & Ors. v. Union of India*[23]*,* The Court highlighted the distinction between 'advocacy', and 'incitement', and how restrictions under Article 19(2) ought to be strictly interpreted to not include 'innocent speech'. In the words of the SC, "The intelligible differentia is clear – the internet gives any individual a platform which requires very little or no payment through which to air his views."

[21]AIR 1959 All 101.
[22]AIR 1962 SC 955.
[23](2013) 12 SCC 73.

In the case of *Kanhaiya Kumar v. State (NCT of Delhi)*[24], the petitioner, charged under section 124A IPC approached Delhi High Court for grant of bail. Deciding upon the issue, the Court observed: "while exercising the right to freedom of speech and expression under Article 19(1)(a) of the Constitution, one has to remember that Part-IV Article 51A of the Constitution provides Fundamental Duties of every citizen, which form the other side of the same coin".

In the light of aforesaid judicial pronouncements, it could be stated that - unless the words used or the actions in question do not threaten the security of the State or of the public; lead to any sort of public disorder which is grave in nature, the act would not fall within the ambit of section 124-A of Indian Penal Code.[25]

III. RISE OF THE HYPER-NATIONALISM: WHAT DATA SAYS?

In February this year,in Bangalore,a 14-year girl stood up on a stage and began a speech with the words "Pakistan Zindabad"[26]. She was promptly arrested. Earlier this year, three students of Kashmir were arrested for raising pro-Pakistan slogans[27]. In both the cases and other similar cases very recently, the police have made several arrests on the grounds of sedition and reignited the debate around India's Sedition law.

According to a BBC News reporter, "In India, you can be charged with sedition for liking a Facebook post, criticising a yoga guru, cheering a rival cricket team, drawing cartoons, asking a provocative question in a university exam, or not standing up in a cinema when the national anthem is being played".[28]And the latest data suggest that this law remains as relevant as ever with sedition arrests increasing in recent years.In 2014, there were 47 cases of sedition but that number increased to 70 in 2018 (the latest year with available data)[29].

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[24](2016) 227 DLT 612.

[25] Law Commission of India, *Sedition*, Consultation Paper, 30, (August 2018). [online] Available at: <http://www.lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf> [Accessed 14 March 2020].

[26]Pooja Dantewadia, V., 2020. *Sedition Cases In India: What Data Says*. [online] Livemint. Available at: <https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html> [Accessed 22 March 2020].

[27] Ibid.

[28]BBC News. 2020. *Why India Needs To Get Rid Of Its Sedition Law*. [online] Available at: <https://www.bbc.com/news/world-asia-india-37182206> [Accessed 21 March 2020].

[29]Supra at 28.

In January, more than 3,000 protesters against the Citizenship Amendment Act (CAA) were charged with sedition while in 2019, more than 3,300 farmers were charged with sedition for protesting about land disputes[30]. Though police are charging more people with sedition, few cases actually result in a conviction. Data from the country's Ministry of Home Affairs reveals that between 2014 and 2016, 179 people were arrested on the charge of sedition. However, no charge sheet was filed in over 80% of the cases by the end of 2016. Trial could start only in 10% of cases. Unlike in colonial India, most sedition cases today rarely even go to trial.[31] One of the reasons behind this is sedition as an offence has no solid legal ground. The Constitution of India also provides freedom of speech and expression as a fundamental right which many activists and legal scholars have argued prevents sedition from labelling as an offence.

IV. WHY INDIA NEEDS TO SCRAPE OFF SEDITION LAW?

The sedition Law in India can be questioned for the following reasons:

1. Colonial Law: British Government used this law to suppress the rebellious criticism, speech and views against the British rule. But this colonial law is still being used in independent India, despite having specialised laws to deal with the external and internal threats to sabotage the nation. Hence in a democratic republic where the sovereignty rests with the citizens such law has no significance.
2. In Parliament, the then Prime Minister, Jawaharlal Nehru, while introducing the Constitution (First Amendment) Act, 1951, had identified offence of sedition being fundamentally unconstitutional and remarked that "*Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is,*

[30] Ibid.
[31] Crime in India - Statistics, National Crime Records Bureau, Ministry of Home Affairs (2016).

should have no place, because all of us have had enough experience of it in variety of ways and apart from the logic of the situation, our urges are against it."[32]

3. Sedition Law: The law of sedition is more likely to be the last refuge of the political parties which they use for their own incentives. The party in government exploits their power against dissent criticising the functioning of the government or questioning their policies. It is said so because the law has not yet been amended or repealed; despite the highest court of India has criticised the law at several instances.
4. The crime of sedition is now dwindling in relevance. An examination of Indian Penal Code demonstrates that its other provisions are sufficient to address all threats to violence and public order, rendering S.124(A) obsolete.
   Chapter VIII of the Indian Penal Code contains offences against public tranquillity. These include rioting[33], assaulting or obstructing a public servant trying to suppress a riot[34], provocation with the intent to spark a riot[35], and promoting enmity between different groups on the basis of religion, race, place of birth, residence, language etc[36]. Further, it contains a provision for punishing acts that were prejudicial to national integration[37]. It also includes being the member of, joining, hiring people to join, or continuing an unlawful assembly[38]. Minor skirmishes are covered by the crime of 'affray' which punishes the act of two or more persons disturbing the public peace by fighting in a public place[39]. Thus, any such act that was *'prejudicial to the maintenance of peace & harmony'* would be punishable.

V. INTERNATIONAL LEGAL STANDARDS

The International Covenant on Civil and Political Rights (ICCPR)[40], which India ratified in 1979, which provides in Article 19 that:

[32] Supra at 18.
[33] Section 146 of The Indian Penal Code, 1872.
[34] Section 152of The Indian Penal Code, 1872.
[35] Section 153 of The Indian Penal Code, 1872.
[36] Section 153(A) of The Indian Penal Code, 1872.
[37] Section 153(B) of The Indian Penal Code, 1872.
[38] Section 141 of The Indian Penal Code, 1872.
[39] Section 159 of The Indian Penal Code, 1872.
[40] International Covenant on Civil and Political Rights, adopted December 16, 1966, entered into force March 23, 1976 (except art. 41, which entered into force March 28, 1979), 999 U.N.T.S. 171, reprinted in 6 ILM 368 (1967),

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   a. For respect of the rights or reputations of others;
   b. For the protection of national security or of public order (*ordre public*), or of public health or morals.

The ICCPR is an outgrowth of the UDHR, adopted by the United Nations General Assembly in 1948[41], aforementioned article i.e. Art. 19 of which provides that:
"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[42]

Thus, the guarantee of freedom of expression applies to all forms of expression, not only those that fit with popular perspectives and viewpoints, as noted by the European Court of Human Rights in the seminal *Handyside v. United Kingdom* case:
"Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man... [I]t is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State

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http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf and http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx (accessed March 20, 2020).

[41] Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A (III), 3 UN GAOR, UN Doc. A/810, p. 71 (1948), http://www.un.org/e/documents/udhr/ (accessed March 20, 2020).

[42] The right to freedom of expression is also protected in regional human rights treaties, including the European Convention on Human Rights (art.10), the African Charter on Human and Peoples' Rights (art. 9), and the American Convention on Human Rights (art. 13), all of which draw upon the Universal Declaration of Human Rights (UDHR). These treaties and the court judgments deriving from them demonstrate the global acceptance of the rights guaranteed by the UDHR, and provide useful perspectives on the appropriate interpretation of those rights.

or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society.'"[43]

Under International law, also the right to freedom of expression is not absolute. Given its paramount importance in any democratic country, however, the UNHRC held that any restrictions on the exercise of this right must meet strict three-fold test i.e. such restrictions must-

a. be provided by law;
b. be imposed for the purpose of safeguarding respect for the rights or reputations of others, or the protection of national security or of public order (*ordre public*), or of public health or morals; and
c. be necessary to achieve that goal.[44]

When analysed pursuant to these standards, a number of Indian laws currently in effect impose limitations on expression that go beyond the restrictions that are mentioned and permitted by international law and, in some cases[45], appears to be with conflict with the Constitution of India. While in some cases, the Indian Supreme Court has narrowed the scope of such laws. However, the continued application of those inconsistent laws with international standards of freedom of expression makes clear that the draconian laws themselves need to be repealed or amended.

VI. SEDITION LAW VIS-A-VIS FREEDOM OF SPEECH

To give voice to the importance of the freedom of speech, John Stuart Mill argued that for the stability of a society one must not suppress the voice of the citizens, how so ever contrary it

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[43] European Court of Human Rights, Handyside v. United Kingdom, (5493/72) [1976] ECHR 5, December 7, 1976, para.49. See also R. v. Central Independent Television plc, [1994] 3 All ER 641: "Freedom of [speech] means the right to [say] things which the government and judges, however well-motivated, think should not be [said]. It means the right to say things which 'right-thinking people' regard as dangerous or irresponsible"; UN Human Rights Committee, General Comment No. 34, Article 19, Freedoms of opinion and expression (102nd session, 2011), UN Doc. CCPR/C/GC/34/2011, para. 11: "The scope of article 19(2) of the ICCPR embraces even expression that may be regarded as deeply offensive."

[44] UN Human Rights Committee, General Comment No. 34, Article 19, Freedoms of opinion and expression (102nd session, 2011), UN Doc. CCPR/C/GC/34/2011, para. 22 ("General Comment No. 34"). The same three-part test has been applied by, among others, the European Court of Human Rights to cases under art. 10 of the ECHR, see, e.g., Goodwin v. United Kingdom, [GC] No. 17488/90, 22 EHRR 123 (1996), para. 28-37, and the Canadian Supreme Court to cases under the Canadian Charter of Rights and Freedoms, see, e.g., R. v. Oakes, [1986] 1 SCR 103, 138-139.

[45] Human Rights Watch. 2020. *Stifling Dissent | The Criminalization Of Peaceful Expression In India*. [online] Available at: <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india> [Accessed 21 March 2020].

might be. In certain cases, to reach a point of right conclusion, debates and open public discussions are inevitable. Mill further advocated that a good government is the one where the "intelligence of the people" is promoted.[46]

Democracy is not synonymous with majoritarianism, on the contrary it is a system to inclusiveness, where every voice is counted. In the unforgettable words of Charles Bradlaugh: *"Better a thousand-fold abuse of free speech than denial of free speech. The abuse dies in a day but the denial slays the life of the people and entombs the hopes of the race."*[47]
Observing that the criminality and morality do not co-exist, the supreme court held that free flow of the ideas in a society makes its citizen well informed, which in turn results into the good governance.[48]

The relationship of Sec 124-A of the Indian Penal Code and Art 19 of the Constitution of India is a strained relationship. The Constitution of India guarantees freedom of speech and expression in Article 19(1)(a), which provides that "all citizens shall have the right to freedom of speech and expression."[49]The Indian Supreme Court has held that freedom of expression under article 19(1)(a) includes the right to seek and receive information, including information held by public bodies[50].In the case of *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors.*[51], emphasising the importance of the freedom of speech the Supreme Court observed: "Freedom of speech goes to the heart of the natural right of an organised freedom-loving society to 'impart and acquire information about that common interest'".

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[46]Supra at 27.
[47]Jewish Supremacism, *Freedom of Speech and My Book Jewish Supermacism*. Available at: <http://davidduke.com/freedom-of-speech/>[Accessed 22 March 2020].

[48] S. Khusboo v. Kanniamal & Anr, AIR 2010 SC 3196.
[49] Article 19(1)(a) of the Constitution of India, states that "All citizens shall have the right (a) to freedom of speech and expression."
[50] While writing the constitution in the late 1940s, violence from the bloody partition of the country at the time of independence weighed heavily on the minds of political leaders. While establishing a democracy that enshrined freedom of expression, some were, as lawyer Rajeev Dhawan said, "very wary of giving too much room to free speech, civil liberties, due process and religious freedom." See Rajeev Dhavan, Publish and Be Damned: Censorship and Intolerance in India (New Delhi: Tulika Books, 2008).
[51] AIR 1995 SC 2438, see also LIC of India v. Prof. Manubhai D. Shah & Cinemart Foundation, AIR 1993 SC 171.

By Article 19(2)[52], however, the constitutional right to freedom of expression is limited. In this sense, the Constitution of India is less protective of peaceful expression than the ICCPR[53]. The extent and scope of protection of free speech and expression in India is largely determined by the interpretations of the terms "in the interests of," and "reasonable restrictions" of the various grounds listed in Article 19(2). The supreme court decisions on the same, however, have been inconsistent.

One of the example- The court has interpreted the phrase "in the interests of" in section 19(2) broadly, holding that speech that has "a tendency" to cause public disorder may be restricted even if there is no real risk of it doing so.[54] The court explained: "If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law 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."[55]

Further, the court clarified that:
"The anticipated danger should not be remote, conjectural or far-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 powder keg.'"[56]

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To the question whether Article 19(2) and Section 124-A are contradictory or compatible to each other. There are three arguments that can be made:

1. Section 124A ultra-vires the Constitution since it infringes article 19(1)(a) and is not saved by the expression 'in the interest of public order'[57].

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[52] Article 19(2) of the Constitution of India, 1950 permits "reasonable restrictions… in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offense."
[53] ICCPR under section 19(2) permits only restrictions that are "necessary" "for respect of the rights or reputation of others, for protection of national security or of public order (*ordre public*) or of public health or morals."
[54] Ramji Lal Modi v. The State of Uttar Pradesh, 1957 SCR 860 (upholding constitutionality of section 295A of the Indian Penal Code).
[55] Ibid.
[56] S. Rangarajan Etc. v. P. Jagijivan Ram, 1989 SCR (2) 204, 226.
[57]Ram Nandan v. State of U.P, AIR 1959 All. 101.

2. Section 124A is not void because the expression ‘in the interest of public order’ has a wider amplitude and is not only confined to ‘violence’. It must undermine the authority of the government by bringing in hatred or contempt or disaffection towards it[58].
3. In *Indramani Singh v. State of Manipur*[59], it was held that Section 124A is partly void and partly valid. Exciting mere disaffection or attempting to cause disaffection is ultra vires, but the restriction under Article 19(2) to excite hatred or contempt against the Government established by law in India, is valid.

The Indian Supreme Court has made clear that only restrictions in the interest of one of the eight specified interests can pass constitutional muster.[60] In March 2015, in striking down section 66A of the Information Technology Act, the supreme court ruled that “any law seeking to impose a restriction on the freedom of speech can only pass muster if it is proximately related to any of the eight subject matters set out in Article 19(2).”[61]

VII. SUGGESTIONS: THE WAY FORWARD

All speech-related offences should be made non-cognizable and bailable offences; so that there is at least a judicial check on the police authority acting on the basis of politically motivated complaints. This would also reduce the harmful impact of using custody and arrest as a way of harassing anyone exercising their rights of freedom of speech and expressions under Article 19(1)(a)[62].

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[58]Debi Soren v. State, AIR 1954 Pat. 254. The Supreme Court has also endorsed the view of Patna High Court in so far as the expression "in the interest of public order", is concerned. The SC is also of the opinion that the expression has a wider connotation, see Ramji Lai Modi v. State, AIR 1957 S.C. 620 and also State ofU.P. v. Ram Manohar Lohia, 1960 SCJ 567. Another view is that the words "in the interests of public order" is equivalent to "for reasons connected with public order". Walliullah, J, observed in Basudev v. Rex, AIR 1949 All. 523. (F.B.), that the expression 'for reasons' connected with "must mean a real and genuine connection between the maintenance of public order on the one hand and the subject of legislation on the other". See also Ram Nandan v. State, AIR 1959 All. 101.

[59]1955 CriLJ 184.

[60] Supra at 24, para. 17: a law restricting speech “cannot pass muster if it is in the interest of the general public. Such law has to be covered by one of the eight subject matters set out under art. 19(2). If it does not, and is outside the pale of 19(2), Indian courts will strike down such law.”.

[61]Supra at 24.

[62]Supra at 51.

All police departments must be instructed that decisions on whether or not to arrest someone for speech should not be based on threats of violence or disorder by those who dislike or are somehow offended by that speech. Decisions to arrest someone for speech should be based solely on an evidentiary assessment of whether or not the individual has violated a law[63].

In the case of offences under S.153-A[64] and S.295-A[65] of the IPC, it is mandatory under S. 196(1)[66] of the CrPC to obtain prior sanction of the government before taking cognizance of the offences. It is suggested to be extended to the S.124A of the Indian Penal Code i.e. Sedition.

Introduce education programs for all police officers to ensure that they are fully aware of the limitations imposed by the Supreme Court on laws restricting freedom of expression.

- Pending repeal or amendment of section 124A of the Indian Penal Code, police should be specifically informed[67] that, under applicable Supreme Court decisions:
  - The sedition law is only applicable to speech that has the tendency or intention of creating public disorder[68].
  - Mere criticism of the government or government policies cannot be the basis of prosecution under Indian Penal Code section 124A[69].
  - Speech or expression perceived as disrespectful of India or its national symbols cannot, alone, be the basis of a prosecution for sedition.
  - Consistent with the guidelines accepted by the Bombay High Court, make it mandatory for police to obtain a legal opinion in writing, along with reasons, from the law officer of the district and from the state's public prosecutor before filing sedition charges[70].

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[63]Supra at 47.
[64]153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
[65] 295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.
[66]196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.
(1) No Court shall take cognizance of-

- any offence punishable under Chapter VI or under section 153A, of Indian Penal Code, or Section 295 A or sub section (1) of section 505] of the Indian Penal Code (45 of 1860).

[67] Supra at 47.
[68]Kedarnath Das v. State of Bihar, AIR 1962 SC 955.
[69]P. Hemalatha v. The Govt. Of Andhra Pradesh, AIR 1976 AP 375.
[70]AIR 1955 SC 104.

All prosecutions and investigations to be dropped and closed into the cases where the underlying behaviour involved peaceful expression or assembly.India need to chalk out a clear plan and time table for the repeal or amendment of laws that criminalize peaceful expression or assembly and, where legislation is to be amended, consult thoroughly with law fraternity and civil society groups in a transparent and public way.

VIII. **CONCLUSION**

Against this background, there is no iota of doubt that the sedition law needs to be scrapped[71] away. It has become a weapon to threaten anyone who speaks his mind or questions the government and there is no place for it in 21st century India.A twitter post, or a facebook comment, or participating in a protest, or a dissenting opinion is not sedition and should not be seen that as either.

Attempts to stifle dissent and free speech aren't new. Former reign has booked activists and artists under the same law. Leaders of the opposition - the 'Congress'- have criticised the misuse of sedition law. Yet when in power, the Congress had misused the very same law against dissidents. As historian Romila Thapar says, "We have inherited a vast number of colonial laws that were meant for a different society. Today, we are not a colony. These laws need to be reconsidered now."[72]In India, there have been two attempts, via private member bills, in the last decade to revoke it - but both efforts were thwarted by governments. In 2018, the 21st Law Commission issued a consultation paper seeking views on revoking sedition but its term ended before the commission could deliver its recommendations.[73]

Despite the constant demand for striking it off the statute and mounting evidence of its misuse over the years, none of the government have shown any willingness to repeal it. In a world thus,

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[71]Sibbal, K., 2020. *Does Sedition Law Apply To JNU & Assam Cases Or Is It Being Used As Tool To Stifle Dissent?*. [online] ThePrint. Available at: <https://theprint.in/talk-point/does-sedition-law-apply-to-jnu-assam-cases-or-is-it-being-used-as-tool-to-stifle-dissent/179360/> [Accessed 25 March 2020].

[72]The Wire. 2020. *Abolishing Sedition Would Be A Befitting Tribute To Gandhi's 150Th Birth Anniversary*. [online] Available at: <https://thewire.in/rights/abolishing-sedition-law-would-be-a-befitting-tribute-to-gandhis-150th-birth-anniversary> [Accessed 25 March 2020].

[73]Livemint.com.

where freedom from fear[74] is sanctioned as an international human right, one must question that if India in 2020 should even have such a regressive and clearly unconstitutional law like sedition that seeks to send shivers down the spines[75] of citizens.

But, by invoking this law over time and again, in the recent times, the government have given us the answer. They don't seem to be bothered and any recommendations, though, would have likely fallen on deaf ears that in a participative democracy like India, where slogan – shouting is the oxygen and dissent is the blood[76], law like sedition has no place.In parliament, when asked Minister of State Home Affairs Nityanand Rai, whether sedition law is likely to be revoked, he was crisp but clear in his response "There is no proposal to scrap sedition. There is a need to retain the provision to effectively combat anti-national, secessionist and terrorist elements."[77]

[74]Ohchr.org. 2020. *OHCHR | International Covenant On Civil And Political Rights*. [online] Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> [Accessed 25 March 2020].

[75]The Indian Express. 2020. *BJP Will Make Sedition Law So Strong It Will Send Shivers Down Spine: Rajnath Singh*. [online] Available at: <https://indianexpress.com/elections/bjp-sedition-law-strong-gujarat-rajnath-lok-sabha-elections-5673386/> [Accessed 25 March 2020].

[76] Chibber, M, 2020. *Does Sedition Law Apply To JNU & Assam Cases Or Is It Being Used As Tool To Stifle Dissent?*. [online] ThePrint. Available at: <https://theprint.in/talk-point/does-sedition-law-apply-to-jnu-assam-cases-or-is-it-being-used-as-tool-to-stifle-dissent/179360/> [Accessed 25 March 2020].

[77]|, A., 2020. *Sedition Law Needed To Combat Anti-National Elements, No Proposal To Scrap It: Centre*. [online] ANI News. Available at: <https://www.aninews.in/news/national/politics/sedition-law-needed-to-combat-anti-national-elements-no-proposal-to-scrap-it-centre20190703134507/> [Accessed 25 March 2020].