

## “Sedition on India: A Comparative Study Proposing Abolition of the Colonial Law<sup>1</sup>”

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*“Law being the cement which holds the social structure together, must intelligently link the past with the present without ignoring the pressing claims of the future.”*

Edgar Bodenheimer

### **ABSTRACT**

*Independent India inherited many of the laws from their predecessor, including the controversial law of sedition which has judicially evolved over a period of time. Simplistically defined sedition is the defamation of the State and the government with certain peculiar characteristics. The paper elaborates on the changing interpretation of the meaning of sedition under the Indian Penal Code, keeping in mind that the section is an element of the criminal law introduced by the Britishers and a contradiction to freedom of speech guaranteed under Art 19 (1) (a). More than 60 years after independence, it may well be said that the time for prosecuting political libel has passed in India like in other democratic countries, especially the implementer of the law in India - the United Kingdom. This law continues to give the Government a chance of stepping into the shoes of the colonial master. The later episodes of this conjuring rebellion law against human rights activists, columnists and open erudite people in the nation have upraised basic issues of the legitimacy and the old and undemocratic nature of these laws. The paper aims to answer one fundamental question - Is sedition a law in the interest of public order here to stay or the time has come to do away with the colonial law, which prevents free speech? It answers this question through a comparative study of Indian and English Laws of sedition to finally make a case in favour of repealing the colonial archaic sedition law.*

### **INTRODUCTION**

At times does one go over a qualification so fine that even a word talked against it might bring about turmoil. The framers of the constitution understood the liberty of speech along with the freedom to express one's supposition and perspectives as one of the notable privileges of the resident of India. But what has happened over decades with this freedom must have never at any point remotely entered their thoughts. Today we remain to investigate the plausibility where a word talked might be translated as a misuse of Constitutional Liberty - a motivation to be tossed in jail on the charges of sedition.

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*Section 124A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence. - Mahatma Gandhi, March, 1922<sup>2</sup>*

The above words, as rightly put, by Mahatma Gandhi during his famous trial of 1922 in the colonial India, briefly summarizes the very meaning of sedition. The word “Sedition” has been derived from the Latin word “*Seditio*” meaning ‘sed’ – apart and ‘itio’ – going, thus signifying something which is ‘going away from’.<sup>3</sup> As defined by the Oxford Dictionary, it is conduct or speech inciting people to rebel against the authority of a state or monarch. In the legal sense, sedition, as defined by the black law dictionary, it is an insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state.<sup>4</sup>

English law punishes a seditious act with intention of exciting disaffection, hatred or contempt against the government or exciting ill will among the subjects of the King, i.e. The citizens of the United Kingdom. In the United States, the sedition law recognizes acts done wilfully or acts done with the intention or abetting acts to overthrow the government of the United States as a whole or any of the States as a seditious act.

Since its origin, the law has continued to be used to stifle voices of protest, dissent or criticism of the government. In the 21<sup>st</sup> century in light of the ever-growing human rights concerns there exists an ongoing debate on the very existence of sedition law in India. The jurisprudence of sedition in India has been in question throughout in the recent time owing not only to it being incorrectly applied as a tool for harassment by the prosecuting authorities, but also being declared obsolete and hence being repealed in many countries including UK.

### **THE INDIAN SCENARIO**

**Section 124A.**—*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. — Alteration by lawful means, without exciting or attempting to excite hatred, contempt or Comments expressing disapprobation of the measures of the Government with a view to obtain their disaffection, do not constitute an offense under this section.*

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<sup>2</sup>Gandhi, M. K., 2014. The Trial Speech. In: R. Mukherjee, Ed. The Great Speeches of Modern India. Gurgaon: Random House, p. 83.

<sup>3</sup>Oxford Dictionary

<sup>4</sup>Black Law Dictionary, 1067 (2<sup>nd</sup>ed, 1910)

*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.]*<sup>5</sup>

The offense of sedition India, as reproduced above, punishes only those who by their act either bring or attempt to bring into contempt or hatred or excite disaffection towards government. Explanation 3 for the provision excludes acts of disapprobation toward the actions of government from the scope of the offense. Thus, words of criticism, however harsh, but not exciting the feeling of disaffection do not qualify for sedition. But this was not the scenario in the earliest times; rather it took years for this construction to develop. This evolution can be traced in light of the various judicial pronouncements.

### **Disaffection in Colonial Era – The Narrow View**

*Queen Empress v. Bal Gangadhar Tilak*,<sup>6</sup> was the leading case of sedition where the court, transcending the arguments from both sides, interpreted §124A mainly as exciting ‘feelings of disaffection’ towards the government, which covered within its ambit sentiments such as hatred, enmity, dislike, hostility, contempt, and all forms of ill-will. It expanded the scope of the offence by holding that it was not the gravity of the action or the intensity of disaffection, but the presence of feelings that was paramount and mere attempt to excite such feelings was sufficient to constitute an offence.<sup>7</sup>

A conflict arose when the Federal Court of India, the highest judicial body of the country till the establishment of the Supreme Court, in *Niharendu Dutt Majumdar v. King Emperor*<sup>8</sup> held that the mere presence of violent words does not make a speech or publication seditious. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men of its intention or tendency.”<sup>9</sup>

The view of the Federal Court was subsequently overruled by the Privy Council<sup>10</sup>. When the speaker told the audience that the Government wanted to ruin those people who were trying to set them on the right path, that the Englishmen had come to India to make the people addicted to drink, opium and bhang, that the executive and the judiciary are partial to white men and exhorted the audience to resolve not to live under Englishmen; it was held that the speech was calculated to excite disaffection against the Government and to bring hatred and contempt.<sup>11</sup>

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<sup>5</sup> Section 124A, Indian Penal Code, 1860

<sup>6</sup> *Queen Empress v. Bal Gangadhar Tilak*, ILR (1898) 22 Bom 112

<sup>7</sup> Janaki Bakhle, Savarkar (2010), *Sedition and Surveillance: the rule of law in a colonial situation*.

<sup>8</sup> *Niharendu Dutt Majumdar v. King Emperor*, AIR 1942 FC 22

<sup>9</sup> Id

<sup>10</sup> *King Emperor v. Sadashiv Narayan Bhalerao*, (1947) 49 Bom LR 526

<sup>11</sup> *Kedar Nath Sehgal v. Emperor*, AIR 1929 Lah 817

## **Post-Independence Development – Freedom of Speech & Sedition**

After India attained independence in 1947, the offence of sedition continued to remain in operation under §124A of the IPC. In *Tara Singh v. The State of Punjab*<sup>12</sup>, section 124-A, IPC was struck down as unlawful as against the right to speech and Expression ensured under Art 19 (1) (a). The after effect of the above cited case was avoided through the first amendment to the Constitution in which, the additional grounds of ‘public order’ and ‘relations with friendly states’ were added to the list of permissible restrictions on the freedom of speech and expression under Article 19 (2).<sup>13</sup> Further, the word ‘reasonable’ was added before ‘restrictions’ to limit the possibility of abuse by the government.<sup>14</sup> Thus, it made section 124-A of IPC in consonance with Art 19 (1) (a) being saved by the expression “in the interest of public order” in Art 19 (2). It has been stated that the expression in the interest of public order is of wider connotation and includes not only the acts which are likely to disturb public order but something more than that. As per this interpretation, section 124-A IPC has been held intra vires to the constitution.

## **Modern Definition – Kedar Nath Judgement**

The landmark decision of the Supreme Court in *Kedar Nath Das v. State of Bihar*<sup>15</sup> laid down the interpretation of the law of sedition as it stands today. In the court’s interpretation the incitement to violence was considered as an essential ingredient of the offence of sedition.<sup>16</sup> Here, the court followed the interpretation given by the Federal Court in *Niharendu Dutt Majumdar*<sup>17</sup>. The fundamental issue involved for consideration was whether Section 124A has ended up a void in perspective of Article 19 (1) (a) of the Constitution. Sinha, C.J., who delivered the judgment analysed the whole history of S. 124A. It was most likely that the provision of S.124A is violative of the privilege revered under Article 19 (1) (a). The inquiry was principally whether the segment would be spared by bringing it under the ambit of the limitations listed in Article 19 (2). The court measured the clashing implications given to S. 124A by the Federal Court and the Privy Council. The necessity of having the offence of sedition and the view of the Federal Court on the presumption of constitutionality was accepted. Therefore S. 124A was held to be constitutional and should make penal only those matters that had the intention or tendency to incite public disorder or violence. The restrictions imposed on freedom of speech could be said to be in the interest of public order. The crime of sedition was thus established as a crime against public tranquillity, as opposed to a political crime affecting the very basis of the State.<sup>18</sup>

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<sup>12</sup>AIR 1950 SC 124

<sup>13</sup>Siddharth Narrain, Disaffection and the Law: The Chilling effect of Sedition Laws in India, XLVI (8) EPW34 (2011)

<sup>14</sup>Id

<sup>15</sup>AIR 1962 SC 955

<sup>16</sup>PSA Pillai, Criminal Law 1131 (K.I. Vibhute, ed., 2009)

<sup>17</sup>(1942) FCR 38

<sup>18</sup>Rex v. Aldred, (1909) 22 Cox CC 1

Earlier the section placed the successful, exciting of feelings of disaffection and the unsuccessful attempt to excite them absolutely on the same footing but after this judgement, it is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in, to prevent such activities in the interest of public order.

### **Recent developments in the law**

Since the eponymous decision of the Supreme Court in *Kedar Nath*, the courts have applied the law of sedition on various occasions. There have been only fourteen cases of sedition in the last fifteen years, of which only two were heard before the Supreme Court. Further, there have been only three convictions, of which one conviction was made by the Supreme Court.

In one such recent case, *P.J. Manuel vs. State of Kerala*<sup>19</sup>, the accused affixed posters on a board at the Kozhikode public library and research centre, exhorting people to boycott the general election to the Legislative Assembly of the state. The poster proclaimed, “No vote for the masters who have become swollen exploiting the people, irrespective of difference in parties.” Consequently, criminal proceedings were initiated against him under §124A of the IPC for the offence of sedition. The court held that the content of the offense of sedition must be determined with reference to the letter and the spirit of the Constitution and not to the standards applied during colonial rule and ordered acquittal. In another case of *Gurjatinder Pal Singh v. The State of Punjab*<sup>20</sup>, the accused petitioned the Punjab & Haryana High Court for an order to quash the First Information Report (‘FIR’) that had been filed against him under Sec 124A. At a religious ceremony organised in memory of the martyrs the petitioner gave a speech to the people presently advocating the establishment of a buffer state between Pakistan and India known as Khalistan. Crucially, it was held that even explicit demands for secession and the establishment of a separate State would also not constitute a seditious act. Thus, the FIR against the accused was quashed. In the other case of *Mohd Yaqub vs. State of W.B.*<sup>21</sup> the accused had admitted to being a spy for the Pakistani intelligence agency ISI. He would receive instructions from the agency to carry out anti- national activities. He was thus charged for sedition under Sec 124A of the IPC. Citing the elements of sedition that were laid down in *Kedar Nath*, the Calcutta High Court found that the prosecution had failed to establish that the acts were seditious and that they had the effect of inciting people to violence. Thus, the accused were found not guilty as the strict evidentiary requirements were not met.

In the other case of *Nazir Khan vs. State of Delhi*<sup>22</sup>, the accused underwent training with militant organisations such as Jamet-e-Islamic and Al-e-Hadees, and was given the task of carrying out terrorist activities in India. He then kidnapped British and American nationals visiting India, and demanded that ten terrorists that were confined in jail be released in

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<sup>19</sup> ILR (2013) 1 Ker 793

<sup>20</sup> (2009) 3 RCR (Cri) 224

<sup>21</sup> (2004) 4 CHN 406

<sup>22</sup> AIR 2003 SC 4427

exchange for the release of the foreign nationals. However, he was caught by the police after one of the hostages managed to escape. He was subsequently tried for several offences, including sedition. The Supreme Court held it to be an act of sedition noted that the “line dividing preaching disaffection towards the Government and legitimate political activity in a democratic set up cannot be neatly drawn.” The court held it to be an act of sedition. In *Balwant Singh vs. State of Punjab*<sup>23</sup>, the Supreme Court overturned the convictions for ‘sedition’, (124A, IPC) and ‘promoting enmity between different groups on grounds of religion, race, etc.’, (153A, IPC), and acquitted persons who had shouted – “Khalistan zindabaad, Raj Karega Khalsa,” and, “Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da”. In the very famous case of *Binayak Sen vs. State of Chhattisgarh*<sup>24</sup>, one of the accused Piyush Guha made an extra-judicial confession that Binayak Sen, a public health advocate, had delivered certain letters to him to be delivered to Kolkata. These letters allegedly contained Naxal literature – some contained information on police atrocities and human rights. Convicting the accused of sedition, the High Court cited the widespread violence by banning Naxalite groups against members of the armed forces. However, it did not explain how the mere possession and distribution of literature could constitute a seditious act. Further, the High Court did not address the question of incitement to violence, which was evidently absent in this case.

Besides these there are many cases that are still pending in various cases. Some of them are-

- Kirori Singh Bainsla, Gujjar Community leader, June 2008 Bayana, Rajasthan-For leading an agitation demanding ST status for Gujjars
- V. Gopaldaswamy, Politician, MDMK, Dec 2009 Chennai, Tamil Nadu-Remarks allegedly against India’s sovereignty at a book launch function.
- E. Rati Rao, Resident Editor, Varthapatra, Feb 2010 Mysore, Karnataka- Article in Varthapatra claiming encounter deaths in Karnataka
- Piyush Sethia, Environmentalist and Organic Farmer, Jan 2010 Salem, Tamil Nadu - Pamphlet distributed during protest against Chhattisgarh government’s support for Salwa Judum.
- Niranjana Mahapatra, Avinash Kulkarni, Bharat Pawar, others Trade Union Leaders and Social Activists Mar 2010 –June 2010 -Gujarat Police allege link with CPI (Maoist).
- Arundhati Roy, Shuddabrata Sengupta, S.A.R. Geelani, Varavara Rao & others Writers, political activists, and media theorists, Nov 2010 Delhi -Private complaint alleging that they made anti-India speeches titled “Azadi-The only Way” at a seminar in Kashmir”

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<sup>23</sup> 1995 (1) SCR 411

<sup>24</sup> (2011) 266 ELT 193

- Noor Muhammed Bhat Lecturer, Gandhi Memorial College, Srinagar, Dec 2010 Srinagar-Setting a question paper for students of English literature on the topic of “Whether stone pelters were the real heroes”
- Sudhir Dhawale Dalit Rights Activist and Free Lance Journalist, Jan 2011 Wardha, Maharashtra-Police allege link with CPI (Maoist) party.
- Aseem Trivedi, Cartoonist, September 8, 2012, Mumbai-He was arrested after a complaint that his cartoons mocked the Indian constitution and national emblem.
- The most recent case of Meerut University suspending 60 students for cheering in favour of Pakistan in a cricket match between India and Pakistan, these students being charged under sedition

### **THE INTERNATIONAL SCENARIO**

The law of sedition is an archaic piece of law in India, given by the Britishers being nearly half a millennium old. Thus, it is necessary to study and have a comparative analysis with the sedition law of the country who enacted this sedition law. The country which birthed section 124A —repealed its own sedition law in 2009.

Sedition or seditious libel was a common law criminal offence in the **United Kingdom**. The common law principles of seditious libel evolved from the Britain’s oldest law- Statute of Westminster 1275 where it was established that for the crime of sedition, truth was no defence and intention was irrelevant as was whether there was any actual harm done. The offence was then clearly defined in the "Digest of Criminal Law". This was extensively used in the 18th and 19th centuries, mostly against activists who challenged the extent of freedom of speech and media.<sup>25</sup>

But with time the situation changed. The offence of seditious libel remained largely unused for the most of the 20th century as British democracy liberalised. The 1970s was the last time prosecutions were ever made for this offence. Then in 1977, the Law Commission expressed its view that the common law offence of sedition was ill defined, unnecessary and fallen into disuse for nearly 150 years.<sup>26</sup> There was a consensus on the law being redundant and inappropriate and hence a move to repeal the law was made.

On March 2009, amendments to the Coroners & Justice Bill were tabled in the House of Commons and then again in the House of Lords before the Government eventually accepted the case for abolition and promised to get rid of the laws themselves. Some very well-articulated points by their Lordships in the House of Lords’ were debated on the motion like:<sup>27</sup>

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<sup>25</sup> Clare Feikert Ahalt, (2012) Sedition in England: The Abolition of a Law from a Bygone Era.

<sup>26</sup> The Law Commission, Treason, Sedition and Allied Offences, [1977] EWLC C72.

<sup>27</sup> Pang Jo Fan, (2015), KPUM.

*“It is my understanding that... Secretary of State for Justice, agrees that there is no basis for keeping the laws of seditious libel... on the statute book and that there would be a benefit in setting an example to oppressive regimes which use similar offences to silence dissent by repealing these antique and out-of-date laws.” — Lord Lester of Herne Hill (HL Deb, 9 July 2009, cols 843)*

*“The power to express forcefully political discontent is the cornerstone of democracy and lies with the people. The ability of individuals to criticise the state is crucial to maintaining freedom in this day and age, when we have so many journalists, bloggers and so forth who give us their views all the time. Conversely, it is not therefore in the power of government to criminalise this expression. The fundamental rights of UK individuals would be better protected by removing the offence of seditious libel from the statute book.” — Baroness D’Souza (HL Deb, 9 July 2009, cols 848)*

With this, the law of seditious libel was completely uprooted from the English legal system with the additional hope to help campaigners overseas argue for its abolishment. They professed that it would be helpful to open the door for other countries that retain the law to move forward and abolish the offence when it was out of books in the country which in the colonial era was responsible for its implementation. In **New Zealand** also the sedition law was repealed in 2007 on grounds of containing legal principles which defy the principles of natural justice and the rule of law.<sup>28</sup> Similarly **Australia**, **Indonesia** and **South Korea** have also done away with their sedition law declaring them to be unconstitutional. **Canada** also has no sedition laws and the citizens enjoy liberal freedom as the laws to restrict freedom of speech are rarely enforced upon them. **Malaysia** is one example of a democratic country where use of sedition law was rampant, but in the present time it is also confronted with criticism, especially by the United Nations Human Rights Commission to repeal the ‘archaic and draconian’ Sedition Act 1948 - a pre-Merdeka British enactment aimed to control dissenters and to strengthen their political grip in Malaya during a period when the spirit of nationalism was rising high among the people. Similarly, USA has a sedition law, but is rarely enforced in respect for freedom of speech.

### **COMPARATIVE ANALYSIS**

The basic essence of any law is to grow in order to placate the needs of the people and keep abreast with the developments taking place in the country. The present India has evolved up to a great extent. With the advent of modern technology and globalization, the conditions have changed and most importantly the attitude of people towards the Government has revolutionized. The law of Sedition being followed till date is the one enacted in the context of a totally different kind of India in the late 1800’s by the Britishers with the aim to quell and oppress the Indian Freedom struggle. The time seems apposite to repeal this outdated, archaic colonial-era law and get rid of a provision that has no place in a country that prides

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<sup>28</sup> Singh Prabhat, (2016), A quick history of sedition law and why it can’t apply to JNU’s Kanhaiya Kumar.

itself on a Constitution that guarantees to all its citizens the fundamental right to dissent. The law was criticized by Prime Minister Jawaharlal Nehru, who told Parliament in 1951 that he found Section 124A “highly objectionable and obnoxious” and “the sooner we got rid of it the better.”<sup>29</sup> But his government and all the subsequent governments retained it and misused it. Such hypocrisy of Indian politicians kept alive this colonial law which should have been repealed by the first Indian Parliament.

There is no place in a democracy for a black law that conflates disaffection with disloyalty. Democracies like India must be confident enough in their powers to withstand criticism where people have the power to change governments through a vote. No democratic government can afford to charge people with sedition and put them behind bars for saying things which they have the freedom to say. By retaining it the governments have repudiated the concept of human rights evolved through long years of freedom struggle. Clinging to an all-encompassing vaguely worded sedition law will do more harm than good to our democracy.

The Supreme Court of India in the *Kedar Nath Case*<sup>30</sup> has upheld the constitutional validity of the law only with the interpretation that it is to be applied only to actions that have a direct and unambiguous connection to violence or public disorder; else its application would be unconstitutional. However, in practice, the law continues to be used as a weapon of oppression against all voices raised against all dissenting. Politicians with power, police authorities have always ignored the nicety that the scope of the sedition law is severely limited. For them, it is the process of being dragged to court that is the punishment. So even if someone charged with sedition is acquitted along the way, he faces punishment by been put through a torturous legal process simply because they expressed the ‘anti-government’ opinions. Trial courts have been increasingly guilty of entertaining sedition charges and sometimes even convicting at the initial stages. The current case of sedition charged on Kanhaiya Kumar would also not have existed if the law laid by the apex court is strictly implemented as it lacks the necessary proximate nexus between the speech and consequence. The literal interpretation of section-124A is despotic and is widely criticised by the higher judiciary being in violation of the constitutional scheme Therefore, it is better to do away wholesale with the current law.

India is still slapping sedition cases on people, including lecturers, journalists, human rights activists and cartoonists when the offence has been rendered obsolete in many countries, either through a formal scrapping of the sedition law or by rendering it virtually toothless because of judicial rulings. Interestingly, the country which gave India its sedition law, the United Kingdom, which was considered the most enthusiastic user of sedition law, repealed it in 2009 on its becoming obsolete - the last case dating back to 1947.<sup>31</sup> The government has since then rarely used this heavy arm of the criminal law against trenchant critics of the state. The then Parliamentary Under-secretary of State at the Ministry of Justice, Claire Ward, said

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<sup>29</sup> Repeal the sedition law, The Hindu, April 21, 2011.

<sup>30</sup> Id

<sup>31</sup> Nugehalli Nigam, (2016) Do We Really Need a Sedition Law?

at that time “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” According to him the existence of these obsolete offences in their country had been used by other countries as justification for the retention of similar laws. Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries.<sup>32</sup> But democratic India even with all its bitter experience of the operation of this law fails to realize it and continues to retain and use it.

It is time that the lead of modern constitutional democracies such as the United Kingdom is followed. There is an urgent need to re-examine the need for this undemocratic law in the world’s largest democracy and send Section 124A to where it really belongs — to the scrap heap of repealed laws. What was once an instrument of British colonialism to suppress the freedom struggle cannot be retained by the state to silence the voices of its own people. If someone raises slogans against India or endangers the security of India, he should be dealt with under appropriate laws existing under Chapter VIII of the IPC. Various other statutes also govern the maintenance of public order and may be invoked to ensure peace and tranquillity. The law of sedition is too colonial, too dangerous and too destructive of the basic freedoms of the people and hence should be scrapped.

## **CONCLUSION**

In the words of Roscoe Pound, “*Law must be stable yet it cannot be still.*” The words and acts that tend to endanger society differ from time to time as society is instable. In the present day meetings and processions are held lawful which 150 years ago would be deemed seditious owing to the evolution of society.<sup>33</sup> The yardstick to assess that a person has excited or attempted or desired to excite hatred, contempt or disaffection needs to be revisited as at the present day after more than 60 years of independence India as well as the ruling authority have transposed.

In the words of Adlai Stevenson: “*Every man has a right to be heard, but no man has the right to strangle democracy with a single set of vocal chords.*”<sup>34</sup> There is a difference between desiring and working to overthrow the government and desiring and working to overthrow the country. The government is not the same as the country. Because, it is the national anthem of India and not the national anthem of the government of India; it is the national flag of India and not the national flag of government of India; it is the citizen of India and not a citizen of the government of India. Thus, there is a difference between speaking against the government and speaking against the country which should be upheld at all costs.

In today’s environment the sedition law seems to be colonial bogey which expects that citizens should not show enmity, contempt or hatred towards the government established by

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<sup>32</sup> Sonwalkar Prasun, “Sedition law in UK abolished in 2009 continues in India” Hindustan Times, Feb 16, 2016, London.

<sup>33</sup> Jurisprudence- The Philosophy and Method of law, Harvard University Press, 1962.

<sup>34</sup> Eric Barendt, (2003), Interests in Freedom of speech: Theory and Practice in Legal explorations.

law. In its current form, there is a grey area which lies between actual law and its implementation. There is no need for a specific provision for the punishment of acts committed against the state or the government for the maintenance of public order. Other existing provisions that are less stringent and do not counter productively mark out and legitimize offenders as political offenders may be applied in such cases.<sup>35</sup>

Thus, there seems no valid reason available to justify the retention of seditious offences in statute books in light of its obsolescence. It only undermines the public interest. Since its origin the sedition laws have been defined by uncertainty and non-uniformity, giving ample opportunity for its vague implementation of the ruling class, especially as a tool to censor any speech that goes against their interests. The courts have also failed to remove the deficiencies and ensure a proper use of the law and stop it from being a tool of harassment. Drawing inspiration from the repeal of sedition law in England, the Indian law should also be declared obsolete. In light of the above observations, it is time that the Indian legislature and judiciary reconsider the existence of provisions related to sedition. These remain as vestiges of colonial oppression and simply undermine the rights of the citizens to dissent and criticize the government in a democracy.

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<sup>35</sup> Ben Saul, (2005), Speaking of Terror: Criminalizing Incitement to Violence, 28 UNSW LJ 874