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The desirability of Sedition Laws in Modern India

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This paper on the Desirability of the Sedition Laws in Modern India argues why the archaic law of Sedition should be retained in a narrow form. This law has been blatantly misused by the ruling class both pre & post-independence in India, still, it has been argued for several reasons why the law should not be completely done away with. The paper dwells on the historic background of sedition in India, along with its relation with the Fundamental Right to Free Speech. Further, it has compared the Proximity & Tendency tests to determine sedition. At last, the paper puts forward four suggestions on how it can be reformed & Section 124A of the IPC¹ has been rewritten by replacing some vital keywords.

Keywords: *sedition, speech, ipc.*

INTRODUCTION

Probably for the very first time in the history of Independent India, the Supreme Court put a criminal law into abeyance when the central government decided to review it.² The 152-year-old, section 124A of the IPC,³ which defines and penalizes sedition, has virtually been suspended

¹ Indian Penal Code 1860, s 124A

² 'Is This the Beginning of the End of Sedition Law in India?' (*News18*, 13 May 2022)
<<https://www.news18.com/news/opinion/is-this-the-beginning-of-the-end-of-sedition-law-in-india-5167393.html>> accessed 03 July 2022

³ *Ibid*

by the supreme court. N.V. Ramana, the Chief Justice of India, presided over a three-judge bench held that “*Union of India agrees with the prima facie opinion expressed by this court that the rigours of Section 124 A of IPC are not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime*”.⁴

The Supreme Court further held that the Union government and the states must stop registering FIRs under the provision and suspend all previous 124A cases until the matter has been thoroughly reconsidered by the Apex Court.⁵ In addition, the Court decided that those who have already been detained and imprisoned for violating Section 124A IPC may file a bail application with the concerned authorities. It has also been ruled that in case, a new case is filed, “the appropriate parties are free to approach the court for the appropriate remedy, and the court is compelled to evaluate the relief demanded in light of the verdict delivered by the court.”⁷ If we are to build the democratic foundations of our country, seditious behaviour must not exist given the contemporary, advanced reality around us. For a democracy to work properly, there must be room for criticism, disagreement, and divergent points of view.⁸

The definition of Sedition was most eloquently pronounced in the ancient case of *Reg. v Alexander Martin Sullivan*.⁹ It was stated that the term “*sedition*” is extremely broad and covers any verbal, physical, and written actions intended to disturb the peace of the nation and incite people to try to destroy the government and the laws of the State.¹⁰ Sedition tends to do these things by its very nature, even though its goals are frequently to foment unrest and discontent, stir up opposition to the government, and disparage the administration of justice. However, controversies about sedition laws are not new.¹¹ Even Mahatma Gandhi said that Section 124A

⁴ *SG Vombatkere v Union of India* 2022 LiveLaw (SC) 470

⁵ *Ibid*

⁶ *Ibid*

⁷ D Raja, ‘Why the sedition law must go’ (*Indian Express*, 13 May 2022)

<<https://indianexpress.com/article/opinion/columns/why-the-sedition-law-must-go-7914386/>> accessed 03 July 2022

⁸ *Ibid*

⁹ *Reg v Alexander Martin Sullivan* (1868) 11 Cox CC 44

¹⁰ *Ibid*

¹¹ *Ibid*

was a tool employed to limit the freedoms of the populace.¹² It has been charged that successive governments have suppressed dissent by using the law to target its critics.¹³

HISTORICAL BACKGROUND OF SEDITION

The provision of sedition has colonial roots. The provision was added by Sir Thomas Macaulay in his first draft in 1837. The clause was not included when the IPC was passed in 1860. The section, which was later included by an amendment in 1870, was modelled after the English Treason Felony Act 1848 and intended to address rebels, mutinous actions, and dissenters.¹⁴ When questioned about this omission, Mr. James Stephens cited Sir Barnes Peacock's letter to Mr. Maine, in which he made the following observation¹⁵: *"I have looked into my notes and I think the omission of a section instead 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."*¹⁶

Governments have used the sedition to restrict free speech ever since it was first enacted. During the colonial era, the British colonial government utilized it to suppress Indians who disagreed with the ruling class. Tilak and Gandhi are among the most notable Indian freedom movement figures that have been charged with sedition.¹⁷ B. R. Ambedkar ardently advocated in the Constituent Assembly that liberty, equality, and fraternity should guide our democratic lives.¹⁸ Even though Jawaharlal Nehru harshly criticized it before independence, the provision on sedition was kept.¹⁹ During British rule,²⁰ the punishment for sedition was to be transported

¹² FE Online, 'What is sedition law? Controversies and latest developments around Section 124A - EXPLAINED' (*Financial Express*, 11 May 2022) <<https://www.financialexpress.com/india-news/explained-what-is-sedition-law-and-what-are-the-controversies-and-developments-around-section-124a/2520384/>> accessed 03 July 2022

¹³ *Ibid*

¹⁴ ORF Online, 'The sedition law: the past, present, and future' (*ORF*, 27 May 2022) <<https://www.orfonline.org/expert-speak/the-sedition-law-the-past-present-and-future/>> accessed 04 July 2022

¹⁵ *Ibid*

¹⁶ Law Commission of India, 'Sedition, Consultation Paper' (*Law Commission of India*, 30 August 2018) <<https://lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf>> accessed 04 July 2022

¹⁷ *Beginning of the End* (n 2)

¹⁸ *Ibid*

¹⁹ *Why the sedition law must go* (n 7)

²⁰ *Ibid*

“beyond the seas for the term of his or her natural life”. This was amended to life imprisonment in 1955.²¹

Mahatma Gandhi was accused of Sedition, his comments in 1922 brilliantly sum up the misuse of the Sedition law at that time²²:

“...Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC 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 violence.... I consider it a privilege, therefore, to be charged under that section.”²³

In this case, Mahatma Gandhi received a sentence of six years.²⁴ But it will be wrong to say that all the judgements were prejudiced at that time, some were progressive too. In the case of *Kamal Krishna Sircar v Emperor*²⁵, the accused was charged with sedition for delivering a speech condemning the ban on the Communist Party of India. The Calcutta HC ruled that it was absurd to assert that comments of this type constitute sedition.²⁶ If this were the case, one could argue that every argument in favour of a new kind of government or against the one in place today incites hatred. When advocating for a different form of governance, it should not be inferred that one hates or despises the current form of governance.

In 1951, the Punjab High Court held Section 124A unconstitutional.²⁷ In a related ruling from 1959, the Allahabad High Court gave the same judgement that it had infringed the fundamental

²¹ Business Standard, ‘What is sedition law?’ (*Business Standard*, 13 May 2022) <https://www.business-standard.com/podcast/current-affairs/what-is-sedition-law-122051300071_1.html> accessed 04 July 2022

²² *Ibid*

²³ Abhijit Sengupta, ‘Sedition Has No Room in Modern Democracies, Time for The Law to Be Repealed’ (*The Wire*, 26 July 2021) <<https://thewire.in/rights/sedition-law-democracy-rights-repeal-misuse>> accessed 04 July 2022

²⁴ *Ibid*

²⁵ *Kamal Krishna Sircar v Emperor* AIR 1935 Cal 636

²⁶ *Ibid*

²⁷ *Ibid*

right to free speech.²⁸ The Government of India filed an appeal with the Supreme Court in 1962,²⁹ which upheld the law's applicability to coercive or violent separatism while ruling that statements critical of the government or political parties were not illegal.³⁰

GLOBAL-VIEW ON SEDITION

Globally, there has been a broad trend supporting free speech and opposing sedition. Under Section 73 of the Coroners and Justice Act, 2009,³¹ the sedition statute was formally repealed in the United Kingdom due to its chilling impact on the right to free speech and expression.³² The common law against sedition was described as "arcane" and "from a bygone era when freedom of expression wasn't seen as the right, it is today," as it dates back to the Statute of Westminster, 1275 when the King was believed to possess divine authority.³³ Australia also repealed the sedition law in 2010 & Singapore too repealed it last year citing that it already has existing legislation in place to address the issue.³⁴ It's also crucial to note that, even though colonialism's impacts are still being felt today, the Britishers who implemented the sedition laws³⁵ to suppress Indians also got rid of it in their own country quoting that it doesn't want to be quoted as an example to use such draconian law in the rest of the world but we are still carrying it forward.³⁶

SEDITION & FREEDOM OF SPEECH & EXPRESSION

Section 124A defines sedition as: "*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*

²⁸ ET, 'Anti-sedition law needs the bin' (*The Economic Times*, 15 January 2019)

<<https://economictimes.indiatimes.com/blogs/et-editorials/anti-sedition-law-needs-the-bin/>> accessed 04 July 2022

²⁹ *Ibid*

³⁰ The Tribune, 'To repeal or not: Nehruvian dilemma on sedition law' (*The Tribune*, 10 September 2018)

<<https://www.tribuneindia.com/news/archive/nation/to-repeal-or-not-nehruvian-dilemma-on-sedition-law-650444>> accessed 04 July 2022

³¹ Coroners and Justice Act 2009, s 73

³² *Ibid*

³³ The Indian Express, 'Explained: What is the sedition law, and why Supreme Court's fresh directive is important' (*The Indian Express*, 12 May 2022) <<https://indianexpress.com/article/explained/sedition-law-explained-origin-history-legal-challenge-supreme-court-7911041/>> accessed 04 July 2022

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ Law Commission of India (n 16)

*attempts to excite disaffection towards, the Government established by law shall be punished with imprisonment for life, to which fine may be added...*³⁷ Article 19(1)(a) of the Constitution in our country acknowledges the freedom of speech and expression to be a fundamental right.³⁸ However, the freedom is restricted to certain reasonable restrictions like, *“interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or about contempt of court, defamation or incitement to an offence.”*³⁹ Governments have used sedition to stifle and suppress political opposition & the exercise of this freedom has been constrained by the presence of this colonial relic, Section 124A of the IPC. Free speech is one of the most crucial democratic values. This freedom is designed to enable a balance between social change and stability, assist in the pursuit of the truth, help people find their sense of fulfillment, and improve their capacity for decision-making.

Freedom of speech and expression, the mother of all liberties, is the most significant and fundamental human right since it gives life meaning. The foundation of a free society is said to be this liberty. Freedom of speech was listed as a fundamental right in the Preamble of the 1948 Universal Declaration of Human Rights. The right to Free speech frequently brings up difficult questions, such as how much control the government should have over how people behave. Every restriction on an individual's autonomy is carefully considered because it forms the basis of this freedom. However, reasonable restrictions may be imposed on it to ensure that this right is exercised responsibly and that it is available to all citizens equally. Restrictions may be imposed on this freedom by Article 19(3) of the International Covenant on Civil and Political Rights of 1966 (ICCPR), as long as they are legal, outlined by law, and necessary to uphold others' rights or reputations or to protect public safety, order, health, or morals.⁴⁰ But the situation in today's India is very grim. Governments across the country are misusing this section to silence dissent & which is the reason why India's position in the most recent World Press Freedom Index dropped from 142 in 2021 to 150 out of 180 countries in 2022 illustrated by these

³⁷ Indian Penal Code 1860, s 124A

³⁸ Constitution of India, art 19(1)(a)

³⁹ *Ibid*

⁴⁰ International Covenant on Civil and Political Rights 1966, art 19(3)

instances.⁴¹ If India goes down this rabbit hole, it will affect journalists, activists, and all Indian citizens because "*Our liberty depends on the freedom of the press, and that cannot be limited without being lost.*" - Thomas Jefferson.⁴²

NCRB DATA ON SEDITION

The law of Sedition has been blatantly misused by several central & state governments over the years. According to the data given by National Crime Records Bureau, 399 cases of sedition have been reported across the country since 2014. The number of cases has increased steadily over the past few years, reaching 93 in 2019 and 73 in 2020. 559 people were detained as a result of all these instances, but only 10 of them were later proven guilty.⁴³ This proves that the majority of the prosecutions were instituted to quell political dissent or settle political scores.⁴⁴

Data compiled by article-14.com shows a 28% annual increase in sedition cases between 2014 and 2020 compared to the yearly average between 2010 and 2014. In brazen disregard for Supreme Court orders, journalists, government critics, and others have been prosecuted with sedition. According to a report by Article-14.com, since 2014, 106 sedition charges have been brought against individuals who allegedly posted online content that was "*pro-Pakistan*". Their investigation finds that 96% of the sedition cases filed against 405 people between 2010 and 2021 for criticizing the government and legislators were registered after 2014. Of them, 149 were accused of making "*critical*" or "*derogatory*" remarks about the Prime Minister, while 144 were accused of doing the same about Yogi Adityanath, the chief minister of Uttar Pradesh.⁴⁵ The convicts of sedition generally spent 50 days in jail until they were granted bail by the trial court and up to 200 days in jail before obtaining bail from the High Court.⁴⁶

⁴¹ G Sampath, 'India's position on the World Press Freedom Index' (*The Hindu*, 5 May 2022) <<https://www.thehindu.com/news/national/indias-position-on-the-world-press-freedom-index/article65382354.ece>> accessed 08 July 2022

⁴² *Ibid*

⁴³ Beginning of the End (n 2)

⁴⁴ *Ibid*

⁴⁵ article14, 'Our New Database Reveals Rise In Sedition Cases In The Modi Era' (*Article14*, 2 February 2021) <<https://www.article-14.com/post/our-new-database-reveals-rise-in-sedition-cases-in-the-modi-era>> accessed 05 July 2022

⁴⁶ *Ibid*

Despite a rise in cases, there have not been many sedition convictions. Out of the 47 cases that were registered in 2014, there was only one conviction; there were none out of the 30 cases that were registered in 2015; one out of the 35 cases that were registered in 2016; one out of the 51 cases that were registered in 2017; one out of the 70 cases that were registered in 2018; and one out of the 93 cases that were registered in 2019.⁴⁷ The low conviction rates demonstrate that Section 124A is being abused and that charges are being filed despite the absence of the required elements.⁴⁸

THE GOLDEN PRINCIPLE OF SEDITION: PROXIMITY VS TENDENCY

The Law of Sedition has been challenged many times before the Supreme Court but the cases of *Kedar Nath Singh v State of Bihar*⁴⁹ & *Superintended, and Central Prison v Ram Manohar Lohia*⁵⁰ are the most significant ones. But the apex court illustrated its views on Sedition in two different ways in these two cases. It used the test of proximity in the *Ram Manohar Lohia* case⁵¹ in 1960 but switched to the test of tendency in the *Kedar Nath Singh* judgement in 1962. A comparative analysis of these two cases will open new horizons in front of us.

▪ **Superintended, Central Prison v Ram Manohar Lohia**

In this case, Supreme Court applied the Proximity test & held that a limitation to the right to free speech & expression must be tightly linked to, or have a nexus with, the public order and must not be far-fetched, problematic, speculative, or remote from the public order to be deemed a reasonable restriction.⁵² In simple terms, the court ruled that the claimed offence and public disruption must have a "*proximate*" or close connection.⁵³ Gautam Bhatia, a constitutional law expert, and lawyer, asserts that if a speech incites a crowd to burn down a structure, then it is *proximately* connected to public disorder. However, there is no relationship between the speech⁵⁴

⁴⁷ ORF Online (n 14)

⁴⁸ *Ibid*

⁴⁹ *Kedar Nath Singh v the State of Bihar* 1962 AIR 955

⁵⁰ *Superintendent, Central Prison v Ram Manohar Lohia* AIR 1960 SC 633

⁵¹ *Ibid*

⁵² *Superintendent, Central Prison* (n 50)

⁵³ *Ibid*

⁵⁴ *Ibid*

and the rioting if someone asks for an oppression-free society in a speech and riots break out as a result in the city because there is a "huge gap" between the call for an oppression-free society and violence. Public disorder and speech must be closely related.⁵⁵

▪ **Kedar Nath Singh v State of Bihar**

*"Today the dogs of the CID are loitering around Barauni. Many official dogs are sitting even in this meeting...Today these Congress goondas are sitting on the gaddi due to the mistake of the people. When we drove out the Britishers, we shall strike and turn out these Congress goondas as well. These official dogs will also be liquidated along with these Congress goondas. These Congress goondas are banking upon the American dollars and imposing various kinds of taxes on the people today. The blood of our brothers - mazdoors and Kisans - is being sucked."*⁵⁶

These were the exact words of Kedar Nath Singh for which he was charged with sedition. The most authoritative judgement on how the sedition laws should be construed is the Supreme Court's 1962 Kedar Nath Singh decision.⁵⁷ The five-judge constitutional bench held in this case that the right to freedom of speech and expression extends to criticism of public policies and statements made about government actions, so long as they don't "*incite people to violence against the government established by law or are made to create public disorder.*"⁵⁸

The Court concluded that sedition encompasses any verbal or written statements that allude to using force to overthrow the government.⁵⁹ The Court made it clear that criticizing government policies or conduct in any way will not be regarded as sedition. In simple terms the court used the "*tendency test*" to make its decision, the judgment stated that any spoken or written comments must have the intent or tendency to cause unrest or breach of peace by resorting to violence to constitute sedition.⁶⁰

⁵⁵ Bar and Bench, 'Sedition and the Supreme Court's Kedar Nath Singh judgment: Tendency versus proximity' (Bar & Bench, 19 May 2022) <<https://www.barandbench.com/columns/sedition-challenge-what-is-the-ke-dar-nath-singh-judgment>> accessed 06 July 2022

⁵⁶ *Ibid*

⁵⁷ *Ibid*

⁵⁸ *Kedar Nath Singh* (n 49)

⁵⁹ *Ibid*

⁶⁰ *Ibid*

▪ Proximity vs Tendency

A comparative analysis of the two tests suggests that the tendency is far too wide than the proximity test. It is very difficult to assert the *tendency* in today's generation of social media. Thus, the widening of the scope enables the government to suppress dissent. In this regard, I will like to draw the words of GD Khosla,

"Anything may tend to almost anything. A lamp post may be taken as a phallic symbol, a convenient object for canine relief, a source of light, evidence of civilization, something to lean against when waiting for a bus, or something to demolish to demonstrate a sense of rebellion or discontent. So, what is the tendency of a lamppost?" ⁶¹

In my opinion, if the sedition has to stay at all, we should go back to the proximity test as it stresses the connection between speech & violent conduct. Surprisingly, the Supreme Court didn't give any justification in the Kedar Nath Singh case for shifting to the tendency test although both the constitution benches were headed by the then Chief Justice of India, BP Sinha.⁶²

CONCLUSION & SUGGESTIONS

The debate regarding the desirability of the Sedition law is not new to India. It is there since the pre-Independence period. This was the best possible tool available to the British colonial government to detain the freedom fighters. During our independence, a large discussion took place in our Constituent Assembly which resulted in the omission of the word *sedition* from our Constitution but it was retained as a penal offence in Section 124A of the IPC. However, the misuse of the provision didn't end after independence; various state & central governments are alleged to use this provision to suppress dissenting voices. The provision has been challenged multiple times before the Supreme Court of India, until the order of May 2022, the Supreme Court has always upheld the constitutionality of Sedition, sometimes with a very limited scope & sometimes with relatively wider. The suspension & consequent reconsideration of Section

⁶¹ Bar and Bench (n 55)

⁶² *Ibid*

124A of the IPC is indeed a historic event in the history of our country. The changing times in our society & the blatant misuse by the government have put us in front of this situation.

In my opinion, the Sedition in its current form must go. It has more potential of being misused rather than used. This archaic provision was drafted nearly 185 years ago⁶³ & in a very different context & situation which has changed drastically over the years; however, there have been very nominal amendments to this provision. Out of the many problematic aspects of this legislation, the most significant one is the *tendency test* formulated by the Kedar Nath Singh judgement. The wording of Section 124A coupled with this *tendency test* makes this provision very vague & ambiguous. The scope of the *tendency test* is so wide that it is unable to maintain a balance between the fundamental right of the citizens of free speech & reasonable restrictions imposed upon it. In today's world of social media, anything can tend to indicate anything, it is very difficult to find the correlation between cause & effect. This grey zone is being blatantly misused by the governments after governments silence the protests.⁶⁴ In 2021, police from the nation's capital "*hijacked*" Disha Ravi, a climate change activist and college student from Bangalore, to Delhi on a charge of sedition. Disseminating a "*toolkit*" about the farmers' protest was their only grievance against her. After more than a week, Ravi was released on bond as a result of unanticipated social media protests.⁶⁵ How is encouraging the farmers' agitation peacefully called sedition? This is only one instance of the government misusing the Sedition law which is not even the tip of the iceberg. It is only being possible because of the wide, vague & ambiguous scope of the Sedition law. Therefore, my *1st suggestion* will be to do away with the *tendency test* & switch back to the *proximity test* where the prime focus is given on finding the connection between speech & public disorder. The proximity test is similar to the Brandenburg Test which was developed in the US Supreme Court's *Brandenburg v Ohio* decision, which states that incitement by speech – whether it be written or spoken – must be such that it leads to "*imminent lawless action.*"⁶⁶ The Supreme Court of India has adopted the proximity test in several decisions,

⁶³ The Wire (n 23)

⁶⁴ *Ibid*

⁶⁵ *Ibid*

⁶⁶ *Brandenburg v Ohio* 395 US 444 (1969)

including *S Rangarajan v P Jagjivan Ram*⁶⁷, *Arup Bhuyan v State of Assam*⁶⁸, and *Shreya Singhal v Union of India*⁶⁹.

Why I said that the Disha Ravi case is not even the tip of the iceberg can be inferred from the NCRB reports. The constant increasing rate of cases over the years & low conviction rate illustrates that some cases are simply given to harass the person concerned & sometimes to settle the political score. The Supreme Court has reiterated in multiple cases that mere criticism of the government doesn't constitute sedition but that has not stopped any government from lodging cases against political opponents. This is another reason why sedition in its current form has no place in modern democracy & it must go. My 2nd suggestion will be to restrict the scope of the provision by including *intention* as one of the requisite elements to form sedition. The speech of the accused must be scrutinized to see whether his/her comments are mere criticism of the establishment or if it is intended to create unrest in society. In the first case, the accused gets a pass but in the second case, he/she gets booked for sedition. Having said all these, I strongly agree with the Supreme Court ruling in place that mere criticism of the government has no place in the ambit of sedition & constructive criticism is much needed for a democracy to develop & flourish. In a democracy, singing the same songs repeatedly is hardly a display of patriotism. People should be allowed to show their affection for their country in whichever manner they want. One can participate in debates or constructive criticism for carrying out the same action by pointing out the shortcomings in the government's policies. Even while such language may be harsh and unpleasant to others, this does not make the activities seditious. Section 124A should be applied only when there is an attempt to use force with illegal means to disrupt public order or overthrow the government.

Since I've already given 2 suggestions, it must be clear that I am in favour of retaining the Sedition law but not in its current form. There are several reasons why I will not like to completely do away with Sedition. The primary reason is, it is true that the Constitution of India is really strong & it has survived for more than seven decades at the hands of autocratic leaders

⁶⁷ *S Rangarajan v P Jagjivan Ram* 1989 SCC (2) 574

⁶⁸ *Arup Bhuyan v State of Assam* (2011) 3 SCC 377

⁶⁹ *Shreya Singhal v Union of India* AIR 2015 SC 1523

who have tried to demolish it or parts of it for their benefit. But we need to be ready for the unprecedented & worst-case scenario too. If I have to pick up an incident from the past, I would like to mention the *Naxalbari Uprising* & the consequent Maoist activities happening in many places of India. The *Naxalbari Uprising* had a massive influence over Bengali society at that time, students from schools, colleges, and universities joined the movement without having any fundamental knowledge about what they were doing. Their aim was not to dislodge any particular government, their fight was against the whole system of parliamentary democracy. In the long term, the movement failed but for at least a decade it converted Bengal into a lawless society resulting in the formation of three different governments⁷⁰ & proclamation of emergency thrice in a short span of fewer than 5 years & division of the Communist Party of India, not once but twice.⁷¹ In recent times, the attack on the Capitol in the United States after the defeat of erstwhile President Donald Trump showed the world to which extent some people can go.⁷² Nobody can guarantee that a similar situation can never happen in India. My point is very simple, if the speech or representation is restricted to mere criticism of the government then it is completely fine but when it extends to dislodging the entire system then it becomes problematic & therefore, the Sedition law must stay in a very much restricted form.⁷³ My 3rd suggestion will be to check whether the alleged act is done to dislodge the current political structure of India or not. If it passes this test, then it should come under Sedition.

My 4th suggestion will be to construe the degree of disruption of public order properly. If anyone's speech doesn't create any unrest in society, then there is no objective to impose a strict law like Sedition upon him or her. In the *Ram Manohar Lohia* case, the difference between law & order, public order & security of the state was described perfectly. The Court took note of how drastically the three of them differed from one another.⁷⁴ Imagine three circles that are positioned closely one to the other. Law & Order is symbolized by the largest circle, followed

⁷⁰ Adrija Roy Chowdhury, 'Naxalbari: How a peasant uprising triggered a pan-India political movement' (*Indian Express*, 25 May 2018) <<https://indianexpress.com/article/research/51-years-of-naxalbari-how-a-peasant-uprising-triggered-a-pan-india-political-movement-5191046/>> accessed 07 July 2022

⁷¹ *Ibid*

⁷² Britannica, 'United States Capitol attack of 2021' (Britannica, 2021) <<https://www.britannica.com/event/United-States-Capitol-attack-of-2021>> accessed 07 July 2022

⁷³ *Ibid*

⁷⁴ *Superintendent, Central Prison* (n 50)

by public order and security of the state in that order. Thus, one act can hamper law & order but it may or may not disturb public order.⁷⁵

There is no doubt that free speech & criticism is essential in a functioning democracy but we need to be clear on what constitutes criticism & what doesn't. A provision like sedition in a very narrow form can filter these so-called *criticisms* which will ultimately contribute to a better democracy. Otherwise, these *criticisms* will be reduced to a sick, bearded & nearly unsound man hurling insane abuses to politicians on his YouTube channel & indirectly influencing the younger generation to use this slang hastily making the sphere of opposition & dissent a laughing stock. It should also be noted that Sedition laws still exist in the US whose free speech is considered ideal. Given the sensitivity of India's geopolitical situation and the fact that we are surrounded by enemies, it is difficult to argue that the rule of sedition should be fully abolished. Therefore, I suggest rewriting the Section 124A in the following words:

"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, attempts to displace the Constitution of India or attempts to excite disaffection towards, the State 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."

⁷⁵ *Ibid*