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Sedition – Abuse of Process of Law & Threat to Survival of Democracy

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ABSTRACT

The offence of Sedition, as contained in section 124-A of Indian Penal Code, is one of the most abused provisions of law. Despite the fact that Supreme Court laid down its essential ingredients in its Constitution Bench judgment in Kedar Nath case, followed by a number of other judgments, it is still mischievously invoked by overzealous people who cannot tolerate any criticism to the government's point of view or by the government itself. A large percentage of such cases result in acquittal. But the ever increasing instances of use of this provision have a suffocating impact upon right to free speech and expression and democratic future of this country. The country of its origin, United Kingdom, has removed it from the Statute Book. In these circumstances, what should be the way out for us?

I. INTRODUCTION

Historically, the legal provision of sedition is most abused provision of law. Successive Governments and their ideologues have used this provision to silence their critics. The present times have seen maximum number of cases registered against an array of persons. Along with the provision of sedition, there are few more provisions, which are traditionally incorporated in the FIRs.

In the present paper, we will examine:

i) What is law related to sedition?

ii) Sample FIRs filed incorporating the provision of sedition therein.

iii) Data on Sedition cases.

iv) Law Commission of India on Sedition.

v) Conclusions or What is the way out?

II. LAW RELATING TO SEDITION:

Sedition has been defined under Section 124-A of Indian Panel Code (IPC). Before we proceed

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to examine various cases, which have laid down the ingredients for commission of this offence, let's examine the bare provision of the said offence.

124-A. Sedition.—Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

A number of cases have been decided by the Apex Court during the course of time relating to the offence of sedition including other offences as well. We will examine the law as laid down in different cases.

(A) Kedar Nath Singh Versus State of Bihar[2]

This happens to be the most authoritative case decided by Constitution Bench of the Supreme Court. In this case, the constitutionality of Section 124-A was challenged on the ground that it was violative of the fundamental rights of speech and expression as contained in Article 19 of the Constitution of India. The Section penalizes any spoken or written words, which have the effect of bringing or which attempts to bring into hatred or contempt or attempt to excite or attempts to excite disaffection towards the Government established by law. The key words in the present section are "disaffection to the Government establishment by law". The Apex Court, while interpreting the words, "the Government established by law" observed that the very existence of the State will be in jeopardy, if the Government established by law is subverted. As per the Apex Court, the continued existence of the Government established by law was an essential condition of the stability of the State. It was held that the alleged Acts, in order to fall within the meaning of Section 124-A IPC, have to have the effect of subverting

[2] AIR 1962 SC 955

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the Government or bringing that Government into contempt or hatred or creating disaffection against it. However, the important ingredient according to the Apex Court was the tendency to create public disorder or disaffection by actual violence or incitement to violence. So, any written or spoken words, which had an effect of subverting the Government by violent means like revolution, could fall within four corners of the said provision.

While commenting upon the explanations attached to the statutory provision, it was clarified that any act of disapprobation of measures of Government with a view to their improvement or alteration by lawful means will not come within the Section. At the same time, any such strongly worded comments, which expressed disapprobation of action of the Government but at the same time, did not excite any feelings to cause public disorder by acts of violence, would not be penal. It was clarified that any comment upon the acts of the Government so as to ameliorate the condition of the people or to secure the alteration of the measures by lawful means without excitement to public disorder or without use of violence will also not fall within four corners of offence of sedition.

The relevant portion of the Judgment of Constitution Bench is being reproduced below:

"…the section, it must be noted, penalises any spoken or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in Section 124A has been characterised, comes under Chapter VI, relating to offences against the State. Hence, any acts within the meaning of Section 124 A which have the effect of subverting the Government or bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term "revolution," have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section.

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Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feeling which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence"

(B) Offence of Sedition as it existed prior to Kedar Nath Case

It will not be out of place to mention that the interpretation of offence of Sedition by the Constitution Bench of the Apex Court was totally different from the views expressed in pre-independence era by various Courts. Some of the notable cases are:

Empress Versus Jogender Chander Bose[3] - In this case, popularly known as Bangobasi case, the High Court explained the word, 'disaffection' which was interpreted to mean the words calculated to create in mind of persons a disposition not to obey the lawful authority of the Government or to subvert or resist that authority. It was found sufficient to invite action under the said provision if the words were calculated to excite feeling of ill-will against the Government and to hold it into hatred and contempt of the people. The relevant paragraph from the Judgment is being reproduced below:

"Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr. Jackson cannot be sustained. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection in fact, produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."

[3] ILR 19 Cal 35

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(C) Difference with Kedar Nath Case

As seen above, in contrast to the Kedar Nath's Judgment, the requirement of the Section was that it would be sufficient if the words, 'excited the feelings of ill-will against the Government and brought it into hatred and contempt of the people'. The uses of violent means for rebellion or acts of subversion were not required to be there.

The next very famous case was **'Queen – Empress Versus Bal Gangadhar Tilak'**[4]. Here again, the word 'disaffection' was interpreted to mean hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. It was sufficient that if a man excited or attempted to excite feelings of disaffection, he was guilty under the said Section. To the contrast, the offence did not mean exciting and attempting to excite mutiny or rebellion or any sort actual disturbance. If a person charged under the said Section tried to excite the feelings of enmity to the Government that was sufficient to make him guilty under this Section despite the fact that he neither excited nor attempted to excite any rebellion or outbreak or forcible resistance to the Government.

Bal Ganga Dhar Tilak was found guilty by the jury and later he applied under Letters Patent for grant of leave to Appeal to the Privy Council. It refused to grant leave for filing the Appeal. The case was then taken to Her Majesty in the Privy Council. While delivering the Judgment, the Lord Chancellor did not see any reason to dissent from the reasons given by the Court below. In other words, the findings of the Bombay High Court were upheld. Relevant provision from the Judgment is being reproduced below:

"The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are feelings of disaffection'? I agree with Sir Comer Petheram in the Bangobasi case that disaffection means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment: if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. …….. The offence consists in exciting or attempting to

[4] ILR 22 Bom 112

excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt."

(D) Difference between Pre Independence and Post Independence views on Sedition:

As such, it is very important to differentiate between the opinions of the Court in pre-independence era and by the Constitution Bench of the Supreme Court after the independence. The following Table shows the difference of opinion with respect to the ingredients that are required to constitute the offence of sedition.

Sr. No.	**Ingredients of offence in Pre-independence era**	**Ingredients of offence in as per Constitution Bench of Supreme Court in Post-Independence era**
1	Exciting or attempting to excite the feelings of disaffection i.e hatred, hostility, contempt, ill will, enmity or disloyalty to the Government.	Subverting the Government or bringing that Government into contempt or hatred, or creating disaffection against it, by the use of actual violence or incitement to violence. Any written or spoken words, which have implicit in them the idea of subverting Government by violent means, like that in revolution

2	Exciting mutiny, rebellion was not necessary.	Use of violent means is necessary ingredient.
3	Any comments against the government which excited the feelings of disaffection were seditious.	The comments expressing disapprobation of actions of the Government, without exciting the feeling which can cause public disorder by acts of violence will not amount to Sedition.
4	Any strong difference with government for bringing about change could amount to sedition.	Expressing strong difference of opinion against the acts of Government to seek their alteration by lawful means without exciting violence will not be seditious.

(E) Dictum of Law in Kedar Nath case followed in later cases:

The next case decided by the Supreme Court was '**Balwant Singh Versus State of Punjab'**[5]. Here the prosecution case happened to be that after assassination of the Prime Minister, Smt. Indira Gandhi, the accused raised the slogans in front of Neelam Cimena Chandigarh. The slogans were- (i) Khalistan Zindabad, (ii) Raj Karega Khalsa, (iii) Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da. The Court observed that the slogans were raised a couple of times and without any overt act whatsoever. No disturbance of any kind was caused by raising of slogans and people in general were not affected by those slogans and carried on their normal activities. The Court held that the casual raising of slogans cannot be said to aimed at exciting or attempting to excite hatred or disaffection towards the Government as established in law. The Court further held that in addition to raising of the slogans some overt act was also required so as to bring home the charge against the accused. The relevant paragraphs from the Judgment are being reproduced below:

"A plain reading of the above section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual

[5] (1995) 3 SCC 214

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slogans a couple of times without any other act whatsoever, the charge of sedition can be founded. It is not the prosecution case that the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that the slogans in fact created any law and order problem. It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read too much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that in spite of the fact that the appellants raised the slogans a couple of times, the people, in general, were unaffected and carried on with their normal activities. The casual raising of the slogans, 219 once or twice by two individuals alone cannot be said to be aimed at exciting or attempting to excite hatred or disaffection towards the Government as established by law in India. Section 124-A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case."

While holding so, the Court reversed the Judgments of conviction and acquitted the accused of the offence.

In the year 1999 another matter titled, **Balbir Singh Versus State of Uttar Pradesh**[6] came up before the Apex Court . Here the accused were charged under TADA along with Sections 124-A and 155-A of IPC on the allegations that the accused were found to be hearing audio cassettes of Sant Jarnail Singh Bhinderawala. The Court held that hearing the speeches of Sant Jarnail Singh Bhinderawala could not amount offence under Section 124-A and 155-A of IPC. Accordingly, the conviction ordered by the Courts below was set aside and the accused was acquitted from the charges framed against them. It was observed by the Court:

"Similarly, we are also satisfied that no offence can be said to have been committed either under Section 124-A or Section 153-A of IPC. We, therefore, set aside the conviction and sentence passed against the appellants and acquit them of the charges levelled against them."

In **Bilal Ahmed Kaloo v. State of A.P**.[7] decided by the Apex Court in 1997, the appellant, a Kashmiri Youth was charged under the provisions of the Terrorist & Disruptive Activities Act, 1987 along with Sections 124-A, 153-A, 505(2) of IPC along with Arms Act. Recovery of arms and ammunition was affected from him. Though he was acquitted of the offences under TADA by the trial court, however, he was convicted under above provisions of IPC and Arms Act and was sentenced to imprisonment for life. While relying upon the Judgments rendered by the

[6] (1999) 5 SCC 682
[7] (1997) 7 SCC 431

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Constitution Bench of the Supreme Court in Kedar Nath's case, the Court held that the necessary ingredients for the said offence happen to be that it should bring the Government established by law in India into hatred or contempt. The Court found that there was not even a suggestion that the accused did anything against Government of India or any Government of the State. Accordingly, the accused was acquitted of the charges under IPC but was convicted under Arms Act.

Nazir Khan Versus State of Delhi[8] happened to be the next case, wherein the accused happened to be the members of terrorist organization "Harkat-ul-Ansar" and had kidnapped four foreign nationals to stake the claim of release of jailed dreaded militants. The Court differentiated the permissible activities with those constituting offence in the following words:

"It is the fundamental right of every citizen to have his own political theories and ideas and to propagate them and work for their establishment so long as he does not seek to do so by force and violence or contravene any provision of law. Thus where the pledge of a society amounted only to an undertaking to propagate the political faith that capitalism and private ownership are dangerous to the advancement of society and work to bring about the end of capitalism and private ownership and the establishment of a socialist State for which others are already working under the lead of the working classes, it was held that it was open to the members of the society to achieve these objects by all peaceful means, ceaselessly fighting public 486opinion that might be against them and opposing those who desired the continuance of the existing order of the society and the present Government; that it would also be legitimate to presume that they desired a change in the existing Government so that they could carry out their programme and policy; that the mere use of the words "fight" and "war" in their pledge did not necessarily mean that the society planned to achieve its object by force and violence."

While convicting the accused for offence under Section 124-A, the Court observed that all those practices, which were calculated to disturb tranquility of the State and lead persons to subvert the Government and laws of the country by inducing the discontent or insurrection and action and acts which could create public disturbance or lead to a civil war would amount to commission of offence of sedition. The relevant paragraph from the Judgment is being reproduced below:

"Section 124-A deals with "sedition". Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a

[8] (2003) 8 SCC 46

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comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. "Sedition" has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder."

In a case titled, **Common Cause Versus Union of India**[9] the petitioner prayed that before any FIR was lodged or any arrest was made on the charges of sedition, it should be mandatory for authority to produce a reasoned order of Director General of Police certifying that the seditious act had lead to incitement of violence or had tendency to create public disorder. The said prayer was made to prevent abuse of this provision.

Though the Court did not agree to the submissions made by the petitioner, yet it reiterated that the authorities were bound by the principles laid down by Constitution Bench in Kedar Nath case. It said:

"we are of the considered opinion that the authorities while dealing with the offences under Section 124-A of the Penal Code, 1860 shall be guided by the principles laid down by the Constitution Bench in Kedar Nath Singh v. State of Bihar."

III. FIRS REGISTERED INCORPORATING THE PROVISION OF SEDITION THEREIN

In this paper two sample FIRs are examined – One registered against Mr. Vinod Dua, Journalist and second against noted Film maker Shyam Benegal, Actress Aparna Sen, Historian Ramchandra Guha and 46 others.

FIR registered against Mr Vinod Dua, Journalist, in Police Station Kumarsain, District Shimla, HP.

The FIR No. 0053 was registered on 6.5.2020 under sections 124-A, 268, 501, 505 IPC with respect to Episode 255 of Vinod Dua show[10] loaded on You Tube on 30.3.2020. This paper will be examining the FIR with respect to commission of offence of sedition (s. 124-A) only.

[9] (2016) 15 SCC 269
[10] https://www.youtube.com/watch?v=vjjFD_tgvv8

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Before the contents of FIR are adverted to, it would be important to note the brief contents of show as uploaded on You Tube by Mr Dua. He stated:

a. "On 19.3.2020 the Prime Minister announced that there will be Janta Curfew on 22.3.2020. The people should come out at 5 PM and beat "taali and thaali" to encourage Corona warriors. People came out and after curfew ended at 9 PM, they took processions and danced in streets thereby blowing to winds the cautions of social distancing. According to Mr Dua, PM made an event out of this.

b. On 24.3.2020 the Prime Minister announced Lockdown at an abrupt 4 hours notice. There was no preparedness on the part of government. Incompetence is characteristic of this government. This was reflected in three incidents of Notebandi, GST and Lockdown.

c. The Prime Minister has made political use of incidents like Pathankot terror attack, Pulwama attack, Surgical Strike and Balakot strikes for garnering the votes. The government converts every act into an event for claiming votes.

d. The country does not have required Corona testing kits. As on date 7 lakh PPE kits, 6 lakh N95 masks and 1 Crore 3 ply masks are required. There is no information on their availability. Ventilators and sanitisers were being exported out of the country till 24th March.

e. Despite the ICMR caution dated 12.2.2020 and Mr Rahul Gandhi's letters dated 12.2.2020 and 13.3.2020 about spreading of Corona virus, the government slept.

f. There was minute to minute planning for Mr Trump's India visit but there was no planning for Lockdown or preventing Delhi riots.

g. An impression has been given that PM Cares Fund is Government Trust whereas it is not. There is no auditing of this Fund. Why PM National Disaster Relief Fund was not used and was bypassed. This fund can be used anywhere in Bihar, Rajasthan or for RSS.

h. We need clarifications from the government on these issues."

The FIR

The complainant has referred to points no. c & d (above) in the FIR to allege that the said offences have been committed. In his words:

"On 30th March, 2020, Mr. Vinod Dua, in his show namely The Vinod Dua Show on You Tube has made unfounded and bizarre allegations…… At 5 minutes and 9 seconds of the video,

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he has stated that Narendra Modi has used deaths and terror attacks to garner votes. At 5 minutes and 45 seconds of the video he claims that the government does not have enough testing facilities and has made false statements about the availability of the Personal Protective Kits (PPE) and has stated that there is no sufficient information on those. Further, he also went on to state that ventilators and sanitizer exports were stopped only on 24th March 2020…….That the said allegations are false and the claims are bizarre and unfounded. Mr. Vinod Dua has spread false and malicious news by stating that the PM has garnered votes through acts of terrorism. This directly amounts to inciting violence amongst the citizens and will definitely disturb public tranquility. This is an act of instigating violence against the government and the Prime Minister. He also creates panic amongst the public and disrupts public peace by trying to spread false information, such as the government does not have enough testing facilities which is absolutely false. The government has sufficient facilities to curb the pandemic and have been taking all the measures to control the pandemic. By making such false statements Mr. Vinod Dua has spread fear amongst the people, This video will only create a situation of unrest amongst the public……. Mr. Vinod Dua has circulated these rumours with the intent to defeat lockdown, by creating an impression that there is complete failure of institution and it will become hard to survive the lockdown."

Whether the allegations show commission of offence of Sedition in accordance with law laid down by Apex Court

If we test above said FIR on the touchstone of law laid down by Constitution Bench of Supreme Court in Kedar Nath case[11] (supra) and later judgments, we see that necessary ingredient which are required for commission of offence happen to be:

- Subverting the Government or bringing that Government into contempt or hatred, or creating disaffection against it, by the use of actual violence or incitement to violence.
- The comments expressing disapprobation of actions of the Government, without exciting the feeling which can cause public disorder by acts of violence will not amount to Sedition.

Neither there are such allegations that there was an attempt to subvert the government by Mr Dua or actual violence was used or he incited the violence for creating the disaffection towards government. Nor such ingredients are present in the FIR.

[11] AIR 1962 SC 955

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Apparently, registration of FIR and further prosecution, when it may not amount to commission of offence, would be an abuse of process of law.

FIR against noted film maker Shyam Benegal, actress Aparna Sen, historian Rama Chandra Guha and other 46 celebrities

A complaint was filed by a local advocate in Bihar's Muzaffarnagar Court against 49 celebrities, who wrote an open letter to the Prime Minister expressing concern over growing incidents of mob lynching and religious identity based hate crimes. On the said complaint, Magistrate passed an order for registration of FIR on the claims of complainant that they tarnished the image of country and undermined impressive performance of Prime Minister.

It would be important to go through the brief contents of July 23, 2019 letter[12]:

"Lynching of Muslims and Dalits and other minorities should stop immediately. We were shocked to learn from NCRB (National Crime Records Bureau) report that there have been no less than 840 instances of atrocities against Dalits in 2016."

"Further 254 religious identity based hate crimes were reported between January 1, 2009 to October 29, 2018 where atleast 9 persons were killed and 579 were injured. About 90% of these attacks were reported after May 2014 when your government assumed power nationally."

"You have criticized such lynchings in Parliament Mr Prime Minister, but that is not enough! What action was actually taken against the perpetrators? No citizen should have to live in fear in his/her own country."

"Regrettably "Jai Shri Ram" has become a provocative war cry that leads to law and order problems and many lynchings take place in its name. it is shocking that so much violence should be perpetrated in the name of religion. These are not middle ages. The name of Ram is sacred to many in majority community of India. As highest executive of this country, you must put a stop to name of Ram being defiled in this manner."

"There is no democracy without dissent. People should not be branded anti national or urban naxals and incarcerated because of their dissent against the government."

"Criticizing the ruling party does not imply criticizing the nation. No ruling party is synonymous with the country where it is in power. Hence anti government stand cannot be equated with anti national sentiments."

"We hope that our suggestions will be taken in the spirit that they are meant – as Indians

[12] https://www.scribd.com/document/419587342/Letter-by-eminent-personalities#from_embed

genuinely concerned with, and anxious about fate of our nation."

This letter invited the registration of FIR for offence of sedition.

Analysis

It is anybody's guess that from where the Magistrate came to the conclusion that these words were meant to subvert the government by use of violence or even otherwise. The letter was written by celebrities and intellectuals who have excelled in their fields and brought laurels to the nation. The test of law laid down in Kedar Nath[13] case meant nothing to the Magistrate. Even in Balwant Singh v. State of Punjab[14] the Apex Court had held that raising the slogans of "Khalistan Zindabad" a couple of times with no overt acts whatsoever, would not amount to sedition. Clearly, registration of FIR was an attempt to stifle free speech - a Constitutional right. Though after lot of criticism, it is believed that the police submitted a cancellation report in the Court[15].

IV. DATA ON SEDITION CASES

The National Crime Records Bureau maintains the nation wide data about various kinds of criminal cases in India. A table showing this data is shown below:

	2018	**2017**	**2016**
Cases for trial	90	58	34
Trials completed	13	6	3
Trials pending	77	52	31
Convictions	2	1	1
Acquittal	11	5	2
No. of arrests	56	228	48
No. of persons chargesheeted	46	160	26
No. of convictions	2	4	1
No. of acquittals	21	7	1

[13] AIR 1962 SC 955

[14] (1995) 3 SCC 214

[15] SEDITION – THE LAW ITSELF IS A PROBLEM – BY MEHTAB ALAM

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Conviction rate	15.40%	16.70	33.30%
Pendency rate	85.60%	89.70%	91.20%

From 2016 to 2018, number of cases saw nearly three times jump. In 2019, it is reported that more than 3300 farmers were charged with sedition for protesting about land disputes. January 2020 saw more than 3000 persons charged with sedition for protesting against Citizenship Amendment Act[16].

V. LAW COMMISSION OF INDIA ON SEDITION

The Law Commission was asked to consider the offence of Sedition as defined under section 124-A IPC by the Government of India. It submitted a consultation paper[17] calling from suggestions from different sections of society. It would be relevant to quote the observations of Law Commission as follows:

"8.1 In a democracy, singing from the same songbook is not a benchmark of patriotism. People should be at liberty to show their affection towards their country in their own way. For doing the same, one might indulge in constructive criticism or debates, pointing out the loopholes in the policy of the Government. Expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means.

8.2 Every irresponsible exercise of right to free speech and expression cannot be termed seditious. For merely expressing a thought that is not in consonance with the policy of the Government of the day, a person should not be charged under the section. Expression of frustration over the state of affairs, for instance, calling India no country for women, or a country that is racist for its obsession with skin colour as a marker of beauty are critiques that do not threaten' the idea of a nation. Berating the country or a particular aspect of it, cannot and should not be treated as sedition. If the country is not open to positive criticism, there lies little difference between the pre- and post-independence eras. Right to criticise one's own history and the right to offend are rights protected under free speech.

8.3 While it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy. Therefore, every restriction on free speech and expression

[16] https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html
[17] Law Commission of India – Consultation Paper on Sedition – 30th August, 2018

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must be carefully scrutinised to avoid unwarranted restrictions."

In brief the Commission pointed out:

1. United Kingdom abolished the law of sedition ten years ago quoting it as draconian law.
2. Sedition should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means. It is in tune with Constitution Bench Judgment in Kedar Nath case.
3. Any expression that is not in consonance with the policies of government should not be termed as an act of sedition.
4. Dissent and criticism are essential for a robust democracy.

VI. CONCLUSIONS

Data shows multiple increases in registration of cases of sedition. It also shows that very few cases lead to convictions. It is so because in most cases the facts do not even contain the necessary ingredients for commission of offence. However, registration of cases achieves their desired object i.e. stifling the right to speech and expression. The forever dragging cases lead to unbearable harassment of citizens.

Data also shows that even peaceful protests against the policies of government have invited registration of cases for sedition in the past. Many overzealous persons, who cannot bear any kind of criticism against their leaders or party, have been registering FIRs incorporating the offences of sedition and others. There has been gross misuse of law of sedition at all the levels.

Even though, the Supreme Court has outlined the necessary ingredients of offence in its judgments, still FIRs have continuously been filed, which on face of it may not even disclose commission of offence or may lead to acquittal after trial consuming a number of years.

So what is the way out? There can be only two alternatives, if our democracy is to survive. Either to abolish the offence, as has been done by the United Kingdom or the United States of America, where the offence has fallen into disuse. Or, the second alternative is to reword the section incorporating the words "by use of violence for disrupting public order or for overthrowing the government". In Australia the word sedition has been removed from statute book and replaced by "violence urging offence" which is punishable for inciting violence for overwhelming constitutional authority. Whatever is the option, the fact remains that there has to be some kind of affirmative action if our democracy is to survive!

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