SECTION 124A: VESTIGE OF A BYGONE ERA AND THE NEED FOR ITS REPUDIATION

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Abstract:

The paper analyses the provision of law which deals with sedition in India and argues through the lens of a legal realist, that its abrogation has now become long overdue. Since its introduction, the provision has been severely misused to gag those in defiance of the ruling government proving to be highly problematic and controversial. The paper first traces its history and introduction in India highlighting its misuse through contemporary times where it is still a rather effective tool in curbing dissent as it wields a rather hefty life sentence. The paper then analyses its legal evolution through independence and right up to Kedar Nath Singh v State of Bihar in 1962, where although its scope was narrowed, its constitutional validity was upheld. There has been multiple instances of Section 124A being used for trivial issues highlighting a lack of uniformity. Although a mere booking for sedition might not result in conviction, the entangling of a person in the process itself is tedious as it carries a hefty life sentence. In conclusion, the paper will argue the need to implement certain guidelines to prevent the misuse of the provision and to necessitate the need for a larger bench to review its constitutionality.

Introduction:

The history of sedition can be traced back to the late medieval period of current United Kingdom, a period where the principles of the feudal society ruled by the King were unquestionable. The first English legislation, the Statute of Westminster in 1275 established this divine right of the King over the Kingdom. Seditious libel found mention in the Statute as any statement in which hatred or contempt against the monarch, his heirs or government is present.[1] Seditious libel was also very closely linked to blasphemous libel, criticism of religion, as the church and the state were more or

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[1] Simkin, J. (2018, December 13). The history of freedom speech in the UK. Retrieved from https://spartacus-educational.com/spartacus-blogURL116.htm

less interchangeable at that period of time.[2] This is the beginning of the legal suppression of the right to free speech. Fast-forwarding nearly 400 years, this had evolved to the creation of the Sedition Act, 1661 which criminalised the acts of printing, writing, preaching or malicious speaking which included defaming the Monarch, the government or the church.[3] It was replaced by the Treason Act of 1795 which was made permanent in 1817. It was not until 1848 when the Treason Felony Act was passed which removed death as a punishment for such offences.

History of Sedition Law in India:

The law of sedition was introduced in colonial India in the year 1870 through amendment by Sir James Stephan as Section 124A of the Indian Penal Code, 1860. Although the provision was drafted by Thomas Macaulay in 1837 as part of the Draft Penal Code, it was omitted in the final enactment of the IPC.[4] The need for the introduction of Section 124A after 10 years of enacting the IPC was that the there was an increase in Wahabi activities against the British rule. It was to curb such anti-British activities, Section 124A was introduced as a legal weapon for the colonial rule to put off the movement. Section 124A was inspired by Section 3 of the Treason Felony Act, 1848 which was the law in effect in the UK at that time. [5] The section was amended in 1898 to a large extent and the present provision is largely similar as it stood on 1898 barring minor alterations in 1937, 1948 and 1950.[6]

As mentioned earlier, the primary objective of bringing in Section 124A was to supress those who were acting against the interests of the colonial government. Those who incited 'disaffection' towards the government could be booked under it and could lead to a life sentence. The first case was against the editor of *Bangobasi* in 1891 who published an article criticising a particular

[2] Index on Censorship and English PEN. (2009, April). A Briefing on Seditious Libel and Criminal Libel. Pgs. 4-5. Retrieved from https://www.englishpen.org/wp-content/uploads/2015/09/seditious_libel_july09.pdfcontent/uploads/2015/09/seditious_libel_july09.pdf
[3] 'Charles II, 1661: An Act for Safety and Preservation of His Majesties Person and Government against Treasonable and Seditious practices and attempts', in Statutes of the Realm: Volume 5, 1628-80, ed. John Raithby (s.l, 1819), pp. 304-306. British History Online http://www.british-history.ac.uk/statutes-realm/vol5/pp304-306 [accessed 27 May 2020].
[4] An analysis of Modern Offence of Sedition, (2014) 7 NUJS L Rev 121
[5] Donogh, W. R. (1911). A treatise on the law of sedition and cognate offences in British India, penal and preventive: With an excerpt of the acts in force relating to the press, the stage, and public meetings. Retrieved from https://archive.org/details/onlawofsedition00dono
[6] Gaur, Krishna Deo (2009). *Textbook on the Indian Penal Code*. Universal Law Publishing. pp. 220, 226–227. ISBN 8175347031.

legislation. The charges were later dropped on account of an apology.[7] This case clarified the meaning of disaffection and said that it is "the usage of words, spoken or written to create a disposition in the minds of those it is addressed, to not obey the government".[8] The trial and conviction of Bal Gangadhar Tilak in 1897 marked the first instance of the implementation of section 124A, beginning the era of criminalising dissent. The courts were there to employ the whim of the colonial power, Tilak had published an article about the coronation celebration of Shivaji in which patriotic speeches were raised. The entire process was peaceful but after the publication of the article, two British officers had been killed. The court in this case expanded the scope of the section observing that the mere excitement of feelings of disaffection could constitute an offence under the section. Anything from hatred, enmity, dislike, hostility, contempt, and every form of ill will towards the government was considered as 'feelings of disaffection'. It also said the intensity of the excitement act was irrelevant as long as it resulted in such feelings being 'excited'.[9] The section began to serve its purpose, to stifle the expression of dissent towards the colonial government. Tilak was released from prison after a year but was charged again in 1908 for another article published in his newspaper, *Kesari*.[10] This time he was sentenced and served six years in prison. The provision was continually employed throughout India on editors of magazines, regional leaders and even disrupted businesses of those who were inclined towards the nationalist movement.

In the same year, the first sedition case of southern India was slapped against Subramania Siva and V.O. Chidambaram Pillai.[11] Both were active freedom fighters endorsing the swadeshi movement and V.O.C had started a shipping company in 1906, the Swadeshi Steam Navigation Company to compete with the British India Steam Navigation Company (BISNC). In the case, both were charged under section 124A with Siva the primary accused and V.O.C, his mentor, as the second accused. But it is pertinent to note that the judge awarded a life sentence to V.O.C and only 10 years to Siva observing , "It seems to me he was a tool in the hands of the second accused... Subramania Siva also had the grace not to make vile and baseless allegations against the district authorities. For the conduct of the second accused I can see no extenuation. He is evidently disloyal to the core and a man of a type most dangerous to society".[12] Within 3 years of his arrest,

[7] Dev, A. (2018, August 29). A history of the infamous section 124a. Retrieved from https://caravanmagazine.in/vantage/section-124a-sedition-jnu-protests
[8] Queen Empress v Jogendra Chunder Bose ILR (1892) 19 Cal 35
[9] Queen Empress v Bal Gangadhar Tilak and Keshav Mahadev Bal ILR (1898) 22 BOM 112
[10] Emperor v Bal Gangadhar Tilak, 1908 SCC OnLine Bom 48: (1908) 8 Cri LJ 281
[11] Imranullah, M. S. (2014, July 7). Remembering July 7, 1908, the judgement day. Retrieved from https://www.thehindu.com/news/cities/Madurai/remembering-july-7-1908-the-judgement-day/article6185099.ece
[12] In Re: V.O.Chidambaram Pillai, 1908 SCC OnLine Mad 28

his company was liquidated and his ships auctioned which was conveniently acquired by BISNC, restoring their monopoly over the shipping industry.[13] Although the sentence was reduced on further appeals, he had lost all his wealth and returned to a life of poverty.

In 1922, Mahatma Gandhi was charged for sedition for which the entire trial lasted only a single day. The nature and incidents of the trial proved to be pivotal for the non-cooperation movement. "Affection cannot be manufactured or regulated by law,"[14] Gandhi said while on trial. "If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence".[15] He pointed out that what is a crime as per the law seems to be the highest duty of an Indian citizen for him and that he will gladly accept the highest sentence. Citing the Tilak trial, he was sentenced to six years.

Legal Evolution:

The independence of the judiciary in colonial India might have been highly questionable but there has been some resistance to the outright oppressive law. In 1942, the then Chief Justice of the Federal Court, Sir Maurice Gwyer was against the idea of disaffection alone amounting to conviction under Section 124A and held that there must be an incitement to disorder or must satisfy reasonable men that it was their intention or tendency[16] thereby narrowing its scope. But this was rejected by the Privy Council in *Sadhashiv Narayan Bhalerao*[17] where the judicial committee reiterated the interpretation in Tilak's case.

Post-independence, Section 124A was held to be unconstitutional successively in *Romesh Thappar*[18] and *Tara Singh*. The reasoning of the High Court in the latter was that a restriction on fundamental rights will not stand if the language restricting such right is broad enough to cover situations falling both within and outside the limits of constitutionally permissible legislative action.[19] This enabled the new Congress government to amend the Constitution in the First Constitutional Amendment

[13] Sherrif, A. (2018, August 2). This fiery freedom fighter from Tamil Nadu challenged the British Raj on the seas! Retrieved from https://www.thebetterindia.com/154337/freedom-fighter-tamil-nadu-chidambaram-pillai
[14] Iftikhar, R. (2016, June 8). The Great trial oh Mahatma Gandhi - 1922. Retrieved from https://qrius.com/the-great-trial-of-mahatma-gandhi-192
[15] Livemint. (2019, January 25). Republic of dissent: Gandhi's sedition trial. Retrieved from https://www.livemint.com/politics/news/republic-of-dissent-gandhi-s-sedition-trial-1548352744498.html
[16] Niharendu Dutt Majumdar v King Emperor, AIR 1942 FC 22
[17] King Emperor v Sadashiv Narayan Bhalerao. [1947] L.R 74 I.A 89
[18] Romesh Thappar v State of Madras AIR 1950 SC 124
[19] Tara Singh v State, AIR 1951 SC 441

and added additional grounds including 'public order' for restriction under Article 19(2) and Article 19(1)(a)[20]. The word 'reasonable' was also added before 'restrictions'.[21] Following the amendment, the High Court of Allahabad struck down the constitutionality of section 124A and held it to be ultra vires of Article 19(1)(a). The main reasoning used by the court was that the restriction imposed by the section was not in the interests of public order and therefore it is not reasonable. [22] The Supreme court overturned this judgement *in Kedar Nath Singh*[23] in 1962 where a five-judge bench overruled the decision of the Allahabad High Court and held it to be *intra vires* of the Constitution. The Supreme Court held that without the saving clause of Article 19(2), Section 124A is clearly violative of Art.19(1)(a). The reasonable restriction of public order can be invoked only when there is a threat of violence to the government established by law and anything otherwise would put it outside the purview of the public order restriction. Therefore, the court narrowed the scope of s.124A and held that the offence of sedition is made only when there is incitement of public disorder. This is the current scope of the section but the government has highly misused it in implementation.

The Law Commission in its 42nd report, which dealt with the IPC, proposed changes to the section which would have recommended *mens rea* to be expressly related to the Article 19(2) and the punishment must have a maximum of seven years[24]. Currently, imprisonment could only lead to a life sentence or a three-year sentence and nothing in between. These recommendations were overlooked. In *Balwant Singh*[25], the court acquitted the appellants who were convicted under s.124A for expressly demanding secession of Punjab from the Union of India in a crowded market place on the day after the assassination of then PM Indira Gandhi. The court held that mere raising of slogans without an intention to incite public disorder will not be a threat to the State. The courts have further clarified this in *Indira Das*[26] that speech which incites only imminent public disorder or an imminent threat of violence to the state can warrant conviction. In 2015, former Union Minister late Mr. Arun Jaitley was surprisingly charged for sedition for his article criticising the Supreme Court decision on the NJAC issue. The Allahabad High Court quashed the charge reiterating *Kedar Nath Singh* and that any words or speech without incitement to public disorder or

[20] The Constitution (First Amendment) Act, 1951
[21] Id
[22] Ram Nandan v State
[23] Kedar Nath Singh v State of Bihar 1962 Supp. (2) S.C.R. 769
[24] Law Commission of India. (1971). *Indian Penal Code* (42). Retrieved from Ministry of Law, Government of India website: http://lawcommissionofindia.nic.in/1-50/Report42.pdf
[25] Balwant Singh and Other v State of Punjab, (1995) 3 SCC 214
[26] Indira Das v State of Assam (2011) 3 SCC 380

violence disrupting security of the state will fall outside the scope of the section.[27] The High Court heavily criticised the magistrate for failing to apply his mind and "to have closed his eyes to the well-settled view that healthy criticism or even intellectual disagreement with a particular view of a judge contained in a judgment of the court is not a crime even if the view was unacceptable to some."[28]

In 2016 in *Common Cause v Union of India*, the petitioners prayed for issuing certain guidelines as relief providing for pre-arrest requirements and compliances before implementation of section 124A. Unfortunately, the Supreme Court reiterated that the authorities must follow the guiding principles laid down in Kedar Nath Singh and ignored the guidelines proposed by the petitioner. The guidelines proposed by the petitioner was that,

A) Mandatory requirement of procuring a reasoned order from the Director General of Police or commissioner of Police certifying that the 'seditious act' led to incitement of any violence or public disorder before the filing of FIR or arrest is made on charges under section 124A.
B) The Magistrate taking cognizance of a private complaint of a sedition charge must certify that the 'seditious act' led to incitement of violence or public disorder.
C) Pending cases of sedition must be reviewed and without orders of concerned DGP or Commissioner of Police certifying that the 'seditious act' led to incitement of violence or public disorder.
D) Failing to meet the criteria mentioned in A), B) and C) all prosecutions and investigations must be dropped as it does not amount to an offence under section 124A without the incitement to violence or causing public disorder.[29]

It was merely seeking a direction to ensure that the concerned authorities must implement the provision in the manner intended and defined by the court in *Kedar Nath*, although the crux of the prayer is drawn from the principle laid down in *Kedar Nath*, by issuing guidelines, it would have mitigated the scope for procedural abuse. The Supreme Court passed a judgement directing the authorities to follow the principles laid down in *Kedar Nath* and said that there is no necessity to

[27] Arun Jaitley v State of U.P, 2015 SCC OnLine AII 9413: (2016) 92 ACC 352
[28] Chhibber, M. (2019, January 17). When a Facebook post almost got Arun Jaitley tried for sedition. Retrieved from https://theprint.in/politics/when-a-facebook-post-almost-got-arun-jaitley-tried-for-sedition/179224/
[29] Common Cause and Another v Union of India, (2016) 15 SCC 269

deal with any other issue contemplated by the petitioner's prayer such as issuing the above directions.

Blatant Misuse: Section 124A Since Kedarnath Singh

The lack of necessity is the ignorance of an existing problem. A similar ignorance was shown towards other procedural lapses leading to abuse in situations of registering an FIR and the power of police to arrest. The problem of not registering FIRs or abuse of the arrest powers has existed since the creation of the respective statues and developed into systematic problems. These issues were addressed only in 2014 after a major incident like the Nirbhaya Gang rape case which resulted in a large public outcry. The decisions of the Supreme Court in *Lalita Kumari*[30] and *Arnesh Kumar*[31] were gladly welcomed and are perceived as necessary protection of fundamental rights. A similar issue exists with the implementation of Section 124A, the fundamental right to freedom of speech and expression guaranteed by Article 19(1)(a) is severely violated due to the blatant misuse of the provision and the courts are failing to take effective action.

Section 124A has been used as a tool to against free speech on multiple instances. Author Arundhati Roy, anti-nuclear activist S.P. Udaykumar, student leader turned politician Kanhaiya Kumar, folk singer S. Kovan and political cartoonist Aseem Trivedi[32] complete only the tip of an iceberg of instances where it has been imposed on those who are critical of the government. It has become weapon in the hands of the State to muzzle dissent and it is being used for the most whimsical of reasons. Bengaluru journalism student Amulya Leona Noronha was charged with sedition for raising the slogan 'Pakistan Zindabad' at a protest held against the Citizenship (Amendment) Act. Retd. Supreme Court Judge B. Sudharshan Reddy has said that no provision of criminal law would apply for any citizen for raising such a slogan. He further stated that 'Liberal constitutional democracy is in peril and the judiciary needs to step in'.[33] The consultation paper by the Law Commission of India also recommends that Section 124A must be re-phrased or repealed. It said that it must clearly state that Section 124A must be invoked only to criminalize acts

[30] Lalita Kumari v Govt. of U.P, (2014) 2 SCC 1
[31] Arnesh Kumar v State of Bihar, (2014) 8 SCC 273
[32] Rajagopal, K. (2019, January 15). Sedition law a tool against free speech? Retrieved from https://www.thehindu.com/news/cities/Delhi/sedition-law-a-tool-against-free-speech/article25996244.ece
[33] Menon, A. (2020, February 26). How the sedition law has become a weapon to muzzle dissent. Retrieved from https://www.indiatoday.in/india-today-insight/story/how-the-sedition-law-has-become-a-weapon-to-muzzle-dissent-1650030-2020-02-26

committed with the intention to disrupt public order or to overthrow the Government with violence and illegal means. It also pointed out that expression of frustration over the State for its conduct cannot amount to sedition. [34] But yet, countless activists have been booked for sedition for expressing such frustration with the government. Director Mani Ratnam, historian Ramachandra Guha and 49 others penned an open letter to Prime Minister Narendra Modi to take cognizance of the growing trend of mob lynching with the expectation that such unlawful incidents are curbed. But to their shock, a case under Section 124A was slapped against all of them. The charge against them was that the letter tarnished the image of the nation and was anti-national to do so.[35] Similar instances where a man chanted pro-Pakistan slogans and a school principal and a parent was arrested for a school play which demonstrated rejection of the Citizenship (Amendment) Act, both separate instances in Karnataka, were charged with sedition.[36] Even a school play to a private audience without any incitement to violence or public disorder draws the ire of the provision.

The National Crime Records Bureau began to record sedition cases only from 2014. For a span of five years (2014-2018), 233 cases were registered under Section 124A leading to the arrest of 463 people but only 4 were convicted.[37] Since the CAA was passed in December 2019, 194 cases of sedition have been filed (as of March, 2020)[38] nearing the tally of cases filed in five years, in just 3 months. The high number of filing and the low number of convictions clearly shows the misuse of the provision to muzzle dissent. There is also a growth in the number of cases filed annually showing a trend of the increasing misuse of the provision.[39] Supreme Court Senior Advocate Sanjay Hegde has said that the impetus lies on the judiciary to re-look into its earlier judgments as the current stance of the court does not seem to be working.[40] Even during lockdown due to the Covid-19 pandemic, Tamil politician Seeman was charged with sedition in May for his speech

[34] Law Commission of India. (2018, August 30). Consultation Paper on Sedition. Retrieved from http://www.lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf
[35] Ramchandra Guha, Mani Ratnam, Aparna Sen among 49 booked for sedition for letter to Narendra Modi against mob lynching. (2019, October 4). Retrieved from https://www.thehindu.com/news/national/ramchandra-guha-mani-ratnam-aparna-sen-and-others-who-wrote-open-letter-to-pm-modi-booked/article29593009.ece
[36] Sriram, J. (2020, March 6). Should the sedition law be scrapped? Retrieved from https://www.thehindu.com/opinion/op-ed/should-the-sedition-law-be-scrapped/article30993146.ece
[37] Crime in India table contents | National crime records bureau. Retrieved from https://ncrb.gov.in/crime-in-india-table-addtional-table-and-chapter-contents?field_date_value%5Bvalue%5D%5Byear%5D=2014&field_select_table_title_of_crim_value=23&items_per_page=50
[38] Sriram, J. (2020, March 6). Should the sedition law be scrapped? Retrieved from https://www.thehindu.com/opinion/op-ed/should-the-sedition-law-be-scrapped/article30993146.ece
[39] Ibid 37
[40] Ibid 38

against the implementation of CAA in February[41], there was no incitement to violence nor had it caused any public disorder in between the speech and the filing of the case. The 2012[42] and 2014[43] IPC (Amendment) Bills proposed the complete overhaul of the section, whereas the 2015 IPC(Amendment) Bill[44] brought forth by Congress MP Dr. Shashi Tharoor suggested an addendum which would have made incitement to violence an express ingredient, imbibing the principle held in Kedar Nath. These bills never moved forward but are again necessary to protect the fundamental right of free speech.

Comparative Analysis:

Sedition has been abolished in many democratic societies such as South Korea, Indonesia, New Zealand, Australia and the United Kingdom. The offence of sedition was done away with in England in 2009 for being arcane in a modern society. The Parliamentary Under Secretary of State at the Ministry of Justice, Claire Ward, stated,

"Sedition and seditious and defamatory libel are arcane offences – from a bygone era when freedom of expression wasn't seen as the right it is today… The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom… Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech."[45]

The abolishing of sedition in the UK shows that sedition was introduced and used as a tool to curb dissent against the State. It was introduced in the UK to control the lower classes as it was

[41] சீமான் மீது தேசத்துரோக வழக்குப்பதிவு. (2020, May 9). Retrieved from https://www.hindutamil.in/news/tamilnadu/553632-police-filed-sedition-case-against-seeman-1.html
[42] Indian Penal Code (Amendment) Bill, 2012 (Pending)
[43] Indian Penal Code (Amendment) Bill, 2014 (Pending)
[44] Indian Penal Code (Amendment) Bill, 2015 (Pending)
[45] Feikart-Ahalt, C. (2012, October 2). Sedition in England: The Abolition of a Law From a Bygone Era [In Custodia Legis]. Retrieved from https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone era/#:~:text=The%20laws%20on%20sedition%20were,the%20Human%20Rights%20Act%201998.&text=The%20laws%20prohibited%20any%20acts,were%20made%20with%20seditious%20intent

the nobility and upper classes who were involved in governmental affairs. Australia has traded sedition for the words 'urging violence' against the State.[46]

But other modern democratic societies still have the offence of sedition as part of their criminal code. Countries like the United States of America, Canada, Germany and Malaysia have provisions for sedition but vary widely in their implementation. In the USA, there must be proof that there was in fact conspiracy to use force to be convicted of seditious conspiracy.[47] Unless there is active engagement in planning to engage in violence, seditious conspiracy will not apply.[48] The standard for conviction is stricter than that of Kedar Nath where incitement to violence is sufficient to warrant conviction. In Canada, seditious libel remains an offence but has not been used since 1951, where in *Boucher v King*, the Supreme Court of Canada has held that it is not sedition unless there is also an intention to incite people to violence against the administration of justice.[49] It is almost identical to the principle laid down in Kedar Nath but the implementation has been highly contrasting. While it is hardly used in Canada, there is an upward trend in its usage in India.

A similar abusive usage of sedition has been observed in Malaysia where the government has used its Sedition Act, 1948 to further its own interests. Although the incumbent government has stated that it would repeal the act and imposed a moratorium until such event, it has later backtracked on this and lifted the moratorium. The sedition act, 1948 in Malaysia has been a part of many such abusive laws violating fundamental rights of its citizens.[50] On the international stage, India is in a similar category where there are many such abusive laws like Section 124A, Unlawful Activities (Prevention) Act, 1967 and the Armed Forces Special Powers Act (AFSPA), 1958 used to further government interest and mitigate political rivalry.

Conclusion:

[46] Australian Law Reform Commission. (2006). *Fighting words: A Review of Sedition Laws in Australia* (104). Retrieved from Commonwealth of Australia website: Fighting words: A review of sedition laws in Australia [2006] ALRC 104. Retrieved from https://www.alrc.gov.au/wp-content/uploads/2019/08/ALRC104.pdf
[47] Sec. 2384 - Seditious Conspiracy, CHAPTER 115 - TREASON, SEDITION, AND SUBVERSIVE ACTIVITIES, PART I – CRIMES, Title 18 - CRIMES AND CRIMINAL PROCEDURE, United States Code.
[48] Sedition. (2019, February 20). Retrieved from https://criminal.findlaw.com/criminal-charges/sedition.html#:~:text=%C2%A7%202384.,jurisdiction%20of%20the%20United%20States%3A&text=To%20oppose%20by%20force%20the,of%20the%20United%20States%3B%20or
[49] Aime Boucher v His Majesty the King, [1951] S.C.R 265
[50] Human Rights Watch. (2020, June 9). Malaysia: End use of Sedition Act. Retrieved from https://www.hrw.org/news/2019/07/17/malaysia-end-use-sedition-act

The effect of such blatant misuse of a criminal provision without any uniformity in its implementation highlights the lack of certainty. The principle set in *Kedar Nath* is very clear, that only those who incite violence in expressing their disaffection to the government can be liable under Section 124A, it is because, any expression without the incitement to violence is a fundamental right guaranteed under Article 19(1)(a) and by inciting violence, the act is against the foundational values of the Constitution itself. By criminalising those who incite such violence, the values of a democracy and the Constitution are protected. That is the purpose of the provision, to protect the society from elements who aim to disturb the ethos of a healthy democracy. But it has been implemented in a manner contrary to this purpose and it has become a tool in the hands of such elements from whom it was meant to protect. Such abuse of the law must not be allowed and the judiciary has a role to play to check this misuse. But sadly, in Common Cause v UOI, the bench felt that it was not necessary to issue orders with respect to pre-arrest requirements for section124A. This is a failure of the judiciary and will lead to a loss of trust in the law in the society.

At this juncture, it is an impending need that such a colonial era law must be repealed to protect the foundational values of the Constitution. The fact that a law introduced to supress Indian freedom fighters has not been repealed for 67 years since we've attained freedom shows that the government chose to retain it to further its interests as and when required. The proof lies in the blatant misuse and usage against political rivals, critiques and dissenters. The Supreme Court is duty bound to act as the guardian of the people when the State fails to act fairly and it must issue guidelines as prayed by the petitioner in *Common Cause* or similar to it with the aim of protecting the fundamental freedoms under Article 19(1)(a) for the people until appropriate legislation is passed to repeal the provision.