

**TERMINATING PREDICAMENTS BETWEEN  
SEDITION AND FREE SPEECH:  
THE NEED TO DRAW A LINE BETWEEN - A  
FREEDOM AND AN OFFENCE**

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Of late, a debate has stirred up upon the restriction on the freedom of speech due to the contentious law of sedition. Sedition is a heritage of our colonial past. The sole motive behind the incorporation of this provision was to subjugate the masses. Now, the time has changed; India is a democracy now, and the people enjoy a right to speak their minds and criticize the State. Does that mean they could speak anything? Section 124A of the Indian Penal Code, 1860, provides with a restriction to their speech. Are the restrictions enumerated in this provision, reasonable? Can a law curtail the freedom of expression? Amidst a lot of divergent opinions, the provision is presently relied to be reasonable, although it is vague and applied inconsistently by various courts. The centre of debate is the point where the freedom of speech ends and the offence of sedition begin. Indian courts have tried to demarcate the line but the same has become unreliable as the government has used sedition as a weapon to muffle the voices raised against them. More so, the police have failed to understand the ambiguous and lengthy guidelines drafted by the Hon'ble courts. In this situation the citizens of this nation are left in a state of destitution where they are uncertain if uttering a few words could land them up in a prison. Many rely on the assertion that repealing the law of sedition would solve the delinquency. On the other hand, one cannot ignore the principle of *salus reipublicae suprema lex*, which means that security of state cannot be compromised at any cause. This paper explores the points of distinction between the freedom of expression and a seditious speech. It further analyses

the shortcomings in the present law and the obstructions in its execution and suggests that the law of sedition be retained in the statute book along with certain specified amendments.

*“To be anti-Indian is not a criminal offence, and it is definitely not sedition”*

-Fali Sam Nariman

Words have power, they can influence masses. Words can bind people together as one and they also possess the ability to spread hostility and antagonism. They can hurt and can also incite someone to hurt another. An adverse statement which expresses the speaker's hatred or bigotry against any individual, a community, the government or an organization is a hate speech. In India, hate speech could be anti-national (sedition); communal, racial, lingual, ethnical and descent related; outraging religious feelings, etc.<sup>89</sup> Further, it could be humiliating, threatening and aimed to incite violence against a particular religion, race, gender, ethnicity, nationality, sexual orientation, disability, political views, social class and so on.<sup>90</sup>

Lately, a lot of hue and cry has been raised in regard to hate speeches against the State and its Functionaries, which is also known as Sedition. As a consequence of the same, two sets of factions have emerged, on one hand, are those who advocate the claim for a fundamental right of speech and expression, with minimum levels of constraints and the other, are the ones who support the restrictions for the interest of the general public, as it is paramount for peaceful society.

The issue pertaining to hate speech is posing a complex and mischievous problem for the exercise of

<sup>89</sup>See Rajeev Dhavan, *India has many forms of 'hate speech', but no grounds for a tighter law*(2013), DAILYMAIL, available at, <http://www.dailymail.co.uk/indiahome/indianews/article-2334785/India-forms-hate-speech-grounds-tighter-law.html> (last visited Jun 20, 2016).

<sup>90</sup>See TIMES OF INDIA, *In India there is no law that defines hate speech*, 2015, available at, <http://timesofindia.com/india/Learning-with-the-times-In-india-there-is-no-law-that-defines-hate-speech/articleshow/49225313.cms> (last visited Jun 20, 2016).

freedom of speech and expression which is guaranteed by the Indian Constitution.<sup>91</sup> It is a freedom to the extent of, neither inciting nor encouraging violence or violation of the law.<sup>92</sup>

### THE FUNDAMENTAL RIGHT TO SPEAK

Freedom of speech and expression is an integral part of a democracy<sup>93</sup> and lays down the foundation of all democratic organizations. Every citizen must be allowed to participate in the democratic process and, to enable him to rationally exercise his right of expression, unrestricted discussion of public matters is undeniably crucial.<sup>94</sup>

A subversive speech stands on the boundary between the freedom of speech and expression and the reasonable restrictions. Here, Voltaire's<sup>95</sup> observation, which clearly supports the idea of free speech for both, the person propagating the hate speech and, the persons targeted by the same, becomes significant. In very simple words he keeps: "While I disagree with what you have to say, I will defend to the death your right to say it." The rationale behind this right is that unrestricted speech is a natural right of every person, and the same should not be tarnished if somebody finds it objectionable.

Freedom of speech and expression has an aspect of duty as well. A man hampered with an idea, not only has a right to express it but he also owes a duty to express it. He owes it to his conscience and common good of the public for it is a necessary condition of public discussion. In this way, the public benefits in extracting the truth from falsehood.

<sup>91</sup>Michel Rosenfeld, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis*, *Cardozo Law Review*, 1523, (2003).

<sup>92</sup>See Ushy Mohan Das, *Freedom of speech + misinformation, that is where we need to draw the line*, *INDIAN EXPRESS* (2016), available at <http://indianexpress.com/article/blogs/jnu-row-kanhaiya-kumar-abvp-freedom-of-speech-misinformation-that-is-where-we-need-to-draw-the-line/> (last visited Jun 25, 2016).

<sup>93</sup>See *Romesh Thapar v. State of Madras*, (1950) AIR SC 124.

<sup>94</sup>See *Maneka Gandhi v. Union of India*, (1975) 2 SCR 621.

<sup>95</sup>PAUL F BOLLER & JOHN H GEORGE, *THEY NEVER SAID IT* 124-126 (Pg. 124-126, New York, Oxford Press) (1989).

### Constitutional Restrictions on the Fundamental Right to Speak

Freedom of speech and expression is not an absolute or unconditional fundamental right. It is subjected to reasonable restrictions which are enumerated in Article 19(2) of the Indian Constitution. These restrictions are in respect of maintenance of sovereignty and integrity of the state, along with public order, morality and decency.

An unrestricted right will serve as sword in the hands of those who wish disorder and anarchy, propagandize protests or views. Free speech can only be taken away if community interest and public order is endangered. This anticipated danger shall not be remote or far-fetched; instead it must have a proximate and direct nexus to the expression.<sup>96</sup>

There cannot be a universally standardized or general test for the determination of reasonability<sup>97</sup>. In *The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*,<sup>98</sup>, the apex court made an effort to describe the reasonability of a restriction, by stating that in order to be reasonable, a restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object.

### FREEDOM OF SPEECH & THE DILEMMA OF SEDITION

The framers of the Constitution came across, the dilemma as to whether the word 'sedition' should be used in Article 19(2) or not and if it was used then in what sense it was to be used. Many believed that the offence of sedition was essentially an offence against public disorder.<sup>99</sup> Law like sedition had been used to

<sup>96</sup>See *S. Rangarajan Etc. v. P. Jagjivan Ram*, (1989) 2 SCC 574.

<sup>97</sup>See *Debi Soren and Ors. v. The State*, (1954) CriLJ758.

<sup>98</sup>See *The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*, (1960) 2 SCR 821.

<sup>99</sup>See *Brij Bhushan v. State of Delhi*, (1950) SCR 605.

subdue Indians. The framers made a prudent decision to use more generic terms which covered sedition and every other offence against the state.

The word 'sedition' is derived from the Latin word 'seditio' which means, 'a going aside'. It is an act or expression which brings the sovereign authority into contempt or hatred or which disturbs the tranquillity of the state. It is essentially the defamation of State.<sup>100</sup> It is a more serious offence than an ordinary breach of peace<sup>101</sup>. Section 124A, which embodies the offence of sedition appears in Chapter VI of the Indian Penal Code under the heading "Of offences against the state". This section embodies only one aspect of sedition i.e., seditious libel.

The Law regarding sedition in India is colonial in origin and nature, which had been used to subdue Indians. Section 124A was adopted into the statute book on August 2, 1870 and a new element of suppression was added to the Anglo-Saxon jurisprudence. This stringent law was incorporated only with the purpose to suppress the voice of Indian freedom fighters and strengthen the command of the British upon Indians. Mahatma Gandhi, during his trial in the case of sedition, declared Section 124A to be the prince among the political sections of the Indian Penal Code deliberately positioned to suppress liberty of the Indian masses.

### ***A Legacy of Unsteady Status of Sedition***

The question regarding the constitutionality of Section 124A troubled the judges of the highest court for years. There are divergent views within the judiciary in regard to this provision. Many High Courts had declared this provision unconstitutional.<sup>102</sup> It was

<sup>100</sup>See P. Hemalathav. *The Govt. of Andhra Pradesh*, (1976) AIR AP 375.

<sup>101</sup>H.P GUPTA & P.KSARKAR, *LAW RELATING TO PRESS AND SEDITION IN INDIA*, (pg.141, 1st ed., 2002, Orient Publishing Company, Allahabad).

<sup>102</sup>The Hon'ble High Courts of Allahabad and Punjab & Haryana had declared Section 124A to be unconstitutional.

finally answered in *Kedar Nath Singh v. State of Bihar*<sup>103</sup> that a constitution bench of the Hon'ble Supreme Court ruled this provision to be constitutional and detailed a comprehensive study on this provision.

### **DISTINCTION BETWEEN FREE SPEECH & SUBVERSIVE SPEECH**

A speech which brings into hatred or excites disaffection against the sovereign government with an intention to do so is sedition. While, on the other hand, the commission of an act with an intention to show that the government is deluded or erroneous in its actions or to point out mistakes or flaws in the government or in law is not sedition. In other words, the speech must have a direct and consequential effect on the public order to be termed it to be seditious. The authorities need to apply this hate speech provision objectively.<sup>104</sup> Sedition cannot be used in case of speeches expressing disagreement or opinions against the government unless it excites terror and violent attacks. It means that every citizen has the right to express his/her opinions (even if it is 'anti-national') without any fear until and unless it excites violence.

The subjects have a right to criticize the measures of government. A citizen has every right to say or write whatever he likes about the government, by way of criticism so long as he does not incite people to resort to violence.<sup>105</sup> It is a defence of sedition, as long as the speaker bounds himself in certain limits. Indian courts have tried to outline these limits within which a speaker must bind his tongue. But sometimes the situation is not as plain and manageable. Can a definite line of distinction be made that can demarcate between a sincere criticism and a seditious hate speech? If at all a line is demarcated, who will examine the

<sup>103</sup>See *Kedar Nath Singh v. State of Bihar*, (1962) AIR SC 955.

<sup>104</sup>See *R v. Sullivan*, (1868) 11 Cox. 44 (lr.); *R v Burdett*, (1820) 1 St. Tr. (N.S.)1.

<sup>105</sup>See *ArunJately v. State of U.P.*, (2016) 1 ACR 890

government, who use sedition as a weapon to muffle the voices raised against them? The flexibility of this law becomes an advantage for the governments. More so, how can police be made to understand the ambiguous and lengthy guidelines drafted by the Hon'ble courts? Arrests of innocent citizens on the charge of sedition have grown considerably during the past decade. Intolerance has become quite a concern in India in recent times. But here it is the government's intolerance towards critical speeches that has tarnished the basic freedom of expression.

### MISUSE OF LAW BY THE LAWMAKERS

Lately, many governments both at the Centre and in states charge sedition as soon as they hear a speech critical of the government. The guidelines issued by the Maharashtra government to the police in the aftermath of the cartoonist Aseem Trivedi case are of a similar nature. It is a setback to the ideals of democracy.<sup>106</sup> The guidelines state that sedition charges would apply to whoever is critical of the central and state governments, elected representatives belonging to the government, Zila Parishad chairman, Mayor of a city, and other elected representatives of the government.<sup>107</sup> This circular brings the freedom of expression to a standstill. It has departed from the fundamental right of the freedom of speech and expression. Governments have become so self-protective of their status that they are making a colourable exercise of power which further provides with fuel to hate speeches. Rajinder Sachar,<sup>108</sup> remarked over these actions of the government that we are going through an undeclared emergency. The

restriction on speech is nothing less than a state of emergency.

The Supreme Court ruled in the *Kedar Nath case*<sup>109</sup> that comments however strongly worded, expressing disapprobation of action of the government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. The Maharashtra government circular is in utter disregard and contempt of the Supreme Court ruling. The government cannot expect its citizens to regulate their speech, if it adopts such harsh measures on the subjects.

### VAGUE AND UNCLEAR TACTICS OF POLICE AND THE LOWER JUDICIARY

In *Bilal Ahmed Kaloo v. State of Andhra Pradesh*,<sup>110</sup> the Hon'ble Supreme Court made an observation regarding the "casual attitude" of the lower judiciary and the police, while convicting an accused of a serious offence as that of Sedition, without any material evidence:

*"Before parting with this judgment, we wish to observe that the manner in which convictions have been recorded for offences under Section 153A, 124A and 505(2), has exhibited a very casual approach of the trial court. Let alone the absence of any evidence which may attract the provisions of the sections, as already observed, even the charges framed against the appellant for these offences did not contain the essential ingredients of the offences under the three sections. Mechanical order convicting a citizen for offences of such serious nature like sedition and to promote enmity and hatred etc. does harm to the cause. It is expected that graver the offence, greater should be the care taken so that the liberty of a citizen is not lightly interfered with."*

<sup>106</sup>See *Sanskar Marathe v. State of Maharashtra & others*, (2015) Bom SCC 587.

<sup>107</sup>See Geeta Sidhu, *Thin line between free and seditious speech*, THE HOOT available at, <http://www.thehoot.org/media-freedom/thin-line-between-free-and-seditious-speech-8897> (last visited Jul 14, 2016).

<sup>108</sup>See Debrashi Dasgupta, *A stick called 124A*, OUTLOOK, 2016, available at, <http://www.outlookindia.com/magazine/story/a-stick-called-124a/281402.html>.

<sup>109</sup>Supra 15, ¶24

<sup>110</sup>See *Bilal Ahmed Kaloo v. State Of Andhra Pradesh*, (1997) AIR SC 3483.

Looking back at the incidents which happened in the past decade where majority of people were booked under the charge of sedition, and were released due to failure of the police to submit the charge sheet or where majority of them were convicted in the Lower Courts but later they were not found guilty by the High Court or Supreme Court, this shows that how much litigation is involved but the important point to infer is that there has been a gross misuse of section 124A. While conviction is rare, the long and tortuous legal process is seen as a deterrent to others.

Quite recently, in the Kanahiya Kumar incident, the debate over the freedom of speech and the colonial law of Sedition caught up fire in the mind of the citizens of India. A general opinion is that the recent governments have become intolerant towards disagreements. Bhindranwale, an extremist who was considered a terrorist by many was a controversial figure, followers of Bhindranwale have upsurged, they declare him to be a martyr and claim Khalistan, a separate nation for Sikhs, but this is not considered seditious by anyone. If we consider the JNU incident on the same parameters, JNU students did nothing wrong if they organized a meeting to honour Afzal Guru. The ambiguity in the implementation of a law like sedition creates uncertainty in the minds of the public.

In *Balwant Singh case*<sup>111</sup>, Hon'ble Apex Court, generously analyzed the text of Section 124A, and acquitted two persons accused of the charges of sedition. These men raised the slogans of "Khalistan zindabad", "Raj karega Khalsa" and "Hinduan nun Punjab chon kadh ke chhadange, hun mauka aya hai raj kayam karan da", a day after the assassination of Indira Gandhi. The Hon'ble Court observed that raising the slogans a few times, which did not evoke any response and did not create any law and order

problem, did not attract Section 124A. Henceforth, a mere display of sympathy towards any person or a cause and an actual commission of the offence of sedition are very distinct in itself.<sup>112</sup> Police should mind the difference between advocacy and incitement. The difference between them is same as that of preparation and attempt<sup>113</sup> and in this case incitement is punishable and not the advocacy. This ruling of the apex court clarifies that advocacy and sympathizing with a cause will not be a crime, till the time it turns into incitement of violence.

Furthermore, the police do not understand the implications of words like disaffection and disloyalty. They only file the FIRs and do not indulge into the understanding of the words mentioned in the text itself. Thus a lot of FIRs are filed against individuals but only a few are found guilty with the charge of sedition. Many a times, innocent citizens suffer arrest without reasonable application of mind. Prakash Ram, a resident of Haldwani, Uttarakhand was accused of being a Maoist. Police arrested him on charges of sedition. After eight long years of struggle in the court, his name was finally cleared by the Sessions Court. He stated that "*I spent two of the best years of my life behind bars (he was granted bail in 2006) and six more years in my battle for Justice,*" "*I may be free now but this arrest has spoilt my reputation and will make it difficult for me to get work*". There many like Prakash Ram who is hassled by this relic of our colonial past.<sup>114</sup>

Further it must be highlighted that sometimes the arrest of individuals, rather than the slogans shouted, could lead to tension and a law and order problem. This over-sensitiveness attitude could be counter-productive and invite more trouble. Indeed, the explanations to Section 124A make it clear that

<sup>112</sup>See *State of Chhattisgarh v. DrBinayakSen*, (2011) 266 ELT 193

<sup>113</sup>See *ShreyaSinghal v. U.O.I*, (2013) 12 SCC 73

<sup>114</sup>*Supra* 20

<sup>111</sup>See *Balwant Singh v. State of Punjab*, (1995) 1 SCR 411

criticism or disapproval of actions of the government do not amount to sedition. In a country like India, it is inevitable to have disaffection towards government's actions and not every form of disaffection could be treated as sedition.

### SHOULD SEDITION BE REPEALED OR RETAINED?

Former Prime Minister Pt. Jawaharlal Nehru had once said, *“now so far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better.”*<sup>115</sup> Further, many of the liberalists believe that the provision in regard to sedition as stated in the Indian Penal Code is too colonial and in utter contradiction to the constitutional provision of freedom of speech and expression.

A prohibition on speech, whether hateful or not, undermines democracy. Voice of every individual has its own significance even if he is a minority. In the absence of such a right, it is democracy that suffers along with those who are in power. There is a necessity to reassess the sedition law and review it according to the present-day conditions. If we look at this situation from the other side, then the people also possess a right to know to what others have to say. It is another facet of the freedom of speech<sup>116</sup>. The notion of “marketplace of ideas” has to be recognized both by the judiciary and the legislature. Society is best served when ideas, even hateful ideas, are disproven through public debate.<sup>117</sup> This little curtailment sometimes becomes a tool to abuse the law. In 1962, the Supreme Court ruled that speech or action constitute sedition

only if it incite or tend to incite disorder or violence.<sup>118</sup> Yet various state governments continue to charge people with sedition even when the standard is not met. This provision of law is vague and prone to abuse by the authorities.

India gained freedom from the British after a long battle and we acquired certain habits and ideas from them. The law pertaining to sedition is one of them. Sriram Panchu (Senior Advocate) once said that, *“Countries like the US and the UK (which ironically introduced the law in India) have repealed the law. It is only countries like Saudi Arabia, Malaysia and Sudan that still hold on to sedition. Which of these two categories of countries do we want to follow?”*<sup>119</sup> Even the British, who introduced this law in India, have scrapped it. He further commented sedition as an attack on the liberal polity of the nation. This outdated law has no place in a democratic setup like India. Moreover, it has been used more often by the independent India's government than the British government during its presence.

On the other hand, many countries like Scotland, Australia, Italy, France, Canada and the United States have laws similar to the offence of sedition as laid down in India. Recently, Malaysia strengthened its sedition and anti-terrorism laws and extending the term of sentence for the offence as well.

A state has to be equipped with the authority to punish those who by their conduct, endanger the safety and stability of the state, or spread such feelings of disloyalty and disturb public order.<sup>120</sup> Maoist insurgents and similar other groups have posed to be a great threat to the sovereignty of this nation. These groups

<sup>115</sup>Supra 15

<sup>119</sup>Staff Reporter, Discussion on misuse of sedition law by The Hindu Centre for Politics and Public Policy THE HINDU (2016), available at, <http://www.thehindu.com/news/the-hindu-centre-for-politics-and-public-policy-panel-discussion-on-misuse-of-sedition-law/article8393879.ece> (last visited Jul 2, 2016).

<sup>120</sup>Supra 15

<sup>115</sup>MINISTRY OF INFORMATION AND BROADCASTING, JAWAHARLAL NEHRU SPEECH'S (Pg. 518, Commercial Publication Ltd., Bombay) (1954)

<sup>116</sup>Dheerajendra, INDIAN JOURNAL, Vol.3, Issue.4, available at, [http://indialawjournal.com/volume3/issue\\_4/articleby\\_.html](http://indialawjournal.com/volume3/issue_4/articleby_.html)

<sup>117</sup>See Grant v. Torstar Corp., (2009) 3 SCR 640

believe in overthrowing the state governments through violent measures. These groups influence a lot of men. In presence of these adversaries of the nation, it would be foolish to abolish a law like sedition. Furthermore, under the principle of *salus reipublicae suprema lex*, which means that safety of the state is the supreme law, laws like sedition must be given a place in the statute books. It is the safety of the state which must be protected at all costs. For a government to work for its subjects, it has to be sovereign in its command and authority. There are both sides of the coin. Although, sedition marks an end to free speech but its presence in a country like India cannot be slashed. In spite of this, an effective regulation is required in the enforcement of this law.

#### SCHOLARLY RECOMMENDATIONS

As a result, this law must not be repealed, but must be retained to help the sovereign authorities to curb the incidents of violence against the state and to preserve the integrity of this nation, and maintain the public peace and morality.

*Firstly*, that there are many victims of police ruthlessness, as discussed earlier. Therefore, police must be trained enough to ensure that incongruous cases of sedition must not be lodged. Furthermore, as a procedural aspect, a compulsory legal opinion from the law officer or district attorney must be taken before invoking sedition. But many believe that time should not be wasted in taking a legal opinion and a senior police officer shall decide on this matter.

*Secondly*, Section 124A, which works as a restriction on Article 19(1)(a) of the Indian Constitution should be made more conform to Article 19(2). The mens rea has not been included in the provision. Words like

“intention” and “knowledge” must be added to charge seditious intentions expressly under this provision.<sup>121</sup>

*Thirdly*, that the definition should be extended to include disaffection towards the Constitution of India, Parliament and State Legislatures and the Administration of justice, as it is fundamental duty of every citizen to abide by the Constitution and respect its ideals and institutions.<sup>122</sup> Therefore, it will enforce a duty upon the citizens, not to incite disaffection towards the Constitution and its institutions.

*Fourthly*, that under the present provision of sedition, even an unsuccessful attempt toward sedition would be labelled as sedition.<sup>123</sup> An unsuccessful attempt will not undermine the sovereignty and integrity of the state or any of its institutions. Thus this section must be amended to remove unsuccessful attempts out of its definition.

*Fifthly*, that the 42<sup>nd</sup> Law Commission in its report recommended that, punishment for the offence of sedition to be fixed at a maximum of seven years. While the other serious offences in the category “Of Offences against the State” have a lesser term of imprisonment, a person convicted of sedition could be sentenced either for a maximum period of three years or for life. It is quite evident that the present sentence fixed for the offence is obscure<sup>124</sup> and it needs to be altered.

*Sixthly*, that in 2015, Shashi Tharoor<sup>125</sup> moved a private member bill in the Parliament, which states that, a person could only be charged under sedition only if his words, signs or visual representations

<sup>121</sup>Law commission of India, Forty Second report on Indian Penal Code, Jun 1971, available at <http://www.lawcommissionofindia.nic.in/lc42.htm> (Last visited 29, Jun, 2016)

<sup>122</sup>The Constitution of India, 1950, Part IVA, Article 51A(a).

<sup>123</sup>See Tara Singh Gopi Chand v. The State, (1951) CriLJ 449.

<sup>124</sup>Law commission of India, Forty Second report on Indian Penal Code, Jun 1971, available at <http://www.lawcommissionofindia.nic.in/lc42.htm> (Last visited 29, Jun, 2016)

<sup>125</sup>IN PARLIAMENT, Privatebill, available at <http://www.shashitharoor.in/in-parliament.php> (Last visited 29, Jun 2016)

results in the commission of an actual offence, punishable under the IPC. His proposition narrows down the ambit of sedition and might put an end to the devious and unscrupulous suppression of masses due to the law of sedition.

### CONCLUSION

Free speech is quintessential for maintaining democracy because it facilitates the exchange of diverse opinion and ideas. Freedom of speech lay at the foundation of all democratic organizations.<sup>126</sup> The Preamble of the Constitution of India speaks of liberty of thought and the freedom of expression, belief, faith and worship. It cannot be over emphasized that when it comes to democracy, freedom of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme. Freedom of speech and expression, though not absolute, was necessary as we need to tolerate unpopular views. This right requires free flow of opinions and ideas essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance, the culture of open dialogue is generally of great societal importance<sup>127</sup>. The object of guaranteeing constitutional protection to freedom of speech and expression is to advance public debate and discourse. However, speech laden with harmful intent or knowledge of causing harm or made with reckless disregard is not entitled to the protection of Article 19(1) (a). Such speech has no social value except in cases where it is a truthful statement meant for public good.

The law enforcement agencies have always used sedition against artists, public men, intellectuals, and many others for criticizing the government. Whereas the communal killers, mass murderers, and rapists who

prey on the poor, roam free. The strict interpretation must be done away with by the authorities and they should rather build up a case of sedition on liberal grounds of interpretation of the provision.

Hence, it is arduous to determine where to draw the line but, it must be drawn as far as possible in the favour of free speech. The Indian Judiciary played a major role in interpreting the law more liberally and rationally to craft a clear and luminous distinction between the discussion of ideas and an act of endorsement towards hatred towards the government.

In the 21<sup>st</sup> century, people are actively participating in the country's affairs. The Constitution of India gives freedom of speech and expression and it is subject to reasonable restrictions enumerated in section 19(2). It should not be neglected that the Supreme Court has issued guidelines on invoking the charges of sedition which specifically provide that the provisions of section 124A are only made out where there is a tendency to public disorder by use of violence or incitement to violence. But the invocation of hate speech and sedition in a series of cases has stirred up the debate. Arrest of people like Hardik Patel, Aseem Trivedi, and many others, could be seen as sign of the increasing intolerance of the Indian government of any political movement venting out people's grievances.

The offence of Sedition involves the question of the relationship between government and the people. In the past, when the government was the absolute ruler and people were the subjects, any opposition, however peaceful, was considered a challenge to political authority and, as such, was punishable as sedition. After, the arrival of the democratic government, recognition of sedition became controversial; the line was required to be drawn between permissible speech and justifiable limits in the interest of safeguarding the political authority of a democratic state.

<sup>126</sup>See *Romesh Thappar v. State of Madras* (1950) SCR 594 at 602

<sup>127</sup>See *S. Khushboo v. Kanniamal & anr.*, (2010) 5 SCC 600 ¶45



Justice Brandeis in a concurring judgment in *Whitney v. California*,<sup>128</sup> ruled that fear of serious injuries cannot alone justify suppression of free speech and assembly. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to believe that the danger is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. He even stated that the path of safety lies in the opportunity to discuss freely the supposed grievances and their proposed remedies.

In *Sanskar Marathe case*,<sup>129</sup> the court had taken the duty upon itself of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Article 19(1) (a) of the constitution and the power of the legislature to impose reasonable restriction on that guaranteed right in the interest of, inter alia, security of the state and public disorder. If some advocacy or act results in violence, we can say that the line has been crossed from the exercise of free speech to sedition. The courts have given the illumination, a line of demarcation between free speech and subversive has been carved. Now it is the duty of the functionaries of the state to pursue on those lines so that the liberty of the citizens is not interfered with.

In a democratic society like India, tolerance for contradictory and dissenting expression of opinion need protection on the pretext of individual right of self-expression, but aggressive mode of expression likely to cause social disruption, spread hatred and violence in the community, cannot be allowed to be propagated. For larger social good, a little curtailment on individual freedom is permissible and constitutional, though one must remember Rabindra Nath Tagore, when he, through his Poem "Where the

mind is without fear", indicated that, Fear prohibits the flow of knowledge in the mind of people.

<sup>128</sup>*Whitney v. California* 71, L,ED.1095

<sup>129</sup>See *Sanskar Marathe v. State of Maharashtra & others* Bom587 SCC (2015).