

VALEDICTORY ADDRESS ON “LAW OF SEDITION IN INDIA AND FREEDOM OF EXPRESSION” BY HON’BLE MR. JUSTICE DEEPAK GUPTA, JUDGE, SUPREME COURT OF INDIA, AT THE WORKSHOP OF LAWYERS, ORGANISED BY PRALEEN PUBLIC CHARITABLE TRUST AND LECTURE COMMITTEE AT AHMEDABAD, GUJARAT ON 07.09.2019

I am extremely grateful to Praleen Public Charitable Trust, especially Mr. Suresh N. Shelat, Sr. Advocate, and the organisers of this programme for inviting me to deliver this valedictory address. For me it is a special honour. It is only because of the blessings and encouragement of Hon’ble Justice P.D. Desai that I am in this position today. This address is my humble tribute to him.

Justice Prabodh Dinkarrao Desai was by far the finest Judge I have known in my 4 decades in the legal profession. He was true to his oath and lived by very strict principles which he expected others to follow. The foremost quality of Justice Desai was his fearlessness. When any Judge takes oath, he swears to work to the best of his ability without fear or favour, affection or ill will. Fear was a word which did not exist in Justice Desai’s mind or dictionary. He worked tirelessly as a Judge and Chief Justice for 23 years, never

seeking any reward for himself. A man who was elevated as a Judge of the High Court at the young age of 39 years could well have risen to the highest judicial post in the country if he had played his cards right. However, Justice Desai believed in doing the right things, and not in playing his cards right. He never pandered to those in power and sacrificed his future in his quest for truth. He may never have been elevated to the Supreme Court but today he is acknowledged and remembered as one of the finest Judges this country has ever seen.

Justice Desai was a judge way ahead of his times. He used the Constitution as a tool to ameliorate the lives of the downtrodden. He was not bound by the rules of procedure and if, within the bounds of law, he could give relief to any petitioner before him he never hesitated to do so. Justice Desai was one of the pioneers of Public Interest Litigation. He was an activist judge who did not hesitate to take action even on letters written to him, if those letters disclosed violation of the fundamental rights of the citizens. It was he who said that the right to have motorable road is a fundamental right within the meaning Article 21 of the

Constitution. In some cases he entertained letters without disclosing the names of the persons who had written the letter. He was a messiah for the needy, the downtrodden and those whose fundamental rights have been curtailed whether it be in jail or outside. In one of his judgments he said “fundamental rights do not flee a person as he enters the prison”.

Justice Desai was the Chief Justice of the Himachal Pradesh High Court from 23rd December, 1983 to 13th November 1988. When he joined, I had put in a little more than 5 years’ of practice. For 5 years, day in and day out, I appeared in the Court of Justice Desai. Each day was a learning experience; learning not only in the field of law but learning how law can be used as an instrument of social change, how the legal fraternity can help alleviate the problems of the downtrodden.

Today’s topic “Law of Sedition in India and Freedom of Expression” is very important and relevant. I would like to divide this topic in two portions. Since freedom of speech

and expression is a fundamental right guaranteed under the Constitution of India, this must be given its due importance and weightage while interpreting any legal provisions including the law of sedition. Therefore, I will first deal with the constitutional right of freedom of speech and expression, then with the laws of sedition and finally the interplay between the two.

RIGHT OF FREEDOM OF SPEECH & EXPRESSION

In the Preamble to the Constitution, 'We the people of India' have promised to secure for all the citizens- liberty of thought, expression, belief, faith and worship. This is an inherent human right and a part of the basic structure of the Constitution. There cannot be any democratic polity where the citizens do not have the right to think as they like, express their thoughts, have their own beliefs and faith, and worship in a manner which they feel like.

What is a general promise in the Preamble to the Constitution, later becomes an enshrined fundamental right. Article 19(1)(a) guarantees the right of freedom of speech and

expression. This right is a well-recognised right which includes within its ambit the right of freedom of press, the right to know, right to privacy, etc. Article 21 prescribes that no person shall be deprived of his life or personal liberty except according to the procedure prescribed by law. The word 'life' has been given an expansive meaning and has been now recognised to mean to live a life of decency and not a mere animal existence. I am not dilating on the various aspects of the right to life but even if there was no Article 19 (1) (a) we could include the right to freedom of belief, thought, expression, faith and worship in the right to life enshrined in Article 21. Article 25 makes it clear that every person is entitled to freedom of conscience and the right to freely practice, profess and propagate his or her religion.

No doubt, the State has the power to impose reasonable restriction on the exercise of such rights in the interest of sovereignty and integrity of the country, the security of the State, friendly relations with foreign States, public order, decency or morality, etc.

The right of freedom of opinion and the right of freedom of conscience by themselves include the extremely important right to disagree. Every society has its own rules and over a period of time when people only stick to the age-old rules and conventions, society degenerates. New thinkers are born when they disagree with well accepted norms of society. If everybody follows the well-trodden path, no new paths will be created, no new explorations will be done and no new vistas will be found. We are not dealing with vistas and explorations in the material field, but we are dealing with higher issues. If a person does not ask questions and does not raise issues questioning age old systems, no new systems would develop and the horizons of the mind will not expand. Whether it be Buddha, Mahavira, Jesus Christ, Prophet Mohammad, Guru Nanak Dev, Martin Luther, Kabir, Raja Ram Mohan Roy, Swami Dayanand Saraswati, Karl Marx or Mahatma Gandhi, new thoughts and religious practices would not have been established, if they had quietly submitted to the views of their forefathers and

had not questioned the existing religious practices, beliefs and rituals.

It is said that when Guru Nanak Dev went to Mecca, he was very tired and lay down to take rest. His feet were facing the Kaaba which, for the followers of Islam, is the house of God. The *maulvi* became angry on seeing Guru Nanak sleeping with his feet towards the house of God and shouted "You fool, don't you know this is the house of God? Why are you lying with your feet towards the Kaaba?" Then Guru Nanak woke up and said, "O sir, I am sorry I didn't know it. I was tired so I just lay down and fell asleep. Could you turn my legs to the side in which there is no God?" The *maulvi* had no real answer and Guru Nanak observed God does not live in one place. He lives everywhere.

Closer home, when Guru Nanak visited Haridwar and entered the holy Ganges to take a dip early in the morning, he saw that most of the pilgrims were taking water from the Ganges, raising it towards the sun and dropping it as an offering to their ancestors. Since he did not believe in such

rituals and was a rationalist, Guru Nanak turned his back towards the sun, faced the West and started pouring water. This outraged some of the priests, who asked him what he was doing. He answered, my crops in the fields are dying because of lack of water. I am watering them. Everybody started laughing and making fun of him and asked him how this water would reach his fields hundreds of miles away. He answered that if the water that you pour can reach your ancestors in another world why can't the water which I pour reach my fields. Today if somebody was to behave like Guru Nanak, most probably he would have to spend a couple of days in jail.

In a secular country, every belief does not have to be religious. Even atheists enjoy equal rights under our Constitution. Whether one is a believer, an agnostic or an atheist, one enjoys complete freedom of belief and conscience under our Constitution. There can be no impediments on the aforesaid rights except those permitted by the Constitution.

The right to dissent is one of the most important rights guaranteed by our Constitution. As long as a person does not break the law or encourage strife, he has a right to differ from every other citizen and those in power and propagate what he believes is his belief. The judgment of H. R. Khanna, J. in ***A.D.M. Jabalpur case***¹, is a shining example of a dissent which is much more valuable than the opinion of the majority. This was a judgment delivered by a fearless, incorruptible Judge. Judges are administered oath wherein they swear or affirm to perform the duties to the best of their ability without fear or favour, affection or ill will. First and foremost part of the duty is to do one's duty without fear. As I said earlier, 'fear' is not a word which existed in the dictionary of Justice P.D. Desai. In fact, this is a word which should not exist in the dictionary of any person who professes to be a judge.

A very important aspect of a democracy is that the citizens should have no fear of the government. They should not be scared of expressing views which may not be liked by

¹ A.D.M. Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521

those in power. No doubt, the views must be expressed in a civilised manner without inciting violence but mere expression of such views cannot be a crime and should not be held against the citizens. The world would be a much better place to live, if people could express their opinions fearlessly without being scared of prosecutions or trolling on social media. It is indeed sad that one of our celebrities had to withdraw from social media because he and his family members were trolled or threatened of dire consequences.

LAW OF SEDITION

The foremost thing that one must keep in mind is that this law was introduced at a time when we were ruled by a foreign imperialist colonizing power. The British brooked no opposition and did not want to listen to any criticism. Their sole aim was to deprive the people of this country of their rights including the right to express their views. In my view, this right of freedom of expression is an inherent human right and even if, there was no Article 19, this right along with its limitations would be accepted to be an enforceable fundamental right.

Interestingly, though sedition was an offence in the first draft of the Indian Penal Code (IPC) drafted by Lord Macaulay, somehow this did not find its way into the IPC when it was enacted in the year 1860. The IPC was amended in the year 1898 when Section 124A was introduced. After its various amendments, it reads as under:

“Section 124A. Seditious - 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.”

When Section 124A was first introduced, we were told that this provision was not to curb legitimate dissent but was

to be used only when the writer or the speaker directly or indirectly suggested or intended to produce the use of force. Another reason given was that there was a *Wahabi* conspiracy by a man who had preached *Jihad* or holy war against Christians in India and therefore the need to introduce such a provision. Though Section 124A was inserted for fear of Muslim preachers advocating *Jihad* or religious war, it was initially used against Hindu leaders. The first such case was of **Jogendera Chunder Bose**² wherein in a newspaper called *Bangobasi*, the Editor objected to the English rulers raising the age of consent of sexual intercourse for Indian girls from 10 to 12 years. While charging the Jury, the learned Chief Justice explained the law to the Jury in these terms:

"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

² Queen Empress v. Jogendera Chunder Bose, (1891) ILR 19 Cal.35

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."

The British used the law of sedition to curb any demand for independence. In the case of **Lokmanya Tilak**³, which was tried by a Jury, the presiding Judge, Justice Strachey, while explaining to the Jury the meaning of sedition had this to say:

"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. It is true that there is before you a charge against each prisoner that he has actually excited feelings of disaffection to the Government. If you are satisfied that he has done so, you

³ Queen Empress v. Balgangadhar Tilak, ILR (1898) 22 Bom. 112

will, of course, find him guilty. But if you should hold that that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with attempting to excite such feelings. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them, so that, if you find that either of the prisoners has tried to excite such feeling in others, you must convict him even if there is nothing to show that he succeeded. Again, it is important that you should fully realize another point. The offence consists in exciting or attempting to 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. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope."

A similar provision existed in the laws in England.

However, in England this offence was a misdemeanour,

meaning a petty crime punishable with imprisonment up to 2 years, but for subjects in the colonies including India, the punishment was 'banishment for life' which essentially means life imprisonment. The difference is stark and the reason for this difference is that in England the Crown was dealing with its own citizens and in the colonies, it was dealing with people whom it did not consider to be its own citizens but those who were being ruled by it. Both were obviously not equal.

Though in India the directions of the Judges to the Jury gave a very wide meaning to the word 'sedition', in England, at the same time, the interpretation given to sedition, was as under⁴:

"Nothing is clearer than the law on this head - namely, that whoever by language, either written or spoken incites or encourages other to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel. The word "sedition" in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form....."

⁴ Rex v. Aldred (1909) 22 CCLC 1

The difference in the approach while interpreting the word 'sedition' between the citizens of the mother country and the colonies is writ large. Criticism of the Government without any incitement or encouragement to use physical force or violence which would not be an offence in England would somehow tantamount to be an offence in the colonies though the language used was the same.

It is said that English is a very strange and difficult language and any word can have two meanings. But, here the double meaning was not due to a problem in semantics but where and against whom the law was being applied. A lenient view as against citizens and a harsh view against the colonized.

Another important decision on the law of sedition is in the ***Niharendu Dutt Majumdar's case***⁵ when Chief Justice Sir Maurice Gwyer of the Federal Court held:-

“Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why

⁵ Niharendu Dutt Majumdar v. The King Emperor, (1942) FCR 38

they may also constitute sedition, if they seek as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Governments, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must, either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."

However, the Privy Council did not approve what was said by Justice Maurice Gwyer.

At this stage, I would also like to refer to the Father of the nation Mahatma Gandhi, who in this city of Ahmedabad was charged with sedition. While appearing before Sessions Judge Broomfield, Mahatma Gandhi while dealing with the word 'disaffection' had this to say:

"Affection cannot be manufactured or regulated by law. 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"

I think this brilliantly sums up what I want to say today that mere criticism without incitement to violence would not amount to sedition.

However, the Mahatma was sentenced to undergo imprisonment for 6 years.

You cannot force people to have affection for the Government and merely because people have disaffection or strongly disagree with the views of the Government or express their disagreement in strong words, no sedition is made out unless they or their words promote or incite or tend to promote or incite violence and endanger public order.

THE SITUATION AFTER INDEPENDENCE

The Constituent Assembly, while debating on the right of freedom of speech also considered the law of sedition. In the first draft of the Constitution, sedition was included as an exception to the right to free speech. In the debate, many persons spoke for and against including sedition as an exception to Article 19. It was the likes of K.M. Munshi, Bhupinder Singh Mann etc., who carried the day. Munshi insisted that sedition should not be kept as one of the

exceptions to free speech. He was clear in his mind that only incitement to violence or insurrection should be barred and, therefore, exceptions to Article 19 do not contain the word 'sedition' but security of State, public disorder or incitement to an offence. This clearly underlines the fact that the founding fathers of the Constitution were of the view that sedition could be an offence only if it led to or incited public disorder or violence. In fact, Mr. Munshi relied upon the judgment of Sir Maurice Gwyer, which I referred to above. After independence and before the first amendment to the Constitution was brought in, it was felt that Section 124A would not at all be constitutionally valid. In fact, Justice Sarjoo Prasad in Bihar had gone to the extent of interpreting the judgment of the Supreme Court in **Ramesh Thapar's case**⁶ to mean that even a call for incitement of murder would not be a crime. This was an extreme view, which was rightly set aside by the Supreme Court⁷, but this led to the first amendment being brought in by which the restriction of public order was introduced to Article 19. Interestingly, whereas the first amendment carried to the American

⁶ Ramesh Thapar v. State of Madras, 1950 AIR 124

⁷ State of Bihar v. Shailabala Devi, AIR 1952 SC 329

Constitution guaranteed freedom of speech, our first amendment curtailed the right of freedom of speech to a certain extent.

The constitutional validity of the provisions of Section 124A was challenged before a Constitution Bench of the Supreme Court in ***Kedar Nath Singh's case***⁸, wherein the challenge was based mainly on the ground that Section 124A was inconsistent with Article 19(1)(a) of the Constitution. After referring to the various decisions, some of which I have referred to above, the Apex Court held as follows:

“It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law

⁸ Kedar Nath Singh v. State of Bihar, 1962 Supp 2 SCR 769

steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.”

The Supreme Court held that no offence of sedition under Section 124A is made out unless the words – spoken or written, would have the tendency to create disorder or disturbance of public peace by resort to violence. Unless the words are likely to lead to violence, no offence is made out.

If one carefully analyses the Constitution Bench decision in ***Kedar Nath Singh's case***, it is apparent that if creation of disorder or disturbance of law and order or incitement to violence had not figured, the Constitution Bench may have in all likelihood, struck down Section 124A. It was held to be constitutional only when read in the context of incitement to violence or creating public disorder or disturbing law and order.

In 1974, the then Government brought another change into Section 124A making it even more stringent. The offence, which till then had been a non-cognizable offence was made a cognizable offence meaning thereby that a person could be arrested by a police officer without obtaining warrant from a magistrate. For me, it is very shocking that in independent India we should make the provisions with regard to sedition even more stringent and curb the voice of the people.

The law as laid down in ***Kedar Nath Singh's case*** is absolutely clear. It is only if there is incitement to violence or creating of public disorder or disturbing the law that the offence of sedition is made out. Following this judgment, the Supreme Court in 1995 in **Balwant Singh's case**⁹ held that raising slogans like "**Khalistan Zindabad**", "**Raj Karega Khalsa**", etc. by themselves did not amount to an offence of sedition because there was no material or record to show that any violence had taken place despite the

⁹ Balwant Singh and Ors. vs. State of Punjab (1995) 3 SCC 214

slogans being raised at a public place.

This position of law has been reiterated many times including in **Bilal Ahmed Kaloo's case**¹⁰ and **Common Cause vs. Union of India**¹¹. In both these cases, the Supreme Court directed the Courts to exercise care while invoking charges of sedition. The Courts were advised to follow the principles laid down in **Kedar Nath Singh's case**. It was again said that sedition charges cannot be levelled only for criticizing the Government or its policies.

THE INTERPLAY BETWEEN FREEDOM OF EXPRESSION AND THE LAW OF SEDITION

I would like to start with a quote from Justice Nariman's opinion in **Shreya Singhal's case**¹².

“**13.** This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at

¹⁰ Bilal Ahmed Kaloo vs. State of A.P., (1997) 7 SCC 431.

¹¹ Common Cause & Anr. vs. Union of India (2016) 15 SCC 269

¹² Shreya Singhal v. Union of India, (2015) 5 SCC 1

the heart of Article 19(1) (a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc.....”

This passage brilliantly sums up what should be applied even in the laws of sedition. Though Justice Nariman expressed the view that discussion and advocacy are the inherent constituents of the right to ‘Freedom of Speech and Expression’, the harsh reality is that the art of conversation is itself dying down. There is no healthy discussion; there is no advocacy on principles and issues. There are only shouting and slanging matches. Unfortunately, the common refrain is either you agree with me or you are my enemy, or worse, an enemy of the nation, an anti-nationalist.

The constitutional validity of Section 124A has to be read in the context of Article 19 of the Constitution of India. Thus, it is clear that advocating any new cause however unpopular or uncomfortable it may be to the powers that be, it must be permitted. Majoritarianism cannot be the law.

Even the minority has the right to express its views. We must also remember that in India we follow the first past the post principle. Even Governments which come in with a huge majority do not get 50% of the votes. Therefore, though they are entitled to govern or be called as majority, it cannot be said that they represent the voice of all the people. There is another very important aspect of this interplay between freedom of expression and the law of sedition, and here I would also discuss the offence of creation of disharmony under Section 153A and criminal defamation under Section 499-500 IPC. Sedition can arise only against a Government established by law. Government is an institution, a body and not a person. Criticism of persons cannot be equated with criticism of the Government. During the dark days of Emergency, an attempt was made by one Party President to equate his leader with the country. That attempt miserably failed and, I am sure that no one will ever try in future to equate a personality with this country of ours which is much bigger than any individual. Criticism of senior functionaries may amount to defamation for which they can take action in

accordance with law but this will definitely not amount to sedition or creating disharmony.

The law of sedition is more often abused and misused. The people who criticise those in power are arrested by police officials on the asking of those in power and even if a person may get bail the next day from court, he has suffered the ignominy of being sent to jail. The manner in which the provisions of Section 124A are being misused, begs the question as to whether we should have a relook at it. Freedom of expression being a constitutional right must get primacy over laws of sedition. Sedition is a crime only when there is incitement to violence or public disorder. That is what the law of the land is as laid down in ***Kedar Nath Singh's case***. Sadly, day in and day out, we read of people being arrested in different parts of the country for making cartoons, making not so complementary references about the heads of the State, etc. The police always claim to be short of forces when questioned about the adverse law and order situation in various parts of the country. Trials in criminal cases of rape, murder and crimes falling under POCSO carry

on for years on end because police officials do not have time to even depose before the courts but when it comes to sedition or Section 153A or implementing the provisions of Section 66A of the Information Technology Act (which has been declared unconstitutional), there seems to be no shortage of manpower and the police acts with great alacrity. It is, thus, clear that there is one set of rules for the rich and the powerful and another set of rules for the ordinary citizens of the country. In a country which professes to live by rule of law, this cannot be permitted.

The last few years have given rise to a number of cases where the law of sedition or creating disharmony have been misused rampantly by the police to arrest and humiliate people who have not committed the crime of sedition as laid down by the Constitution Bench of this Court.

In 2011, the Mumbai police arrested Asim Trivedi, a cartoonist for circulating a cartoon which allegedly poked fun at the Constitution and the National Emblem in an anti-corruption rally organised by Anna Hazare. This led to the Bombay High Court issuing directions to the police that

before arresting a person on charges of sedition the senior officials should be consulted. The High Court of Bombay held¹³ as under:

“15...it is clear that the provisions of section 124A of IPC cannot be invoked to penalize criticism of the persons for the time being engaged in carrying on administration or strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comments, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The section aims at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.

16. Cartoons or caricatures are visual representations, words or signs which are supposed to have an element of wit, humour or sarcasm. Having seen the seven cartoons in question drawn by the third respondent, it is difficult to find any element of wit or humour or sarcasm. The cartoons displayed at a meeting held on 27 November, 2011 in Mumbai, as a part of movement launched by Anna Hazare against corruption in India, were full of anger and disgust against corruption prevailing in the political system and had no element of wit or humour or sarcasm. But for that reason, the freedom of speech and expression available to the third respondent to express his indignation against corruption in the political system in strong terms or visual representations could not have been encroached upon when there is no allegation of incitement to violence or the tendency or the intention to create public disorder.”

¹³ Sanskar Marathe v. State of Maharashtra & Ors., 2015 CriLJ3561

I think our Country, our Constitution and our National Emblems are strong enough to stand on their own shoulders without the aid of the law of sedition. Respect, affection and love is earned and can never be commanded. You may force or compel a person to stand while the National Anthem is being sung but you cannot compel him within his heart to have respect for the same. How does one judge what is inside a person's mind or in his heart?

In Chhattisgarh, a 53 years old man was arrested on charges of sedition for allegedly spreading rumours over social media about power cuts in the State. It was said that this was done to tarnish the image of the then Government running the State. The charge was absurd and again highlights the misuse of power. In Manipur, a journalist made a vituperative attack on the Chief Minister of the State and used totally unparliamentary language against the Prime Minister of the country. The language was intemperate and uncalled for but this was not a case of sedition. It was at best a case of criminal defamation. The man was kept behind bars for months under the National Security Act. In

West Bengal, a party leader was arrested for morphing an image of the Chief Minister and in U.P., a man was arrested for morphing the image of the Prime Minister of the country and shockingly this image had been morphed 5 years back. What was the hurry to suddenly arrest this man after 5 years? A rapper who does not even live in India has been charged for sedition. The language used by her may be totally uncalled for, some other offences may be made out, but sedition does not appear to be one of them. In another extreme case, a film maker in Tamil Nadu has been booked under Sections 153 and 153A IPC for inciting caste enmity because he allegedly made remarks against the Chola Dynasty King for being caste oppressive. This Chola Dynasty King lived more than a thousand years back.

The law of creating disharmony and Section 66A of the Information Technology Act, 2000 which has been held unconstitutional are still being used day in and day out to arrest people. In fact, a Bench of the Supreme Court has

been constrained to pass directions on 15.02.2019¹⁴ that copies of the judgment of the Supreme Court in the case of **Shreya Singhal** be made available by every High Court in this country to all the District Courts. It does not speak well of the Indian judiciary that the magistrates are unaware of the law of land and day in and day out we hear of magistrates granting judicial custody or police remand in relation to such offences wherein the basic offences are not made out and under Section 66A of the Information Technology Act, a law which is no longer valid.

The law laid down in **Kedar Nath Singh's case**, being the law of the land has to be applied in letter and spirit and unless the actions lead to creation of public disorder, disturbance of law and order or incitement to violence, no action should be taken. In fact, in my view, the law of sedition needs to be toned down if not abolished and the least which the Government can do is to make it a non-cognizable offence so that the persons are not arrested at the drop of a hat.

¹⁴ Peoples' Union for Civil Liberties v. Union of India & Ors., M.A. No.3220/2018 in W.P.(CrI.) No.199/2013

In many countries all over the world, recognising the right of freedom of speech, the laws of sedition have been abrogated or withdrawn. Even in England, sedition is no longer an offence and the crime of sedition was abolished from 2009 on the ground that sedition and seditious and defamatory libel are archaic offences - from a bygone era when freedom of expression wasn't seen as the right it is today.

India is a powerful nation, loved by its citizens. We are proud to be Indians. We, however, have the right to criticise the Government. Criticism of the Government by itself cannot amount to sedition. In a country which is governed by the rule of law and which guarantees freedom of speech, expression and belief to its citizens, the misuse of the law of sedition and other similar laws is against the very spirit of freedom for which the freedom fighters fought and gave up their lives. The shoulders of those in power who govern should be broad enough to accept criticism. Their thinking should be wide enough to accept the fact that there can be

another point of view. Criticism of the policies of the Government is not sedition unless there is a call for public disorder or incitement to violence. The people in power must develop thick skins. They cannot be oversensitive to people who make fun of them. In a free country, people have a right to express their views. Everybody may not use temperate or civilised language. If intemperate, uncivilised and defamatory language is used, then the remedy is to file proceedings for defamation but not prosecute the persons for sedition or creating disharmony.

We all must be open to criticism. The judiciary is not above criticism. If Judges of the superior courts were to take note of all the contemptuous communications received by them, there would be no work other than the contempt proceedings. In fact, I welcome criticism of the judiciary because only if there is criticism, will there be improvement. Not only should there be criticism but there must be introspection. When we introspect, we will find that many decisions taken by us need to be corrected. Criticism of the executive, the judiciary, the bureaucracy or the Armed Forces

cannot be termed sedition. In case we attempt to stifle criticism of the institutions whether it be the legislature, the executive or the judiciary or other bodies of the State, we shall become a police State instead of a democracy and this the founding fathers never expected this country to be.

Gurudev Rabindra Nath Tagore had a view on nationalism, which is the anti-thesis of the view which many of us have. He, in fact, had not appreciated the *satyagrah* movement. He, who wrote the National Anthem also held the view that “nationalism is a great menace”. I do not agree with those views nor did eminent leaders of that time but this did not make Gurudev Rabindra Nath Tagore less an Indian, less a patriot than any of his contemporaries. Merely because a person does not agree with the Government in power or is virulently critical of the Government in power, does not make him any less a patriot than those in power. In today’s world, if any person was to say “nationalism is a great menace” he may well be charged with sedition.

To conclude, I would say that if this country is to progress not only in the field of commerce and industry but to progress in the field of human rights and be a shining example of an effective, vibrant democracy then the voice of the people can never be stifled. I can do no better than quote the words of Gurudev Rabindra Nath Tagore:

“Where the mind is without fear and the head is held high
Where knowledge is free
Where the world has not been broken up into fragments
By narrow domestic walls
Where words come out from the depth of truth
Where tireless striving stretches its arms towards perfection
Where the clear stream of reason has not lost its way
Into the dreary desert sand of dead habit
Where the mind is led forward by thee
Into ever-widening thought and action
Into that heaven of freedom, my Father, let my country awake.”

Thank you all. Jai Hind.
