

MISUSE OF SEDITION LAWS IN THE ASIA PACIFIC: A SWORD THAT HANGS OVER THE HEADS OF CITIZENS¹

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I. INTRODUCTION

Sedition has been considered to be an oppressive law used as a tool by the State to discourage dissent and criticism across the globe. In common parlance, sedition is defined to mean language or behaviour intended to persuade or encourage people to fight against or oppose their government, sometimes by using violence³ and is thus considered to be an ‘*inherently political and politicised offense*’.⁴ Sedition is not to be confused with treason; treason involves punishment for ‘*overt acts of betrayal*’ while sedition involves punishment for speech that incites disaffection against the government, disturbs the tranquillity of the state and ‘*stirs up opposition to the established authority of the state*’⁵.

Sedition as a concept was devised as early as the 13th century as a method to curb criticism by the printing press levelled against the monarchy.⁶ In England it was considered imperative to suppress ideas which were antithetical to the monarchy/ government to maintain supremacy and control over its subjects.⁷ With the advent of the press, the authorities became wary of the use of the press as a tool to circulate ideas against the government and thus, in order to prevent wider dissemination of information, a system of censorship was devised to control such speech.⁸ Sedition was first introduced by way of statute in the sixteenth century after the crown officials and local governors in England observed that scathing criticism was being levelled

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³ Definition of sedition as seen in Cambridge Dictionary, Oxford Dictionary & Collins Dictionary; Bryan Garter, Black, *Black’s Law Dictionary* (9th edn, West Thomas Reuters 2009) 1479

⁴ Jaelyn Ling-Chein Neo, “Seditious in Singapore! Free Speech and the Offence of Promoting Ill-Will and Hostility Between Different Racial Groups” (2011) Singapore Journal of Legal Studies (NUS) 351, 354

⁵ Ibid; Bryan Garter, Black, *Black’s Law Dictionary* (9th edn, West Thomas Reuters 2009) 1479

⁶ Gauri Kashyap, ‘Sedition in the Common Law Jurisdictions: UK, USA and India’ (*Supreme Court Observer*, 20 May 2021) <<https://www.scoobserver.in/journal/sedition-in-the-common-law-jurisdictions-uk-usa-and-india/>> accessed 25 July 2023

⁷ T. Barton Carter, Marc Franklin, Amy Sanders & Jay Wright, *First Amendment and the Fourth Estate, The Law of Mass Media* (11th edn, Foundation Press 2011)

⁸ *ibid*

against them which posed threats to their desired version of public order and social stability.⁹ The Sedition Act 1661 was a sound alternative to the existing treason laws as it rid the Government of the cumbersome procedures and extreme penalties of the offense of treason.¹⁰ Eventually, sedition found its way into the common law system.¹¹

Towards the 18th Century, the sedition law came under scrutiny and garnered heavy criticism in the United Kingdom, however, since it was noted that the law was of great assistance in curbing dissent and uprisings it was incorporated in India by way of an amendment in the Indian Penal Code (“IPC”)¹² as well as other imperial colonies such as Singapore and Hong Kong by way of Ordinances. This law was used vigorously in India to prosecute celebrated freedom fighters such as Bal Gangadhar Tilak and Mahatma Gandhi as well as in Hong Kong to suppress pro-communist uprisings in 1967.¹³

Eventually, in 2009, the offense of sedition was abolished in England by section 73 of the Coroners and Justice Act 2009 prompted by the working paper published in 1977 which *inter alia* addressed concerns related to sedition.¹⁴ Additionally, eight Commonwealth nations have repealed their laws on sedition.¹⁵ These countries are: United Kingdom, Singapore, New Zealand, Kenya, Ghana, Jamaica, Maldives and Sierra Leone.¹⁶ The reasons cited by most of these governments for the repeal is the scope for misuse as well as the widespread abuse of the laws by the law enforcement authorities.¹⁷

Despite the repeal of this law in England as well as several commonwealth nations, many of the Asian commonwealth nations continue to retain the section on sedition in their statute books. A standard justification that governments provide to retain the law is that it is within the right of a sovereign government to suppress internal rebellion as well as external aggression to protect its citizens.¹⁸

⁹ Roger B. Manning, “The Origins of the Doctrine of Sedition” (1980) 12(2), *Albion: A Quarterly Journal Concerned with British Studies* 99

¹⁰ *ibid*

¹¹ *ibid*

¹² Kashyap (n 6)

¹³ Eric Lai, ‘Hong Kong’s Sedition Law is Back’ (*The Diplomat*, 3 September 2021) <<https://thediplomat.com/2021/09/hong-kongs-sedition-law-is-back/>> accessed 25 July 2023

¹⁴ Law Commission (Working Paper No 72, 1977) ‘Codification of the Criminal Law: Treason, Sedition and allied offenses’ <<http://www.bailii.org/ew/other/EWLC/1977/c72.pdf>> accessed 20 July 2023

¹⁵ Adam Smith, Charline Yim & Marrayum Kahloon, ‘The Crime of Sedition: At the Crossroads of Reform and Resurgence,’ April 2022’ (*Trialwatch Fairness Report*) <<https://hri.law.columbia.edu/sites/default/files/publications/sedition-report-april-2022.pdf>> accessed 20 July 2023

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ Sarah Sorial “Can Saying Something Make it so? The Nature of Seditious Harm” (2010) 29(3) *Law and Philosophy* 273

In the recent past, the scope of sedition has been expanded or modernised so as to include counter terrorism within its ambit.¹⁹ ‘Modern’ sedition laws seek to restrict speech that promotes violence against the state, which appears in the form of religious sermons preaching extremist views such as jihad or those which glorify/ encourage terrorism.²⁰ Sedition laws are recurrently utilised to punish those for “*what they think (or what they are thought to think) rather than on the basis of the degree to which their activities actually pose a threat to the social order (however defined).*”²¹

Many Countries in the Asia Pacific region, more specifically, in the South Asian region have cast a wide net of repression by misusing their sedition laws to attack journalists, political activists, lawyers and opposition party members among others. Sedition as an offense is now being misused to “*minister the vanity of wounded governments*”²² instead of the actual purpose behind its enactment i.e. preservation of public order.

Contemporary governments have developed an assortment of laws to mete out a variety of punishments depending on the gravity of the offense of sedition as perceived by them. The broad spectrum of punishments for comparable acts of sedition across various countries demands a deeper look into these laws and to examine their intent more closely. In particular, the evolution of such laws on the Indian subcontinent since British colonial times and involving India, Pakistan, and Bangladesh will be examined in greater depth, along with similar laws in Hong-Kong and Singapore which also have British colonial roots.

This work will present a brief historical summary of sedition laws in the Asia Pacific region: namely India, Pakistan, Bangladesh, Singapore and Hongkong and their evolution through time to their present day versions. The reader’s attention is invited to instances of widespread misuse of sedition laws in certain jurisdictions. Lastly, the author advocates for the repeal of these archaic, antiquated and anachronistic laws in the jurisdictions that have opted to retain and exercise them unfairly.²³ The author argues that as long as sedition laws remain in the statute books authorities will be tempted to utilize them, even in instances where such use is not warranted.

¹⁹ ibid

²⁰ ibid

²¹ Sorial (n 18)

²² *Niharendu Dutt Majumdar v the King-Emperor* (1942); Saptarshi Bhattacharya, ‘The Law of Sedition and India: An Evolutionary Overview’ (*The Hindu Centre for Politics and Public Policy*, 5 August 2022) <<https://www.thehinducentre.com/the-arena/current-issues/the-law-of-sedition-and-india-an-evolutionary-overview/article65721149.ece>> accessed 27 July 2023

²³ Laurence Maher, “The Use and Abuse of Sedition” (1992) 14 *Sydney Law Review* 287

II. COUNTRY WISE DISCUSSION ON THE SEDITION LAWS & THEIR MISUSE

1. SOUTH ASIAN REGION (INDIA, PAKISTAN & BANGLADESH)

a. Brief History of the introduction of Sedition Laws in the South Asian Region (India, Pakistan & Bangladesh)

At the time of the British rule, several statutes were enacted by them in India. While framing the Indian Penal Code, 1860 (“IPC”), Lord Thomas Macaulay presented a provision on sedition, namely, section 113 of Draft Penal Code, 1837-39.²⁴ However, this section was not present in the IPC at the time of enactment.²⁵ It is unclear as to why this section was not incorporated into the IPC at the initial stage, but it is possible that the legislative body was unsure about its authority to enact such a provision.²⁶ Section 124A i.e. the present provision on sedition was not placed in the IPC until 1870, by Act 27 of 1870.²⁷ There was a considerable amount of discussion and debate when the amendment to incorporate sedition was introduced by Sir James Fitzjames Stephen,²⁸ eventually, the amendment was passed and law was introduced into the IPC. The reason behind the enactment of section 124A was that the British needed robust provisions to control revolts and mutinies within India. The British in the past had faced considerable trouble in containing the war of independence of 1857 and the Wahabi Movement in India against the British rule that persisted till 1870 and needed a criminal provision to control dissent that threatened the British Raj.

The colonial and racist purpose behind the enactment of this law is glaringly evident. As recent as the year 2023, the Lahore High Court while adjudicating upon the constitutional validity of section 124A referred to a passage of one of the members of the Viceroy’s Council advocating the use of sedition laws.²⁹ To understand the mindset of the colonialist it is necessary to reproduce their despicable words which attempted to justify the use of section 124A to stifle the press.

²⁴ Kedar Nath Singh v. State of Bihar, 1962 SCC OnLine SC 6

²⁵ ibid

²⁶ ibid

²⁷ ibid

²⁸ ibid

²⁹ Haroon Farooq v Federation of Pakistan and Ors, WP No 59599 of 2022 (Lahore High Court)

*“This is the class that writes for the Native Press, perorates on platforms, and generally vents its spleen upon the government which has not been able to find appointments for more than a fraction of its members. To honest, well- object. But **every government has the right to object when its critics wander off from criticism to calumny....**—No government such as ours in India can afford to allow the minds of an ignorant and credulous oriental population to be gradually poisoned and embittered by persistent calumny of the government and all its measures. If these sections lead to a more careful, well-considered and responsible journalism, they will confer a benefit not only on the state and the public, but on the journalistic profession itself.”*

[emphasis supplied]

b. Examination of Section 124A of the IPC

Before proceeding with the discussion on misuse of the sedition laws, it is imperative to examine section 124A of the IPC.

Section 124A in colonial India as introduced in 1870 before independence (“**erstwhile section 124A**”) has been reproduced below for reference:

*“124-A. Exciting Disaffection.— Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, **excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.***

Explanation.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the methods of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.”

[emphasis supplied]

In contrast with the erstwhile section 124A, the most recent section 124A of the IPC, after several amendments has been reproduced below for reference:

“124-A. 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”

A visible difference in the 2 sections is the insertion of an explanation of the word disaffection which was lacking in the erstwhile section 124A. Other than that, despite the rewording of the section, the substance and effect of the law is the same.

Article 372 of the Constitution of independent India provides that all the laws in force in the territory of India before the commencement of the Constitution shall remain in force until altered, repealed or amended. Similarly, Article 268 of the Constitution of Pakistan and Article 149 of the Constitution of Bangladesh provided for the retention of several British era statutes. Hence, the IPC was retained by all 3 nations after independence from the British. At that time, not many foresaw how section 124A, which was enacted by the British as a tool to repress native Indians would now be used by an independent government to curb freedom of speech of its very own citizens.

The blatant misuse and incorrect use and application of this law by the police led to the Supreme Court of India in *Kedar Nath Singh v. State of Bihar*³⁰ reinterpreting and analysing the section. The Supreme Court of India upheld the constitutionality of section 124A, and stated that the restrictions imposed on the freedom of speech and expression under this section are in

³⁰ Kedar Nath Singh v. State of Bihar, 1962 SCC OnLine SC 6

the interest of public order and fall within the ambit of permissible legislative interference with fundamental rights.³¹ However, it clarified that the application of this section must be strictly limited to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence and stressed upon the need for caution in its application.³² It was also emphasised that the phrase “*government established by law*” does not include a specific political party or person.³³ More recently, the Supreme Court of India once again warned against the arbitrary use of section 124A by the police and stated that the authorities shall be guided by the principles laid down in *Kedar Nath Singh v. State of Bihar*.³⁴

Even Pakistani Courts, as early as 1954, stated that a person should only be charged with sedition if he incites “*that degree of disaffection, hatred or contempt which induces people to refuse to recognise the government at all and leads them to unconstitutional methods...*”³⁵ Like *Kedar Nath Singh v State of Bihar*, this ruling of the Pakistan Court narrowed the scope of sedition in Pakistan. While most judgments enthusiastically embrace the idea of free speech etc, a closer examination of the ground reality shows that the provisions on sedition continue to be misused rampantly.

The punishment under section 124A is unyielding in nature as the offense is cognisable, non-bailable, non-compoundable, and contemplates imprisonment from 3 years to life.³⁶ Even if the provision is not utilised to prosecute an offender it has a ‘*chilling effect*’ on free speech.³⁷ It is precisely for this purpose that governments choose to retain the law and apply it.³⁸

Even Jawaharlal Nehru the founding fathers of India, while addressing the Parliament on the Bill pertaining to the First Constitution of India Amendment 1951 discussed how section 124A is antithetical to the idea of democracy and must be done away with at the earliest.³⁹ His words have been reproduced below for reference:

³¹ *ibid*

³² *ibid*

³³ *ibid*

³⁴ *Common Cause v. Union of India*, (2016) 15 SCC 269; J Venkatesan ‘Supreme Court warns Police that criticism of Government is not sedition’ *The Wire* (New Delhi, 5 September 2016) <<https://thewire.in/law/criticism-of-government-does-not-constitute-sedition-says-supreme-court>> accessed 16 July 2023

³⁵ Reema Omer, ‘Sedition and its discontents’ (*Dawn*, 3 February 2020) <<https://www.dawn.com/news/1532177>> accessed 29 July 2023

³⁶ Indian Penal Code 1860, s 124A; Atul Dev, A History of the Infamous Section 124A (*The Caravan*, 25 February 2016) <<https://caravanmagazine.in/vantage/section-124a-sedition-jnu-protests>> accessed 30 July 2023

³⁷ “Time to Repeal 124A: Maharashtra reminds us why a law on sedition has no place in a democracy” (2015) 50 (37) *Economic and Political Weekly* 8

³⁸ *ibid*

³⁹ Siddharth Narrain, “‘Disaffection’ and the Law: The Chilling Effect of Sedition Laws in India” (2011) 46 (8) *Economic and Political Weekly* 33

*“Take again Section 124-A of the Indian Penal Code. Now so far as I am concerned **that particular Section 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.** We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it.”*

[emphasis supplied]

c. Widespread Misuse of Sedition Laws in the South Asian Region

- INDIA

Sedition Laws in independent India, were originally retained in the IPC to safeguard the nation’s sovereignty and integrity but now have been wielded as a tool to quell political dissent and criticism. Over the years, instances of widespread misuse and abuse have raised serious concerns about the restrictions on fundamental rights of citizens. Almost a century after the enactment of the law and more than 75 years of independence from the British, the misuse of sedition laws has become increasingly rampant, especially, in the last decade with innumerable instances where innocent persons have been charged with sedition.

In the 60 years since, the police have largely ignored the ruling in *Kedar Nath v. State of Bihar*, and have repeatedly arrested peaceful critics of the government. The ineffectiveness of the courts’ attempts to limit the abuse of the law makes it clear that full repeal is essential.⁴⁰ Subsequent events discussed in the article show the reluctance of the Indian government to entirely do away with this draconian law.

According to statistics of the National Crime Record Bureau (“NCRB”), an alarming figure of 236 sedition cases have been filed between 2018- 2020, however, the conviction rate remains

⁴⁰ Linda Lakhdhir & Jayshree Bajoria, ‘Sedition law: Why India should break from Britain’s abusive legacy’ (*Human Rights Watch*, 18 July 2022) <<https://www.hrw.org/news/2022/07/18/sedition-law-why-india-should-break-britains-abusive-legacy>> accessed 2 August 2023

meagre,⁴¹ demonstrating the abuse of the law by the police. Furthermore, the NCRB data exhibits a spike in the arrests on charges of sedition since the year 2014.⁴²

Between the years 2016 to 2019 there have been only 2 convictions⁴³ in comparison to the hundreds of cases filed. According to Amnesty International, since 2010 sedition charges have been pressed on approximately 13,000 citizens of India including singers, filmmakers, journalists, and actors.⁴⁴ In fact, the Allahabad High Court, while adjudicating upon a frivolous sedition charge expressed its angst about the surge in sedition cases and remarked that “*the unity of India is not made of bamboo reeds which will bend to the passing winds of empty slogans. The foundations of our nation are more enduring.*”⁴⁵

There has been a plummet in India’s press freedom index, India has been ranked 161st out of 180 countries in 2023, 11 ranks below its rank in 2022.⁴⁶ While India’s ranks have slipped considerably, Pakistan’s ranks have risen, presumably, after the recent change in the government.

In *S.G. Vombatkere v. Union of India*⁴⁷ the Supreme Court of India, on May 2022 ordered a stay on all existing sedition proceedings and on the registration of fresh cases expressing that the ‘*rigours of Section 124A of IPC in not in tune with the current social milieu and was intended for a time when this country was under the colonial regime*’. The Court’s stay order was in consideration of the fact that this law was widely misused by the law enforcement authorities. In an affidavit filed by the Union of India, the Union requested the Courts to not examine the validity of section 124A again and requested them to await an exercise of reconsideration by the legislature.⁴⁸ The Union Government discussed the need for a statutory provision to combat sedition however, it acknowledged that the rampant misuse and abuse of the law for other purposes was a serious concern that needed to be addressed.⁴⁹ In this judgment

⁴¹ National Crimes Record Bureau, ‘Crime in India 2020 Statistics Volume-1’ <<https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>> accessed 4 July 2023

⁴² NC Asthana, ‘Despite Courts Saying it can’t be, Sedition Law is Used to Vilify Dissenters’ *The Wire* (29 January 2020) <<https://thewire.in/law/sedition-anti-national-tukde-tukde-gang>> accessed 14 July 2023

⁴³ Deeptiman Tiwary, ‘Sedition case reality check: only two convictions in three years’ *Indian Express* (New Delhi, 18 January 2019) <<https://indianexpress.com/article/india/sedition-case-punishment-convictions-kanhaiya-kumar-jnu-5543891/>> accessed 18 July 2023

⁴⁴ Hayley Wong, ‘Hong Kong supercharges 1938 British Sedition Law to Curb Dissent’ (*Bloomberg*, 23 August 2022) <<https://www.bloomberg.com/news/articles/2022-08-23/hong-kong-supercharges-1938-british-sedition-law-to-curb-dissent#xj4y7vzkg>> accessed on 20 August 2023

⁴⁵ Inayat Altaf Shekh v State Of U.P. (Criminal Misc Bail Appl No. 53115 of 2021, Allahabad High Court)

⁴⁶ ‘India slips in World Press Freedom Index, ranks 161 out of 180 countries’ *The Hindu* (New Delhi, 3 May 2023) <<https://www.thehindu.com/news/national/india-slips-in-world-press-freedom-index-ranks-161-out-of-180-countries/article66806608.ece>> accessed 3 August 2023

⁴⁷ *S.G. Vombatkere v. Union of India*, (2022) 7 SCC 433

⁴⁸ *ibid* para 4

⁴⁹ *ibid* para 4

it was noted that security interests, integrity of the State and the civil liberties of citizens needed to be balanced.⁵⁰

The Law Commission of India in its 279th report on “Usage of the Law of Sedition” (“**Report**”) released in June 2023 expressed the view that section 124A should be retained and proposed certain amendments to make the section conform with the ratio decidendi set out in *Kedar Nath Singh v State of Bihar*.⁵¹ Further, surprisingly, the Report recommended more stringent punishment for the offense of sedition.⁵² Presently, the term of imprisonment for this offense stands at 3 years, the Law Commission recommended making the offense punishable for a term upto 7 years in order to make the offense at par with other offenses contained in Chapter VI of the IPC.⁵³ The Report, while attempting to justify the retention of section 124A states that the provision only seeks to criminalise the “*pernicious tendency to incite violence or cause public disorder in the guise of exercising right to freedom of speech and expression*”⁵⁴ The Law Commission placed weightage on ‘*who wields the power*’ as a determinant of how sedition is used.⁵⁵ It would be ‘*oppressive in the context of a colonial government; necessary and proportionate in the hands of a democratic government*’⁵⁶ It stated that the existence of other counter terror legislations does not obviate the necessity of a sedition law.⁵⁷ Another argument propounded by the Law Commission to retain sedition is the internal strife in Jammu and Kashmir and the Khalistani movement in Punjab.⁵⁸ However, this argument appears to fall on the flat end of the sword since reports of the NCRB indicate that there has been a noticeable trend of sedition charges in states where there is no internal strife, rebellion or secession.⁵⁹ The view of the Law Commission came as a surprise since the Supreme Court of India had also expressed its doubts regarding the validity of the law of sedition.

⁵⁰ *ibid* para 6

⁵¹ Law Commission of India, *Usage of the Law of Sedition* (Law Comm No 279, 2023) para 9.4, 10.1

⁵² *ibid* para 10.5, 10.6

⁵³ *ibid* para 10.5, 10.6

⁵⁴ Radhika Roy & Shilpa Joseph, ‘Law Commission’s Report on Sedition ignores Free Speech Law and Indian Colonial History’ (*Livelaw*, 10 June 2023)

[<230432#:~:text=The%20Law%20Commission%20of%20India,three%20years%20to%20seven%20years.>](#)
accessed 10 August 2023

⁵⁵ Law Commission of India Report (n 51)

⁵⁶ *ibid* para 9.9, 9.10; Roy & Joseph (n 54)

⁵⁷ Law Commission of India Report (n 51) para 9.5- 9.8

⁵⁸ Roy & Joseph (n 54)

⁵⁹ Roy & Joseph (n 54)

In August 2023, the Union Home Minister introduced the Bharatiya Nyaya Sanhita Bill, 2023 (“**BNS Bill**”) in Parliament seeking to replace the IPC. Section 124A has been removed in the BNS Bill which gives one the impression that sedition has been done away with. However, section 150 of the BNS Bill appears to be a differently worded substitution of section 124A. This section discusses acts endangering sovereignty, unity and integrity of India and criminalises acts which excite or attempt to excite, ‘*secession or armed rebellion or subversive activities, or encourage feelings of separatist activities or endangers sovereignty or unity and integrity of India*’. A plain reading of this section indicates that this section has been enacted to control the Khalistani movement in Punjab, Maoist Movement as well as the militant and separatist activities in Kashmir. Section 150 prescribes punishment of a term of 7 years to life imprisonment, making the punishment more severe than section 124A which prescribes a term of 3 years imprisonment.⁶⁰ Kapil Sibal, Senior Advocate of the Supreme Court of India and Rajya Sabha MP has commented that this bill allows for “*using draconian police powers for political ends*”⁶¹ In the authors view, section 150 of the BNS Bill has merely changed the appearance of section 124A but has retained the substance of the original law, making it far more Machiavellian than the original British law.

PRE INDEPENDENCE MISUSE AND LANDMARK JUDGMENTS:

A. TRIAL OF BAL GANGHADAR TILAK

In *Emperor v. Bal Gangadhar Tilak*⁶² Bal Gangadhar Tilak a prominent freedom fighter and activist was tried and convicted under section 124A on charges of sedition in respect of his articles ‘*The Country’s Misfortune*’ and ‘*These Remedies are not Lasting*’ published in his newspaper Kesari where he advocated the cause of ‘Swarajya’ or independence for India.⁶³ These articles were heavily critical of the British rule in India.⁶⁴

⁶⁰ Chandni Chandel, ‘Old sedition Law vs New Bharatiya Nyaya Sanhita (Bill), 2023 – What’s the difference’ (*The Statesman*, 12 August 2023) <<https://www.thestatesman.com/india/old-sedition-law-vs-new-bharatiya-nyaya-sanhita-bill-2023-whats-the-difference-1503211007.html>> accessed 20 August 2023

⁶¹ Sparsh Upadhyay, ‘Bharatiya Nyaya Sanhita Bill Allows Using Draconian Police Powers For Political Ends: Kapil Sibal’ (*Livelaw*, 12 August 2023) <<https://www.livelaw.in/top-stories/bharatiya-nyaya-sanhita-bill-allows-using-draconian-police-powers-for-political-ends-kapil-sibal-235088>> accessed 13 August 2023

⁶² 1908 SCC OnLine Bom 48

⁶³ AG Noorani, *Indian Political Trials 1775-1947* (OUP 2005) 125-130

⁶⁴ Abhinav Chandrachud, *An Independent, Colonial Judiciary* (1st edn, OUP 2015) 267

The Bombay High Court expressed the view that while freedom of the press was a valuable right, this right was subject to the fact that no journalist is entitled to attribute '*dishonest or immoral motives*' to the Government or the Crown.⁶⁵ Davar J sentenced Tilak to transportation for a term of 6 years instead of transportation for life which he considered to be a form of '*leniency*'. This term was considered to be unfairly lengthy given the fact that Davar J, under the IPC then could have imposed a meagre fine or a shorter sentence.⁶⁶ Transportation of a term of 6 years was an '*atypical sentence*'⁶⁷ since most criminal cases filed in the Bombay High Court involved sentences of a short duration which generally did not exceed a few years imprisonment.⁶⁸ Further, it was presumed that the jurors voted along racial lines.⁶⁹

This conviction of Tilak acted like a spark in a keg and spurred on the freedom movement in India. Davar J while expressing his sorrow in convicting a man who commanded so much respect, condemned Tilak harshly⁷⁰ and stated that only a "*diseased mind, a most perverted mind, that can think that the articles that you have written are legitimate articles to write in political agitation. They are seething with sedition: they preach violence: they speak of murders with approval, and the cowardly and atrocious act of committing murders by bomb not only seem to meet; with your approval but hail the advent of bomb in India as if something had come to India for its good.*"

B. TRIAL OF MOHANDAS KARAMCHAND GANDHI

This trial which came to be known as the Great trial of 1922 was held in Government Circuit House at Ahmedabad on 18th March 1922.⁷¹ Mahatma Gandhi, one of India's most revered freedom fighters was tried under section 124A. The charges imposed on him were, writing 3 seditious articles in his weekly journal the Young India.⁷² The printer of the journal Shankerlal Banker was also charged under this provision.⁷³ In this journal he published militant essays where he called upon the people of India, more particularly the soldiers to quit the army and to

⁶⁵ 1908 SCC OnLine Bom 48

⁶⁶ Chandrachud (n 64) 267

⁶⁷ *ibid*

⁶⁸ *ibid*

⁶⁹ *ibid*

⁷⁰ *ibid* 268

⁷¹ Louis Fischer, *The Life of Mahatma Gandhi* (Granada Publishing 1982) 256-258

⁷² *ibid*

⁷³ *ibid*; Venu Madhav Govindu, 'The Great Trial of 1922' (*The India Forum*, 13 March 2022) <<https://www.theindiaforum.in/article/great-trial-1922>> accessed 20 August 2023

declare rebellion against the government.⁷⁴ He pleaded guilty of all charges and demanded the court to sentence him to the maximum penalty under law.⁷⁵

Gandhi then went on to deliver an oral statement in Court wherein he expressed his reasoning behind his disaffection towards the British empire.⁷⁶ He was utterly disappointed in how the British government failed the Indian citizens in the Jallianwala Bagh incident which eventually resulted in the crawling orders, degradation and humiliation and stated that his hope of reform was shattered.⁷⁷ The Khilafat promise remained unfulfilled, the Punjab crime was ‘whitewashed’ and the perpetrators were rewarded instead of being admonished and penalised.⁷⁸ It was these incidents that made him realise that in the hands of the British, India had become more ‘helpless than she was before’.⁷⁹ Gandhi was sentenced to six years of simple imprisonment.⁸⁰

It is most appropriate to reproduce an extract of Gandhi’s oral statement in Court.

“Section 124A under which I am happily charged is perhaps the Prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or a 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”⁸¹

POST INDEPENDENCE MISUSE

Sedition laws, more recently have been abused rampantly by the law enforcement authorities. In criminal law in India since the complaint precedes the First Information Report (“FIR”), the accused is brow beaten and troubled, despite his/ her innocence and is forced to defend himself

⁷⁴ Fischer (n 71)

⁷⁵ Govindu (n 73); Bernard Sexton, ‘The Trial of Gandhi’ (1922) 16 (3) The New York Times Current History 440

⁷⁶ *ibid*; Noorani (n 63) 225-235

⁷⁷ Bernard Sexton, ‘The Trial of Gandhi’ (1922) 16 (3) The New York Times Current History 440, 442; Noorani (n 61) 225- 235

⁷⁸ *ibid*

⁷⁹ *ibid*

⁸⁰ Govindu (n 73); ‘Great Trial of 1922’ (*MK Gandhi*) <<https://www.mkgandhi.org/speeches/gto1922.htm>> accessed 21 August 2023

⁸¹ Sexton (n 77); AG Noorani, *Indian Political Trials 1775-1947* (OUP 2005) 125-130; Govindu, (n 73)

in Court to exonerate himself.⁸² Even after it is held that the FIR filed was frivolous and baseless allegations were imposed on the accused, no compensation is offered to the accused.⁸³ This subjects the accused to grave prejudice and unfairness.

NOTABLE INSTANCES OF MISUSE

KANHAIYA KUMAR

This incident pertains to the alleged seditious slogans recited by students of the Jawaharlal Nehru University in New Delhi in the year 2016.⁸⁴ The students, Kanhaiya Kumar (the former president of the JNU Student Union), Umar Khalid and Anirban Bhattacharya among others were arrested under section 124A and other provisions of the IPC. The arrests were based on the protests held on the JNU campus disapproving of the death penalty meted out to Afzal Guru, who was responsible for the Parliament Attack in India in 2001 and Maqbool Bhat, a Kashmiri separatist. The Delhi Court, in 2021 took cognisance of the chargesheet filed by the Delhi Police and the accused were summoned to face trial at a later date.⁸⁵

The charges were met with widespread outrage and many condemned the actions of the government as it was considered to be a hit on freethinking and an attack on freedom of speech.

SEDITION CHARGES AGAINST NOTABLE JOURNALISTS

1. A prominent journalist Vinod Dua was charged under section 124A for his critical remarks about the government's handling of the crisis involving the migrant labourers during the lockdown imposed in the COVID 19 pandemic.⁸⁶ The Supreme Court of India quashed this case against Vinod Dua, and expressed that protection would be extended to all journalists in terms of the ratio in *Kedar Nath Singh v State of Bihar*.⁸⁷ It has been suggested that the

⁸² "The Court Fails the Citizen: The dismissal of the case on misuse of the sedition law suggests the Supreme Court is removed from reality" (2016) 51(37) Economic and Political Weekly 8

⁸³ *ibid*

⁸⁴ Poonam Sharma, 'JNU sedition case: Kanhaiya Kumar, Umar Khalid, others appear in court for last day of hearing' *India Today* (New Delhi, 15 March 2021) <<https://www.indiatoday.in/india/story/jnu-sedition-case-kanhaiya-kumar-umar-khalid-others-appear-in-court-for-last-day-of-hearing-all-you-need-to-know-1779414-2021-03-15>> accessed 13 July 2023

⁸⁵ Aamir Khan, 'Sedition case: Kanhaiya Kumar, Khalid Khalid appear in court' *Times of India* (New Delhi, 16 March 2021) <<https://timesofindia.indiatimes.com/city/delhi/sedition-case-kanhaiya-khalid-appear-in-court/articleshow/81520434.cms>> accessed 13 August 2023

⁸⁶ *Vinod Dua v. Union of India*, 2021 SCC OnLine SC 414

⁸⁷ 'Every Journalist is entitled to protection: SC quashes sedition case against Vinod Dua' *Indian Express* (New Delhi, 4 June 2021) <<https://indianexpress.com/article/india/supreme-court-sedition-case-bjp-vinod-dua-7342138/>> accessed 20 August 2023; *Vinod Dua v. Union of India*, 2021 SCC OnLine SC 414 para 102

Court should exercise its power to grant the public law remedy of compensation in order to discourage the misuse of penal provisions.⁸⁸

2. Siddique Kappan a Kerala based journalist was booked under the provisions of the Unlawful Activities (Prevention) Act 1967 (“UAPA”) under charges of sedition under section 124A in light of his attempt to cover the rape of a Dalit minor girl in the Hathras region of Uttar Pradesh.⁸⁹ This sparked considerable outrage in the fraternity of journalists who issued statements condemning his arrest.⁹⁰ The journalist was eventually granted bail by the Supreme Court of India after spending 23 long months in jail.⁹¹

SHARJEEL IMAM

Sharejeel Imam, a student of JNU was arrested on account of his inflammatory speeches where he vehemently opposed the Citizenship Amendment Act (“CAA”) and National Register of Citizens (“NRC”) during the anti CAA protests.⁹² It was alleged that Sharjeel’s speeches created enmity between groups thus resulting in riots in the Jamia Milia Islamia university area.⁹³ He was arrested for ‘instigating and abetting the Jamia riots’.⁹⁴ A group of students and alumni of the Indian Institute of Technology signed a statement in support of Sharjeel claiming that the police had ‘cherry picked’ comments and had arrested him under the UAPA on the basis of ‘half-baked reports’.⁹⁵ In 2021, the Bombay High Court granted anticipatory bail to a 23 year old transgender student who had been charged with sedition for allegedly chanting ‘objectionable slogans’ at an LGBTQ gathering at Azad Maidan in support of Sharjeel Imam and his cause.⁹⁶ The Court held that aligning with the cause of a person who is against the CAA

⁸⁸ Satya Prasoorn, ‘A Missed Opportunity: Vinod Dua’s Sedition Case’ (*Supreme Court Observer*, 29 June 2021) <<https://www.scobserver.in/journal/a-missed-opportunity-vinod-duas-sedition-case/>> accessed 22 August 2023

⁸⁹ Mahtab Alam ‘Hathras Case: Malayalam Journalist and Three Others Booked Under Sedition, UAPA’ *The Wire* (New Delhi, 7 October 2020) <<https://thewire.in/media/hathras-case-malayalam-journalist-siddique-kappan-booked-under-sedition-uapa>> accessed 13 August 2023

⁹⁰ Alam (n 89)

⁹¹ Siddique Kappan v. State of U.P. (Arising out of SLP (Crl.) No.7844 of 2022)

⁹² ‘Sharjeel Imam chargesheeted in seditious speech case’ *The Economic Times* (New Delhi, 18 April 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/sharjeel-imam-chargesheeted-in-seditious-speech-case/articleshow/75217894.cms?from=mdr>> accessed 12 July 2023

⁹³ *ibid*

⁹⁴ *ibid*

⁹⁵ ‘IITians for Sharjeel Imam’

<https://docs.google.com/forms/d/1vsg0JeDM3xB4Cuh1ZbRutUNKFIYGiR4HucUPnOfIAhY/viewform?chromeless=1&edit_requested=true> accessed 20 August 2023

⁹⁶ Urvarshi Chudawala v. State of Maharashtra (ABA No 342 of 2020, Bombay High Court); Sparsh Upadhyay, ‘23-yr-old Trans Student Booked on Sedition Charges Granted Anticipatory Bail by Bombay High Court’ (*Livelaw*, 1 November 2021) <<https://www.livelaw.in/news-updates/23yr-old-trans-student-sedition-charges-anticipatory-bail-bombay-high-court-184789>> accessed 1 August 2023

and NRC is insufficient to show that the person is inciting disaffection against the constituted government.⁹⁷

ASEEM TRIVEDI

A cartoonist by profession, Aseem Trivedi was charged with sedition due to his depiction of the Parliament of India as a commode.⁹⁸ His cartoon depicting the Ashok Chakra's (i.e. India's National Emblem) four lions as four wolves was deemed to be seditious in nature as well.⁹⁹ In this sketch the phrase truth shall prevail was replaced with the phrase corruption shall prevail.¹⁰⁰ Eventually the Maharashtra police dropped all charges of sedition on the recommendation of the Advocate General.¹⁰¹ Political satire is a time honoured form of art enjoyed by readers globally. The proceedings instituted against Aseem Trivedi highlight the restraints on the freedom of artistic expression in India.

PANJAB UNIVERSITY INCIDENT

66 students of Panjab University were charged with sedition by the Chandigarh police after protests ensued over a fee hike imposed by the University.¹⁰² The complainant, a security officer stated that his complaint had been entirely misinterpreted and misunderstood by the police.¹⁰³ After the imposition of charges was met with vociferous protests, the Chandigarh Police, to avoid further embarrassment stated that the charges would be dropped if substantial evidence was not found.¹⁰⁴ This instance highlights how the police is unable to interpret the provisions of the verbose section 124A accurately, thus, causing considerable prejudice to innocent victims.¹⁰⁵ Alternatively, this incident might demonstrate how the police is deliberately misinterpreting the provisions of this section to favour the government.

⁹⁷ *ibid*

⁹⁸ 'Anti-corruption cartoonist Aseem Trivedi arrested on sedition charges' (*India Today*, 9 September 2012) <<https://www.indiatoday.in/india/story/anti-corruption-cartoonist-aseem-trivedi-arrested-on-sedition-charges-115575-2012-09-08>> accessed 23 August 2023

⁹⁹ See n 96

¹⁰⁰ *ibid*

¹⁰¹ *Sanskar Marathe v. State of Maharashtra*, 2015 SCC OnLine Bom 587

¹⁰² Shub Karman Dhaliwal, 'At least 66 Panjab University students booked on sedition charges for protesting fee hike' (*The Indian Express*, 12 April 2017) <<https://indianexpress.com/article/india/for-protesting-fee-hike-66-panjab-university-students-are-booked-for-sedition-4609728/>> accessed 17 August 2023

¹⁰³ *ibid*

¹⁰⁴ *ibid*

¹⁰⁵ *ibid*

ARREST OF KASHMIRI STUDENTS

3 Kashmiri Muslim students languished in jail due to charges imposed under section 124A for purportedly celebrating India's defeat to Pakistan in a cricket match in 2021.¹⁰⁶ They were granted bail by the Allahabad High Court in 2022 after facing inordinate delays in getting a hearing.¹⁰⁷ This incident underscores the petty lengths the government will go to in order to quash any public expression it disapproves of.

The instances mentioned above underscore the growing concern about the misuse of sedition laws in India.

The offense of sedition, exists independently of the IPC and is contained in several statutes namely, (1) The National Security Act 1980 ("NSA") and the (2) Unlawful Activities (Prevention) Act 1967

(1) Section 3 of the NSA confers extraordinary powers of detention on the Central Government or State Government if it is satisfied that a person needs to be detained to prevent him from acting in any manner "*prejudicial to the defence of India, the relations of India with foreign powers, of the security of India,*"¹⁰⁸ "*the security of the State*"¹⁰⁹ or "*the maintenance of public order*".¹¹⁰ Courts have emphasised that the powers conferred by the NSA have to be exercised with extreme care and caution.¹¹¹

Misuse of the NSA is rampant in India. A few of these instances are: Dr. Kafeel Khan was detained under the NSA after delivering an anti-CAA speech at the Aligarh Muslim University. The Allahabad High Court eventually ordered for his release as his speech did not encourage hate or violence.¹¹² Kishorechandra Wangkhem, a Manipuri journalist was detained under the NSA for his critical comments on the Chief Minister of Manipur, N. Biren Singh and the political party he was a member of. When he was produced before the court, the detention was held to be illegal and he was set free. Within 24 hours, he was arrested once again under the

¹⁰⁶ Lakhdir & Bajoria (n 40)

¹⁰⁷ Inayat Altaf Shekh v State Of U.P. (Criminal Misc Bail Appl No. 53115 of 2021, Allahabad High Court)

¹⁰⁸ National Security Act 1980 (India), s 3(1)

¹⁰⁹ *ibid*, s 3(2)

¹¹⁰ *ibid*

¹¹¹ Kishori Mohan Bera v. State of West Bengal, (1972) 3 SCC 845

¹¹² Alok Pandey, 'UP Doctor Kafeel Khan's Detention Under Tough Law NSA "Illegal", Free Him: High Court' *NDTV* (Lucknow, 1 September 2020) <<https://www.ndtv.com/india-news/kafeel-khan-allahabad-high-court-orders-release-of-up-doctor-charged-under-national-security-act-for-anti-kaa-speech-2288450>> accessed 20 August 2023

NSA for posting allegedly inflammatory statements. In no time, the advisory board set up under the NSA approved his detention for 12 months.¹¹³

(2) Under section 2 (o) of the UAPA an unlawful activity means any action which is taken by an individual or association by '*committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise*' which:

- a. "*is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or*
- b. *disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or*
- c. *causes or is intended to cause disaffection against India*"

This section of the UAPA thus covers within its ambit all seditious speech and activities. Subsection (c) makes use of the phrase "*cause disaffection against India*" which may be used against people who point out the flaws of a political party in the public domain to throttle what should otherwise be considered as legitimate political discourse in a democratic state.

Most recently, the UAPA was abused in the case of a tribal rights activist, Father Stan Swamy, who died after being held in state custody for 270 days.¹¹⁴ He was charged under the UAPA in relation to his alleged links to Naxalites, Maoists and his role in the Bhima Koregaon violence.¹¹⁵ The injustice meted out to him should '*rankle the conscience*' of the Indian criminal justice system which has failed him miserably.¹¹⁶

The NSA and the UAPA are both stringent provisions that should be used only in sparing circumstances, as these laws threaten citizens' fundamental rights.¹¹⁷ These laws are prone to

¹¹³ Kartikay Agarwal & Arjun Sharma, 'National Security Act, 1980 – Iniquitous Act and Constitutional Tyranny or a Justified Piece of Legislation' (*Jurist*, 1 May 2020) <<https://www.jurist.org/commentary/2020/05/agarwal-sharma-national-security-act-1980/>> accessed 1 August 2023

¹¹⁴ Awastika Das, 'Father Stan Swamy Died as UAPA Martyr; But Political Prisoners Continue to Suffer Without Bail' (*Livelaw*, 8 July 2023) <<https://www.livelaw.in/articles/father-stan-swamy-uapa-martyr-but-political-prisoners-continue-to-suffer-without-bail-232260>> accessed 6 August 2023

¹¹⁵ Yashovardhan Azad, 'Stan Swamy's Death Exposes our broken Criminal Justice System Crying for Reforms' (*The Wire*, 9 July 2021) <<https://thewire.in/rights/stan-swamys-death-uapa-terrorism-bhim-koregaon-justice-undertrial>> accessed 2 August 2023

¹¹⁶ *ibid*

¹¹⁷ Agarwal & Sharma (n 113)

abuse and misuse by authorities, the consequence of which is far more reaching and dangerous than section 124A.¹¹⁸

- PAKISTAN

In 2023, Pakistan was ranked 150th out of 180 countries in the World Press Freedom Index,¹¹⁹ which is reflective of the excessive censorship and unnecessary attack on journalists who dare to broach and inquire into topics considered off limits. A journalism thinktank – Reporters without Borders has classified the erstwhile Prime Minister of Pakistan (Imran Khan) as one of 37 global “predators of press freedom”.¹²⁰

A journalist Hamid Mir who was charged with sedition in Pakistan authored an article in the Washington Post wherein he stated that sedition laws are being used as a weapon to stifle dissent and are heavily relied upon to threaten journalists, news anchors and academics.¹²¹ He went on to write that one could be charged with sedition for simply liking a post on Facebook or for depicting a cartoon¹²² Journalists who write content that is critical of the government or military face the threat of sedition charges, leading to self-censorship.¹²³ Even reporting on sensitive issues such as military operations or corruption scandals can lead to accusations of undermining national security.¹²⁴ While sedition charges in Pakistan do not result in convictions in most cases, the person who is charged is compelled to spend considerable time combatting these baseless/ frivolous charges and is thus heavily inconvenienced.¹²⁵

¹¹⁸ ibid

¹¹⁹ Fatima Amjd & Naimat Khan ‘Pakistan moves up seven places in World Press Freedom Index’ (*Arab News Pakistan*, 3 May 2023) <<https://www.arabnews.pk/node/2297026/pakistan>> accessed 23 August 2023

¹²⁰ Zafar Aafaq, ‘India & Pakistan Govts United in Illegally Using Sedition Laws Despite Court Warnings’ (*Article 14*, 7 July 2021) <<https://article-14.com/post/india-pakistan-govts-united-in-illegally-using-sedition-law-despite-court-warnings-60e51a3784627>> accessed 3 August 2023

¹²¹ Hamid Mir, ‘Censorship is suffocating Pakistan’ (*The Washington Post*, 15 June 2021) <<https://www.washingtonpost.com/opinions/2021/06/15/hamid-mir-assails-censorship-in-pakistan/>> accessed 5 August 2023

¹²² ibid

¹²³ ibid

¹²⁴ ibid

¹²⁵ Smith, Yim & Kahloon (n 15)

There are several notable instances of misuse of the laws on sedition in Pakistan. These have been discussed below:

PRIME MINISTER IMRAN KHAN

The most prominent abuse of sedition law is when former Prime Minister of Pakistan, Imran Khan was arrested on charges of sedition, blasphemy and terrorism.¹²⁶ Khan led an Azadi March in Islamabad to protest against his unfair removal as Prime Minister.¹²⁷ After this march turned violent and police had to resort to teargassing the protesters, charges were framed against Imran Khan.¹²⁸ These charges were framed on the basis of allegations that Imran Khan had attempted to spark a mutiny by delivering seditiously charged speeches to provoke the citizens of Pakistan.¹²⁹ In the past, three erstwhile Prime Ministers and a President— Hussain Shaheed Suharwardy, Benazir Bhutto, Nawaz Sharif and Asif Ali Zardar have been charged with sedition.¹³⁰ The author believes that this reflects a trend in Pakistan where the incumbent party, after overthrowing the previous rulers prosecutes them to eliminate political opposition and competition.

JOURNALIST ARSHAD SHARIF

Arshad Sharif and Khawar Ghuman news anchors of ARY News were booked under section 124A of the Pakistan Penal Code (“PPC”) for allegedly carrying out ‘*anti state propaganda*’.¹³¹ These charges were imposed after Arshad Sharif interviewed a close aide of former Prime Minister Imran Khan.¹³² Additionally the channel was taken off air because the Pakistan Electronic Media Regulatory Authority (“PEMRA”) alleged that the channel was circulating ‘*false hateful and seditious content*’ in an attempt to instigate rebellion within armed

¹²⁶ ‘Pakistan Govt Mulls Sedition Case Against Ex-PM Imran Khan’ (*Outlook India*) <<https://www.outlookindia.com/international/pakistan-govt-mulls-sedition-case-against-ex-pm-imran-khan-news-200148>> accessed 7 August 2023

¹²⁷ *ibid*

¹²⁸ *ibid*

¹²⁹ *ibid*

¹³⁰ Aafaq (n 120)

¹³¹ Pakistan TV channel founder, anchors booked for ‘sedition’ *ANI News* (Karachi, 10 August 2022) <<https://www.aninews.in/news/world/asia/pakistan-tv-channel-founder-anchors-booked-for-sedition20220810114326/>> accessed 4 August 2023

¹³² ‘Journalist Arshad Sharif shot dead in Kenya’ *The Express Tribune* (Islamabad, 24 October 2022) <<https://tribune.com.pk/story/2383245/senior-journalist-arshad-sharif-shot-dead-in-kenya-confirms-wife/>> accessed 24 August 2023

forces.¹³³ Before the case could be heard by the Courts, Arshad was shot dead in Kenya by Kenyan authorities.¹³⁴

PASHTUN TAHAFUZ MOVEMENT LEADERS

Leader of the Pashtun Tahafuz Movement (“PTM”) Manzoor Pashteen was booked on charges of sedition under the PPC and terrorism under the Anti-Terrorism Act, 1997 (“ATA 1997”) for commenting that Pakistani institutions were responsible for the extrajudicial killings of citizens in the tribal regions of north-western Pakistan and broached the topic of enforced disappearances.¹³⁵ His public accusations of human right violations by the Pakistani army made him a ‘*thorn in the side*’ of the military.¹³⁶ Human rights organisations such as Human Rights Watch and the Human Rights Commission of Pakistan condemned the FIR against Manzoor Pashteen and demanded his immediate release and dropping of charges.¹³⁷ After spending close to a month in jail Manzoor was released on bail.¹³⁸ Further, other members of the PTM such as Member of National Assembly (“MNA”) Mihsin Dawar and MNA Ali Wazir were charged with sedition for their involvement in protests and rallies wherein they criticised the state policies. Subsequently, an Anti- terrorism Court in Karachi acquitted Ali Wazir in 2022 after he spent 4 years in prison.¹³⁹ The arrest of Manzoor and other members of the PTM is proof of how the Pakistani government is overtly misusing the PPC and other stringent statutes to intimidate and clamp down on critics of the government.¹⁴⁰

¹³³ See n 131

¹³⁴ See n 132

¹³⁵ ‘Pak rights group condemns FIR against Pashtun leader Manzoor Pashteen’ *ANI News* (Islamabad, 26 October 2022) <<https://www.aninews.in/news/world/asia/pak-rights-group-condemns-fir-against-pashtun-leader-manzoor-pashteen20221026113704/>> accessed 30 August 2023

¹³⁶ Hannah Ellis-Petersen & Shah Meer Baloch ‘Civil rights activist arrested in Pakistan on sedition charges’ *The Guardian* (27 January 2020) <<https://www.theguardian.com/world/2020/jan/27/civil-rights-activist-manzoor-ahmad-pashteen-arrested-in-pakistan-on-sedition-charges>> accessed 12 July 2023

¹³⁷ See n 135

¹³⁸ Sirajuddin, ‘PTM’s Manzoor Pashteen released from jail’ *Dawn* (25 February 2020) <<https://www.dawn.com/news/1536600>> accessed 23 August 2023

¹³⁹ ‘ATC clears MNA Ali Wazir in sedition case’ (*The Express Tribune* 25 October 2022) <<https://tribune.com.pk/story/2383431/atc-clears-mna-ali-wazir-in-sedition-case>> accessed 22 July 2023

¹⁴⁰ ‘Pakistan: Pashtun Activist Arrested’ *HRW* (New York, 27 January 2020) <<https://www.hrw.org/news/2020/01/27/pakistan-pashtun-activist-arrested>> accessed 29 July 2023

THE HISTORIC STRIKING DOWN OF SECTION 124A

In a significant move, the Lahore High Court struck down section 124A of the PPC.¹⁴¹ Shahid Karim J observed that since the courts were not able to take cognisance of the fact that the law needed an urgent repeal, the Courts had to step up to protect the citizens.¹⁴² Karim J opined that section 124A of the PPC is so widely worded that it is intended to ‘*wreck revenge on a political dissenter*’.¹⁴³ The Court held that a provision as broadly worded as section 124A gives the police and other authorities unfettered rights to restrict free speech and since this section is in ‘*significant tension with constitutionalism and constitutional democracy*’ it must be done away with.¹⁴⁴ Further, since section 124A runs contrary to the fundamental rights i.e. right to freedom of speech, enshrined in Articles 19 and 19A of the Pakistani Constitution, it is liable to be struck down.¹⁴⁵ Moreover, Karim J expressed the view that since sedition is a ‘*relic of autocracies and colonial subjugation*’ it was time that this provision found a ‘*permanent resting place*’ and suffer the ‘*condemnation it deserves*’.¹⁴⁶ This ruling reflects a more liberal approach and demonstrates how several erstwhile British colonies are slowly breaking away from the century old, parochial, colonial law.

Despite the striking down of section 124A by the Lahore High Court, there continue to be several other laws which criminalise sedition. These laws vary in language and scope, but seek to achieve the same purpose, namely: to maintain national security and public order.

The 2 chief laws related to sedition in Pakistan, with the exception of the defunct section 124A are –(1) Anti-terrorism Act, 1997 and (2) Prevention of Electronic Crimes Act 2016.

(1) Section 6 of the ATA 1997 defines terrorism to include acts which seek to “*coerce and intimidate, overawe the Government, the public or a section of the public, community or sect to create a sense of fear or insecurity in society*”. Section 6 inter alia criminalises the following acts:

- 1) Acts which incite hatred and contempt on a religious, sectarian or ethnic basis to prompt violence ;

¹⁴¹ Haroon Farooq v Federation of Pakistan & Ors, WP No 59599 of 2022 (Lahore High Court)

¹⁴² *ibid* para 10

¹⁴³ *ibid* para 54

¹⁴⁴ Haroon Farooq v Federation of Pakistan & Ors, WP No 59599 of 2022 (Lahore High Court) para 52

¹⁴⁵ See n 144 at para 77

¹⁴⁶ See n 144 at para 75

- 2) Acts which pose danger to public safety, or acts done to frighten the public and obstruct them from carrying on their lawful trade and disrupts civil life;
- 3) Acts which involve violence against members of the police force, armed forces, civil armed forces, or public servants.

This vague and broadly worded section can be used in place of section 124A to muffle dissent and criticism. This statute has been subject to gross overuse. As of 2014, more than 17,000 cases under this Act were pending trial.¹⁴⁷ In one case, a Pakistani citizen, Zafar Iqbal was deemed to be a terrorist under the ATA 1997 for shooting his father during a heated argument. The ingredients of this crime certainly do not attract the stringent provisions of the ATA 1997.¹⁴⁸

(2) Section 20 of the Prevention of Electronic Crimes Act 2016 (“**PEC Act**”) criminalises the transmission of information which one knows to be false, intimidates or harms the reputation or privacy of a ‘natural person’. Three journalists in Pakistan faced sedition charges under the PEC Act for using derogatory language while making reference to the Pakistani Army and state institutions.¹⁴⁹ Since section 20 of the PEC Act only applies to transmission of false information in relation to ‘*natural persons*’, the charges imposed against these journalists *prima facie* appear to be bogus and a tactic to silence the press. These laws, more often than not are used to scare the press and critics instead of actually prosecuting genuine cases.

In the presence of these laws, the striking down of section 124A, though a welcome step, might not truly change the situation in Pakistan. Remnants of provisions on sedition persist in Pakistan in various other statutes and will continue to be abused by authorities to further their agendas.

¹⁴⁷ Justice Project Pakistan ‘Terror on Death Row’ (2014) <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan_1.pdf> accessed 3 August 2023

¹⁴⁸ See n 147

¹⁴⁹ ‘Pakistan: Three journalists face sedition charges under Cybercrime Law’ *IFJ* (24 September 2020) <<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/pakistan-three-journalists-face-sedition-charges-under-cybercrime-law>> accessed 25 July 2023

- BANGLADESH

In 2023 Bangladesh was ranked 163rd out of 180 countries in the RSF World Press Freedom Index, the lowest in South Asia.¹⁵⁰ This is perhaps on account of the numerous arbitrary and wrongful arrests of journalists under sedition and defamation laws.

Prime Minister Sheikh Hasina's government has often been accused of using the country's sedition laws as a vehicle to muffle journalists reporting on issues concerning corruption and human rights.¹⁵¹ In addition to section 124A of the Bangladesh Penal Code ("BPC"), Bangladesh passed a draconian act known as the Digital Security Act in 2018 ("DS Act"). This act, much like section 124A seeks to criminalise dissent, however, it restricts its application to dissemination of seditious content on online platforms by digital means.¹⁵² Section 21 of the DS Act prescribes a penalty of imprisonment for a term not exceeding 10 years for '*making any kind of propaganda or campaign against liberation war spirit of liberation war, father of the nation, national anthem or national flag*' by digital means. Section 31 criminalises the intentional publishing or transmission of anything on a website that creates '*enmity, hatred or hostility among different classes or communities of the society, or destroys communal harmony, or creates unrest or disorder, or deteriorates or advances to deteriorate the law and order situation*'.

Thus, the provisions in the DS Act can be utilised by the government or police to punish dissenters. It has been urged that the DS Act has created a precarious situation in Bangladesh where the sword of Damocles hangs over the heads of the citizens.¹⁵³ Sedition laws are very stringent in Bangladesh since section 124A of the BPC continues to remain in force and now, the DS Act is additionally being used to stifle free speech in Bangladesh.¹⁵⁴ The DS Act is influenced by archaic colonial laws and hence it has been contended that the "*previous foreign colonial state has transformed into a native colonial state.*"¹⁵⁵

¹⁵⁰ 'Bangladesh's press freedom lowest in South Asia' (*The Business Standard*, 3 May 2023) <<https://www.tbsnews.net/bangladesh/bangladesh-ranks-lowest-among-south-asian-countries-press-freedom-index-2023-625626>> accessed 23 August 2023

¹⁵¹ 'Bangladesh: End Crackdown Against Journalists and Critics' *HRW* (New York, 3 May 2023) <<https://www.hrw.org/news/2023/05/03/bangladesh-end-crackdown-against-journalists-and-critics>> accessed 23 August 2023; Mir (n 121)

¹⁵² 'Bangladesh: Muzzling dissent online' (*Amnesty International*, 12 November 2018) <<https://www.amnesty.org/en/documents/asa13/9364/2018/en/>> accessed 15 August 2023

¹⁵³ 'Bangladesh Lawyer files sedition case over Al Jazeera report' (*Al Jazeera*, 17 February 2021) <<https://www.thedailystar.net/law-our-rights/news/sedition-law-and-press-freedom-bangladesh-3353681>> accessed 9 August 2023

¹⁵⁴ *ibid*

¹⁵⁵ *ibid*

SEDITION CHARGES AGAINST AL JAZEERA

In one case a Bangladeshi lawyer filed a sedition case against Al Jazeera, a popular newspaper over an investigative report titled ‘*All the Prime Minister’s Men*’.¹⁵⁶ This report *inter alia* blew the lid on how criminal entities are collaborating with Bangladeshi security forces, and such links could be traced to the Prime Minister.¹⁵⁷ The lawyer argued that the report was ‘fictitious and flawed’ and tarnished Bangladesh’s image internationally which is tantamount to committing sedition.¹⁵⁸ The Dhaka Metropolitan Magistrate eventually ordered for the charges to be withdrawn as the imposition of these charges were not authorised by the government of Bangladesh¹⁵⁹

SHAFIQ ISLAM KAJOL

A Bangladeshi photojournalist Shafiq Islam Kajol was charged with sedition under the DS Act for *inter alia* sharing an article on Shamima Noor Papia an expelled Jubo Mohila League leader.¹⁶⁰ After being arrested, he allegedly disappeared for 53 days, was subsequently found and placed in custody of the Border Guards Bangladesh. The Human Rights Watch implied that there was foul play involved and stated that the manner of Kajol’s disappearance raised eyebrows regarding human rights violations.¹⁶¹ Even though Shafiq was granted bail, he was jailed as the police pressed charges under other sections of the BPC on him.¹⁶² In 2020 the High Court issued rule calling upon the government to render an explanation as to why bail should not be granted to Kajol.¹⁶³ In December 2020, the High Court granted bail to Kajol.¹⁶⁴

¹⁵⁶ *ibid*

¹⁵⁷ *ibid*

¹⁵⁸ *ibid*

¹⁵⁹ Al Jazeera Investigative Unit, ‘Bangladesh Court rejects sedition case over Al Jazeera Report’ (*Al Jazeera*, 23 February 2021) <<https://www.aljazeera.com/news/2021/2/23/bangladesh-court-rejects-sedition-case-for-al-jazeera-probe>> accessed 3 August 2023

¹⁶⁰ Rehya, ‘Photojournalist Kajol shown arrested in another DSA case’ *Dhaka Tribune* (27 July 2020) <<https://www.dhakatribune.com/bangladesh/court/217611/photojournalist-kajol-shown-arrested-in-another>> accessed 30 July 2023

¹⁶¹ Bangladesh: Joint call for the release of Journalist Shafiqul Islam Kajol (*HRW*, 11 August 2020) <<https://www.hrw.org/news/2020/08/11/bangladesh-joint-call-release-journalist-shafiqul-islam-kajol>> accessed 11 July 2023

¹⁶² ‘Photojournalist Kajol indicted in 3 DSA cases’ (*The Business Standard*, 8 November 2021) <<https://www.tbsnews.net/bangladesh/court/photojournalist-kajol-indicted-3-dsa-cases-326776>> accessed 20 August 2023

¹⁶³ *ibid*

¹⁶⁴ *ibid*

ROAD SAFETY PROTESTS ARRESTS

In the year 2018, protests concerning road safety ensued after a speeding bus killed 2 students in Dhaka. Journalists who were reporting these protests were arrested on charges of sedition under section 57 of the Information and Communication Technology Act (the section has since been repealed)¹⁶⁵. 86 people, including photographer and activist Shahidul Alam, leader of the student's federation Maruf, University student Asif, actor Nawshaba among others were arrested under this Act.¹⁶⁶ The wildly disproportionate action taken by the Bangladeshi police has made it apparent that the government has been '*firing cannons to kill mosquitos*'.¹⁶⁷

2. SINGAPORE & HONG KONG

- SINGAPORE

- a. Brief History of Sedition Laws in Singapore*

Sedition was introduced into Singapore by the British by way of the Sedition Ordinance, 1938.¹⁶⁸ Similar to sedition laws in other colonies, the purpose of the British in introducing these laws was to subjugate citizens and curb resistance to the British rule.¹⁶⁹ Eventually, with changes in the law, the current version of the statute i.e. Sedition Act, 1948 ("SA 1948") found its way into Singapore. The SA 1948 has its genesis and foundations in the Malaysian Sedition Ordinance, 1948.¹⁷⁰ Even the Sedition Ordinance 1948, was introduced by the British to the Federation of Malaya in 1948, to stifle dissent in Malaya.¹⁷¹ When Singapore and Malaysia merged to extend Singapore as a constituent state of the Federation of Malaysia, this Ordinance

¹⁶⁵ After the introduction of the Digital Security Act 2018, section 57 of the Information and Communication Technology Act was repealed; 'Digital Security Act draft approved, Section 57 repealed' *Dhaka Tribune* (Dhaka, 29 January 2018) <<https://www.dhakatribune.com/bangladesh/laws-rights/136818/digital-security-act-draft-approved-section-57>> accessed 4 August 2023

¹⁶⁶ Mark Lacy & Nayanika Mookherjee, 'Firing cannons to kill mosquitoes': Controlling 'virtual streets' and the image of the state' in Bangladesh' (2020) 54(2) *Contributions to Indian Sociology* 280, 281-284

¹⁶⁷ *ibid*

¹⁶⁸ Tham Yuen-C, 'Singapore Parliament repeals Sedition Act after 83 years' (*The Straits Times*, 5 October 2021) <<https://www.straitstimes.com/singapore/politics/singapore-parliament-repeals-sedition-act-after-83-years>> accessed 13 July 2023

¹⁶⁹ Ling-Chein Neo (n 4)

¹⁷⁰ *ibid*

¹⁷¹ Second Reading of Sedition (Repeal) Bill — Speech by Mr K Shanmugam, Minister for Home Affairs and Minister for Law (5 October 2021) <<https://www.mha.gov.sg/mediaroom/parliamentary/second-reading-of-sedition-repeal-bill-speech-by-mr-k-shanmugam/>> accessed 27 August 2023

was gazetted.¹⁷² After the separation from Malaysia in 1965, Singapore opted to retain this statute.¹⁷³

b. Discussion on the Singapore Sedition Act 1948

The Act on sedition in Singapore was the SA 1948. Section 3 (1) of the SA 1948 deals with seditious tendency and criminalises the following tendencies:

“(a) to bring into hatred or contempt or to excite disaffection against the Government; (b) to excite the citizens of Singapore or the residents in Singapore to attempt to procure in Singapore, the alteration, otherwise than by lawful means, of any matter as by law established; (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Singapore; (d) to raise discontent or disaffection amongst the citizens of Singapore or the residents in Singapore; to promote feelings of ill will and hostility between different races or classes of the population of Singapore.”

This section contains a proviso which states that no act, speech, words, publication etc shall be deemed to be seditious merely because it has a tendency to (a) demonstrate that the ‘government has been misled or mistaken in any of its measures’ (b) point out errors or defects in the government, constitution, legislation or administration of justice in order to remedy such errors. (c) persuade citizens of Singapore to by lawful means procure the alteration of any matter (d) point out any matters producing feelings of ill will towards different races or classes of the population with a view to remedy the situation.¹⁷⁴

A notable and perhaps novel feature of the SA 1948 is that it extends the application of sedition laws to specific types of speech on race and religion which are offensive in nature. The definition of sedition in the Singaporean statute appears to be wider/ broader than the Indian, Pakistani and Bangladeshi provisions since it includes religious intolerance and racial speech within its ambit.¹⁷⁵ This provision has given rise to considerable debate, given that under article 14 of the Constitution of the Republic of Singapore, freedom of speech is only subject to the restrictions under article 14(2) i.e. security, friendly relations with other countries, public order or morality, the protection of parliamentary privileges and provisions against contempt of court, defamation or incitement to any offense.¹⁷⁶ Some contend that such speech does not fall

¹⁷² Ling-Chein Neo (n 4)

¹⁷³ *ibid*

¹⁷⁴ Sedition Act 1948 (Singapore), s 3

¹⁷⁵ Yock Lin Tan, “Sedition and its New Clothes in Singapore” (2011) Singapore Journal of Legal Studies (NUS) 212, 225

¹⁷⁶ Ling-Chein Neo (n 4) 361

within the category of public order and hence this provision is liable to be struck down. Others argue that promoting ill will and hostility is a strong enough offense as it poses direct threat to the public order and hence serves as a valid justification for the retention of the provision.¹⁷⁷ In other common law countries, the offense of sedition holds a far higher threshold and does not include within its ambit speech directed at a racial group that has a likeliness to cause feelings of ill will and hostility.¹⁷⁸

Section 4 prescribes, in cases of conviction for a first offence ‘*a fine not exceeding \$5,000*’ and/or ‘*imprisonment for a term not exceeding 3 years*’, and, for a subsequent offence, ‘*imprisonment for a term not exceeding 5 years*’. The term of imprisonment under this statute is less harsh than that imposed on offenders under section 124A of the Penal Codes in India Pakistan and Bangladesh as these countries’ statute books contemplate imprisonment for life.

Section 3 (3) of the SA 1948 states that intention behind doing a seditious act is deemed to be irrelevant. This provision differs from other common law countries i.e. Indian, Pakistani and Bangladeshi as these countries’ statutes give regard to the intention of the offender. The Singaporean law appears to be harsher and more stringent in nature since intention is unavailable as a defense to a person who has unintentionally/ mistakenly said something that is deemed to be seditious.

Section 9 of the SA 1948 is important for the reason that it empowers authorities to suspend the publication and circulation of newspapers containing seditious content, making this section susceptible to misuse by the government to clamp down on journalists. Further, section 11 of the SA 1948 grants wide powers to police officers by empowering them to arrest any person found or suspected of committing any seditious act without a warrant. On a bare reading of these sections, it appears that broad and far reaching powers are granted to the government to tackle the dissemination of seditious content.

¹⁷⁷ Lin Tan (n 175)

¹⁷⁸ Ling-Chein Neo (n 4) 362

c. Landmark Judgments on Sedition in Singapore

PUBLIC PROSECUTOR V. ONG KIAN CHEONG

This was the first case in Singapore where a trial on sedition was held and custodial sentences were awarded to the offenders.¹⁷⁹ In this case, the accused circulated publications which promoted Christianity and denigrated Islam.¹⁸⁰ These publications were held to possess the tendency to promote feelings of ill-will and hostility between Christians and Muslims in Singapore and were seized by the Police¹⁸¹ This, in turn, would undoubtedly lead to feelings of ill will within the Malay community, since a large proportion of Malays are Muslim. The Court opined that while people may have a desire to profess and spread their faith, the right to propagate such opinions cannot be unfettered.¹⁸² It advised that one must be sensitive and observe mutual respect for another's faith and religious beliefs.¹⁸³ The Court directed the forfeiture of all seditious publications and imprisonment of a term of 4 weeks for the two perpetrators.¹⁸⁴

PUBLIC PROSECUTOR V. KOH SONG HUAT BENJAMIN

In this case the accused committed seditious acts which had the tendency of promoting feelings of ill-will and hostility. These acts were in relation to the online posting of '*invective and perjorative*' anti Malay and anti-Muslim comments.¹⁸⁵ One of the accused was sentenced to imprisonment for a term of one month since his statements were found to be vile and denigrating.¹⁸⁶ He had indulged in a mockery of Islamic beliefs by positioning the halal logo of the Islamic Religious Council of Singapore alongside an image of a pig's head.¹⁸⁷ Furthermore, he attempted to draw a comparison between Islam and Satanism which was disrespectful to the Muslim community.¹⁸⁸ The other offender had not made serious statements and hence was only subjected to one day of imprisonment with fine.¹⁸⁹

¹⁷⁹ Lin Tan (n 175); Public Prosecutor v. Ong Kian Cheong & Anr [2009] SGDC 163 para 84

¹⁸⁰ Public Prosecutor v. Ong Kian Cheong & Anr [2009] SGDC 163

¹⁸¹ Ibid at para 77

¹⁸² See n 179

¹⁸³ Public Prosecutor v. Ong Kian Cheong & Anr [2009] SGDC 163 para 82

¹⁸⁴ Ibid

¹⁸⁵ Public Prosecutor v. Koh Song Huat Benjamin [2005] SGDC 272, D.C.

¹⁸⁶ Ibid

¹⁸⁷ Ibid at para 11, 15

¹⁸⁸ ibid

¹⁸⁹ Ibid para 11, 16

d. Misuse of the Law

While the law on sedition has not been subject to much misuse in Singapore recently, the fact still remains that the SA 1948 conferred broad, sweeping powers on the authorities which were susceptible to misuse if the power went into the wrong hands. The author has observed that the political misuse is far lesser in Singapore than in the South Asia i.e. India, Pakistan, Bangladesh. Largely, sedition laws in Singapore have been used in the past to control speech that promotes and incites ill will and hostility and seldom for other purposes.

Six prosecutions have been made since the year 1965, and the SA 1948 was last used in 2016, to prosecute the people behind the website entitled ‘*The Real Singapore*’, which displayed anti-foreigner sentiment vide online posts.¹⁹⁰

There are some critics who contend that there is virtually no freedom to criticize the government, the Courts or to peacefully and lawfully protest state policies.¹⁹¹ They assert that Singapore’s draconian laws on sedition, contempt and libel have been used wrongfully against activists, cartoonists and others to suppress dissent and constructive criticism.¹⁹² They believe that is not enough that the sedition law is not being misused by the government, as the very presence of the law casts a fear and creates a chilling effect on free speech which prevents citizens from exercising their rights granted under the Constitution of Singapore. In fear of punishment, citizens are unable to voice their views on subjects that fall within the scope of seditious tendency under the SA 1948. Critics have implored Singapore to keep its laws on freedom of speech and expression at par with other international nations, citing Malaysia as an example in point.¹⁹³ Fortunately, heed was paid to such views and the SA 1948 was repealed by the Singaporean Parliament in 2021.

e. Subsequent Repeal of the SA 1948

On 13 September 2021, the Singaporean government presented a bill in Parliament to repeal the SSA 1948.¹⁹⁴ The Ministry of Home Affairs while recapping the use of sedition laws explained that the SA 1948 has been used previously to “*address various forms of conduct that*

¹⁹⁰ Yuen-C (n 168)

¹⁹¹ ‘Singapore: End Broad Restrictions on Speech’ (*HRW*, 14 June 2018) <<https://www.hrw.org/news/2018/06/14/singapore-end-broad-restrictions-speech>> accessed 26 August 2023

¹⁹² See n 191

¹⁹³ *ibid*

¹⁹⁴ Hong Kong Parliament First Reading of Sedition (Repeal) Bill, 13 September 2021 <<https://www.mha.gov.sg/mediaroom/press-releases/first-reading-of-the-sedition-repeal-bill/>> accessed 25 July 2023

could weaken our social fabric and undermine our institutions,”¹⁹⁵ However, with efflux of time, this statute lost much of its relevance as well as utility. The Ministry of Home Affairs cited its “*limited application*” as one of the key reasons for its repeal, and went on to state that new laws such as the Maintenance of Religious Harmony Act, the Protection from Online Falsehoods and Manipulation Act 2019, the Administration of Justice (Protection) Act 2016, the Undesirable Publications Act, the Newspaper and Printing Presses Act, and specific provisions under the Penal Code were sufficient to address issues “*in a more targeted and calibrated manner*”.¹⁹⁶ Since the provision in the SA 1948 concerning social cohesion and harmony between different groups was still of contemporary relevance, the offenses in the Penal Code would be amended so as to deal with this issue adequately.¹⁹⁷

Singapore’s Parliament voted to repeal its sedition law, with the Home Affairs and Law Minister explaining that “*the excitement of disaffection against the Government shouldn’t be criminalised.*”¹⁹⁸ The SA 1948 was repealed by the Singaporean Parliament on 5th October 2021 by passing the Sedition (Repeal) Bill.¹⁹⁹ This Bill came into effect on 2nd November 2022 by the notification of the Sedition (Repeal) Act 2021 (Commencement) Notification 2022.²⁰⁰

- HONG KONG

- a. History of Sedition Law in Hong Kong

In the colonial era, the Sedition Publication Ordinance was introduced in Hong Kong Special Administrative Region (“**Hong Kong**”) in 1914 to censor anti-colonial activists.²⁰¹ Subsequently, the Emergency Regulation Ordinance 1922 and Sedition Ordinance 1938 were promulgated to empower the government to exercise strict control over Chinese publications and jail political activists.²⁰² After the introduction of these ordinances, another important Ordinance i.e. the Control of Publications Consolidation Ordinance 1951 was enacted to

¹⁹⁵ *ibid*

¹⁹⁶ *ibid*

¹⁹⁷ *ibid*

¹⁹⁸ Smith, Yim & Kahloon (n 15)

¹⁹⁹ Sedition (Repeal) Act 2021 (Singapore)

²⁰⁰ Sedition (Repeal) Act 2021 (Commencement) Notification 2022 (Singapore)

²⁰¹ Lai (n 13)

²⁰² *ibid*

exercise control over newspapers.²⁰³ One such prominent instance of use of this law was in the waves of riots in 1967.²⁰⁴ Ardent supporters of China's Cultural Revolution and pro-communist forces orchestrated acts of protest within industries, organised rallies, and conducted violent attacks against British authorities.²⁰⁵ In response to this, the government pressed charges of sedition on the managers of three pro-China newspapers and one printing company and sentenced them to three years in prison. However, after that trial the colonial government ceased to apply the same law in Hong Kong.²⁰⁶ The Seditious Ordinance was amended in 1970 to incorporate two forms of intentions into the definition of seditious intention.²⁰⁷ This ordinance continued till 1971 after which it was subsumed into the Crimes Ordinance. The Seditious Publication Ordinance and Seditious Ordinance were abolished, but acts of sedition continued to remain offenses under the Crimes Ordinance carrying penalties including fines and two years' imprisonment.²⁰⁸ Even though these sedition related offenses were still part of the legal framework, the new Hong Kong administration refrained from prosecuting persons under these charges.²⁰⁹ Preceding the Hong Kong handover in 1997, Hong Kong's legislature was in support of repealing the law before the city returned to China. After some members contended that it would be sufficient to narrow the scope instead of entirely removing it from the Statute book,²¹⁰ it was eventually voted against.²¹¹ After a long period of dormancy, the government started the active use of sedition laws soon after the enactment of the new 'The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region' ("**National Security Law**") in June 2020.²¹²

b. Seditious Intention under the Crimes Ordinance

A seditious intention is defined to mean an intention to *inter alia* bring hatred or contempt or to excite disaffection against the Central People's Government or other competent authorities

²⁰³ Legislative Council Paper No. CB(2)2283/01-02(01), Background paper prepared by the Legislative Council Secretariat on prohibition of publication of false news, Bills Committee on United Nations (Anti-Terrorism Measures) Bill, 13 June 2002

²⁰⁴ Lai (n 13)

²⁰⁵ *ibid*; Chris Lau, 'What is Hong Kong's colonial era sedition law, and how does it fit into landscape of national security legislation?' (SCMP, 9 September 2020) <<https://www.scmp.com/news/hong-kong/politics/article/3100740/what-hong-kongs-colonial-era-sedition-law-and-how-does-it>> accessed 19 July 2023

²⁰⁶ Lai (n 13)

²⁰⁷ *ibid*

²⁰⁸ Lai (n 13)

²⁰⁹ *ibid*

²¹⁰ Legislative Council Paper No. CB(2)2638/96-97, Report of the Bills Committee on the Crimes (Amendment) (No.2) Bill 1996, 13 June 1997

²¹¹ *ibid*

²¹² Lai (n 13)

of the Peoples Republic of China or the Hong Kong Government, promote feelings of ‘ill-will and enmity’ between different classes of the population of Hong Kong and to counsel disobedience to law.²¹³ Under section 10 of the Ordinance, the attempt or preparation to do any act with a seditious intention, utterance of seditious words, printing or import of seditious publication is liable to face imprisonment of a term of 2 years for a first offense and a term of 3 years for a subsequent offense. Further, any person, who has any seditious publication in his possession without any sound reasoning is guilty under section 9 and shall face imprisonment of a term of 1 year for a first offense, 2 years for a subsequent offense.²¹⁴ Since the possession of a “seditious publication” falls within the domain of a private act that is unharmed to others, it is insensible to criminalise such possession.²¹⁵ The Hong Kong Government, in an attempt to implement Article 23 of the Basic Law, released a proposal in September 2002 to introduce sedition in a new national security legislation, since the Crimes Ordinance was virtually defunct.²¹⁶ After protests ensued, the proposal did not return to public consultation. The subsequent introduction of the National Security (Legislative Provisions) Bill 2023 in the legislature also had to be abandoned as there were unprecedented protests.²¹⁷

c. Imposition of the National Security Law in Hong Kong

Hong Kong was released from British control in 1997 and given to China, by way of a unique arrangement.²¹⁸ The Basic Law which serves as a constitution of Hong Kong lays down the “one country, two systems” principle.²¹⁹ Article 23 of the Basic Law of Hong Kong, empowers Hong Kong to enact its own laws to “prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to “prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.”²²⁰ Despite the fact that the Basic Law contemplates complete

²¹³ Crimes Ordinance (Hong Kong), s 9

²¹⁴ Crimes Ordinance (Hong Kong), s 10

²¹⁵ Albert H.Y. Chen, ‘Treason, Secession, Subversion, Sedition and proscribed organizations: Submission to LEGCO on the Consultation Document’ <<https://www.legco.gov.hk/yr02-03/english/panels/ajls/papers/ajlsse1121cb2-413-1e.pdf>> accessed on 20 August 2023

²¹⁶ Proposals to implement Article 23 of the Basic Law, Consultation Document (Security Bureau, 2002) <<https://www.info.gov.hk/archive/consult/2002/bl23-e.pdf>> accessed 23 August 2023

²¹⁷ ‘Huge protest fills HK streets’ (CNN, 2 July 2003) <<https://edition.cnn.com/2003/WORLD/asiapcf/east/07/01/hk.protest/>> accessed 27 August 2023

²¹⁸ Hong Kong: How is it run, and what is the Basic Law? (BBC, 1 July 2022) <<https://www.bbc.com/news/world-asia-china-49633862>> accessed 19 August 2023

²¹⁹ *ibid*

²²⁰ Basic Law (Hong Kong), chapter II, art 23

autonomy in framing laws in relation to treason, sedition, secession etc against the Central People's Government, the Chinese Government has imposed the National Security Law on the citizens of Hong Kong. It is alleged that the law was forcefully enacted by Chinese Authorities and was passed weeks after its announcement, to bypass Hong Kong's legislature.²²¹ The actual contents of the statute were hidden from the public and surprisingly, withheld from the Hong Kong government till its enactment.²²² The General principles in Chapter I of the National Security Law explicitly state that the purposes for enactment of this law are *inter alia* to ensure the protection of the "lawful rights and interests of the residents of the Hong Kong Special Administrative Region" and "full and faithful implementation of the policy of One Country, Two Systems under which the people of Hong Kong administer Hong Kong with a high degree of autonomy".²²³ Ironically enough, the National Security Law is in stark contrast to the actual purposes it enlists. The introduction of the National Security Law by the Chinese authorities is an outright and egregious breach of the 'one country, two systems' principle that has been consistently followed by Hong Kong.²²⁴ The National Security Law consists of 66 articles and criminalises acts of "secession"²²⁵, "subversion"²²⁶, "terrorism"²²⁷ and "collusion with foreign or external forces"²²⁸,²²⁹ the punishment of which is imprisonment for life.

The National Security Act has conferred broad powers upon the Chinese Government. The key features of this Act which are indicative of this have been discussed below.

Firstly, the most controversial feature of the National Security Law is that it empowers mainland China to try some cases.²³⁰ In such cases the Criminal Procedure Law of the People's Republic of China and other national laws shall apply to procedural matters, *inter alia* those related to criminal investigation, examination and prosecution, trial, and execution of

²²¹ Hong Kong's National Security Law: 10 Things you need to Know (*Amnesty International*, 17 July 2020) <<https://www.amnesty.org/en/latest/news/2020/07/hong-kong-national-security-law-10-things-you-need-to-know/>> accessed 21 August 2023

²²² *ibid*

²²³ Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, Chapter I, art 1

²²⁴ Hong Kong National Security Law: What is it and is it worrying? (*BBC*, 28 June 2022) <<https://www.bbc.com/news/world-asia-china-52765838>> accessed 10 August 2023

²²⁵ Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, art 20, 21

²²⁶ *Ibid*, art 22, 23

²²⁷ *Ibid*, art 24, 25, 26, 27, 28

²²⁸ *Ibid*, art 29, 30

²²⁹ Harsh Penalties, Vaguely Defined Crimes: Hong Kong's Security Law Explained (*The New York Times*) <<https://www.nytimes.com/2020/06/30/world/asia/hong-kong-security-law-explain.html>> accessed 30 July 2023

²³⁰ Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, art 55-59

penalty.²³¹ However, the Chinese government has clarified that it will only exercise that power over limited cases.²³² This promise is mere tokenism since the legality of the introduction of this law is on shaky ground.

Secondly, Hong Kong will be required to form its own Committee for Safeguarding National Security to enforce the provisions contained in the National Security Law. Notably, this committee will be under the supervision of, and accountable to the Chinese Government²³³ and this national security committee must have a delegate from Beijing to ‘advise’ the committee.²³⁴

Thirdly, Hong Kong's chief executive is authorised to appoint judges to hear matters pertaining to the National Security Law, which has raised eyebrows about the autonomy and independence of the judiciary.²³⁵

Fourthly, the investigative authorities have been cloaked/ equipped with broad and extensive powers. Under the National Security Law, investigating officers are permitted to search properties, freeze or confiscate assets, prohibit persons from leaving Hong Kong, engage in surveillance *inter alia* intercepting communications without obtaining leave of the Courts in Hong Kong.²³⁶

Fifthly, The Central People’s Government has been provided with an “*overarching responsibility*” for national security issues in Hong Kong²³⁷

Sixthly, Article 35 of the National Security Law states that a person who is convicted under this law is automatically disqualified from contending as a candidate in elections of the Legislature and district councils of Hong Kong. Further, if the person convicted is a member of the Legislative Council, a government official, a public servant, a member of the Executive Council, a judge or a judicial officer, or a member of the district councils, he shall be removed from his post.²³⁸ This provision appears to be an attempt to silence opposition politicians from furthering their opposition agenda which may threaten the Chinese communist government

²³¹ *ibid*, art 57

²³² See n 223

²³³ Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, art 12; See n 221

²³⁴ *ibid*, art 15

²³⁵ Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, art 44; See n 221

²³⁶ Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, art 43; See n 221

²³⁷ *Ibid*, art 3

²³⁸ *Ibid*, art 35

In an early instance of abuse, a citizen was arrested on Monday under the National Security Law for unfurling a flag of Hong Kong during protests.²³⁹ This law imposes constraints on civil liberties and “loyalty to the party is paramount” under this law.²⁴⁰ Critics have strongly opposed the National Security Law because Hong Kong already had pre-existing laws to deal with offenses which endanger national security.²⁴¹ Furthermore, the terms ‘secession, subversion, terrorism and collusion with foreign or external forces’ are ambiguously worded which gives the authorities a *carte blanche* to arrest those who are critical of the party.

d. Misuse of the Law

One of the principal reasons for the revival and use of the British era Crimes Ordinance is that offenses under the Crimes Ordinance can be prosecuted more easily since the threshold for arrest is far lower than that of the National Security Law.²⁴² The term of imprisonment is 2 years for a first offense and 3 years for a subsequent offense, as compared to the National Security Law which contemplates life imprisonment. It is for this reason that authorities are equipped to handle a larger number of cases without spending significant resources.²⁴³ The success rate for conviction appears to be higher in sedition proceedings as opposed to proceedings under the National Security Law.²⁴⁴ Seven persons out of the of 35 on whom sedition charges have been imposed have been prosecuted.²⁴⁵ This is in contrast with only four under the National Security Law.²⁴⁶ Arrests under sedition laws have quadrupled since August 2021, in comparison to the previous years.²⁴⁷ Hence, it is quite evident that there is a higher probability of success in prosecuting an offender under sedition laws than under National Security Laws.

²³⁹ Harsh Penalties, Vaguely Defined Crimes: Hong Kong’s Security Law Explained (The New York Times) <<https://www.nytimes.com/2020/06/30/world/asia/hong-kong-security-law-explain.html>> accessed 30 July 2023

²⁴⁰ *ibid*

²⁴¹ *ibid*

²⁴² Wong (n 44)

²⁴³ Wong (n 44)

²⁴⁴ *ibid*

²⁴⁵ *ibid*

²⁴⁶ *ibid*

²⁴⁷ *ibid*

Prominent instances of misuse in Hong Kong have been discussed below:

TAM TAK CHI

Prior to the infamous trial of Tam Tak-chi, sedition laws were last used in the year 1967 by the British to prosecute pro-Chinese newspapers and ‘*other anti-colonial demonstrators*’.²⁴⁸ Tam Tak chi a former opposition politician was sentenced to three years and four months imprisonment due to his use of seditious language as well as his involvement in organising and promoting participating in unauthorised gatherings to protest against the National Security Law.²⁴⁹ His use of the phrase “*Free Hong Kong, our Revolution*” and his characterisation of Hong Kong’s National Security Law as a “*party security law*” has resulted in the charges.²⁵⁰ Activists and critics apprehended that Tak-chi’s arrest was only the beginning²⁵¹ and their apprehensions were correct. Since Tak-chi’s arrest nearly 30 others were charged with sedition in 2020.²⁵² This includes 5 speech therapists who have been charged for authoring children’s storybooks one of which was entitled ‘*Defenders of the Sheep Village*’ which illustrates sheep protecting their community from wolves. The police claimed that these books were used as a means to incite hatred against the government.²⁵³ In a ‘*grotesquely disproportionate*’ use of the law, six persons were charged and arrested under the sedition laws for clapping in a courtroom as a peaceful act of defiance.²⁵⁴

JIMMY LAI

Jimmy Lai, a mogul in the newspaper industry, was the founder of a pro-democracy newspaper ‘Apple Daily’.²⁵⁵ He was charged with sedition and under the National Security Law on

²⁴⁸ Smith, Yim & Kahloon (n 15)

²⁴⁹ Hong Kong’s First Sedition Trial in Decades sets Dangerous Precedent (*Clooney Foundation for Justice*, 27 May 2022) <https://cfj.org/news_posts/hong-kongs-first-sedition-trial-in-decades-sets-dangerous-precedent/> accessed 15 July 2023

²⁵⁰ *ibid*

²⁵¹ *ibid*

²⁵² Jack Lau, ‘Hong Kong national security law: 26 arrests so far, resignation of a foreign judge, and suspension of a middle school pupil mark third month’ (*SCMP*, 30 Sept 2020) <<https://www.scmp.com/news/hong-kong/politics/article/3103600/hong-kong-national-security-law-26-arrests-so-far>> accessed 10 July 2023

²⁵³ Donny Kwok & Sara Cheng ‘Children’s tales of sheep and wolves incite sedition, HK Police say’ (*Thomson Reuters*, 22 July 2021) <<https://www.reuters.com/article/us-hongkong-security-unions-idAFKBN2ES0BF>> accessed 23 July 2023

²⁵⁴ ‘Hong Kong: “Sedition” Arrests after clapping in court a new low for human rights’ (*Amnesty International*, 6 April 2022) <<https://www.amnesty.org/en/latest/news/2022/04/hong-kong-sedition-arrests-after-clapping-in-court-a-new-low-for-human-rights/>> accessed 5 July 2023

²⁵⁵ Jessie Pang, ‘Hong Kong tycoon Jimmy Lai loses bid to terminate national security trial’ (*Reuters*, 29 May 2023) <<https://www.reuters.com/world/china/hong-kong-media-tycoon-jimmy-lai-loses-bid-terminate-national-security-trial-2023-05-29/>> accessed 4 July 2023

account of seditious publications in the Apple Daily.²⁵⁶ Lai had been accused of collusion with foreign governments due to his tweets seeking attention from foreign politicians, a meeting held with the US secretary of state, publication of an English version of his newspaper and his requests to the international community to support Hong Kong's protests against the Fugitive Offenders Ordinance.²⁵⁷ To back up their charges of sedition, the prosecution submitted in evidence around 160 articles published by Apple Daily which allegedly called upon the people to promote violent methods to oppose the Chinese government and to incite hatred against the police.²⁵⁸ Experts from the UN and special rapporteurs have addressed a joint communication to the Chinese government expressing grave concern over the arbitrary and wrongful arrest of Jimmy Lai.²⁵⁹ In May 2023, Jimmy Lai's application to terminate the National Security Law trial was rejected by the Hong Kong Court.²⁶⁰ Lai will remain in jail till his trial commences.

CHUI CHUN MAN

Chui Chun Man a former policeman was charged and convicted under the sedition laws due to his Facebook comments on the death of a marine officer.²⁶¹ He inter alia suggested that the marine officer deserved his death and stated that "it's not enough to see only one dog official dead".²⁶² Though he made use of ill-chosen words, the use of sedition laws to prosecute him appears to be high handed and arbitrary since the action does not fit within the framework and stipulations of the sedition ordinance.²⁶³ This speech was interpreted to incite violence against

²⁵⁶ James Pomfret & Sara Cheng, 'Hong Kong Apple Daily founder and staff face new sedition charges' (*Thomson Reuters*, 28 December 2021) <<https://www.reuters.com/world/asia-pacific/hong-kong-apple-daily-founder-staff-face-new-sedition-charge-2021-12-28/>> accessed 15 July 2023

²⁵⁷ Hong Kong Media Tycoon Trial a Travesty (Human Rights Watch, 13 December 2022) <<https://www.hrw.org/news/2022/12/13/hong-kong-media-tycoon-trial-travesty>> accessed 23 July 2023

²⁵⁸ *ibid*

²⁵⁹ UN expresses grave concern over detention of Jimmy Lai in Hong Kong (*The Guardian*) <<https://www.theguardian.com/world/2023/may/31/un-experts-express-grave-concern-over-detention-of-jimmy-lai-in-hong-kong-china>> accessed 10 July 2023

²⁶⁰ Pang (n 255)

²⁶¹ Candice Chau, 'Ex-Hong Kong police officer convicted of sedition over comments over death of marine officer' (*HKFP*, 13 June 2023) <<https://hongkongfp.com/2023/02/28/ex-hong-kong-police-officer-convicted-of-sedition-over-comments-over-death-of-marine-officer/>> accessed 21 August 2023

²⁶² *ibid*

²⁶³ *ibid*

the police, which is far-fetched and unreasonable.²⁶⁴ Imposition of sedition charges, which were unheard of for several years have now become a common occurrence in Hong Kong.²⁶⁵

Unfortunately, this law has served its purpose, i.e., to repress anti-government thoughts and opinions.²⁶⁶ The aim is to induce a chilling effect on free speech, so that people fear publicly criticizing the government.²⁶⁷ Some supporters of the sedition law i.e. the law contained in the Crimes Ordinance argue that a law should not be abhorred merely because it is a relic of the British colonial government.²⁶⁸ They further contend that the fact that such a statute has survived the test of time is an indication of its relevance and utility.²⁶⁹ The author respectfully disagrees with this view. The laws on sedition have never possessed any utility, the utility that the British envisaged in sedition law was its efficiency in repressing freedom of speech to prevent any challenge to the authority of the empire. To retain a law like this and argue that it has survived the test of time is to admit that the government intends to achieve the same purpose that the British government sought to achieve i.e. to gag dissenters. It is clearly evident that the Hong Kong authorities aim to eliminate the '*faintest murmurings of dissent*' by unjustly using their sedition laws and national security laws.²⁷⁰

III. REASONS FOR REPEAL OF SEDITION LAW ACROSS THE ASIA PACIFIC REGION

The author advocates for the unequivocal repeal of all sedition laws across the Asia Pacific region. The main reasons for repeal are the restrictions the law imposes on free speech, the chilling effect on free speech, the widespread misuse and glaring abuse of the law as have been elaborated upon throughout the article. In addition to these grounds for repeal, are a few other grounds. The reasons for repeal have been categorised under 2 heads – (1) Does not serve its intended purpose i.e. preservation of public order, and; (2) Historical reasons

²⁶⁴ *ibid*

²⁶⁵ *ibid*

²⁶⁶ *ibid*

²⁶⁷ Lai (n 13)

²⁶⁸ Lau (n 205)

²⁶⁹ *ibid*

²⁷⁰ See n 254

(1) Does not serve its intended purpose:

If there is a constitutional guarantee of freedom of speech, prohibitions on free speech should not be imposed unless such prohibition is necessary for the preservation of public order and there is no other method to protect and preserve such order.²⁷¹ The argument that laws on sedition preserve public order is based on the premise that all seditious speeches inevitably result in revolution, violence, insurrection etc.²⁷² Some countries criminalise the mere *tendency* to incite violence or the *attempt* to excite disaffection, not considering the fact that such tendency or attempt might not actually prompt violence. Not only is the law on sedition contrary to the freedom of speech and expression but it is also being misused blatantly in instances where its use is not warranted. It is believed that the most efficacious method of dealing with offensive speech is to “*allow it into the 'marketplace' of ideas*” with the fervent hope that such opinions will be subject to debate, argued against and rejected by society.²⁷³

(2) Historical reasons:

Sedition was devised as a tool by the colonial British government to oppress the native citizens and reign tyranny over them. Since the origins of sedition are rooted in the laws of treason, a repressive approach is taken to all forms of criticism levelled against the government.²⁷⁴ This law is one of the few remnants of the British colonial legacy and has no place in a modern civil democracy. The UK abolished the law on sedition citing that the law was used for ‘*arcane offenses from a bygone era when freedom of expression wasn't seen as the right it is today*’.²⁷⁵ It is time for other countries to follow the UK and discard these laws, especially since these laws are tainted with decades of colonial mistreatment and abuse.

²⁷¹ Maher (n 23)

²⁷² *ibid*

²⁷³ Sorial (n 18)

²⁷⁴ Maher (n 23)

²⁷⁵ ‘Criminal libel and sedition offenses abolished’ (*Press Gazette*, 13 January 2010) <<https://pressgazette.co.uk/criminal-libel-and-sedition-offences-abolished/>> accessed on 30 August 2023

IV. CONCLUSION

Laws on sedition continue to be blatantly misused and conveniently misinterpreted by the police, as well the courts, to further certain political agendas and stifle political dissent. Many legal luminaries including judges, writers and intellectuals have implored their governments to repeal this much antiquated and abused law and to take a leaf out of the book of other common law jurisdictions such as Pakistan, Singapore which have proactively struck down and repealed this draconian law. Sedition is a colonial relic of the British era that serves as a tool for the governments to exercise control over its citizens and make citizens '*obedient, unquestioning vassals of the state*'²⁷⁶ thus, its repeal is long overdue. Some countries have acknowledged that in order to abide by their human rights obligations, they will have to do away with their sedition laws.²⁷⁷ However, others have chosen to retain these laws to exercise strict control on freedom of speech of citizens citing that there are certain restrictions on free speech that must be observed to ensure public order and safety. A government's true allegiance to the right to freedom of speech can only be seen if it is willing to permit its citizens to voice opinions which construes as dangerous or threatens their power.²⁷⁸ Dissent is a "safety valve" of a healthy democracy and is critical in keeping the government in check.²⁷⁹ For countries in the Asia Pacific region that have not yet repealed their sedition law, the legislatures and courts must consider taking prompt action before the misuse becomes a daily feature, costing citizens the right to exercise their fundamental rights.²⁸⁰

²⁷⁶ Omer (n 35)

²⁷⁷ Smith, Yim & Kahloon (n 15)

²⁷⁸ Maher (n 23)

²⁷⁹ '124A & India: Sedition law has seen too many seen too many abuses & a very small conviction rate. Time for it to go' *Times of India* (Mumbai, 8 May 2022) <<https://timesofindia.indiatimes.com/blogs/toi-editorials/124a-india-sedition-law-has-seen-too-many-abuses-a-very-small-conviction-rate-time-for-it-to-go/>> accessed 31 July 2023

²⁸⁰ Smith, Yim & Kahloon (n 15)