MANOJ KUMAR SINHA AND ANURAG DEEP, *Law of Sedition in India and Freedom of Expression*, Indian Law Institute, New Delhi, (2019), Price: INR 400, Pages: 291.

THE PRESENT time is so apposite for a book on sedition, especially of the nature under review here.[1] Law of sedition has in recent times generated intense debate as to its use, more so in view of the fact that in preceding few years, there has been a surge in the number of cases of sedition, many of them being at the centre of public and media debates. The law relating to sedition has a long and a chequered history, and this necessitates a *rethinking* in order to see sedition law in India in its right perspective, especially at a time when arguments abound as to their use and misuse. Section 124 A of the Indian Penal Code, 1860, that deals with sedition, has been a subject matter of interpretation in a good number of cases.[2] However, there are few pressing issues with respect to which question of sedition should be revisited. Freedom of speech and expression and right to dissent are foremost among the issues that cannot be ignored given the primal place they have in a constitutional democracy. Together, these rights constitute the life-blood of a democratic society. Any unreasonable and wanton restriction upon them will be detrimental to the well being of the democratic values that nourish the constitutional edifice. Be that as it may, the Parliament exercising its legislative power under Constitution enacts laws which many a time arguably fall foul of constitutional limitations, fundamental right to freedom of speech and expression being one of them. That being so, questions of free speech and sedition require a pragmatic and constitutionally cautious approach in order that spell of ambiguity as to what counts as sedition is cast away allowing a conceptual and definitional perspicuity.[3]

George Bernard Shaw has said that our whole theory of freedom of speech and opinion for all citizens rests not on the assumption that everybody is right, but on the

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1 Manoj Kumar Sinha and Anurag Deep, *Law of Sedition in India and Freedom of Expression* (Indian Law Institute, 2019)

2 *Niharendu Dutt Majumdar* v. *King* (1942) FCR 38; *King-Emperor* v. *Sadhashiv Narayan Bhalerao*, 74 IA 89; *BrijBhushan* v. *State of Delhi*, 1950 SCR 605; *Nazir Khan* v. *State of Delhi* (2003) 8 SCC 461;*KedarNath Singh* v. *State of Bihar*, 1962 Supp (2) SCR 769; *Lingaram Kodopi* v. *State of Chhattisgarh* (2014) 3 SCC 474. Also see, R.K. Misra, "Freedom of Speech and the Law of Sedition in India" 8 *JILI* (1966) 117; Deepak Gupta, "Law of Sedition in India and Freedom of Expression" 4 *SCC J* (2020) 14; Suresh Kumar Sahni, "Judicial Verdicts Versus Public Outcries" 5 *SCC J* (2011) 18.

3 Cases relating to sedition may well remind us of Krishna Iyer J's thoughtful adjudicatory *aide-memoire* when he says: "Some cases, apparently innocent on their face…may harbour beneath the surface profoundly disturbing problems concerning *freedoms, the unfettered enjoyment of which is the foundation for a democracy to flourish*." *State of U.P.* v. *Lalai Singh Yadav* (1976) 4 SCC 213 at 215. Emphasis added. He further observed, "Such is our constitutional scheme, such the jurisprudential dynamics and philosophical underpinnings of freedom and restraint, a delicate area of fine confluence of law and politics which judges by duty have to deal with." *Id.* at 220.

certainty that everybody is wrong on some point on which somebody is right, so that there is a public danger in allowing anybody to go unheard.[4] Voices even if they are in the form of dissents should not go unheard or be suppressed. Mill famously said, "If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind."[5] Equally thoughtful is the statement of Voltaire, who remarked, "I disapprove of what you say, but I will defend to the death your right to say it."

Indian tradition boasts of preachings and writings of sages and seers that eloquently emphasise the importance of dissent, criticism and freedom of expressing one's view. For instance, Kabir says, "We should keep our enemies close to us."[6] We have had a long and rich tradition of debate and discussion aimed at exploring the truth, and it is so well encapsulated in the Sanskrit proverb, which implies that "it is only through the articulation of *diverse opinion* that the truth will finally come out!"[7] The age-old adage—(level of intelligence and ways of thinking are different) hold great relevance and importance today, and viewed from this perspective, the recent observation made by the Supreme Court in a case of sedition against Farooq Abdullah where it was stated that "It is not seditious to have views different from the Government", is seemingly in consonance with ancient tradition of Indian culture and civilisation. Here one would do well to keep in mind the following statement of A B Vajpayee, a great politician and statesman of our time. He had said that if there is a to portray opposition and political opponents as traitors, democracy ceases to exist, and dictatorship comes into existence.

With the advent of modern state and constitutionalism, freedom to express one's view, dissent and criticism came to be gradually safeguarded by means of constitutional provisions that not only guarded these rights but also at the same time regulated them. This finds apt articulation in the words of Krishna Iyer J., who once observed that "Rights and responsibilities are a complex system and the framers of our

4 See, George Bernard Shaw, *Socialism for Millionaires* (1901) quoted in Upendra Baxi (ed) *K K Mathew on Democracy, Equality and Freedom* 104 (1978).

5 John Stuart Mill, *On Liberty* 10 (1871).

6 When translated, it means: "Keep your critic close; you get to know your faults if someone criticizes you, and you have a chance to correct them. Give your critics shelter in your courtyard and listen to the criticism without annoyance, because critic is not your enemy, he is helping you to clean the rubbish from your life without soap and water." See, "Nindaknihararakhiye, aangankutichhaway", *available at* :https://www.speakingtree.in/allslides/om-nindak-nihare-rakhiye-aangan-kuti-chhaway/3 (last visited on Nov. 30, 2021). Also see, Linda Hess and Shukdeo Singh, *The Bijak of Kabir* (New York, Oxford University Press, 2002).

7 See, "The Troubled Sapien", *available at*: https://thetroubledesapien.wordpress.com/vade-vade-jayate-tattvabodha-ancient-sanskrit-proverb/(last visited on Nov. 30, 2021). *See generally*, RadhavallabhTripathi, *Vâda in Theory and Practice* (2016).

Constitution, aware of the grammar of anarchy, wrote down reasonable restrictions on libertarian exercise of freedoms."[8] However, the *extent* and *reasonableness* of such restrictions has often been a subject matter of criticism. Laws that restrict the freedom of speech should not cross the constitutionally entrenched limitations, either explicitly or impliedly. Efforts to unreasonably trample upon the *dissent* or *criticism* should be avoided by the government of the day as Laski would say: "A government can always learn more from the criticism of its opponents than from the eulogy of its supporters."[9]

Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression subject to certain restrictions.[10] It is axiomatic that freedom of speech and expression is one of the most cherished rights in a constitutional democracy. It is *sine qua non* for a democratic society to flourish and survive.Freedom of speech and expression is sacrosanct and the said right should not be ordinarily interfered with.[11] While balancing free speech against restriction, shift of emphasis is to free speech.[12] It has been observed in various judgments that "Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom, by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Articles 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself."[13] Freedom of speech has no meaning if there is no freedom after speech.[14]

Moving beyond the constitutional confines of municipal law, it may be seen that international law is premised upon a normative framework aimed at protecting the freedom of speech and expression which may be observed in some of the important conventions on human rights.[15] It also remains so well documented in Human Rights Committee's General Comment no. 34 which underscores the fact that "Freedom of opinion and freedom of expression are indispensable conditions for the full

8 *State of U.P.* v. *Lalai Singh Yadav* (1976) 4 SCC 213 at 219.

9 Harold Laski, *A Grammar of Politics* 21 (1996).

10 See, P K Tripathi, "Free Speech in the Indian Constitution: Background and Prospect" 67 *Yale L J* 384(1957-58). Also see, B C Nirmal and Rabindra Kr. Pathak, "Changing Dimension of Freedom of Speech and Expression" in R C Aggarwal (ed), *Constitution of India and Pendency of Court Cases* (2016).

11 *Nachiketa Walhekar* v. *CBFC* (2018) 1 SCC 778 at 779.

12 *NOVVA ADS* v. *Deptt. of Municipal Admn. and Water Supply* (2008) 8 SCC 42 at 51.

13 *Indibly Creative (P) Ltd.* v. *State of W.B.* (2020) 12 SCC 436 at 456.

14 *Maqbool Fida Husain* v. *Rajkumar Pandey* 2008 Cri LJ 4107.

15 For instance see, art. 19, International Covenant on Civil and Political Rights (ICCPR); Art. 9, African Charter on Human and Peoples' Rights; Art. 10, European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 13, American Convention on Human Rights and ASEAN Human Rights Declaration.

development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions."[16]

Therefore, the present book that delves deep into the aspects of *freedom of expression* and *law of sedition* in India, needs to be analysed and reviewed in the light of historical antecedents, constitutional confines and norms of international law that provide a sound bedrock for a critical appraisal of a work that takes into account these two aspects in detail. The book under review is divided into six chapters, and traces the evolution and development of the law of sedition, takes into account the constitutional and precedential aspects of the law relating to sedition, and thereby prepares a ground in the first two chapters for an in depth analysis of section 124A of the Indian Penal Code, 1860 in chapter three, which is a long chapter that in detail analyses the different dimensions of section 124A, taking into account the technical and theoretical nuances of the words and expression under the aforesaid provision.Chapter four deals with procedural and evidential issues of sedition, followed by chapter five that discusses at length the 'desirability of sedition law' in India. However, it is the concluding chapter that needs to be commented upon, more so in view of the authors' conclusions that they seem to have reached with respect to basic arguments with respect to law of sedition in India, and future course of action that should be adopted leading to law reforms as regards sedition law in India.

The authors seem to raise doubts as to precedential applicability of the *Kedar Nath* judgement, and pin-point its 'mis-application' in one of the cases. They also conclude that there is 'over generalisation' of the *ratio* in *Balwant Singh*. Be that as it may, the authors have also highlighted that fact that 'misuse is apparent and needs to be addressed' as regards the action taken by 'the police and the subordinate judiciary' in cases of section 124A of the Indian Penal Code, 1860. As regards article 19(1) (a), it is also asserted that "it is not wise to compare free speech under article 19(1)(a) with western ideas of liberty of thought and expression".[17]

Given the length and breadth of discussion on law of sedition *vis-à-vis* freedom of expression undertake in the book under review, it is befitting to take note of the fact that the broad proposition that possibility of misuse is not a valid justification for repeal of a legislation is subject to several caveats such as compelling state interest and indispensability of legislation in question; human faith of the police;[18] humane

16 See, General Comment no.34, *available at*: https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf (last visited on Nov. 31, 2021). Also see, *General Comment No. 10* which also reiterates the importance of freedom of expression. Also see, Resolution 169 on Repealing Criminal Defamation Law in Africa by the African Commission on Human and Peoples' Rights (24 Nov. 24, 2010).

17 *Supra* note 1 at 265.

approach of the judges/ judicial officers while dealing with an application for grant of police remand or judicial remand of a suspect/accused,[19] and strict adherence to the Supreme Court's 'bail not jail'[20] dictum while considering the application for grant of bail application depending upon the circumstances of a particular case.

Since the scope of section 124A, Indian Penal Code, as interpreted by *Kedarnath* is duly restricted and there are many more legislations to deal with social security concern like NIA Act, UAPA, NSA along with many preventive detention legislations, time has perhaps come to give a decent burial to the century old abhorrent and anachronistic sedition law at the earliest available opportunity.[21]However, the authors should be appreciated for their sound, sensible, sanguine, and sagacious observations on the consequences of the exponential misuse of sedition law in recent times.

The logical conclusion of these observations should have been the recommendation for the repeal of sedition law but after quoting observation from 1966 article published in the Journal of the Indian Law Institute, they came to the conclusion that continuance of sedition law remains the need of the hour. Sedition law continues to be a contentious and controversial legislation since the British time, and has all the potentialities to trigger *for* and *against* debate on it. Given this fact, the present reviewer respects authors' views on the subject but wishes to add the following, Indian Constitution and Indian democracy provide ample scope for plurality of beliefs and diversity of ideas and ideologies—left, rights and centre. It would facile to attribute blame to one or the other ideology for the occurrence of any 'seditious' activities. Continuance or discontinuance of a legislation does not depend on the maturity[22] or otherwise of a democracy rather it depends on policies, necessities and social acceptability. As regards the use of terms like terrorism, militancy, insurgency, naxalism, anti-nationalism or

18 *Monika Kumari* v. *State of UP* (2018)2 SCC (Cri)172. It is important to note that "he (investigating officer) has to be fair, transparent and his only endeavour should be to find out the truth." See, *Sheila Sebastian* v. *R. Jawaharaj* (2018)7 SCC 381, para. 29.

19 *Dataram* v. *State of UP* (2018)3 SCC 22.

20 *Arnab Manoranjan Goswami* v. *State of Maharashtra* (2021) 2 SCC 427.

21 It is true that after the rejection of sedition as an exception to freedom of speech and expression by a collective consensus of the Constituent Assembly, s. 124 A of the IPC was allowed, but it would be a figment of imagination that founding fathers of modern India contemplated it as a permanent, rather than an interim measure to meet the exigencies of situation, that arose in the wake of the partition of the British India, and the rise of separatist tendencies in some parts of the country.

22 If maturity of democracy were to be a condition precedent for the repeal of sedition law, then despite the mischaracterisation of India as half-free or electoral autocracy, there should not be any doubt about maturity of seven decades old Indian democracy. As aptly pointed out by the Supreme Court in *Radhakrishnan Varenickal* v. *Union of India* (2018)10 SCALE 717, para.27, " We live not in a totalitarian regime but in a democratic nation which permits the exchange of ideas and liberty of thought and expression." Further see, B C Nirmal, "Good Governance and Human Rights as Democratic Values" *Indian Journal of Federal Studies* 377-407 (2009).

other emotive expressions, it is often suggested by some commentators that labelling of a particular act as terroristic cares less about the labellers' political perspective.[23] This holds true for other pejorative terms which are generally used to demean opponents, especially political opponents in the eyes of the public.

Authors apparently seem to justify the continuance of sedition law by linking it with the Fundamental Duties to protect sovereignty and territorial integrity of the state. But, the duty to promote scientific temper, pursue a critical inquiry and achieving excellence in all walks of life is also another fundamental duty of far reaching importance. But then pursuit and enforcement of these duties is not possible without the guarantee of freedom of speech and expression as guaranteed under article 19(1)(a) of the Constitution of India. Fundamental duties are undoubtedly no less important than Fundamental Rights and Directive Principle of State Policy (*Rajdharma*). In a recent Supreme Court decision, Dipak Mishra J., underlined the importance of fundamental duty to respect the National Anthem in these words, "…we have no shadow of doubt that one is compelled to show respect whenever and wherever the National Anthem is played. It is the élan vital of the nation and fundamental grammar of belonging to a Nation State."[24] But, they are not legally enforceable and depend for their implementation on education and public awareness of citizens.[25]

Authors also provide a very interesting constitutional analysis of the right to self determination.[26] The principle of equal rights and self-determination of all people is enshrined in the UN Charter, The Friendly Relations Declaration, 1970 and numerous General Assembly resolutions. The principle of self-determination continues to be alive and relevant in non-colonial situations till today.[27] Contrary to mistaken belief that self-determination is synonymous to secession, self-determination means several things in several in different situations and circumstances, *viz.*, freedom from colonial rule, unification of states, dissolution of a state and formation of new states, indigenous

23 Joseph L Lambert, *Terrorism and Hostages in International Law* 13 (Cambridge: Grotius Publications Ltd.,1990). Many innocent persons are likely to be victims of miscarriage of justice due to this tendency of labelling people as traitor.

24 *Shyam Narayan Chouksey* v. *Union of India* (2018) 2 SCC 574 at 591.

25 *AIIMS Students Union* v. *AIIMS*, AIR 2001 SC 3262. Also see, *Fundamental Duties of Citizens (Verma Committee Report), MHRD, Government of India,* (New Delhi, 1999).Also see, R. Venkata Rao & Prakash Sharma, "Fundamental Duties Under Indian Constitution: A Case for Being Responsible Citizens" in *The Constitution of India: Celebrating and Calibrating 70 Years* 389-402 (2020); National Commission to Review theWorking of the Constitution (2001).*See generally*, Anupama Roy, "Teaching Fundamental Duties in Schools" 38 (25) *Economic and Political Weekly*, 2470-2473 (Jun. 21-27, 2003).

26 *Supra* note 1 at 201.

27 See, B C Nirmal, *Right to Self-Determination in International Law* (Deep and Deep Publications, 2000).

peoples' self-determination, and internal self-determination.[28] In any case, India has already registered reservations to common article 1of the human rights covenants which proclaim the right of self determination of all people.

Notwithstanding the above demurring observations, the present volume is well-documented, well-researched, well-written and very much timely today. It is one of the recent comprehensive works on the subject and due to its depth on the subject and substance deserves to be recommended to lawyers, judges, law academics, police officials, human rights activists, research scholars, journalists, and those interested in the study of sedition law as it exists today and it is applied today in India. In a nutshell, due to its intrinsic worth, the book deserves to be kept on the shelf of all important libraries in India and abroad.

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28 It is only in Bangladesh type situation where as secession may be considered justified. For related aspects, see, B C Nirmal, "Tibetan Autonomy and Self-Governance: Myth or Reality" in *Report of the Proceedings of the Workshop held in November* 1999 (Tibetan Parliamentary and Policy Research Centre, 2000).

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