

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA READ WITH /UNDER ORDER XXXVIII OF THE SUPREME
COURT RULES, 2013)

WRIT PETITION (CIVIL) NO.

OF 2021

In the Matter of:

Editors Guild of India & Ors.

....Petitioners

Versus

Union of India & Ors.

...Respondents

WITH

[I.A. No. OF 2021]

{APPLICATION ON BEHALF OF THE PETITIONER SEEKING
ISSUANCE OF NECESSARY DIRECTIONS}

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: AMARJIT SINGH BEDI

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SYNOPSIS

The instant petition is being preferred under Article 32 of the Constitution of India by the Petitioner Editors Guild of India, which represents about 200 eminent editors of national and regional newspapers and broadcast channels and Petitioners 2 & 3, journalists, who are directly affected by the actions of the State and have in the past/presently faced/are facing FIRs under Sections 124A and 505 of the Indian Penal Code, 1860 ("IPC"), and have experienced/are aware of the chilling effect registration of such FIRs have on fundamental rights of members of the press/media, who carry out a public duty to inform and educate public opinion by reporting facts and views that can be viewed as critical or even stridently opposed to that of the ruling establishments, and as such require protection from indiscriminate registration of FIRs and consequences that flow from it under these draconian provisions. The petitioners are constrained to approach this Hon'ble Court in view of the increasing instances of wanton abuse of the pre-constitutional penal provisions under Sections 124-A (sedition) and 505 (statements conducing to public mischief) of the Indian Penal

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Code, 1860 ("IPC") including against members and current Office Bearer of Petitioner no.1, and Petitioner nos. 2 and 3.

Post 26th January 2021 incident at Red Fort and death of a farmer driving a tractor, multiple FIRs having identical contents and wordings have been registered against the senior well known journalists and Editors and current office bearer of the Petitioner No. 1 in multiple states, under Sections 124A and 505 of IPC amongst others. All of them had to individually approach this Hon'ble Court by way of Writ Petitions under Article 32 of Constitution of India.

1. Rajdeep Sardesai vs. State of Uttar Pradesh & Ors. [Case No. W.P. (Crl.) No. 76/2021]
2. Anant Nath vs. State of Uttar Pradesh & Ors. [Case No. W.P. (Crl.) No. 77/2021]
3. Paresh Nath vs. State of Uttar Pradesh & Ors. [Case No. W.P. (Crl.) No. 80/2021]
4. Vijay K. Jose vs. UOI & Ors. [W.P. (Crl.) No. 81/2021]
5. Mrinal Pande vs. State of Uttar Pradesh & Ors. [Case No. W.P. (Crl.) No. 82/2021]
6. Zafar Agha vs. State of Uttar Pradesh & Ors. [Case No. W.P. (Crl.) No. 83/2021]

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The Petitioners are before this Court to protect the freedom of speech and expression of the media, to enable it to carry out its functions without fear of retributive initiation of state power by resort to criminal action triggered by private individuals lodging FIRs, sometimes in a concerted manner, across various states. A free press is the fourth pillar of democracy and cannot be prevented from publishing facts, opinion, and analysis howsoever unpalatable to the ruling establishment. Article 19 of the Constitution of India encompasses freedom of the press and the functioning of a healthy democracy requires that the fourth pillar is adequately protected. The climate of fake news and disinformation requires that free and independent media/press is allowed to carry out its responsibilities to the citizenry without any apprehension of arbitrary use of state power.

Section 124-A of the IPC has a legacy of misuse by governments of the day. The colonial government invoked this provision to prosecute and convict Mahatma Gandhi who termed it as the '*prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen*'. Since independence, there are numerous instances when governments have charged citizens critical of the political

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establishment, including members of the press/media under this provision in an effort today to curb freedom of speech and expression. The Petitioners, being concerned with the general welfare and protection of the rights of the members of the press/media, have noticed that the number of such instances have increased recently. Some other instances from the last two years are summarized below:

1. Vinod Dua – FIRs in Himachal Pradesh and Delhi under Section 124-A IPC for his shows commenting on the ruling party (May 2020).
2. Dhaval Patel – FIR in Gujarat under Section 124-A IPC for an article discussing the potential candidates for the post of Chief Minister of Gujarat (May 2020).
3. MasratZahra – FIR in Jammu and Kashmir under Section 13 Unlawful Activities Prevention Act, 1967 and Section 505 IPC for her photos of events in the state which were uploaded to social media (April 2020).
4. Gowhar Geejani and Peerzada Ashiq – Exact details of FIRs in Jammu and Kashmir not disclosed, but the police version is that they have been booked for seditious articles and social media posts (April 2020).

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5. Andrew Sam – FIR in Coimbatore, Tamil Nadu, *inter alia*, under Section 505 IPC (and sections of Disaster Management Act, 2005 and Epidemic Diseases Act, 1897) for articles in a local news portal about corruption in the local administration (April 2020).
6. Zubair Ahmed – FIR in Andaman and Nicobar Islands, *inter alia*, under Section 505 IPC (and sections of Disaster Management Act, 2005 and Epidemic Diseases Act, 1897) for a tweet regarding the decision of the local authorities to send a family into quarantine after a phone call with an infected relative (April 2020).
7. Siddharth Varadarajan – FIR in Uttar Pradesh under Section 505 IPC for sharing an article in online news-portal, *The Wire*, about the present Chief Minister's actions regarding religious ceremonies and coronavirus (April 2020).
8. Prashant Kanojia – FIR in Uttar Pradesh under Section 505 of IPC for reposting on social media a video of a woman claiming to be in a relationship with the Chief Minister of the state (August 2019).
9. Manjit Mahanta – FIR in Assam under Section 124-A IPC for comments on the Citizenship (Amendment) Bill (January 2019).
10. Kishore Chandra Wangkhem – FIR in Manipur under Section 124-A IPC and National Security Act, 1980 for posts in relation to the

Prime Minister and the Chief Minister of the state (November 2018, remained in jail for several months because of NSA charges).

11. Kanhaiya Lal Shukla, alias Kamal Shukla Petitioner No. 3, against whom FIR in Chhattisgarh was registered (based on complaint from Rajasthan) under Section 124-A IPC for sharing a cartoon regarding the decision of this Hon'ble Court in relation to a PIL filed seeking investigation into Judge B.H Loya's death (April 2018).

12. Aseem Trivedi, Petitioner No. 2, The allegation in the FIR was to the effect that Petitioner 2, a political cartoonist and social activist, through his cartoons, not only defamed Parliament, the Constitution of India and the Ashok Emblem but also tried to spread hatred and disrespect against the Government and published the said cartoons on 'India Against Corruption' website, which not only amounts to insult under the National Emblems Act but also amounts to serious act of sedition.

That there has been increasing instances of wanton abuse of the pre-constitutional penal provisions under Section 124-A and section 505 more particularly against the Editors and journalist in gross violations of the principles laid down in the *Kedar Nath Singh vs. State of Bihar* [1962 (Suppl.) 3 SCR 769]. A two judge bench of this Hon'ble Supreme Court in the case of *Common Cause and Anr. Versus Union of India* [Writ

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Petition (s) (Civil) No. 683/2016] vide order dated 05.09.2016 issued a general direction to the effect that “.....we are of the considered opinion that the authorities while dealing with the offences under Section 124A of the Indian Penal Code shall be guided by the principles laid down by the Constitution Bench in *Kedar Nath Singh vs. State of Bihar* [1962 (Suppl.) 3 SCR 769]”.

Despite these directions, data from the National Crime Bureau's 2019 report indicates that 93 cases of sedition were filed in 2019, compared to 33 in 2016—a 165 % increase. Amongst these, there are two convictions and 29 acquittals. Most alarmingly, even though 93 fresh cases were registered for offence of sedition in 2019 and 135 were pending investigation through previous years not a single case was dropped at the level of police authorities by making any scrutiny under the provisions of Section 157 (1) (b) of CRPC which mandate that ‘if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.’ This prima facie shows that mandatory directions of this Hon'ble Court's to the effect that authorities *shall be guided by the principles laid down by the Constitution Bench in Kedar Nath Singh vs. State of Bihar*, have not

been followed at all and have had no effect on police authorities. While convictions are rare in cases where sedition law has been invoked, registration of FIRs and process of investigation itself has a chilling effect on the freedom of speech and expression, and impedes the freedom of the press to report matters of vital public concern, as the very act of duty of a media person gets criminalised through rampant misuse of these draconian provisions. This cumulative effect achieved by the process of registering an offence, hostile investigations, and the vicissitudes of a prolonged trial, even if an acquittal is the outcome, acts as a severe deterrent on media freedom. There are no existing safeguards in the law to prevent abuse of these provisions, and members of the press/media are constrained to individually approach courts to seek protection of personal liberty. Notably, India's ranking in the World Press Freedom Index has seen a constant decline since 2018. Among the 180 nations on the index, its ranking has declined from 136 to 138 in 2018, 140 in 2019, and 142 in 2020.

As per report by website "Article-14.com" titled as "Our New Database Reveals Rise In Sedition Cases In The Modi Era" "The database has found that of nearly 11,000 individuals against whom sedition cases were

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filed over the last 10 years, 2,000 were mentioned by name, including nine minors, and the rest "unidentified" with 816 cases registered.....The database found the range of expressions found seditious extended from mere holding of posters to social media posts, to raising slogans and private communication. In nearly 30% of cases, a variety of other laws, such as the Unlawful Activities Prevention Act, 1967, Prevention of Damage to Public Property Act, 1984, and the Information Technology Act, 2000, Prevention of Insults to National Honour Act, 1971, Epidemic Diseases Act, 1897, Disaster Management Act, 2005 were added to the FIRs."

Article-14.com report also notes, "In 2016, while it was hearing a petition filed by an activist, S P. Udayakumar, charged with sedition for his role in the Kudankulam protest, a two-judge bench of the Supreme Court, reiterated the principles laid down in Kedar Nath Singh vs State of Bihar.

.....
Despite the Supreme Court judgement, our database showed that a total of 1310 individuals, or 12% of individuals, have been charged over the last decade for shouting slogans....."

Even otherwise, with the rise of India as one of major democracies in the world with a stable polity and smooth transition of power after elections,

it is high time that pre-constitutional provisions in penal code are constantly reappraised on the touchstone of the characteristics of a mature, confident, modern democratic state. The constitutionality of Section 124-A IPC was considered by a Constitution Bench of this Court in *Kedar Nath Singh v. State of Bihar* (1962 SCR Supp. (2) 769) where it was observed,

"This offence, which is generally known as the offence of Sedition, occurs in chapter IV of the Indian Penal Code, headed 'Of offences against the State'. This species of offence against the State was not an invention of the British Government in India, but has been known in England for centuries. Every State, whatever its form of Government, has to be armed with the power to punish those who, by their conduct, jeopardise the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder."

However, as of 2009, the United Kingdom has repealed sedition as an offence. The reasoning by which the constitutionality of Section 124-A and 505 of IPC was sustained in *Kedar Nath Singh* no longer holds. Globally, there has been a change in the use and enforcement of sedition law in the last two decades in favor of the freedom of speech and expression. The decision in *Kedar Nath Singh's* case requires to be reconsidered by this Court. Some other legal and constitutional

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developments relevant for the reappraisal of *Kedar Nath Singh's* case are:

- (a) Freedom of the press and invocation of these provisions against members of the press/media were not the subject matter of consideration before the Constitution Bench in *Kedar Nath Singh's* case. In *Kedar Nath Singh*, the factual substratum of cases related to speeches, activities explicitly seeking overthrow of democratically elected governments through the means of violence.
- (b) In this factual background, this Court upheld the vires of Section 124-A of the IPC and restricted its scope to such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.
- (c) Indian constitutional courts have dynamically interpreted the Constitution in favor of the rights protected under Part III. Devices such as issuing directions to fill the gaps in the operation of a law and continuing mandamus have been employed to expand the notion of 'due process'. The decision in *Kedar Nath Singh* requires a fresh consideration in view of the progressive jurisprudence of

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this Court under Part III. Petitioners are also seeking appropriate safeguard against the Private Complaints with respect to preliminary investigation as provided in the judgment of *Lalita Kumari Versus Government of Uttar Pradesh and Other* [(2014) 2 SCC 1] and *Priyanka Srivastava and Another Versus State of Uttar Pradesh and Others* [(2015) 6 SCC 287], where following *Lalita Kumari*, even under Section 156(3) a duty has been enjoined on Magistrates to record prima facie satisfaction while ordering investigation into complaint in view of rampant abuse of the provision by complainants.

Hence, the instant petition.

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LIST OF DATES

DATE	PARTICULARS
1870	Act 27 of 1870 amended the Indian Penal Code, 1860, introducing the offence of sedition in S. 124-A.
24.01.1962	A Constitution Bench of this Court upheld the constitutional validity of Sections 124-A and 505 IPC in <i>Kedar Nath Singh v. State of Bihar</i> , 1962 Supp. (2) SCR 769.
08.09.2012	Petitioner No. 2, a cartoonist, was arrested by Mumbai police, for committing an offence of Sedition under Section 124A of IPC on complaint of an Advocate.
12.10.2012	State of Maharashtra conveyed its decision to Hon'ble Bombay High Court to drop charges u/s 124A as no case was made out.
05.09.2016	This Hon'ble Court WP (Civil) 683/2016 issued a general direction to the effect that, '...we are of the considered opinion that the authorities while dealing with the offences under 124A of the Indian Penal Code shall be guided by the principles laid down by the

	Constitution Bench in Kedar Nath Singh vs. State of Bihar [1962 (suppl.) 3 SCR 769].
28.04.2018	FIR No. 156/2018 u/s 124A. IPC was registered in Chattisgarh, against Petitioner 3, Editor of Bhunkal Samachar, for publishing/posting a satirical cartoon on Facebook on the rejection by this Hon'ble Court of a matter relating to the death of Judge Loya.
30.08.2018	Law Commission of India Published Consultation Paper on Sedition, and suggested a relook.
2018 – 2020	India's ranking in the World Press Freedom Index has seen a constant decline since 2018. Among the 180 nations on the index, its ranking has declined from 136 to 138 in 2018, 140 in 2019, and 142 in 2020. In the press freedom index 2020 (https://rsf.org/en/ranking_table), India ranks at 142 out of 180 countries, slightly above Pakistan which ranks at 145 and way below our other neighbours such as Nepal who stand at 112 and Sri Lanka who stand at 127.

November 21, 2018	Kishore Chandra Wangkhem – FIR in Manipur under Section 124-A IPC and National Security Act, 1980 for posts in relation to the Prime Minister and the Chief Minister of the state (arrested on November 21, 2018, remained in jail for several months because of NSA charges).
January 7, 2019	Manjit Mahanta – FIR in Assam under Section 124-A IPC for comments on the Citizenship (Amendment) Bill
June 6, 2019	Prashant Kanojia – FIR in Uttar Pradesh under Section 505 IPC for reposting on social media a video of a woman claiming to be in a relationship with the Chief Minister of the state. Was arrested in Delhi on June 6, 2019
April 20, 2020	Masrat Zahra arrested on April 20, 2020 – FIR in Jammu and Kashmir under Section 13 Unlawful Activities Prevention Act, 1967 and Section 505 IPC for her photos of events in the state which were uploaded to social media.

<p>April 21, 2020</p>	<p>Gowhar Geelani and Peerzada Ashiq – Exact details of FIRs in Jammu and Kashmir not disclosed, but the police version is that they have been booked for seditious articles and social media posts and arrested on April 21, 2020.</p>
<p>April, 2020</p>	<p>Andrew Sam Raja Pandian – FIR in Coimbatore, Tamil Nadu, <i>inter alia</i>, under Section 505 IPC (and sections of Disaster Management Act, 2005 and Epidemic Diseases Act, 1897) for articles in a local news portal about corruption in the local administration. Was arrested on April 23, 2020</p>
<p>April 27, 2020</p>	<p>Zubair Ahmed – arrested under FIR in Andaman and Nicobar Islands, <i>inter alia</i>, under Section 505 IPC (and sections of Disaster Management Act, 2005 and Epidemic Diseases Act, 1897) for a tweet regarding the decision of the local authorities to send a family into quarantine after a phone call with an infected relative</p>

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April, 2020	Siddharth Varadarajan – FIR in Uttar Pradesh under Section 505 IPC for sharing an article in online news-portal, <i>The Wire</i> , about the present Chief Minister's actions regarding religious ceremonies and coronavirus
May, 2020	Vinod Dua – FIRs in Himachal Pradesh and Delhi under Section 124-A IPC for his shows commenting on the ruling party (May 2020).
May11, 2020	Dhaval Patel – arrested in connection with FIR in Gujarat under Section 124-A IPC for an article discussing the potential candidates for the post of Chief Minister of Gujarat.
19.06.2020	Petitioner organization issued a statement condemning registration of a FIR at Varanasi's Ramnagar police station against Scroll Executive Editor Ms. Supriya Sharma and its Chief Editor over a report published from Varanasi's Domari village. The statement further condemned the arbitrary employment of the various provisions of the IPC and the Scheduled Caste and

	Scheduled Tribe (Prevention of Atrocities) Act, 1989 as it seriously undermines freedom of the media.
November, 2020	Data from the National Crime Bureau report entitled in "Crime in 2019" records that 93 cases of sedition were filed in 2019, compared to 33 in 2016—a 165 % increase. There were 2 convictions and 29 acquittals.
January-February, 2021	<p>Post 26th January 2021 incident, multiple FIRs are filed against prominent journalists, editors, including the current office bearers of the Petitioner No. 1 in various parts of India.</p> <ol style="list-style-type: none"> 1. Rajdeep Sardesai vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 76/2021] 2. Anant Nath vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 77/2021] 3. Paresh Nath vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 80/2021] 4. Vijay K. Jose vs. UOI & Ors. [Case No. W.P. (CrI.) No. 81/2021] 5. Mrinal Pande vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 82/2021]

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	6. Zafar Agha vs. State of Uttar Pradesh & Ors. [Case No. W.P. (Crl.) No. 83/2021]
02.02.2021	Article 14, an organisation concerned with reportage, research, investigations on issues concerning Justice, Constitution, Democracy launched its Sedition Database and published the highlights on its website which showcases increasing misuse of provisions of Section 124A of IPC.
13.02.2021	Hence the present writ petition.

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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

((PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA READ WITH UNDER ORDER XXXVIII OF THE
SUPREME COURT RULES 2013))

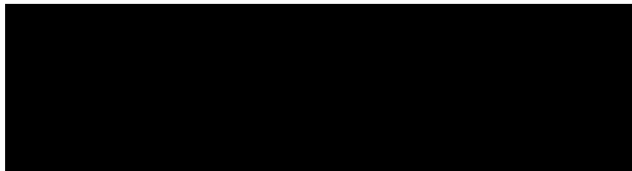
WRIT PETITION (CIVIL) NO. _____ OF 2021

IN THE MATTER OF:

1. Editors Guild of India



2. Mr. Aseem Trivedi



...Petitioners

Versus

1. Union of India Through Secretary
Ministry of Information & Broadcasting
Shashtri Bhawan,
New Delhi – 110001.

Respondent no.1

2. The Press Council of India,
Through its Chairman, Suchana Bhavan, 8-
C. G. O. Complex, Lodhi Road,
New Delhi- 110 003

Respondent no.2

3. National Human Rights Commission, Respondent no. 3
Through it's Chairman
Manav Adhikar Bhawan Block-C, GPO
Complex, INA, New Delhi - 110023
Email: cr.nhrc@nic.in

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

To,

The Hon'ble the Chief Justice of India and his Companion Justices of the
Hon'ble Supreme Court of India.

MOST RESPECTFULLY SHOWETH:

PARTIES

1. The Petitioner no.1 above-named is a society registered under the Societies Registration Act, 1860, which is an apex organization of Editors in India, was established in 1978 with the twin objectives of protecting freedom of the press and raising the standards of editorial leadership of newspapers and magazines. Eminent editors of the day felt that the lack of an organized forum of editors was one of the reasons for the sustained suppression of press freedom during the Emergency. Since its inception, the Editors Guild has taken up issues of abuse of press freedom with the governments of the day, and has campaigned hard for

protecting press freedom. Whether it is state lead persecution of journalists and media organisations, laws that curtail press freedom, or violence against journalists, the Guild has raised these issues with governments, both at national and state level, lead the public discourse through its statements and through member publications, setup fact finding missions, and prepared reports that bring such issues to fore. Some of the most respected editors have been members of the Guild including, B G Verghese, Ajit Bhattacharjee, Nikhil Chakravarti, and Kuldip Nayyar. Currently, it has 200 editors from different geographies, mediums and languages as its members. Besides its elected office bearers led by Seema Mustafa, President, Sanjay Kapoor, General Secretary and Anant Nath, Treasurer, the Guild has eminent editors like N Ram, N Ravi, T N Ninan, Mrinal Pande, Coomi Kapoor, Shekhar Gupta, Raj Chengappa, K N Harikumar, Rajdeep Sardesai, and Naresh Fernandes amongst many of its active members. Therefore the Guild represents the interests of journalists of all major print, television and digital news outlet in the country, especially with respect to the chilling

impact of laws that curb media freedom on the work and livelihood of its members and journalists. As a professional guild it has responsibility and duty to take up these issues with the executive and when necessary seek judicial intervention in order to ensure that there remains a conducive environment to carry on free and independent news reporting in the country, without fear or favour. A copy of Resolution dated.....passed by the Executive Committee of the Petitioner 1 authorising its General Secretary Sh Sanjay Kapoor to file this Petition is hereby annexed and marked as **ANNEXURE – P1 (AT PAGE NOS. - TO 65)**.

2. Petitioner no.2 is a political cartoonist and social activist, who faced an FIR dated against him under section 124A for allegedly disrespecting the Government of India, was arrested on September 8, 2012, had to obtain bail, on October 12, 2012, government of Maharashtra informed the Bombay High Court that it has decided to drop the charges against him under Section 124A as no case is made out. That the Petitioner no. 2 started his career as an editorial cartoonist in 2004 and from 2004 to 2012,

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Petitioner no. 2 contributed regular political cartoons and illustrations for some Hindi daily newspapers including, I-Next (Dainik Jagran Group, all editions), Prabhat Khabar (all editions), Pratahkal (all editions), Dakshin Bharat Rashtramat (Bangalore), Dainik Aj (Kanpur) and a few Hindi magazines like Sampadak (Dharmayug Prakashan Pvt Ltd, Delhi), Chauthi Drishti (Lucknow), Cartoon Watch (Raipur), Hello Kanpur (Kanpur) and online news portal 'KhabarIndia.com'. That the Petitioner no. 2 was a co-recipient of 'Courage in Editorial Cartooning Award 2012' by the US-based group Cartoonists Rights Network International (CRNI).

After the case of treason filed against the Petitioner no. 2, Petitioner no. 2 and his family had to face a lot of problems and even the image of him and his family was tarnished. That despite after the drop of charges of sedition against the Petitioner no. 2, it was not easy for him to find a job. Petitioner no. 2 had been working with many Hindi dailies for eight years but after the arrest, Petitioner no. 2 couldn't find any suitable job or freelance work as a cartoonist. Afterwards, Petitioner no. 2 had to self-

publish the cartoons on his blog and website but it was not enough to provide him with a livelihood. Finally, Petitioner no. 2 had to quit his profession as a cartoonist. Further many organizations hesitate to work with the Petitioner no. 2 as on many occasions, Petitioner no. 2 name dropped from the guest/speaker list. In 2012, when Petitioner no. 2 participated in a TV reality show Bigg Boss, a local political party (Republican Party of India) started public protests and even attacked the TV channel's office in Mumbai as they were against his presence on TV because he had faced sedition charges, even after the government had dropped those charges. As a result, the producers had to get Petitioner no. 2 out of the show, which resulted in a loss of money to the Petitioner no. 2

3. The Respondent No.1 is the Union of India, through the Secretary, Ministry of Information and Broadcasting. The Respondent No. 2 is a statutory body governing the code of conduct of the press in India. The Respondent no.3 is a statutory body constituted under the Protection of Human Rights Act,

1993. It is entrusted with a duty to protect individuals against any violation of their human rights. The Respondents Nos. 2 and 3 have been arrayed as parties to assist this Hon'ble court in this matter of vital public interest and concern. No reliefs are sought against these Respondents.

4. The instant writ petition under Article 32 of the Constitution of India is being filed by, among others, the Editors Guild of India in furtherance of its objectives to safeguard of the freedom of the press. This petition seeks protection of the fundamental rights of members of the press/media. The petitioners are constrained to approach this Court in view of the increasing instances of wanton abuse of the pre-constitutional penal provisions under Sections 124-A (sedition) and 505 (statements conducing to public mischief) of the Indian Penal Code, 1860 ("IPC") including against members and current Office Bearer of Petitioner no.1, and Petitioner no. 2
5. Post 26th January 2021 incident at Red Fort and death of a farmer driving a tractor, multiple FIRs having identical contents and wordings have been registered against the senior well

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known journalists and Editors and current office bearer of the Petitioner No. 1 in multiple states, under Sections 124A and 505 of IPC amongst others. All of them had to individually approach this Hon'ble Court by way of Writ Petitions under Article 32 of Constitution of India.

1. Rajdeep Sardesai vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 76/2021]
2. Anant Nath vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 77/2021]
3. Paresh Nath vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 80/2021]
4. Vijay K. Jose vs. UOI & Ors. [W.P. (CrI.) No. 81/2021]
5. Mrinal Pande vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 82/2021]
6. Zafar Agha vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 83/2021]

That the copy of Rajdeep Sardesai vs. State of Uttar Pradesh & Ors. [Case No. W.P. (CrI.) No. 76/2021] is hereby annexed and marked as ANNEXURE -P2 (AT PAGE NOS. 66 TO 103)

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along with order dated 09.02.2021 passed by this Hon'ble Court in WP (Crl) 76/2021 and other connected matters staying the arrest, annexed herewith and marked as ANNEXURE -P3 (AT PAGE NOS. 104 TO 107).

6. The Petitioners are before this Court to protect the freedom of speech and expression of the media, to enable it to carry out its functions without fear of retributive initiation of state power by resort to criminal action. A free press is the fourth pillar of democracy and cannot be prevented from publishing facts, opinion, and analysis howsoever unpalatable to the ruling establishment. Article 19 of the Constitution of India encompasses freedom of the press and the functioning of a healthy democracy requires that the fourth pillar is adequately protected as media persons carry out a public duty to inform and educate public opinion by reporting facts and views that can be viewed as critical or even stridently opposed to that of the ruling establishments, and as such require protection from indiscriminate registration of FIRs and consequences that flow from it under these draconian provisions. The climate of fake news and disinformation requires

that free and independent media/press is allowed to do carry out its responsibilities to the citizenry without any apprehension of arbitrary use of state power.

7. Section 124-A of the IPC has a legacy of misuse by governments of the day. The colonial government invoked this provision to prosecute and convict Mahatma Gandhi who termed it as the *'prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen'*. Since independence, there are numerous instances when governments have charged citizens critical of the political establishment, including members of the press/media under this provision in an effort today to curb freedom of speech and expression.
8. During the past 2-3 years, prominent journalists/editors have been subjected to indiscriminate criminal prosecution, whereby multiple FIR's including for charges of sedition have been filed in various states, thereby seeking to criminalise the acts done in discharge of professional responsibilities. The Petitioners, being concerned with the general welfare and protection of the rights of the members of the press/media, have noticed that the number of

such instances have increased recently. Some instances from the last two years are summarized below:

- a. Vinod Dua – FIRs in Himachal Pradesh and Delhi under Section 124-A IPC for his shows commenting on the ruling party (May 2020).
- b. Dhaval Patel – FIR in Gujarat under Section 124-A IPC for an article discussing the potential candidates for the post of Chief Minister of Gujarat. He was arrested on 11 May, 2020).
- c. Masrat Zahra – FIR in Jammu and Kashmir under Section 13 Unlawful Activities Prevention Act, 1967 and Section 505 IPC for her photos of events in the state which were uploaded to social media. She was arrested on April 20, 2020).
- d. Gowhar Geelani and Peerzada Ashiq – Exact details of FIRs in Jammu and Kashmir not disclosed, but the police version is that they have been booked for seditious articles and social media posts (April 21, 2020).
- e. Andrew Sam Raja Pandian – FIR in Coimbatore, Tamil Nadu, *inter alia*, under Section 505 IPC (and sections of Disaster Management Act, 2005 and Epidemic Diseases Act, 1897) for

articles in a local news portal about corruption in the local administration (Arrested on April 23, 2020).

- f. Zubair Ahmed – FIR in Andaman and Nicobar Islands, *inter alia*, under Section 505 IPC (and sections of Disaster Management Act, 2005 and Epidemic Diseases Act, 1897) for a tweet regarding the decision of the local authorities to send a family into quarantine after a phone call with an infected relative (Arrested on April 27, 2020).
- g. Siddharth Varadarajan – FIR in Uttar Pradesh under Section 505 IPC for sharing an article in online news-portal, *The Wire*, about the present Chief Minister's actions regarding religious ceremonies and coronavirus (April 2020).
- h. Prashant Kanojia – FIR in Uttar Pradesh under Section 505 IPC for reposting on social media a video of a woman claiming to be in a relationship with the Chief Minister of the state. He was arrested from Delhi on June 6, 2019).
- i. Manjit Mahanta – FIR was filed suomotu by police on statements made by him on January 7, 2019 in Assam under Section 124-A IPC for comments on the Citizenship

(Amendment) Bill. He was granted bail on January 11, 2019 by Guwahati High Court).

- j. Kishore Chandra Wangkhem – FIR in Manipur under Section 124-A IPC and National Security Act, 1980 for posts in relation to the Prime Minister and the Chief Minister of the state. He was arrested on November 21, 2018, remained in jail for several months because of NSA charge.

That it can be seen from the above instances that there has been increasing instances of wanton abuse of the pre-constitutional penal provisions under Section 124-A and more particularly against the Editors and journalist in gross violations of the principles laid down in the *Kedar Nath Singh vs. State of Bihar [1962 (Suppl.) 3 SCR 769]*. Despite the two judge bench of this Hon'ble Supreme Court in the case of *Common Cause and Anr. Versus Union of India [Writ Petition (s) (Civil) No. 683/2016]* vide order dated 05.09.2016 made a direction that ".....we are of the considered opinion that the authorities while dealing with the offences under Section 124A of the Indian Penal Code shall be guided by the principles laid down

by the Constitution Bench in Kedar Nath Singh vs. State of Bihar [1962 (Suppl.) 3 SCR 769]".

9. Data from the National Crime Bureau report entitled in "Crime in 2019" published in November 2020, records that 93 cases of sedition were filed in 2019, compared to 33 in 2016—a 165 % increase. Amongst these, there are two convictions and 29 acquittals. Most alarmingly, even though 93 fresh cases were registered for offence of sedition in 2019 and 135 were pending investigation through previous years not a single case was dropped at the level of police authorities by making any scrutiny under the provisions of Section 157 (1) (b) of CRPC which mandate that 'if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.' This prima facie shows that mandatory directions of this Hon'ble Court's to the effect that authorities *shall be guided by the principles laid down by the Constitution Bench in Kedar Nath Singh vs. State of Bihar*, have not been followed at all and have had no effect on police authorities. While convictions are rare in cases where

sedition law has been invoked, registration of FIRs and process of investigation itself has a chilling effect on the freedom of speech and expression, and impedes the freedom of the press to report matters of vital public concern, as the very act of duty of a media person gets criminalised through rampant misuse of these draconian provisions. This cumulative effect achieved by the process of registering an offence, hostile investigations, and the vicissitudes of a prolonged trial, even if an acquittal is the outcome, acts as a severe deterrent on media freedom. There are no existing safeguards in the law to prevent abuse of these provisions, and members of the press/media are constrained to individually approach courts to seek protection of personal liberty. Notably, India's ranking in the World Press Freedom Index has seen a constant decline since 2018. Among the 180 nations on the index, its ranking has declined from 136 to 138 in 2018, 140 in 2019, and 142 in 2020.

That the copy of National Crime Bureau's 2019 report entitled in "Crime in 2019" is hereby annexed and marked as ANNEXURE -P4 (AT PAGE NOS. 108 TO 151).

That the copy of Press Freedom Index Report is hereby annexed and marked as ANNEXURE -P5 (AT PAGE NOS. 152 TO 160).

10. Flouting of directions of this Hon'ble Court to follow principles laid down in Kedar Nath's judgment while invoking provisions of Section 124A has led to distortion of criminal justice. It deeply impacts administration of justice in the field of criminal law. Criminal law is completely misused against professionals, here journalists, to cause harassment, and therefore, quite apart from having an adverse impact on the freedom of speech, it results in a situation where State resources intended to investigate genuine crimes are diverted for harassment and to fulfil the agenda of persons who disagree with the report.

11. As per report by website "Article-14.com" titled as "*Our New Database Reveals Rise In Sedition Cases In The Modi Era*" "*The database has found that of nearly 11,000 individuals against whom sedition cases were filed over the last 10 years, 2,000 were mentioned by name, including nine minors, and the rest "unidentified" with 816 cases registered.....The database found*

the range of expressions found seditious extended from mere holding of posters to social media posts, to raising slogans and private communication. In nearly 30% of cases, a variety of other laws, such as the Unlawful Activities Prevention Act, 1967, Prevention of Damage to Public Property Act, 1984, and the Information Technology Act, 2000, Prevention of Insults to National Honour Act, 1971, Epidemic Diseases Act, 1897, Disaster Management Act, 2005 were added to the FIRs."

Article-14.com report also notes, "In 2016, while it was hearing a petition filed by an activist, S P Udayakumar, charged with sedition for his role in the Kudankulam protest, a two-judge bench of the Supreme Court, reiterated the principles laid down in Kedar Nath Singh vs State of Bihar.

.....

Despite the Supreme Court judgement, our database showed that a total of 1310 individuals, or 12% of individuals, have been charged over the last decade for shouting slogans...."That the copy of report by website "Article-14.com" titled as "Our New Database Reveals Rise In Sedition Cases In The Modi Era" is

hereby annexed and marked as ANNEXURE -P6 (AT PAGE NOS.161 TO 172).

12. The constitutionality of Section 124-A IPC was considered by a Constitution Bench of this Court in *Kedar Nath Singh v. State of Bihar* (1962 SCR Supp. (2) 769) where it was observed,

"This offence, which is generally known as the offence of Sedition, occurs in chapter IV of the Indian Penal Code, headed 'Of offences against the State'. This species of offence against the State was not an invention of the British Government in India, but has been known in England for centuries. Every State, whatever its form of Government, has to be armed with the power to punish those who, by their conduct, jeopardise the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder."

13. Even otherwise, with the rise of India as one of the major democracies in the world with a stable polity and smooth transition of power after elections, it is high time that pre-constitutional provisions in penal code are constantly reappraised on the touchstone of the characteristics of a mature, confident, modern democratic state. One of the reasons that weighed with the Constitution Bench in Kedar Nath's case was

that Crime of Sedition has been retained in the statute book in England. However, as of 2009, the United Kingdom has repealed sedition as an offence. The reasoning by which the constitutionality of Section 124-A and 505 of IPC was sustained in *Kedar Nath Singh* no longer holds. Globally, there has been a change in the use and enforcement of sedition law in the last two decades in favor of the freedom of speech and expression. The decision in *Kedar Nath Singh's* case requires to be reconsidered by this Court. Some other legal and constitutional developments relevant for the reappraisal of *Kedar Nath Singh's* case are:

- a. Freedom of the press and invocation of these provisions against members of the press/media were not the subject matter of consideration before the Constitution Bench in *Kedar Nath Singh's* case. In *Kedar Nath Singh*, the factual substratum of cases related to speeches, activities explicitly seeking overthrow of democratically elected governments through the means of violence.
- b. In this factual background, this Court upheld the vires of Section 124-A of the IPC and restricted its scope to such activities as

would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.

- c. Indian constitutional courts have dynamically interpreted the Constitution in favor of the rights protected under Part III. Devices such as issuing directions to fill the gaps in the operation of a law and continuing mandamus have been employed to expand the notion of 'due process'. The decision in *Kedar Nath Singh* requires a fresh consideration in view of the progressive jurisprudence of this Court under Part III.
- d. Petitioners are also seeking appropriate safeguard against the Private Complaints with respect to preliminary investigation as provided in the judgment of *Lalita Kumari Versus Government of Uttar Pradesh and Other* [(2014) 2 SCC 1] and *Priyanka Srivastava and Another Versus State of Uttar Pradesh and Others* [(2015) 6 SCC 287], where following *Lalita Kumari*, even under Section 156(3) a duty has been enjoined on Magistrates to record prima facie satisfaction while ordering investigation into complaint in view of rampant abuse of the provision by complainants. The abuse of

provisions of Sections 124A and 505 has the effect of curbing fundamental democratic freedoms of dissent, and has even more pernicious consequences by curbing freedom of press when invoked against media persons.

14. The members of the Petitioner guild carry out their duty to inform and educate the public which is vital to the sustenance of our democracy. Any fetter on free and fair debate based on facts, opinions and analysis, presented by a free and independent media, through the misuse of archaic penal provisions is unconstitutional and results in undermining the administration of criminal justice.

15. The right to know is a fundamental right and silencing the media/journalists on the basis of frivolous and vexatious FIRs has a chilling effect. The Petitioners, in consultation with its legal advisors, have formulated a set of guidelines for the assistance of this Court. These guidelines suggest a mechanism for regulating prosecutions against members of the press/media for actions in the course of their duty. These guidelines speak to alternative prayer A of this petition, if this Court is not inclined

to strike down Sections 124-A and 505 of the IPC. Copy of Draft Guidelines as framed by Petitioner No. 1 is hereby annexed and marked as ANNEXURE -P7 (AT PAGE NOS. 173 TO 177).

FACTUAL MATRIX

16. That the Petitioner prefers the present writ Petition on, *inter alia*, the following grounds:

GROUND:

A. FREEDOM OF THE PRESS AND DEMOCRACY:

- a. That the provisions of Sections 124A and 505 of the Indian Penal Code, 1860 is in contravention of Articles 14, 19 and 21 of the Constitution of India.
- b. Freedom of the press is a facet of the fundamental right of free speech and expression which is protected under Article 19(1)(a) of the Constitution of India.
- c. In a democracy, members of the press have a duty to inform the citizenry and the press acts in the capacity of a trustee or surrogate of the public, as the "eyes and ears of the citizenry". For citizens to ascertain facts and effectively

form opinions, it is necessary to have impartial journalists who can perform their duty without fear of retributive criminal prosecutions.

- d. A free press is the hallmark of a democracy and deserves to be shielded from frivolous prosecution for acts done in the course of its duty. Any pressure subverting the freedom of press amounts to infringement of the fundamental right guaranteed under Article 19(1)(a) of the Constitution of India.
- e. With a surge in indiscriminate filing of FIRs against members of the press in relation to acts done in the course of their duty, and consequent police action without reasonable *prima facie* inquiries into the veracity of the allegations against journalists, freedom of the press is being undermined. Notably, the charges on journalists range from the offence of sedition (124-A IPC) to public nuisance (268 IPC), statements creating or promoting ill-will between classes (505 IPC) and even offences under special laws.

- f. As recently as on May 19, 2020, the Supreme Court in *Arnab Ranjan Goswami vs. Union of India* (2020 SCC Online SC 462) has, *inter alia*, observed:

“Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a)... India’s freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal.”

- g. The press is regarded as the fourth pillar of democracy. Courts across the world, including this Hon’ble Supreme Court, have been zealous in upholding freedom of the press which encourages and informs social and political discourse and sustains democracy.

- h. In *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* (1985) 1 SCC 641, the Supreme Court has, *inter alia*, observed:

"In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power. Governments naturally take recourse to suppress newspapers publishing such articles in different ways. Over the years governments in different parts of the world have used diverse methods to keep press under control They have followed carrot-stick methods. Secret payments of money, open monetary grants and subventions, grants of lands, postal concessions, Government advertisements, conferment of titles on editors and

proprietors of newspapers, inclusion of press barons in cabinet and inner political councils etc. constitute one method of influencing the press. The other kind of pressure is one of using force against the press. Enactment of laws providing for pre censorship, seizures, interference with the transit of newspapers and demanding security deposit imposition of restriction on the price of newspapers, on the number of pages of newspapers and the area that can be devoted for advertisements, withholding of Government advertisements, increase of postal rates, imposition of taxes on newsprint, canalization of import of newsprint with the object of making it unjustly costlier etc. are some of the ways in which Governments have tried to interfere with freedom of press. It is with a view to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it is, therefore the primary duty of all the national Courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.”

- i. BECAUSE this Hon'ble Court observed in *Union of India v/s Association for Democratic Reforms*, "One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.
- j. Further in *Romesh Thapar v. State of Madras* 1950 SCR 594, the Supreme Court has, *inter alia*, observed:

"...freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible."

B. CONSTITUTIONALITY OF SECTION 124-A:

- k. These provisions were enacted by an authoritarian government to repress political dissent. It is an archaic and oppressive penal provision which violates one of the basic

tenets of democracy – accountability of the elected government to its people. This provision not only violates freedom of speech and expression on an arbitrary standard of instilling hatred, contempt or disaffection towards the government but also aids the government in nakedly disenfranchising its political rivals and critics.

- l. A country where citizens cannot voice criticism against the government and its actions/inactions, demand accountability and raise questions for fear of penal sanctions is not functional democracy. Such criticism may be raised by the citizenry through the press and by members of the free press as citizens themselves.
- m. Under the Constitution of India, no institution and much less the elected government, is above the Rule of Law or can escape the rigours of public accountability and checks through an independent media.

Manifestly arbitrary, vague and disproportionate

- n. Section 124-A is manifestly arbitrary and is in violation of Article 14 of the Constitution of India. The Supreme Court in

Shayara Bano v. Union of India (2017) 9 SCC 1, has held that a statute can be struck down as being manifestly arbitrary if the provision is capricious, irrational and/or without adequate determining principle, as also if it is excessive or disproportionate, and through unjustified and indiscriminate prosecution and arrests violate Article 21 of the Constitution.

- o. In *A.K. Roy v. Union of India* (1982) 1 SCC 271, the Supreme Court, *inter alia*, held that crimes must be defined with appropriate definiteness. This is a fundamental concept of criminal law. Rule of law requires that individuals must know when lawful conduct ends, and unlawful conduct begins. The language of Section 124-A fails to provide an adequate warning of the conduct which may fall within the proscribed area, and as such is capricious, irrational and without adequate determining principle.
- p. The substratum of the offence under Section 124-A is contingent on abstract terminology without a well-defined boundary. It rests on the bringing into "hatred", or "contempt" or excite "disaffection" towards the Government

of India. The Explanation to the section further expands disaffection with an inclusive definition to include “disloyalty” and “all feelings of enmity”. Through Explanations 2 and 3, an exception is created for “disapprobation of the measures of the Government of India”.

- q. The judicial interpretation provided by this Court in *Kedar Nath Singh v. State of Bihar* 1962 SCR Supp. (2) 769, does not cure the impugned section of the vice of arbitrariness. While the court introduced an additional requirement for the offence under Section 124-A – that the act complained of should have proximity to creating disorder, or disturbance of public peace by resort to violence – it relied upon imprecise criteria of “tendency to disorder” or “intention to create disturbance” which renders the section over-broad.
- r. That the report dated 24th February 2021 by Organisation “Article 14” titled after analysis of a few FIRs filed observed that none of the FIRs fulfil the standards as laid down in the *Kedar Nath Singh v. State of Bihar* 1962 SCR Supp. (2) 769.

- s. That there has been increasing instances of wanton abuse of the pre-constitutional penal provisions under Section 124-A and more particularly against the Editors and journalist in gross violations of the principles/standards laid down in the *Kedar Nath Singh vs. State of Bihar* [1962 (Suppl.) 3 SCR 769]. Despite the two judge bench of this Hon'ble Supreme Court in the case of *Common Cause and Anr. Versus Union of India* [Writ Petition (s) (Civil) No. 683/2016] vide order dated 05.09.2016 made a direction that "*.....we are of the considered opinion that the authorities while dealing with the offences under Section 124A of the Indian Penal Code shall be guided by the principles laid down by the Constitution Bench in Kedar Nath Singh vs. State of Bihar* [1962 (Suppl.) 3 SCR 769]".
- t. However, data from the National Crime Bureau's 2019 report indicates that 93 cases of sedition were filed in 2019, compared to 33 in 2016—a 165 % increase. Amongst these, there are two convictions and 29 acquittals. Most alarmingly, even though 93 fresh cases were registered for offence of

sedition in 2019 and 135 were pending investigation through previous years not a single case was dropped at the level of police authorities by making any scrutiny under the provisions of Section 157 (1) (b) of CRPC which mandate that 'if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.' This prima facie shows that mandatory directions of this Hon'ble Court's to the effect that authorities *shall be guided by the principles laid down by the Constitution Bench in Kedar Nath Singh vs. State of Bihar*, have not been followed at all and have had no effect on police authorities.

- u. In the line of work of a journalist, for instance, covering matters of national security on which the citizens have a right to know, or in cases covering situations of insurgency or internal conflict as is current in some parts of the country, strong disapprobation of government measures may be falsely, maliciously, with motivation or innocently be construed as being within the ambit of the offence. As such,

Section 124-A in its present form is incurable of the vice of manifest arbitrariness even with the judicial interpretation to the section supplied by this Hon'ble Court, and ought to be struck down.

- v. Further, Section 124-A is unconstitutional as it employs vague language and does not provide any manageable standards by which either the accused can be put to notice or the authorities can be clear on whether a cognizable offence has been committed, as such is arbitrary and violative of Article 14 of the Constitution. This Court in **Shreya Singhal v. Union of India** (2015) 5 SCC 1, has held that a vague criminal provision without manageable standards is unconstitutional.

- w. Section 124-A also fails the proportionality review laid down by this Court in *Modern Dental College & Research Centre v. State of Madhya Pradesh and Others* (2016) 7 SCC 353 (cited with approval in *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1). The proportionality test requires that

the impugned law that limits fundamental rights must satisfy the following criteria:

“152. The proportionality test which is stated in the aforesaid judgment, accepting Justice Barak's conceptualisation, essentially takes the version which is used by the German Federal Constitutional Court and is also accepted by most theorists of proportionality. According to this test, a measure restricting a right must, first, serve a legitimate goal (legitimate goal stage); it must, secondly, be a suitable means of furthering this goal (suitability or rational connection stage); thirdly, there must not be any less restrictive but equally effective alternative (necessity stage); and fourthly, the measure must not have a disproportionate impact on the right-holder (balancing stage).”

- x. Section 124-A fails on all aspects of the proportionality review. It fails the threshold stage of serving a legitimate goal. Shielding the Government of India from hatred, disaffection, or contempt of its citizens expressed by non-violent means such as written words, speech or protests cannot be a legitimate goal in a democracy that respects and

guarantees freedom of speech and expression. An undeserving government ought not to be shielded from the hatred, disaffection or contempt of its citizens in a representative democracy that depends on election cycles where such results would follow. Requiring unfailing affection for the elected government from an empowered citizenry in a representative democracy cannot be a legitimate goal.

- y. Further, Section 124-A insofar as it demands a citizenry with a particular disposition towards the Government of India (absent hatred, contempt or disaffection) by criminalizing contrary dispositions fails the suitability test.
- z. Section 124-A also fails the necessity test as it prescribes a criminal offence that is over-broad and covers more legitimate speech than it restricts. Towards the goal of securing the loyalty of the citizenry, a representative government ought to adopt a less restrictive measure through good governance, open government, and preservation of democracy, and not criminalization of speech and expression.

- aa. Section 124-A is grossly disproportionate. The punishment prescribed under the provision is life imprisonment. Section 124-A inasmuch as it burdens speech and expression by prescribing the maximum punishment under the law, short of death penalty, has a disproportionate impact on the right-holder.
- bb. The fundamental right to freedom of the press guarantees and cultivates a fearless, critical, and reasonable press in the service of the citizens who in turn have a right to be informed under Article 19(1)(a). Section 124-A and the indiscriminate registration of FIRs against journalists/members of the press has a chilling effect on both rights— free speech and expression of the citizens and freedom of the press.
- cc. The judgment of this Court in *Kedar Nath Singh Vs. State of Bihar* 1962 SCR Supp. (2) 769 requires reconsideration in the context of members of the free press for the following reasons:
 - (i) It is evident from the facts and circumstances narrated in the *Kedar Nath* judgment that the Court was dealing

with the constitutionality of Section 124-A from the perspective of communal speeches or other material made and circulated by individuals other than the media and did not examine the provision from the perspective of the right to freedom of the press.

- (ii) Use of Section 124-A in the context of members of the free press was not the subject matter of consideration before the Court in *Kedar Nath*. The Court has rendered no opinion on whether this provision offends Article 19(2) of the Constitution when balanced with the fundamental right to freedom of the press.
- (iii) Freedom of the press as a facet of the fundamental right of free speech and expression under Article 19(1)(a) has fully evolved in judgments subsequent to *Kedar Nath*. As such, the decision in *Kedar Nath* should be reconsidered in the context of the application of Article 19(1)(a) to the press.
- (iv) In *Kedar Nath*, the Court made the following observations which support the contention that Section

124-A was never meant to curtail the freedom of the press in any manner:

"36. It has not been questioned before us that the fundamental right guaranteed by Art. 19(1)(a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable restrictions as would come within the purview of clause (2), which comprises (a) security of the State, (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc., etc. With reference to the constitutionality of s. 124A or s. 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Art. 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoke or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the person's for the time being engaged in carrying on the administration.

"Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in s. 124A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of §. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government

with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence. (Emphasis added)

37. It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of 'sedition'. What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a

very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But, in our opinion, such words written or spoke would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government,

or its measures, by way of criticism or comment,
so long as he does not incite people to violence
against the Government established by law or
with the intention of creating public disorder.

The Court, has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Sections 124A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. It is held, in consonance with the views expressed by the Federal Court in the case of Niharendu Dutt Majumdar v. The King Emperor, (1942) F.C.R. 38 that the gist of the offence of 'sedition' is incitement to violence or the tendency or the intention to create public disorders by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State in other words bringing

the law into line with the law of sedition in England, as was the intention of the legislators when they introduced s. 124A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in clause (2) of Art. 19 of the Constitution, if on the other hand we give a literal meaning to the words of the section, divorced from all the antecedent background in which the law of sedition has grown, as laid down in the several decisions of the Judicial Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in clause (2) aforesaid." (Emphasis added)

dd. In this context it is relevant that it was the specific intent of the members of the Drafting Committee and the Constituent Assembly that the freedom of the press should under no circumstance be curtailed under the garb of sedition. The word "sedition", which was earlier included in Article 13(2) of the Draft Constitution, was specifically deleted and the word 'reasonable' was added to make the constitutional courts final arbiter in case of restrictions being placed on

citizens before the article was finally passed as Article 19(2) as it reads today after extensive debate and discussion in the Constituent Assembly.

ee. In **Navtej Singh Johar v. Union of India**(2018) 10 SCC 1, the Supreme Court has, *inter alia*, held:

“196. We have discussed, in brief, the dynamic and progressive nature of the Constitution to accentuate that rights under the Constitution are also dynamic and progressive, for they evolve with the evolution of a society and with the passage of time. The rationale behind the doctrine of progressive realisation of rights is the dynamic and ever-growing nature of the Constitution under which the rights have been conferred to the citizenry.

197. The constitutional courts have to recognise that the constitutional rights would become a dead letter without their dynamic, vibrant and pragmatic interpretation. Therefore, it is necessary for the constitutional courts to inculcate in their judicial interpretation and decision making a sense of engagement and a sense of constitutional morality so that they, with the aid of judicial creativity, are able to fulfil their foremost constitutional obligation, that is, to

protect the rights bestowed upon the citizens of our country by the Constitution.”

- ff. Further, in *Shah Faesal v. Union of India* (Writ Petition (Civil) No. 1099 of 2020), this Court has recognized that overruling established precedents is permissible on the ground of social, constitutional and economic changes. The Constitution is a dynamic document which needs to evolve and adapt to changing times and accordingly, constitutionality of a statute or legislative provision is a dynamic concept.

C. HISTORY OF LAW OF SEDITION:

- gg. The history of sedition laws is coterminous with that of the British Colonial Empire. India being a former colony, and presently, a sovereign democratic republic, it is important to gain a comparative view of the law of sedition in the United Kingdom and other members of the Commonwealth in the present day. The following section provides a brief statement of the status of the sedition law in some such democracies:

- a. United Kingdom: Repealed

- (i) The *KedarNath* decision relies heavily on sedition laws in the United Kingdom. The United Kingdom has, however, repealed its sedition law in 2010 with the passing of the Coroners and Justice Act, 2010. Notably, this was preceded by almost two decades of no prosecutions under the sedition law prior to its repeal.

That the copy of Coroners and Justice Act, 2009 (UK Repealing Act) is hereby annexed and marked as ANNEXURE –P8 (AT PAGE NOS. 178 TO 191).

- (ii) While supporting the move to repeal UK's sedition laws, the erstwhile Parliamentary Under-secretary of State at the Ministry of Justice stated that:

“Sedition and seditious and defamatory libel are arcane offences – from a bygone era when freedom of expression wasn't seen as the right it is today... The existence of these obsolete offences in this country had been used by other countries as justification for the retention

of similar laws which have been actively used to suppress political dissent and restrict press freedom... Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech.”

That the copy of “Criminal libel and Seditious Offences Abolished”, Press Gazette (Jan. 13, 2010) is hereby annexed and marked as ANNEXURE –P9 (AT PAGE NOS. 192 TO 198).

b. New Zealand: Repealed

By a 2007 amendment entitled “Crimes (Repeal of Seditious Offences) Amendment Act, 2007” seditious offence is no longer an offence in New Zealand.

That the copy of Crimes (Repeal of Seditious Offences) Amendment Act, 2007 (New Zealand Repealing Act) is

hereby annexed and marked as ANNEXURE -P10 (AT PAGE NOS. 199 TO 200).

c. Scotland: Repealed

Since 2011, common law offence of sedition have been expressly repealed in Scotland.

That the copy of Criminal Justice and Licensing (Scotland) Act 2010 is hereby annexed and marked as ANNEXURE - P11 (AT PAGE NOS. 201 TO 203).

hh. The Law Commission of India published a consultation paper on sedition in August, 2018. The paper emphasises the need to repeal Section 124-A and provides compelling reasons for this. Among other things, the Law Commission has observed that there are several other statutes to meet the government's concerns regarding national integrity and security.

That the copy of Law Commission Consultation Paper on Sedition (31.08.2018) is hereby annexed and marked as ANNEXURE-P11 (AT PAGE NOS. 204 TO 238).

D. MISUSE OF SECTIONS 124-A and 505:

- ii. In addition, the following reports highlight the rising trend of indiscriminate registration of FIR's against members of the press and persistent threat of criminal prosecution faced by reporters in India:
 - a. A recent analysis published in Live mint on 25.02.2020 based on NCRB data has analysed the trend line of increasing sedition prosecutions in India. The data has revealed that while sedition cases remain a small percentage of the total number of IPC offences registered in India (0.01 p.c.), there has been a steady increase in the number of sedition cases registered since 2014. The report notes that there has been more than doubling of the

number of cases registered under S. 124-A IPC (from 33 in 2016 to 70 in 2018). The report has also noticed that only a very small percentage of the sedition cases have resulted in conviction. For instance, for the year 2018, the number of fresh cases registered that year were 70 and those pending investigation was 190 out of which 38 were sent for trial. However, since 2016 only 4 convictions under S. 124-A IPC occurred. NCRB's 2019 report published in 2020 shows 93 cases of sedition were filed in 2019, compared to 70 in 2018. Further, there were just 2 convictions compared to 29 acquittals in 2019.

That the copy of Livemint analysis of NCRB data is hereby annexed and marked as ANNEXURE -P13 (AT PAGE NOS. 239 TO 247).

- b. A recent report (June 2020) from Rights and Risks Analysis (an Independent Think Tank based out of Delhi) has highlighted the crackdown on journalists during the Covid-19 lockdowns by the Indian State.

That the copy of Rights and Risks Analysis Report DATED June 2020 is hereby annexed and marked as ANNEXURE - P14 (AT PAGE NOS. 248 TO 279).

- c. Free Speech Collective is a coalition of journalists who regularly analyze the impact of government actions on free speech of the press. Their 2018 report entitled "The State Rolls On" gives a detailed analysis on the various threats (legal and extra-legal) faced by members of the press.

That the copy of Free Speech Collective 2018 report entitled "The State Rolls On" is hereby annexed and marked as ANNEXURE-P15 (AT PAGE NOS. 280 TO 325).

- jj. Freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution of India enables the press to

exercise this right in the service of the nation and its people.

A free press is essential for the healthy growth and systematic functioning of a democracy. The growing tendency of restraining this freedom with the aid of indiscriminate, false and frivolous criminal prosecutions and accompanying attempts at arrest needs to be checked, failing which, democracy itself would be a casualty. This is impermissible under our Constitution.

- kk. While convictions have been rare in cases where the charge of sedition has been invoked against journalists, the chilling effect of these prosecutions on the freedom of the press to report on matters of public concern is immense. This is achieved by simply registering an offense, forcing the press member to participate in a hostile process of investigation, and the unpredictability of a prolonged trial. The process itself curbs the capacity and drive to continue to carry out a journalist's professional duty.

- ll. The effect of the rampant misuse of the provisions of Section 124-A is so pernicious that journalists have to constantly appear in far flung places to simply obtain bail and protect their liberty. This acts as a severe deterrent for the press to continue to perform their duty to inform and educate members of the public and serves to criminalise the very acts carried out during the course of their professional endeavour, thereby requiring stringent safeguards until the provisions are struck down as unconstitutional.
- mm. Further, the increased frequency of invocation of Sections 124-A and 505 of the IPC against members of the press is intended to send a message of forced loyalty towards the ruling establishment.
- nn. According to the press freedom index 2020 (<https://rsf.org/en/ranking-table>), India ranks at 142 out of 180 countries, slightly above Pakistan which ranks at 145 and way below our other neighbours such as Nepal and Sri Lanka who stand at 112 and 127 respectively. The need to

strengthen our fourth estate for a vibrant democracy is pressing and this Court's intervention is imperative to protect our free press from being used as a mouthpiece of the government of the day.

oo. Misuse of the provisions of Section 124-A also violates the right to life and livelihood and the freedom to practice any profession guaranteed under Articles 21 and 19(1)(g) of the Constitution of India.

pp. BECAUSE even otherwise, this Hon'ble Court in the case of Balwant Singh and Another v State Of Punjab had observed: "*The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government so as invite provisions of Section 124A IPC*". For citizens to effectively form an opinion, it is necessary to have impartial journalists in the country who can perform their duty without fear.

E. DISTORTION OF CRIMINAL JUSTICE:

- qq. Administration of criminal justice relies on high levels of rectitude on the part of its stakeholders / actors. These actors include the State, various prosecution agencies as well as judicial officers. The first line defence against malicious prosecution ought to be at the stage of receipt of information. This need was recognised by this Court in *Lalita Kumari v. Government of Uttar Pradesh* in W.P. (Crl.) No. 68 of 2008 decided on 12.11.2013 where the court directed mandatory preliminary enquiry in certain categories of cases. The Petitioners submit that similar protection ought to be afforded to members of the press/media in the course of their duty.
- rr. Appropriate safeguard against the Private Complaints with respect to preliminary investigation as provided in the judgment of *Lalita Kumari Versus Government of Uttar Pradesh and Other* [(2014) 2 SCC 1] and *Priyanka*

Srivastava and Another Versus State of Uttar Pradesh and Others [(2015) 6 SCC 287].

- ss. The absence of such protection deeply impacts administration of justice in the field of criminal law. Criminal law is being completely misused against professionals, here journalists, to cause harassment, and therefore, quite apart from an adverse impact on the freedom of speech, it results in a situation where State resources intended to investigate genuine crimes are diverted for harassment and to fulfil the agenda of persons who disagree with the report.
- tt. Data from the NCRB as well as other independent reports suggests that despite various protections granted by courts to members of the press/media, on a case-to-case basis, frivolous prosecutions under the impugned provisions continue to increase.

17. The Petitioner has not preferred any similar writ petition before this Hon'ble Court seeking similar reliefs as sought herein.

PRAYER

The Petitioner, therefore, most humbly prays that this Hon'ble court may be pleased to:

- A. Declare that Sections 124-A of the Indian Penal Code, 1860 is unconstitutional being violative of fundamental rights enshrined in Article 14, 19 and 21 of the Constitution of India;
- B. Declare that Sections 505 of the Indian Penal Code, 1860 is unconstitutional being violative of fundamental rights enshrined in Article 14, 19 and 21 of the Constitution of India;
- C. In case this Hon'ble Court decides not to grant relief prayed for in the Prayer A and Prayer B above, in that case, in the alternative, issue appropriate directions and guidelines along the lines of the proposed draft guidelines at Annexure P7 to prevent malicious registration of

complaints, arrests and/or initiation of criminal proceedings by investigating authorities under Sections 124-A and 505 of the Indian Penal Code, 1860 against members of the press/media so long as the action(s) complained of fall within the course of their duty;

D. Declare that complaints/information alleging commission of an offence under the Indian Penal Code, 1860 or any other special law in force by a member of the press/media is as an exceptional category of cases as per paragraph 120.6 of the decision in *Lalita Kumari v. Government of Uttar Pradesh* in W.P. (Crl.) No. 68 of 2008 decided on 12.11.2013 requiring a preliminary enquiry so long as the action(s) complained of fall within their course of duty;

- E. Declare that the law enforcement authorities must proceed with extreme care and caution on complaints made or information received relating to statements made through the print, electronic, or broadcast media by members of the press/media within the course of their duty and in strict compliance of the guidelines issued by this Hon'ble Court; and
- F. Issue any other or further orders/directions that this Hon'ble Court may deem fit in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IS DUTY
BOUND SHALL EVER PRAY

DRAWN BY: |

FILED BY:

Prashant Kumar

Amarjit Singh Bedi

Advocate

Advocate for the Petitioners

PLACE : NEW DELHI

Drawn on:

Filed on: