IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
W.P.(C) NO. 682/2021

IN THE MATTER OF :
S.G. VOMBATKERE .... Petitioner(s)

VERSUS

UNION OF INDIA .... Respondent(s)

AND OTHER CONNECTED MATTERS

WRITTEN SUBMISSIONS

ON THE QUESTION OF REFERENCE TO FIVE JUDGES BENCH

BEHALF OF TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA

BROAD PROPOSITIONS

A. The judgement in ***Kedar Nath Singh vs State of Bihar*** **[1962 Suppl (2) SCR 769]** is a constitution bench judgment and is binding on a three judge bench of this Hon'ble Court. The said judgment in ***Kedar Nath Singh*** **[supra]** is a good law and needs no reconsideration. It must be treated as binding precedent requiring no reference.

A holistic reading of ***Kedar Nath Singh*** **[supra]** clearly reveals that the Constitution Bench considered the constitutional validity of Section 124A from the perspective of all constitutional principles including the test of Article 14, 19, 21 contained in Part III. Merely because Article 14 and 21 are not mentioned, would not undermine its final judicial conclusion. The five judge bench read down Section 124A only to bring it in conformity with Article 14, 19 and 21 of the Constitution. No reference, therefore, would be necessary nor can the three Judge Bench once again examine the constitutional validity of the very same provision.

Kedar Nath Singh **judgement is a BINDING PRECEDENT of a larger bench**

B. The only argument canvassed on behalf of the Petitioners is development of law post the judgment in ***Rustom Cavasjee Cooper*** **v.** ***Union of India*****, (1970) 1 SCC 248**.

Firstly, subsequent judgments on other issues can never be a ground for referring a long-standing precedent to a larger bench. If this is treated to be a sufficient ground every judicial pronouncement which is pre ***RC Cooper*** **(supra)** judgment, will have to be re-considered and re-examined.

The development of law post RC Cooper does not take away constitutional foundations of Kedar Nath Singh judgment

Secondly, the tests which have specifically evolved post ***RC Cooper* (supra)** for testing the constitutional validity of a provision are already applied in ***Kedar Nath Singh* [supra]**. This is one more reason why no reference is necessary and all petitions deserves dismissal as the question of constitutionality is covered by constitution bench judgment in ***Kedar Nath Singh* [supra].**

C. The ratio in ***Kedar Nath Singh* [supra]** has been analysed, tested and elaborated subsequently by this Hon'ble Court in several cases. The latest in line is the judgment of ***Vinod Dua v. Union of India*, 2021 SCC OnLine SC 414**. It is a settled position in law that a judgment which withstood the test of time and has been followed not mechanically but in the context of changing circumstances, cannot be easily doubted.

***Kedar Nath Singh* judgement has stood the test of time and applied till date in tune with modern constitutional principles**

D. The bench of three judges cannot reconsider the ratio of a judgment of a constitution bench without referring the matter to a larger bench. For a reference to a larger bench also it will be absolutely necessary for the bench of three Hon'ble judges to record its satisfaction that the ratio in ***Kedar Nath Singh* [supra]** is so patently wrong that it needs reconsideration by a larger bench. The bench of three Hon'ble Judges cannot itself decide whether ***Kedar Nath Singh* [supra]** is a good law or not. The petitioners have not shown any justification based upon which this Hon'ble court can record a finding that ***Kedar Nath Singh* [supra]** is patently illegal requiring reconsideration.

Only a bench of co-equal strength as of *Kedar Nath Singh* can pose any doubts on the judgment

E. Instances of the abuse of provision would never be a justification to reconsider a binding judgment of the constitution bench. The remedy would lie in preventing such abuse on a case-to-case basis rather than doubting a long standing settled law declared by a constitution bench since about six decades.

Individual instances of misuse of provision cannot be a ground for reconsideration

F. **<u>If none of the above referred arguments are acceptable, this Hon'ble Court, in combination of three Hon'ble Judges, may not examine the challenge to section 124A and may refer it to a larger bench for consideration whether *Kedar Nath* [supra] needs reconsideration</u>**.

Even if the above arguments are rejected, a larger bench is necessary to consider validity of Section 124A

DETAILED SUBMISSIONS

KEDAR NATH SINGH CASE IS *GOOD LAW* AND A BINDING PRECEDENT

1. It is submitted that at the outset, it is important to note that every petition filed before this Hon'ble Court, either prays for "*reconsideration*" and/or "*overruling*" of the judgment rendered by a bench of five Hon'ble Judges of this Hon'ble Court in ***Kedar Nath Singh vs State of Bihar*** **[1962 Suppl (2) SCR 769]**.

It is submitted that the said judgment squarely upholds the vires of Section 124A and therefore, on the said issue, despite the judgments of larger benches of this Hon'ble Court on other issues, the judgment in ***Kedar Nath Singh*** **(supra)**, remains binding and continues to be good law.

2. It is submitted that in a legal system firmly grounded in the common law principle of binding precedents and *stare decisis,* the grounds for reconsideration of a judicial precedent, ought to be clear, cogent and weighty. That apart, a binding constitution bench judgment may not be referred to a Constitution Bench merely because some Petitioners have laid down an academic challenge to a statutory provision without any cause of action. It is submitted that the said factors do not arise in the present case. It is submitted that the judgment of ***Kedar Nath Singh*** **(supra)** which has been decided post-independence, has been rendered with a clear backdrop and experience of how the law concerning Section 124A used to operate prior to independence and thereafter. It is submitted that it was in this backdrop that the judgment in ***Kedar Nath Singh*** **(supra)** read down the provision and rendered the following findings in order to save the provision from the vice of unconstitutionality. The relevant portion of the said judgment is as under :

> *"**15.** This offence, which is generally known as the offence of Sedition, occurs in Chapter VI 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. In England, the crime has thus been described by Stephen in his Commentaries on the Laws of England, 21st Edn., Vol. IV, at pp. 141-42, in these words:*
>
> *"Section IX. Sedition and Inciting to Disaffection.—We are now concerned with conduct which, on the one hand, falls short of treason, and, on the other does not involve the use of force or violence. The law has here*

Important observation as to the origin of the offence

to reconcile the right of private criticism with the necessity of securing the safety and stability of the State. Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society.

The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused. This may be either

1. to excite disaffection against the King, Government, or Constitution, or against Parliament or the administration of justice;

2. to promote, by unlawful means, any alteration in Church or State;

3. to incite a disturbance of the peace;

4. to raise discontent among the King's subjects;

5. to excite class hatred.

Reasonable interpretation

It must be observed that criticism on political matters is not of itself seditious. The test is the manner in which it is made. Candid and honest discussion is permitted*. The law only interferes when the discussion passes the bounds of fair criticism. More especially will this be the case when the natural consequence of the prisoner's conduct is to promote public disorder."*

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24. *In this case, we are directly concerned with the question how far the offence, as defined in Section 124-A of the Indian Penal Code, is consistent with the fundamental right guaranteed by Article 19(1)(a) of the Constitution, which is in these terms:*

"19. (1) All citizens shall have the right—

(a) to freedom of speech and expression...."

This guaranteed right is subject to the right of the legislature to impose reasonable restrictions, the ambit of which is indicated by clause (2), which, in its amended form, reads as follows;

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

It has not been questioned before us that the fundamental right guaranteed by Article 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 Section 124-A or Section 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Article 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoken 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 persons 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.***

Government established by law distinguished from the persons engaged in carrying on the administration

That is why "sedition", as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the State. Hence, any acts within the meaning of Section 124-A 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.***

The balancing undertaken

25. *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 spoken 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 a 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 qua 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 Article 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 124-A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation.* ***If it is held, in consonance with the views expressed by the Federal Court in the case of Niharendu Dutt Majumdar v. King-Emperor [(1942) FCR 38] that the gist of the offence of "sedition" is incitement to violence or the tendency or the intention to create public disorder 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 Section 124-A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in clause (2) of Article 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.*

Court adopted the approach which was in consonance with entire Part III the Constitution

26. *In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of Sections 124-A and 505 of the Indian Penal Code have to be struck down as unconstitutional.* ***If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression****. There can be no doubt that apart from the provisions of clause (2) of Article 19, Sections 124-A and 505 are clearly violative of Article 19(1)(a) of the Constitution. But then we have to see how far the saving clause, namely, clause (2) of Article 19 protects*

*the sections aforesaid**. Now, as already pointed out, in terms of the amended clause (2), quoted above, the expression "in the interest of ... public order" are words of great amplitude and are much more comprehensive then the expression "for the maintenance of", as observed by this Court in the case of Virendra v. State of Punjab [(1958) SCR 308 at p. 317] . Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity.** If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Article 19(1)(a) read with clause (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. **The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.** As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. **It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order**. **So construed , the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order**. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (1) Bengal Immunity Company Limited v. State of Bihar [(1955) 2 SCR 603] and (2) R.M.D. Chamarbaugwala v. Union of India [(1957) SCR 930]]. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.*

Only such activities which are intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence have been criminalised

***27.** We may also consider the legal position, as it should emerge, assuming that the main Section 124-A is capable of being construed in the literal sense in which the Judicial Committee of the Privy Council has construed it in the cases referred to above. On that assumption, is it not open to this Court to construe the section in such a way as to avoid the alleged unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it? In our opinion, there are decisions of this Court which*

> *amply justify our taking that view of the legal position. This Court, in the case of R.M.D. Chamarbaugwalla v. Union of India [(1957) SCR 930] has examined in detail the several decisions of this Court, as also of the courts in America and Australia. After examining those decisions, this Court came to the conclusion that if the impugned provisions of a law come within the constitutional powers of the legislature by adopting one view of the words of the impugned section or Act, the Court will take that view of the matter and limit its application accordingly, in preference to the view which would make it unconstitutional on another view of the interpretation of the words in question. In that case, the Court had to choose between a definition of the expression "Prize Competitions" as limited to those competitions which were of a gambling character and those which were not. The Court chose the former interpretation which made the rest of the provisions of the Act, Prize Competitions Act (42 of 1955), with particular reference to Sections 4 and 5 of the Act and Rules 11 and 12 framed thereunder, valid. The Court held that the penalty attached only to those competitions which involved the element of gambling and those competitions in which success depended to a substantial degree on skill were held to be out of the purview of the Act. The ratio decidendi in that case, in our opinion, applied to the case in hand insofar as we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace.*
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> ***28.*** *We do not think it necessary to discuss or to refer in detail to the authorities cited and discussed in the reported case (R.M.D. Chamarbaugwalla v. Union of India [(1957) SCR 930] at pp. 940-52. We may add that the provisions of the impugned sections, impose restrictions on the fundamental freedom of speech and expression, but those restrictions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that fundamental right."*

3. It is submitted that therefore, it is clear that this Hon'ble Court, while adjudicating the constitutionality of Section 124A applied high constitutional principles and thereafter rendered the findings as quoted above. This judgment cannot be lightly doubted on the ground that it was examined the issue only on Article 19 and not other fundamental rights. A holistic reading of the judgments evidently shows that the Constitution Bench has examined the constitutionality from all possible angles [including Article 19] and therefore, remains binding.

4. It is submitted that the grounds mentioned in the captioned petitions are not relevant and have never been held to be grounds requiring reference to larger bench for reconsideration. It is submitted that the assertion of the petitioner that the judgment in ***Kedar Nath Singh*** **(supra)** is obsolete in the present times and no longer passes constitutional muster today, is wholly erroneous.

5. At this juncture, it would be illustrative to discuss the cases and opinions of the Hon'ble High Courts on Section 124A, prior to the decision in ***Kedar Nath Singh* (supra)**, in order to appreciate the background in which the said decision was rendered. It is submitted that the same would also be relevant to respond to the assertion of the Petitioners that the deletion of the word "sedition" in in the Draft Constitution from the Article analogous to Article 19(2) – Draft Article 13(2), was indicative of any constituent intent. It is submitted that the first batch of cases to discuss section 124A was the Constitution Bench in ***Romesh Thappar v. State of Madras*, 1950 SCR 594** and ***Brij Bhushan & Anr. V. State of Delhi*, 1950 SCR 650**. It is submitted that both the said cases were decided by the same bench on the same day with the same majority of 5:1 [with J. Fazl Ali in the minority].

6. It is submitted that the majority in ***Romesh Thappar* (supra)** discussed Section 124A under the lens of the colonial era interpretation of sedition. Previously, in ***Niharendu Dutt Majumdar v. King*, 38 FCR (1942)**, the Federal Court liberally interpreted Rule 38(1)(a) read with Rule 34(6)(e) of the Defence of India Rules under the Defence of India Act, 1939, which was similar to Section 124A, and held that "*the acts or words contemplated of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency*." The Privy Council, however, following the literal rule, overruled that decision in the case of ***King Emperor v. Sadashiv Narayan Bhalerao* AIR 1947 PC 82** and emphatically reaffirmed the broader and generic interpretation previous cases, where it was held that sedition "*consisted in exciting or attempting to excite in others certain bad feelings towards the Government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small*."

7. It is submitted that in ***Romesh Thappar* (supra)**, the Hon'ble Supreme Court understood "sedition" as something which could be termed as penal without any proof of tendency to cause disorder or violence. At the said time, it was understood that mere expression of "bad feelings" could make the speech or writings seditious. The Hon'ble Supreme Court while interpreting the erstwhile/unamended Article 19(2) held that the contention that "security of the State" covers cases of sedition or public order, or that they were so interconnected with a law dealing with public safety would necessarily get protection under article 19(2), was implausible. It is submitted that in his dissenting opinion, Fazal Ali, J relied upon his opinion in ***Brij Bhusan* (supra)**, which is discussed hereinunder.

8. It is submitted that in ***Brij Bhushan* (supra)**, the majority did not discuss anything on sedition. However, Fazl Ali J. in his dissenting opinion, specifically elaborated on the fact that "*sedition owes its gravity to its tendency to create disorders*". Justice Fazl Ali

examined the absence of "sedition" under article 19(2) and presented a common sense reason. The dissent notes that the Constituent Assembly was aware of inconsistent interpretation of sedition during the colonial era and believed that the word "sedition" under 19(2) would generate more confusion than clarity and therefore, more general terms like "security of the State" or "tend to overthrow the State" were used as exceptions to freedom of speech. The relevant portion is quoted as under :

> *"...[article 19(2)]* ***covers everything else which makes sedition such a serious offence. That sedition does undermine the security of the State is a matter which cannot admit of much doubt. That it undermines the security of the State usually through the medium of public disorder is also a matter on which eminent Judges and jurists are agreed. Therefore, it is difficult to hold that public disorder or disturbance of public tranquillity are not matters which undermine the security of the State****."*

9. It is submitted that the dissent quotes Stephen's – Criminal Law of England which noted as under :

> *"**19.** It will not be out of place to quote here the following passage from Stephen's Criminal Law of England (Vol. II, pp. 242 and 243):*
>
> *"It often happens, however, that the public peace is disturbed by offences which without tending to the subversion of the existing political constitution practically subvert the authority of the Government over a greater or less local area for a longer or shorter time. The Bristol riots in 1832 and the Gordon riots in 1780 are instances of this kind.* ***No definite line can be drawn between insurrections of this sort, ordinary riots, and unlawful assemblies. The difference between a meeting stormy enough to cause well-founded fear of a breach of the peace, and a civil war the result of which may determine the course of a nation's history for centuries, is a difference of degree.*** *Unlawful assemblies, riots, insurrections, rebellions, levying of war, are offences which run into each other, and are not capable of being marked off by perfectly definite boundaries. All of them have in common one feature, namely, that the normal tranquillity of a civilised society is in each of the cases mentioned disturbed either by actual force or at least by the show and threat of it.*
>
> *Another class of offences against public tranquillity are those in which no actual force is either employed or displayed, but in which steps are taken tending to cause it. These are the formation of secret societies, seditious conspiracies, libels or words spoken.*
>
> *Under these two heads all offences against the internal public tranquillity of the State may be arranged.""*

The rationale behind Section 124A

10. It is submitted that in ***Brij Bhushan*** (supra), as per Fazl Ali, J., the idea of a straight-jacket distinction between "*public order*" and "*security of the State*" was a misnomer. The

dissent notes that the security of the State can be threatened by two types of offences: where violence or force is used and where violence or force is not used. The relevant portion is quoted as under:

> *"**20.** This passage brings out two matters with remarkable clarity. It shows firstly that sedition is essentially an offence against public tranquillity and secondly that broadly speaking there are two classes of offences against public tranquillity: (a) those accompanied by violence including disorders which affect tranquillity of a considerable number of persons or an extensive local area, and (b) those not accompanied by violence but tending to cause it, such as seditious utterances, seditious conspiracies, etc.* ***Both these classes of offences are such as will undermine the security of the State or tend to overthrow it if left unchecked, and, as I have tried to point out, there is a good deal of authoritative opinion in favour of the view that the gravity ascribed to sedition is due to the fact that it tends to seriously affect the tranquillity and security of the State. In principle, then, it would not have been logical to refer to sedition in clause (2) of Article 19 and omit matters which are no less grave and which have equal potentiality for undermining the security of the State. It appears that the framers of the Constitution preferred to adopt the logical course and have used the more general and basic words which are apt to cover sedition as well as other matters which are as detrimental to the security of the State as sedition****.*
>
> *The dissent of Fazl Ali gains importance later*
>
> ***21.** If the Act is to be viewed as I have suggested, it is difficult to hold that Section 7(1)(c) falls outside the ambit of Article 19(2). That clause clearly states that nothing in clause (1)(a) shall affect the operation of any existing law relating to any matter which undermines the security of, or tends to overthrow, the State. I have tried to show that public disorders and disturbance of public tranquillity do undermine the security of the State and if the Act is a law aimed at preventing such disorders, it fulfils the requirement of the Constitution. It is needless to add that the word "State" has been defined in Article 12 of the Constitution to include "the Government and Parliament of India and the Government and legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India".*
>
> ***22.** I find that Section 20 of the impugned Act provides that the Provincial Government may by Notification 619 declare that the whole or any part of the Province as may be specified in the notification is a dangerously disturbed area. This provision has some bearing on the aim and object of the Act, and we cannot overlook it when considering its scope. It may be incidentally mentioned that we have been informed that, under this section, Delhi province has been notified to be a "dangerously disturbed area."*
>
> ***23.** It must be recognized that freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Courts.* ***It must also be recognised that free political discussion is essential for the proper functioning of a democratic Government, and the tendency of modern jurists is to***

> ***deprecate censorship though they all agree that "liberty of the press" is not to be confused with its "licentiousness". But the Constitution itself has prescribed certain limits for the exercise of the freedom of speech and expression and this Court is only called upon to see whether a particular case comes within those limits.*** *In my opinion, the law which is impugned is fully saved by Article 19(2) and if it cannot be successfully assailed it is not possible to grant the remedy which the petitioners are seeking here."*

11. It is submitted that thereafter, the Constitution of India, specifically Article 19(2), was amended to include a wider term such as "*public order*", which has been discussed herein under, as an exception to the freedom of speech and expression under Article 19(1)(a). Therefore, while the majority in ***Romesh Thappar*** **(supra)** considered sedition as an offence without the "*tendency of violence or disorder*", the minority opinion gave it a meaning that would necessarily include the "*tendency of violence or disorder*". As the meaning of sedition for both groups of judges was different, the opinions differ. In effect, the minority opinion of Fazl Ali J. received constituent parliamentary approval through the First Amendment in 1951 under Article 19(2), and further, it also received judicial recognition in ***Kedar Nath Singh*** **(supra)**.

12. At this juncture it would be apposite to discuss the judgments of the Hon'ble High Courts of the country prior to the decision in ***Kedar Nath Singh*** **(supra).** It is submitted that the judgment of J. Weston in the Punjab and Haryana High Court in ***Tara Singh Gopi Chand v. The State*** **ILR (1951) 1 P&H 193** was the first case after the Constitution was enforced where the validity of the sedition law was directly in issue and was decided before the first amendment was made to the Constitution. The Hon'ble High Court adopted a wider interpretation which culminated in the opinion of the Privy Council in ***Sadashiv Narayan Bhalerao*** **(supra)** to hold that even an "*unsuccessful attempt to excite bad feelings is an offence within the ambit section 124A.*"

On the basis of such wider interpretation, the Hon'ble High Court held that none of the restrictions under 19(2) at the said time - "*libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State*" covered such provision. On the basis of the majority opinion in ***Romesh Thappar*** **(supra)**, the Hon'ble High Court declared that Section 124A is not severable and therefore void.

13. It is submitted that the next judgment was in the Patna High Court of the then CJ. - S.K. Das in ***Debi Soren v. State of Bihar,*** **ILR (1953) 32 Pat 1104.** At the time of this decision, the first amendment of the Constitution had been incorporated and the words "*in the interests of public order*" had been added as one of the restrictions under Article 19(2).

The Hon'ble High Court clearly noted that the First Amendment neutralised the opinions in ***Tara Singh Gopi Chand* (supra)**, ***Romesh Thappar* (supra)**, and ***Brij Bhushan*** (supra). It is submitted that S.K. Das, CJ held that the phrase "*interests of public order*" is wider than mere "*public order*". The Hon'ble Court declared section 124A as valid and constitutional, and on the question of fact, the court declared the speech of Debi Soren [who was merely seeking a separate Jharkhand] as not in breach of Section 124A. It is submitted that the difference between "public order" and "in the interests of public order" propounded by S.K. Das, CJ was later on approved by a Constitution Bench in ***Ramji Lal Modi v. State of U.P.* 1957 SCR 860** in the context of Section 295A of the IPC.

14. It is submitted that the Hon'ble Manipur high Court considered the constitutional validity of Section 124A in ***Sagolsem Indramani Singh v. State of Manipur*, 1955 CriLJ 184**. The Hon'ble Manipur High Court referred to the approach of the Federal Court, Privy Council and the judgments in ***Tara Singh* (supra)**, ***Romesh Thappar* (supra)**, and ***Brij Bhushan* (supra)**. The Hon'ble High Court also took note of the first amendment of the Constitution but missed the judgment in ***Debi Soren* (supra)**. In the final conclusion, the Hon'ble High Court treaded the *"middle path"* by declaring the part dealing with *disaffection* as unconstitutional because it covers criticism against the government, and the part covering declaration of *hatred* or *contempt* as constitutional. As regards the part of the provision concerned with disaffection, the Hon'ble High Court held as under :

> *"Public disorder or the reasonable consequence of likelihood of public disorder was held to be the gist of the offence. I am, therefore of opinion that the restriction of the right to freedom of speech and expression in so far as a speech merely tends to excite disaffection towards the Government would not be reasonable and to this extent Section 124A, Penal Code, must be held to be ultra vires and inoperative as being repugnant to Article 19(1) (a) and (2) of the Constitution."*

Conflicting views of the High Court provided various alternatives to the bench in Kedar Nath Singh

Regarding the other part of section 124A, the Hon'ble High Court held as under:

> *"But so far as the question of imposing restriction on speeches or other representations which tend to bring the Government into hatred or contempt as distinct from mere criticism or even ridicule the position appears to be different. Even honest criticism can sometimes cause disaffection, but by bringing the Government into hatred or contempt the interests of the security of the State are likely to be jeopardised. As the restriction of freedom of speech or expression on a person who brings or tends to bring into hatred or contempt the Government established by law in India is for one of the purposes mentioned in the amended Clause (2); of Article 19 of the Constitution and it is also reasonable, it cannot, in my opinion, be held ultra vires. I, therefore, hold that the entire Section 124A cannot be deemed to be ultra vires. Only the portion which seeks to*

> *impose restriction on exciting mere disaffection or attempts to cause disaffection is ultra vires."*

15. It is submitted that the next judgment was by a full Bench of the Allahabad High Court in the case of ***Ram Nandan v. State of U.P.*, AIR 1959 ALL 101**. The Hon'ble High Court adopted a wider interpretation of Section 124A adopted by the Federal Court and the Privy Council. It is submitted that the Hon'ble High Court noted that Article 19(2) conceives of reasonable restrictions only on those comments which create public disorder. The Hon'ble High Court held that it protects those comments, which do not reasonably apprehend disorder or violence, howsoever annoying, harsh, or disappointing they may be. The Hon'ble High Court concluded that Section 124A makes conduct punishable even without public order concerns along with the fact that the word "sedition" was dropped from the reasonable restriction part of Article 19(2) during the Constituent Assembly debates, with the commencement of the Constitution of India, section 124A was rendered void.

16. From the aforesaid, it is clear that the judgment in ***Kedar Nath Singh* (supra)** was rendered with a clear backdrop and in view of multiple conflicting decisions. Further, the said judgment clearly adheres to high constitutional principles and testing Section 124A on all available grounds including all fundamental rights, and read it down in such a way that the provisions confirms to Article 14, Article 19 and Article 21. It is submitted that it clearly applies a *balancing approach* akin to a proportionality review. Further, the said approach results in an eminently just and reasonable interpretation which would pass constitutional muster till date.

PRINCIPLE OF STARE DECISIS AND BINDING PRECEDENTS

17. It is clear that at first, the correctness or the lack thereof, of the decision in ***Kedar Nath Singh vs State of Bihar* [1962 Suppl (2) SCR 769]** is to be adjudicated upon. It is submitted that before embarking on the unimpeachable correctness of the decision in ***Kedar Nath Singh (supra)***, it is necessary to analyse the law with regard to the reference to larger benches, especially in light of the issue being already adjudicated upon by this Hon'ble Court by a Constitution Bench [Five Judges] in ***Kedar Nath Singh* (supra)**, requires a reiteration. It is submitted that from the petitions filed by the Petitioner, no ground has been made which would require reconsideration of the judgment of the Constitution bench.

It is submitted that this Hon'ble Court, under Article 141 of the Constitution, lays down the law for the entire country. It is submitted that therefore, the requirement of

binding precedent, well settled in the jurisprudence in the country, in the absence of any direct conflict, ought not to be interfered with. It is submitted that if the premise of the Petitioners and the reliance thereof on the decisions in ***Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248**, ***Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, *I.R Coelho (Dead) By Lrs. v. State Of T.N.*, (2007) 2 SCC 1** and ***K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1**, is misplaced as if the said premise is accepted, the entire constitutional jurisprudence laid down by this Hon'ble Court, prior to the decisions in the said cases would require reconsideration. It is submitted that the same was never the intent or the meaning of the judgments in ***Rustom Cavasjee Cooper* (supra)** and the subsequent decisions thereafter.

18. It is submitted that in the instant case, the decision in ***Kedar Nath Singh* (supra)** squarely decides the present issue. It is submitted that constitutional validity of Section 124A has been tested and has been unequivocally upheld with certain riders. It is submitted that the well-recognised definition of precedent is "*an adjudged case or decision of a court, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law*".

It is submitted that Salmond defines a precedent as a judicial decision which contains in itself a legal authoritative element which is described as *ratio decidendi*. [*Salmond's Jurisprudence* (10th Edn.) 191.] It is submitted that ***Kedar Nath Singh* (supra)** is undoubtedly a binding precedent well settled in the constitutional jurisprudence in the country.

19. It is submitted that precedents have an intrinsic value attached to them which gives birth to the doctrine of stare decisis. It is submitted that *Stare decisis* refers to the policy of courts to stand by the precedents and not to disturb settled views and legal positions. The doctrine of stare decisis, according to *Black's Law Dictionary* is as under :

> *"Stare decisis.—...one of policy, grounded on theory that security and certainty require that accepted and established legal principle, under which rights may accrue, be recognized and followed, though later found to be not legally sound, but whether previous holding of court shall be adhered to, modified, or overruled is within the court's discretion under circumstances of case before it."*

20. It is submitted that *'Stare decisis'* means that the precedent is binding. It is based on the need for finality of litigation owing to *"the disastrous inconvenience of having each question subject to be regarded and the dealings of mankind rendered doubtful by reason of different decisions....."*. [***Street Tramways v. London County Council*, (1898) AC 375 (378); *Radcliffe v. Ribble Motor Services*, (1939) AC 215 (245)**]

21. The full form of the principle is, "*stare decisis et non quieta movere"* which means "*to stand by decisions and not to disturb what is settled*". Those things which have been so often adjudged ought to rest in peace [***Waman Rao v. Union of India,* (1981) 2 SCC 362**].

Stare decisis is a well-known doctrine of legal jurisprudence. The doctrine of *stare decisis* meaning to stand by decisions rests upon the principle that law by which men are governed should be fixed, definite and known, and that, when the law is declared by a court of competent jurisdiction authorized to construe it, such declaration, in the absence of palpable mistake or error, is itself evidence of law until changed by competent authority. It requires that rules of law when clearly announced and established by a court of last resort, should not be lightly disregarded and set aside, but should be adhered to and followed. What it precludes is that when a principle of law has become established by a series of decisions, it is binding on the courts and should be followed in similar cases. It is a wholesome doctrine which gains certainty to law and guides the people to mould their affairs in the future [***Sakshi v. Union of India,* (2004) 5 SCC 518**]. It is submitted that a view which has been holding the field for a long time should not be disturbed only because another view is possible [***Milkfood Ltd. v. GMC Ice Cream Private Ltd.,* (2004) 7 SCC 288**].

22. It is submitted that the doctrine of *stare decisis* is also applied rigorously by the House of Lords. It is submitted that previous judgments of the House are binding on a later House as precedents, so that nothing but legislation can directly override an erroneous decision of the House of Lords [***In re Compensation to Civil Servants*, AIR 1929 PC 84 (87)**; ***Phanindra v. The King* (1949) 4 DLR (PC) 87**; ***Gideon v. R*., (1950) AC 379**].

It is submitted that particularly on constitutional questions it has been held that *"it must be seldom indeed that the Board would depart from a previous decision which it may be assumed will have been acted upon by the Government and subjects"*

23. In *Corpus Juris Secundum,* the doctrine is explained thus: "*Under the stare decisis rule, a principle of law which has been settled by series of decisions generally is binding on the courts and should be followed in similar cases. This rule is based on expediency and public policy, and, although generally it should be strictly adhered to by the courts, it is not universally applicable*."

24. It is submitted that this doctrine is of utmost importance in matters of constitutional validity of laws where practices and events have taken place based on long-settled legal positions enunciated by the courts. It is submitted that this Hon'ble Court explained the object of stare decisis in ***Narinder Singh* v. *State of Punjab*, (2014) 6 SCC 466**, as under :

> *22. ... **Stare decisis is the fundamental principle of judicial decision-making which requires "certainty" too in law so that in a given set of facts the course of action which law shall take is discernible and predictable. Unless that is achieved, the very doctrine of stare decisis will lose its significance.** The related objective of the doctrine of stare decisis is to put a curb on the personal preferences and priors of individual Judges. In a way, it achieves equality of treatment as well, inasmuch as two different persons faced with similar circumstances would be given identical treatment at the hands of law. [Id, 480, para 22.]*

25. It is submitted that the entire legal system and the general populace arrange their affairs in accordance with the settled law which flows from the doctrine of stare decisis. It is submitted that changes, for that matter any change in the legal position, adversely affect matters relating to regulation of society, criminal law, commerce, business and industry. It is submitted that in matters of regulation of society, settled practices, procedures laws, help in shaping the societal ethos. Further, in the economic field, clarity, consistency and settled legal positions, lead to stability and efficiency.

26. It is submitted that where the point of law has been settled by a series of decisions and has been consistently applied over a long period of time, should not be departed from (even by larger Benches or by a superior court) merely on the ground that another view is possible. It is submitted that the court considering the long-standing view, will have to carefully decide when not to interfere with a settled position of law, and when to interfere in spite of a long-settled position.

27. It is submitted that a constitution bench of this Hon'ble Court in ***Central Board of Dawoodi Bohra Community v. State of Maharashtra*, (2005) 2 SCC 673**, held as under:

> ***5 [Ed.: Para 5 corrected vide Official Corrigendum No. F.3/Ed.B.J./21/2005 dated 3-3-2005.] .** In Bharat Petroleum Corpn. Ltd. case [(2001) 4 SCC 448] the Constitution Bench has ruled that **a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness.** At the most, they could have ordered that the matter be heard by a Bench of three learned Judges. Following this view of the law, what has been declared by this Court in Pradip Chandra Parija case [(2002) 1 SCC 1] clinches the issue. The facts in the case were that a Bench of two learned Judges expressed dissent with another judgment of three learned Judges and directed the matter to be placed before a larger Bench of five Judges. The Constitution Bench considered the rule of "judicial discipline and propriety" as also the theory of precedents and held that **it is only a Bench of the same quorum which can question the correctness of the decision by another Bench of coordinate strength in which case the matter may be placed for consideration by***

Binding power of judgments – especially directly on the issue

a Bench of larger quorum. In other words, a Bench of lesser quorum cannot express disagreement with, or question the correctness of, the view taken by a Bench of larger quorum. A view of the law taken by a Bench of three Judges is binding on a Bench of two Judges and in case the Bench of two Judges feels not inclined to follow the earlier three-Judge Bench decision then it is not proper for it to disagree or dissent with the earlier view; but doubting the correctness of such earlier view, it can only request the Chief Justice for the matter being placed for hearing before a three-Judge Bench which may agree or disagree with the view of the law taken earlier by the three-Judge Bench. *As already noted, this view has been followed and reiterated by at least three subsequent Constitution Benches referred to hereinabove.*

8 [Ed.: Para 8 corrected vide Official Corrigendum No. F.3/Ed.B.J./7/2005 dated 17-1-2005.] . *In Raghubir Singh case [(1989) 2 SCC 754] Chief Justice Pathak pointed out that in order to promote consistency and certainty in the law laid down by the superior court the ideal condition would be that the entire court should sit in all cases to decide questions of law, as is done by the Supreme Court of the United States. Yet, His Lordship noticed, that having regard to the volume of work demanding the attention of the Supreme Court of India, it has been found necessary as a general rule of practice and convenience that the Court should sit in divisions consisting of judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relating thereto and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. The Constitution Bench reaffirmed the doctrine of binding precedents as it has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs.*

9. *Further, the Constitution Bench speaking through Chief Justice Pathak opined that the question was not whether the Supreme Court is bound by its own previous decisions; the question was under what circumstances and within what limits and in what manner should the highest court overturn its own pronouncements. In our opinion, what was working in the mind of His Lordship was that being the highest court of the country, it was open for this Court not to feel bound by its own previous decisions because if that was not permitted, the march of judge-made law and the development of constitutional jurisprudence would come to a standstill. However, the doctrine of binding precedent could not be given a go-by. Quoting from Dr. Alan Paterson's Law Lords (pp. 156-57), His Lordship referred to several criteria articulated by Lord Reid. It may be useful to reproduce herein the said principles: (SCC pp. 770-71, para 16)*

> *(1) The freedom granted by the 1966 Practice Statement ought to be exercised sparingly (the "use sparingly" criterion) (Jones v. Secy. of State for Social Services [1972 AC 944 : (1972) 1 All ER 145 : (1972) 2 WLR 210 (HL)] , AC at p. 966).*
>
> *(2) A decision ought not to be overruled if to do so would upset the legitimate expectations of people who have entered into contracts or*

settlements or otherwise regulated their affairs in reliance on the validity of that decision (the "legitimate expectations" criterion) (Ross Smith v. Ross Smith [1963 AC 280 : (1962) 1 All ER 344 : (1962) 2 WLR 388 (HL)] , AC at p. 303 and Indyka v. Indyka [(1969) 1 AC 33 : (1967) 2 All ER 689 : (1967) 3 WLR 510 (HL)] , AC at p. 69).

(3) A decision concerning questions of construction of statutes or other documents ought not to be overruled except in rare and exceptional cases (the "construction" criterion) (Jones case [1972 AC 944 : (1972) 1 All ER 145 : (1972) 2 WLR 210 (HL)]).

(4)(a) A decision ought not to be overruled if it would be impracticable for the Lords to foresee the consequences of departing from it (the "unforeseeable consequences" criterion) (Steadman v. Steadman [1976 AC 536 : (1974) 2 All ER 977 : (1974) 3 WLR 56 (HL)] , AC at p. 542 C). (b) A decision ought not to be overruled if to do so would involve a change that ought to be part of a comprehensive reform of the law. Such changes are best done "by legislation following on a wide survey of the whole field" (the "need for comprehensive reform" criterion) (Myers v. DPP [1965 AC 1001 : (1964) 2 All ER 881 : (1964) 3 WLR 145 (HL)] , AC at p. 1022, Cassell & Co. Ltd. v. Broome [1972 AC 1027 : (1972) 1 All ER 801 : (1972) 2 WLR 645 (HL)] , AC at p. 1086 and Haughton v. Smith [1975 AC 476 : (1973) 3 All ER 1109 : (1974) 2 WLR 1 (HL)] , AC at p. 500).

(5) In the interest of certainty, a decision ought not to be overruled merely because the Law Lords consider that it was wrongly decided. There must be some additional reasons to justify such a step (the "precedent merely wrong" criterion) (Knuller v. DPP [1973 AC 435 : (1972) 2 All ER 898 : (1972) 3 WLR 143 (HL)] , AC at p. 455).

(6) A decision ought to be overruled if it causes such great uncertainty in practice that the parties' advisers are unable to give any clear indication as to what the courts will hold the law to be (the "rectification of uncertainty" criterion) [Jones case [1972 AC 944 : (1972) 1 All ER 145 : (1972) 2 WLR 210 (HL)] and Oldendorff (E.L.) & Co. GmbH v. Tradax Export SA [1974 AC 479 : (1973) 3 All ER 148 : (1973) 3 WLR 382 (HL)] , AC at pp. 533, 535].

(7) A decision ought to be overruled if in relation to some broad issue or principle it is not considered just or in keeping with contemporary social conditions or modern conceptions of public policy (the "unjust or outmoded" criterion) (Jones case [1972 AC 944 : (1972) 1 All ER 145 : (1972) 2 WLR 210 (HL)] and Conway v. Rimmer [1968 AC 910 : (1968) 2 All ER 304 : (1968) 2 WLR 1535 (HL)] , AC at p. 938).

10. *Reference was also made to the doctrine of stare decisis. His Lordship observed by referring to Sher Singh v. State of Punjab [(1983) 2 SCC 344 : 1983 SCC (Cri) 461] that* ***although the Court sits in divisions of two and three Judges for the sake of convenience but it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three. To do so would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on points of law****; consistency and*

certainty in the development of law and its contemporary status — both would be immediate casualty."

28. It is submitted that the common law system places reliance on precedents for interpreting the provisions of law and for developing legal principles in areas not covered by the statutes. The decisions of this Hon'ble Court are binding precedents, not only because of the continuance of the common law system, but also on account of constitutional mandates—express in the case of the Supreme Court. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Therefore, the need to follow the decisions of this Hon'ble Court, moore so of larger benches, is not a mere requirement of common law principle, but a constitutional mandate.

29. It is submitted that the said doctrine of stare decisis and the binding value of precedents ensure uniformity and consistency in decision-making, and equality in treatment, thereby preventing or helping to prevent bias, prejudice and arbitrariness. It is submitted that the said doctrines provides judicial discipline and consistency.

30. It is submitted that the judgment is ***Kedar Nath Singh* (supra)** has been the law of the land for more than six decades. The judgment balances constitutional rights and principles viz. needs of the State, to provide a reasonable interpretation.

LAW REGARDING REFERENCE TO LARGER BENCHES

31. At the outset, in this regard, it is clarified that every petition filed before this Hon'ble Court, either prays for "*reconsideration*" and/or "*overruling*" of the judgment rendered by a bench of five Hon'ble Judges of this Hon'ble Court in ***Kedar Nath Singh* (supra).** That apart, considering the fact that the judgment in ***Kedar Nath Singh* (supra)** upholds the constitutional validity of Section 124A, it would be necessary to "reconsider" or "overrule" the said judgment before taking any other view on the vires of Section 124A.

It is submitted that the submission of the Petitioner that the same can be done by a bench comprising of three Hon'ble Judges is patently wrong and violates settled principles of Article 141 and common law grounded in precedents itself.

32. It is submitted that the law regarding the binding nature of larger bench decision of benches of lessor coram and co-ordinate strength is well settled. It is submitted that therefore, the decision in ***Kedar Nath Singh* (supra)**, is binding on this hon'ble Court and cannot be deported from. It is submitted that in ***Central Board of Dawoodi Bohra***

***Community and Anr. Vs. State of Maharashtra and Anr,* 2005 (2) SCC 673**, it was held as under :

> *"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-*
>
> ***(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.***
>
> ***(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.***
>
> *(3) The above rules are subject to two exceptions :*
>
> *(i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and*
>
> *(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh and Ors. and Hansoli Devi and Ors. ((supra))"*

Summary of the statement of law on the issue of reference

33. It is submitted that further in ***Pradip Chandra Parija and Ors. Vs. Pramod Chandra Patnaik and Ors.* (2002) 1 SCC 1** [5JB- J. Bharucha], it was held as under :

> *"6. In the present case the Bench of two learned judges has, in terms, doubted the correctness of a decision of a Bench of three learned judges. They have, therefore, referred the matter directly to a Bench of five judges. In our view,* ***judicial discipline and propriety demands that a Bench of two***

The rationale behind precedents and their binding value

learned judges should follow a decision of a Bench of three learned judges. But if a Bench of two learned judges concludes that an earlier judgment of three learned judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment*. If, then, the Bench of three learned judges also comes to the conclusion that the earlier judgment of a Bench of three learned judges is incorrect, reference to a Bench of five learned judges is justified."*

34. It is submitted that in ***Bharat Petroleum Corporation Ltd. vs. Mumbai Shramik Sangha and ors..*** **(2001) 4 SCC 448** [5JB- J. Bharucha], it was held as under :

"1. ..... Two learned Judges of this Court have doubted the correctness of the scope attributed to Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 in the Constitution Bench Judgment in Gammon (India) Ltd. vs. Union of India (1974)ILLJ489SC . This is how the matter comes before us.

2. ***We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges.***

Matter of judicial discipline and propriety

3. Accordingly, this matter shall now be heard and decided by a Bench of two learned Judges."

35. It is submitted that in ***Chandra Prakash v. State of U.P.,*** **(2002) 4 SCC 234** [5JB- J. S. Hegde], it was held as under :

"19. The principles of the doctrine of binding precedent are no more in doubt. This is reflected in a large number of cases decided by this Court. For the purpose of deciding the issue before us, we intend referring to the following two judgments of this Court.

xxx

22. ***A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of***

our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.

.....

24. Applying the principles laid down in the abovesaid cases, we hold that the judgment of the two-Judge Bench of this Court dated 23-3-1995 [State of U.P. v. Dr R.K. Tandon, (1995) 3 SCC 616 : 1995 SCC (L&S) 820 : (1995) 30 ATC 45 (Coram: K. Ramaswamy and B.L. Hansaria, JJ.)] as modified by the subsequent order dated 26-7-1996 [State of U.P. v. Dr R.K. Tandon, (1996) 10 SCC 247 : 1996 SCC (L&S) 1401 (Coram: K. Ramaswamy and G.B. Pattanaik, JJ.)] by the same Bench does not lay down the correct law, being in conflict with the larger Bench judgment. If that be so, the above writ petitions, from which this reference has arisen, will have to be decided dehors the law laid down by those two judgments of the Bench of two learned Judges. Therefore, having decided the issue that has arisen for our consideration, we think it just that these writ petitions should now be placed before a Bench of three learned Judges for final disposal."

36. It is submitted that in ***Shashikala and Ors. Vs. Gangalakshmamma and Ors.*** **(2015) 9 SCC 150** [2JB- J. Bhanumathi], this Hon'ble court held as under :

"28. Though, I am a party to the above reference, at the same time, it is worth mentioning that the reference even in the case of a perceived conflict or disagreement with the views of a two judge (or even a three judge) Bench does not permit a lower Bench formation to refer the matter straightway to a five Judge Bench. This principle was stated in Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangha and Ors. (2001) 4 SCC 448. In that judgment, the Constitution Bench held that a decision of a Constitution Bench binds Benches of two and three learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they can direct that the matter to be heard by a Bench of three learned Judges. In Pradip Chandra Parija and Ors. v. Pramod Chandra Patnaik and Ors. (2002) 1 SCC 1, a Bench of two learned judges expressed reservations with the judgment of a three judge Bench and directed the matter to be placed before a larger Bench of five judges. ***The Constitution Bench held that the rule of 'judicial discipline and propriety' as well as the theory of precedents permitted only a Bench of the same quorum to question the correctness of the decision by another Bench of co-ordinate strength upon which the matter can be placed for consideration by a Bench of larger quorum. A Bench of lesser quorum cannot thus, express disagreement with, or question the correctness of, the view of a Bench of a larger quorum.***

....

31. The clarification of the position, by a three judge Bench, in Rajesh and Ors., ipso facto could not have led to the conclusion that there was a conflict between the views of various Benches, since Santosh Devi itself had noticed Sarla Verma, the logic of which in respect of limiting compensation for non-

permanent employment was clarified.

....

34. Since we have disagreed only insofar as the addition towards the future prospects in case of self-employed or fixed wages to be added to the compensation towards the dependency, the matter may be placed before the Hon'ble the Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench to decide the said issue"

37. It is submitted that ***CCE v. Ratan Melting & Wire Industries,*** **(2005) 3 SCC 57**, it was held as under :

"4. Though the view expressed in Kalyani case [(2004) 6 SCC 719] and our view about invalidation might clarify the observations in para 11 of Dhiren Chemical case [(2002) 2 SCC 127] we feel that the earlier judgment in Dhiren Chemical case [(2002) 2 SCC 127] being by a Bench of five Judges, it would be appropriate for a Bench of similar strength to clarify the position. In the circumstances, we refer the matter to a larger Bench of five Hon'ble Judges. Let the papers be placed before Hon'ble the Chief Justice of India for constituting an appropriate Bench."

38. It is submitted that in ***Zenith Steel Tubes & Industries Ltd. v. SICOM Ltd.,*** **(2008) 1 SCC 533**, it was held as under :

"39. It is also evident from the decision in Paramjeet Singh Patheja case [(2006) 13 SCC 322 : JT (2006) 10 SC 41] that the views expressed in Kailash Nath Agarwal case [(2003) 4 SCC 305] had not been brought to the notice of the learned Judges who decided the matter. Even if we are inclined to agree with one of the two interpretations, the anomalous situation will continue since the decisions are that of coordinate Benches.

40. In such circumstances, we consider it fit and proper that the matter should be referred to a larger Bench to resolve the existing anomaly resulting from the different views expressed in the two abovementioned cases.

41. Accordingly, the Registry is directed to place this matter before the Hon'ble the Chief Justice of India for appropriate orders in the light of what has been stated hereinbefore."

39. It is submitted that in ***Asstt. Director of Mines and Geology v. Deccan Cements Ltd.,*** **(2008) 3 SCC 451,** it was held as under :

"8. We, therefore, refer the matter to a larger Bench to test the correctness of the conclusions that the levy was permissible by the Validation Act, but amounts which have not already been collected, cannot be collected. The records may be placed before the Hon'ble the Chief Justice of India for appropriate directions."

40. It is submitted that from the aforesaid, it is clear that a Bench of lesser Coram would be bound by the decision of five Judges and it will not be permissible for the said bench of

lesser Coram to disagree with the view taken by five Hon'ble Judges. It is submitted that the only option before a bench of lesser coram is to simply place the matter before a bench of co-equal strength, i.e. five Hon'ble Judges [as was the case in ***Kedar Nath Singh* (supra)**]. It is onbly a bench of co-equal strength that can disagree with the judgment of the Constitution Bench while recording cogent reasons as to why the earlier binding Constitution Bench judgment is so patently wrong that it needs to be reconsidered and thereafter refer it to even a larger bench for re-consideration.

41. At this juncture, it is necessary to submit that the reliance of the Petitioner, with regard to the issue of reference, on the judgments in ***Lily Thomas v. Union of India*, (2013) 7 SCC 653** and ***Joseph Shine v. Union of India*, (2019) 3 SCC 39** is wholly misplaced.

It is submitted that this Hon'ble Court in ***Lily Thomas v. Union of India*, (2013) 7 SCC 653** was dealing with a direct constitutional challenge to a provision of the Representation of Peoples Act. Further, previously, in ***K. Prabhakaran* v. *P. Jayarajan*, (2005) 1 SCC 754**, the validity of the said provision of the RP Act was not under challenge and only a reference was made to the Constitution Bench of this Court on certain questions which arose in the civil appeals against the judgments delivered by the High Court in election cases under the Act. It is submitted that the judgment in ***Lily Thomas* (supra)** clearly mentions the same. Further, the said provision was ultimately declared unconstitutional due to lack of legislative competence which was an issue not present before the bench in ***K. Prabhakaran* (supra)**. The relevant portion of ***Lily Thomas* (supra)**, is as under :

> ***"12.*** *Mr Nariman and Mr Shukla submitted that in K. Prabhakaran v. P. Jayarajan [K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 : 2005 SCC (Cri) 451] the validity of sub-section (4) of Section 8 of the Act was not under challenge and only a reference was made to the Constitution Bench of this Court on certain questions which arose in the civil appeals against the judgments delivered by the High Court in election cases under the Act. They submitted that the Constitution Bench of this Court framed three questions with regard to disqualification of a candidate under Section 8 of the Act and while answering Question 3, the Constitution Bench indicated reasons which seem to have persuaded Parliament to classify sitting Members of the House into a separate category and to provide in sub-section (4) of Section 8 of the Act that if such sitting Members file appeal or revision against the conviction within three months, then the disqualification on account of their conviction will not take effect until the appeal or revision is decided by the appropriate court. They submitted that the opinion expressed by the Constitution Bench of this Court in K. Prabhakaran v. P. Jayarajan [K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 : 2005 SCC (Cri) 451] regarding the purpose for which Parliament classified sitting Members of Parliament*

Lily Thomas was a completely different factual situation and does not lay down that smaller coram can overrule larger coram judgments

and State Legislatures into a separate category and protected them from the disqualifications by the saving provision in sub-section (4) of Section 8 of the Act are obiter dicta and are not binding ratio on the issue of the validity of sub-section (4) of Section 8 of the Act.

Findings of the Court

20. *We will first decide the issue raised before us in these writ petitions that Parliament lacked the legislative power to enact sub-section (4) of Section 8 of the Act as this issue was not at all considered by the Constitution Bench of this Court in the aforesaid case of K. Prabhakaran [K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 : 2005 SCC (Cri) 451] .*

36. As we have held that Parliament had no power to enact sub-section (4) of Section 8 of the Act and accordingly sub-section (4) of Section 8 of the Act is ultra vires the Constitution, it is not necessary for us to go into the other issue raised in these writ petitions that sub-section (4) of Section 8 of the Act is violative of Article 14 of the Constitution. It would have been necessary for us to go into this question only if sub-section (4) of Section 8 of the Act was held to be within the powers of Parliament. In other words, as we can declare sub-section (4) of Section 8 of the Act as ultra vires the Constitution without going into the question as to whether sub-section (4) of Section 8 of the Act is violative of Article 14 of the Constitution, we do not think it is necessary to decide the question as to whether sub-section (4) of Section 8 of the Act is violative of Article 14 of the Constitution."

42. It is submitted that similarly, the reliance of the Petitioners on the judgment in ***Joseph Shine v. Union of India,* (2019) 3 SCC 39**, is erroneous as the same was a Constitution Bench itself. It is submitted that further, the matter was placed before a Constitution Bench after a reference. Further, the previous judgment which had upheld the constitutionality of Section 497 of the IPC in ***Yusuf Abdul Aziz v. State of Bombay*, 1954 SCR 930** did not consider the question of unconstitutionality of the entire provision and was rather merely concerned with last line of the provision. The same is evident from the following portion of the judgement in ***Yusuf Abdul Aziz v. State of Bombay*, 1954 SCR 930**, quoted as under :

*"**3.** Under Section 497 the offence of adultery can only be committed by a man but in the absence of any provision to the contrary the woman would be punishable as an abettor.* ***The last sentence in Section 497 prohibits this. It runs—***

"In such case the wife shall not be punishable as an abettor". It is said that this offends Articles 14 and 15.

The portion of Article 15 on which the appellant relies is this:

"The State shall not discriminate against any citizen on grounds only of ... sex."

But what he overlooks is that that is subject to clause (3) which runs—

"Nothing in this article shall prevent the State from making any special provision for women ....""

43. Contrary to the same, ***Joseph Shine*** **(supra)**, the constitutionality of the entire provision was under challenge. The relevant portion is quoted as under :

*"**7.** At this stage, one aspect needs to be noted. At the time of initial hearing before the three-Judge Bench, the decision in Yusuf Abdul Aziz [Yusuf Abdul Aziz v. State of Bombay, 1954 SCR 930 : AIR 1954 SC 321 : 1954 Cri LJ 886] was cited and the cited Law Report reflected that the judgment was delivered by four learned Judges and later on, it was noticed, as is reflectible from the Supreme Court Reports, that the decision was rendered by a Constitution Bench comprising of five Judges of this Court.*

***8.** The said factual discovery will not detain us any further. In Yusuf Abdul Aziz [Yusuf Abdul Aziz v. State of Bombay, 1954 SCR 930 : AIR 1954 SC 321 : 1954 Cri LJ 886] , the Court was dealing with the controversy that had travelled to this Court while dealing with a different fact situation. In the said case, the question arose whether Section 497 contravened Articles 14 and 15 of the Constitution of India. In the said case, the appellant was being prosecuted for adultery under Section 497 IPC. As soon as the complaint was filed, the husband applied to the High Court of Bombay to determine the constitutional question under Article 228 of the Constitution. The Constitution Bench referring to Section 497 held thus : (AIR p. 322, paras 3-7)*

xxx

***9.** On a reading of the aforesaid passages, it is manifest that the Court treated the provision to be a special provision made for women and, therefore, saved by clause (3) of Article 15. Thus, the Court proceeded on the foundation of affirmative action.*

***10.** In this context, we may refer to the observation made by the Constitution Bench in Central Board of Dawoodi Bohra Community v. State of Maharashtra [Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673 : 2005 SCC (Cri) 546 : 2005 SCC (L&S) 246] while making a reference to a larger Bench. The said order reads thus : (SCC pp. 682-83, para 12)*

xxx

***11.** **In the light of the aforesaid order, it was necessary to list the matter before a Constitution Bench consisting of five Judges. As noted earlier, considering the manner in which we intend to deal with the matter, it is not necessary to refer to a larger Bench**.*

xxx

***68.** In view of the foregoing analysis, the decisions in Sowmithri Vishnu [Sowmithri Vishnu v. Union of India, 1985 Supp SCC 137 : 1985 SCC (Cri) 325] and V. Revathi [V. Revathi v. Union of India, (1988) 2 SCC 72 : 1988 SCC (Cri) 308] stand overruled and any other judgment following precedents also stands overruled."*

Further, this Hon'ble Court, sitting in smaller benches in ***Sowmithri Vishnu* v. *Union of India*, 1985 Supp SCC 137** and ***V. Revathi* v. *Union of India*, (1988) 2 SCC 72**, had upheld the validity of the said provision but were however benches of lesser coram than ***Joseph Shine* (supra)** and therefore, were legitimately overruled by this Hon'ble Court.

44. It is submitted that therefore, it is clear that the judgment in ***Kedar Nath Singh* (supra)**, directly decides the issues and it is not possible of a bench of lesser coram than the bench that pronounced the said judgment to take any view contrary to the said view.

NO GROUND FOR REFERENCE MADE OUT

Reasonable construction of Section 124A

45. It is submitted that a co-ordinate bench of this Hon'ble Court has considered ***Kedar Nath Singh* (supra)** and has further brought it in tune with all fundamental rights [including Article 14 and Article 21] in the recent judgment of this Hon'ble Court in ***Vinod Dua v. Union of India*, 2021 SCC OnLine SC 414**. It is submitted that this Hon'ble Court held that only such activities which would be intended or have a tendency to create disorder or disturbance of public peace by resort to violence – are rendered penal by way of Section 124A. It is submitted that based on the aforementioned analysis of the statements, this Hon'ble Court said that the statements of the Petitioner in the said case :

> *"...can at best be termed as expression of disapprobation of actions of the Government and its functionaries so that prevailing situation could be addressed quickly and efficiently. They were certainly not made with the intent to incite people or showed tendency to create disorder or disturbance of public peace by resort to violence."*

In light of the above, and taking a restrictive meaning of the provision, as envisaged in Section 124A, this Hon'ble Court quashed the FIR against the Petitioner. The relevant portion is quoted extensively hereinunder :

> *"**40.** The scope of section 124(A) of the IPC was considered by a Constitution Bench of this Court in Kedar Nath Singh v. State of Bihar.*
>
> ***41.** The conviction of Kedar Nath Singh under Sections 124A and 505(b) of the IPC was affirmed by the High Court; and the view taken by the High Court was paraphrased as under:*
>
> ***XXX***
>
> ***48.** It may be noted here that the appeal of Kedar Nath Singh was dismissed by this Court, affirming the view taken by the Courts below that the speech, taken as a whole, was seditious.*
>
> ***49.** This Court, thus, did not follow the decisions of the Privy Council in Balgangadhar Tilak v. Queen Empress and in King Emperor v. Sadashiv*

Narayan Bhalerao but held that the operation of Section 124A of the IPC must be limited only to such activities as come within the ambit of the observations of the Federal Court.

xxx

55. *Having considered the decisions of the Privy Council in Balgangadhar Tilak and in King-Emperor v. Sadashiv Narayan Bhalero we must now deal with the decision of the Federal Court in Niharendu Dutt Majumdar v. The King Emperor. A passage from the decision of the Federal Court was quoted in Kedar Nath Singh v. State of Bihar but immediately preceding passage from said decision of the Federal Court is also noteworthy and was to the following effect:*

> *"The time is long past when the mere criticism of Governments was sufficient to constitute sedition, for it is recognized that the right to utter honest and reasonable criticism is a source of strength to a community rather than a weakness. Criticism of an existing system of Government is not excluded, nor even the expression of a desire for a different system altogether. The language of S. 124-A of the Penal Code, if read literally, even with the explanations attached to it, would suffice to make a surprising number of persons in this country guilty of sedition; but no one supposes that it is to be read in this literal sense. The language itself has been adopted from English law, but it is to be remembered that in England the good sense of jurymen can always correct extravagant interpretations sought to be given by the executive Government or even by Judges themselves, and if in this country that check is absent, or practically absent, it becomes all the more necessary for the Courts, when a case of this kind comes before them, to put themselves so far as possible in the place of a jury, and to take a broad view, without refining overmuch in applying the general principles which underlie the law of sedition to the particular facts and circumstances brought to their notice.*
>
> *What then are these general principles? We are content to adopt the words of a learned Judge, which are to be found in every book dealing with this branch of the criminal law : Page:"Sedition.....embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State and lead ignorant persons to subvert the Government. The objects of sedition generally are to induce discontent and insurrection, to stir up opposition to the Government, and to bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or disaffection, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or Government, the laws or the constitution of the realm and generally all endeavours to promote public disorder." Fitzgerald, J., in R. v. Sullivan[33]. It is possible to criticise one or two words or phrases in this passage; "loyalty" and "dis-loyalty," for example, have a non-legal connotation also, and it is very desirable that there should be no*

confusion between this and the sense in which the words are used in a legal context; but, generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements."

(Emphasis supplied)

56. These passages elucidate what was accepted by this Court in preference to the decisions of the Privy Council in Balgangadhar Tilak and in King-Emperor v. Sadashiv Narayan Bhalerao. The statements of law deducible from the decision in Kedar Nath Singh are as follows:—

a) "the expression "the Government established by law" has to be distinguished from the persons 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."

.....

b) "any acts within the meaning of Section 124-A 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."

.....

c) "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."

Summary of the interpretation of Section 124A in 2021 – the reasonability thereof

.....

d) "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."

.....

e) "The provisions of the Sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence."

.....

f) "It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order."

.....

> ***g) "we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace."***

46. It is submitted that similarly in ***Balwant Singh & Anr. V. State of Punjab*, (1995) 3 SCC 214**, this Hon'ble Court adopted an extremely restrictive and reasonable construction of Section 124A. It is submitted that in the said case, the prosecutions' case was that the Appellants had raised the following slogans in a crowded place after the assassination of Smt Indira Gandhi, Prime Minister of India— (1) Khalistan Zindabad. (2) Raj Karega Khalsa, and (3) *Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da*. This Hon'ble Court held that the raising of some slogans only a couple of times by the two lonesome appellants which neither evoked any response nor any reaction from anyone in the public cannot attract the provisions of Section 124-A. This Hon'ble Court held that since the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that the slogans in fact created any "*law and order*" problem, the prosecution cannot be sustained. The relevant portion of the said judgement is quoted as under:

> *"**8.** Section 124-A IPC reads thus:*
>
> ***xxx***
>
> *A plain reading of the above section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities,* ***we find it difficult to hold that upon the raising of such casual slogans a couple of times without any other act whatsoever, the charge of sedition can be founded.*** *It is not the prosecution case that the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that the slogans in fact created any law and order problem. It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read too much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that in spite of the fact that the appellants raised the slogans a couple of times, the people, in general, were unaffected and carried on with their normal activities. The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed*

Actual threat of violence held to be a necessary criterion

at exciting or attempting to excite hatred or disaffection towards the Government as established by law in India. Section 124-A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.

12. *It appears to us that the raising of some slogans only a couple of times by the two lonesome appellants, which neither evoked any response nor any reaction from anyone in the public can neither attract the provisions of Section 124-A or of Section 153-A IPC. Some more overt act was required to bring home the charge to the two appellants, who are government servants. The police officials exhibited lack of maturity and more of sensitivity in arresting the appellants for raising the slogans — which arrest — and not the casual raising of one or two slogans — could have created a law and order situation, keeping in view the tense situation prevailing on the date of the assassination of Smt Indira Gandhi. In situations like that, over-sensitiveness sometimes is counter-productive and can result in inviting trouble. Raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established nor could the same give rise to feelings of enmity or hatred among different communities or religious or other groups."*

47. It is submitted that ***Bilal Ahmed Kaloo v. State of A.P.*****, (1997) 7 SCC 431**, this Hon'ble Court has held as under :

*"**1.** Bilal Ahmad Kaloo, a Kashmiri youth had a sojourn in the city of Hyderabad and was involved in a prosecution under Terrorist and Disruptive Activities (Prevention) Act, 1987, (for short "TADA"). Though the Designated Court under TADA has acquitted him of the offences under TADA he was convicted of sedition under Section 124-A of the Penal Code, 1860 and was sentenced to imprisonment for life, besides being convicted of certain other lesser offences for which a sentence of rigorous imprisonment for three years was awarded under each count. This appeal has been preferred by the said convicted person under Section 19 of the TADA.*

2. *The case against the appellant in short is the following. The appellant was an active member of a militant outfit called Al-Jehad which was formed with the ultimate object of liberating Kashmir from the Indian Union. With this in mind the appellant spread communal hatred among the Muslim youths in the old city of Hyderabad and exhorted them to undergo training in armed militancy and offered them arms and ammunition. He himself was in possession of lethal weapons like country-made revolver and live cartridges. He was propagating among the Muslims that in Kashmir Muslims were being subjected to atrocities by the Indian Army personnel.*

4. *As mentioned above the Designated Court acquitted him of the offences under TADA but convicted him of the offences under the Penal Code, 1860 and also under Section 25 of the Indian Arms Act and was sentenced as aforesaid.*

6. *The decisive ingredient for establishing the offence of sedition under Section 124-A IPC is the doing of certain acts which would bring to the Government established by law in India hatred or contempt etc. In this case, there is not even a suggestion that the appellant did anything against the*

Government of India or any other Government of the State. The charge framed against the appellant contains no averment that the appellant did anything against the Government.

7. *A Constitution Bench of this Court has stated the law in Kedar Nath Singh v. State of Bihar [AIR 1962 SC 955 : (1963) 1 MLJ (SC) 40] (AIR at p. 967) as under:*

> *"... Now, the expression 'the Government established by law' has to be distinguished from the persons 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 Section 124-A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of Section 124-A 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."*

8. As the charge framed against the appellant is totally bereft of the crucial allegation that the appellant did anything with reference to the Government it is not possible to sustain the conviction of the appellant under Section 124-A IPC*."*

48. It is submitted that ***Nazir Khan v. State of Delhi*****, (2003) 8 SCC 461**, this Hon'ble Court held as under :

> ***"2.*** *The background scenario with which the case at hand is concerned reveals the macabre designs of a group of such people. The kingpin of the whole case is a person called Ahmed Umar Sayeed Sheikh (described shortly as "Umar Sheikh"), a British national and trained militant who allegedly received training in Afghanistan and other places.*
>
> ***3.*** *The prosecution version as unfolded during trial which led to conviction of the present appellants for offences punishable under Sections 364-A, 121-A, 122, 124-A read with Section 120-B of the Penal Code, 1860 (for short "IPC") and Sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short "the TADA Act"), and Section 14 of the Foreigners Act, 1946 (in short "the Foreigners Act") is as under:*
>
> > *There were originally nine accused persons who were tried in Sessions Case No. 43 of 2001 by the learned Designated Court, TADA, New Delhi. Along with the accused-appellants three other persons faced trial. Two of them, namely, Haji Shamin and Mohd. Yamin have been acquitted. Interestingly, before completion of trial, Umar Sheikh was allowed to leave the country along with other militants in exchange of passengers who had been made hostages in the Indian Airlines hijacked flight AI-814. In other words, the mastermind of the whole*

conspiracy with which the present case is involved escaped the net of law. The legitimacy of such action is not the subject-matter of consideration in these cases, though it has raised many eyebrows. Interestingly, this plea was raised by the appellants who submitted that they have become victims of unintended circumstances, while the mastermind and kingpin has gone out mocking at the security network in the country, and they are facing the brunt. This case does not seek to find out an answer to such questions and therefore we are not dealing with them.

The Court has applied the provision in a very strict manner

29. *The trial court has convicted the accused under Sections 121-A, 122 and 124 IPC. For convicting the accused persons under the aforesaid provisions, the trial court has relied on the fact that the accused persons were trying to overawe the Government of India by criminal force and to bring out hatred and contempt in the people of India and to arouse dissatisfaction in a section of people in India against the Government of India established by laws and collected materials and arms for the aforesaid offences.*

37. *Section 124-A deals with "sedition". Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. "Sedition" has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.*

38. In the aforesaid analysis, the offences punishable under Sections 121-A, 122 and 124-A are clearly established and sufficiently and properly stand substantiated, on the overwhelming materials available on record."

49. Therefore, the ratio in ***Kedar Nath Singh*** **[supra]** has been analysed, tested and elaborated subsequently by this Hon'ble Court. The latest in line is the judgment of ***Vinod Dua v. Union of India*****, 2021 SCC OnLine SC 414**. It is a settled position in law that a judgment which withstood the test of time and has been followed not mechanically but in the context of changing circumstances cannot be easily doubted

Development of constitutional law in India – Post RC Cooper case

50. It is submitted that the development of the law from the era of constitutional silos to an admixture of fundamental rights will not have any bearing on the present issue. It is submitted that the said developments can be summarised as under.

51. It is submitted that in ***A.K. Gopalan* v. *State of Madras*, 1950 SCR 88**, the majority construed the relationship between Articles 19 and 21 to be one of mutual exclusion and it was understood that the seven freedoms of Article 19 were not subsumed in the fabric of life or personal liberty in Article 21. The consequence was that a law which curtailed one of the freedoms guaranteed by Article 19 would be required to answer the tests of reasonableness prescribed by clauses (2) to (6) of Article 19 only. In ***Gopalan* (supra)**, free speech and expression was guaranteed by Article 19(1)(*a*) and was hence excluded from personal liberty under Article 21 as Article 21 was understood as a residue. It was held as under :

> *"11. Reading Article 19 in that way it appears to me that the concept of the right to move freely throughout the territory of India is an entirely different concept from the right to "personal liberty" contemplated by Article 21. "Personal liberty" covers many more rights in one sense and has a restricted meaning in another sense. For instance, while the right to move or reside may be covered by the expression, "personal liberty" the right to freedom of speech [mentioned in Article 19(1)(a)] or the right to acquire, hold or dispose of property [mentioned in 19(1)(f)] cannot be considered a part of the personal liberty of a citizen.* ***They form part of the liberty of a citizen but the limitation imposed by the word "personal" leads me to believe that those rights are not covered by the expression personal liberty. So read there is no conflict between Articles 19 and 21.*** *The contents and subject-matters of Articles 19 and 21 are thus not the same and they proceed to deal with the rights covered by their respective words from totally different angles. As already mentioned in respect of each of the rights specified in sub-clauses of Article 19(1) specific limitations in respect of each is provided, while the expression "personal liberty" in Article 21 is generally controlled by the general expression "procedure established by law"."*

52. It is submitted that the theory that the fundamental rights as compartments was discarded in the judgment of eleven Judges of this Court in ***Rustom Cavasjee Cooper* v. *Union of India*, (1970) 1 SCC 248** and it was held as under :

> *"52. … it is necessary to bear in mind the enunciation of the guarantee of fundamental rights which has taken different forms. In some cases it is an express declaration of a guaranteed right : Articles 29(1), 30(1), 26, 25 and 32; in others to ensure protection of individual rights they take specific forms of restrictions on State action—legislative or executive—Articles 14, 15, 16, 20, 21, 22(1), 27 and 28; in some others, it takes the form of a positive declaration and*

> *simultaneously enunciates the restriction thereon : Articles 19(1) and 19(2) to (6); in some cases, it arises as an implication from the delimitation of the authority of the State, e.g. Articles 31(1) and 31(2); in still others, it takes the form of a general prohibition against the State as well as others : Articles 17, 23 and 24. The enunciation of rights either express or by implication does not follow a uniform pattern. But one thread runs through them : they seek to protect the rights of the individual or groups of individuals against infringement of those rights within specific limits.* ***Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields : they do not attempt to enunciate distinct rights****."*

53. It is submitted that the abrogation of the ratio of ***Gopalan* (supra)** in ***R C Cooper* (supra)** was revisited in a seven-Judge Bench decision in ***Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248** which held as under :

> *"There can be no doubt that in view of the decision of this Court in Rustom Cavasjee Cooper v. Union of India [Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248] the minority view must be regarded as correct and the majority view must be held to have been overruled."*

54. It is submitted that following the decision in ***Maneka Gandhi* (supra)**, the established constitutional doctrine is that the expression "personal liberty" in Article 21 covers a variety of rights, some of which "have been raised to the status of distinct fundamental rights" and given additional protection under Article 19. Therefore, a law which provides for a deprivation of life or personal liberty under Article 21 must lay down not just any procedure but a procedure which is *just, fair and reasonable*.

55. It is submitted that the nine judge bench decision in ***K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1** summarises the position of law succinctly :

> *"Firstly, the fundamental rights emanate from basic notions of liberty and dignity and the enumeration of some facets of liberty as distinctly protected rights under Article 19 does not denude Article 21 of its expansive ambit. Secondly, the validity of a law which infringes the fundamental rights has to be tested not with reference to the object of State action but on the basis of its effect on the guarantees of freedom. Thirdly, the requirement of Article 14 that State action must not be arbitrary and must fulfil the requirement of reasonableness, imparts meaning to the constitutional guarantees in Part III."*

56. It is submitted that the judgment in ***Kedar Nath Singh* (supra)**, whilst adjudicating upon the constitutionality of the provision, adequately applied the constitutional principles of proportionality, fundamental freedom of speech and expression and the countervailing interest of the State to regulate. It is submitted that the said delicate balancing would pass the constitutional muster even today, despite the efflux of time and

despite the change in the understanding of fundamental rights as compartments to conjoint rights. It is submitted that without prejudice to the above, even if the compartmentalisation theory of fundamental right has undergone a change, it cannot be denied that the judgment in ***Kedar Nath Singh* (supra)**, decided that the ground for state interference under Section 124A was traceable to the factors mentioned under Article 19(2) and that the interreference contemplated under Section 124A, as interpreted/read down in ***Kedar Nath Singh* (supra)**, was *reasonable* and therefore, ***proportionate***. The relevant findings with regard to the same quoted above are a testament to the rigorous review that the constitution bench conducted.

57. It is further submitted that, it is clear that this Hon'ble Court in ***Kedar Nath Singh* (supra)**, after applying the standard of judicial review and the acceptable reasonableness and proportionality enquiry and other relevant factors, to arrive at the conclusions.

58. The bench of three judges cannot reconsider the ratio of a constitution bench without referring the matter to a larger bench. For a reference to a larger bench also it will be absolutely necessary for the bench of three Hon'ble judges to record its satisfaction that the ratio in ***Kedar Nath Singh* [supra]** is so patently wrong that it needs reconsideration by a larger bench. The bench of three Hon'ble Judges cannot itself decide whether ***Kedar Nath Singh* [supra]** is a good law or not.

Kedar Nath Singh is not "per incuriam"

59. Lastly, it is submitted that the submission of the Petitioners that ***Kedar Nath Singh* (supra)** at paragraph 26 relied upon the decisions in ***Ramji Lal Modi v. State of U.P.* [AIR 1957 SC 620** (Five Justices' Bench) and ***Virendra v. State of Punjab* [AIR 1957 SC 896]** (Five Justices' Bench) to decide the scope of Article 19(2) and interpret the phrase "*in the interests of … public order*" in Article 19(2) and failed to consider or otherwise engage with another Constitution Bench judgment in ***Supdt, Central Prison v. Ram Manohar Lohia* [AIR 1960 SC 633** renders ***Kedar Nath Singh* (supra)** *per incuriam* is totally unfounded and erroneous.

It is submitted that the judgment in ***Supdt, Central Prison v. Ram Manohar Lohia* [AIR 1960 SC 633]** itself relies in great detail upon the judgments in ***Ramji Lal Modi v. State of U.P.* [AIR 1957 SC 620** (Five Justices' Bench) and ***Virendra v. State of Punjab* [AIR 1957 SC 896]** (Five Justices' Bench) in order to render its finding of "*a proximate connection or nexus with public order but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with public order*". From a perusal of the judgment in that ***Kedar Nath Singh* (supra)** it is clear that the bench applied the same standard as applied *L**ohia* (supra)**. It is not necessary for every bench to refer to every judgment of all

co-ordinate benches while rendering a decision. It is undeniable that the bench in ***Kedar Nath Singh*** **(supra)** holds that the offence of sedition, as interpreted by it, has *a proximate connection or nexus with public order* and *not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with public order*.

60. Therefore, it is submitted that the petitioners have not shown any justification based upon which this Hon'ble court can record a finding that ***Kedar Nath Singh*** **[supra]** is patently illegal requiring reconsideration.

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