

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2016
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

COMMON CAUSE & ANR. ... PETITIONER

VERSUS

UNION OF INDIA ... RESPONDENTS

PAPERBOOK

(KINDLY SEE INSIDE FOR INDEX)

ADVOCATE FOR THE PETITIONERS: PRASHANT BHUSHAN

SYNOPSIS AND LIST OF DATES

The Petitioners herein are filing the instant writ petition in public interest under Article 32 of the Constitution of India. The petitioners through the instant writ petition is seeking urgent intervention of this Hon'ble court to address the misuse and misapplication of Section 124A (sedition) by successive governments leading to routine persecution of students, journalists and intellectuals engaged in social activism. It is submitted that these charges are framed with a view to instill fear and to scuttle dissent and are in complete violation of the scope of sedition as laid down by a constitution bench of this Hon'ble Court in *Kedar nath v State of Bihar* [1962 Supp. (2) S.C.R. 769], which is the *locus classicus* on the interpretation of sedition.

As per the constitution bench judgment of *Kedarnath vs State of Bihar* only those acts, which involve incitement to violence or violence constitute a seditious act. In the various cases that have been filed in the recent years, the charges of sedition against the accused have failed to stand up to judicial scrutiny. The petitioner is therefore seeking a strict compliance of the Constitutional Bench judgment of this Hon'ble Court in *Kedar Nath* in which for the very first time scope of sedition as a penal offence was laid down and it was held that the gist of the offence of sedition is "incitement to violence" or the "tendency or the intention to create public disorder". The petitioner is, therefore, praying for the issuance of an appropriate writ, order or direction making it compulsory for the concerned authority to produce a reasoned order from the Director General of Police (DGP) or the Commissioner of Police, as the case maybe, certifying that the "seditious act" either lead to the incitement of violence or had the tendency or the intention to create public disorder, before any FIR is filed or any arrest is made on the charges of sedition against any individual.

Section 124A IPC reads as follows. *Section 124A: Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.*

Explanation 1. — The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2. — Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3. — Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

In *Kedar Nath Singh v. State of Bihar* a constitution bench of this Hon'ble Court upheld Section 124A of the Indian Penal Code by construing it narrowly and stating that the offence would only be complete if the words complained of have a tendency of creating public disorder by violence. It was added that merely creating disaffection or creating feelings of enmity in certain people was not good enough or else it would violate the fundamental right of free speech under Article 19(1)(a).

Kedar Nath case settled the law on sedition and restricted the application of Section 124A to only those activities that had an intention or tendency to create disorder, or disturbance of law and order or incitement to violence. The

judgment further stated that if these essential ingredients were not read into the meaning of sedition, Section 124A would be rendered unconstitutional. It was held:

“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 spoke 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 Art. 19(1)(a) read with clause (2).”

The constitutional validity of Section 124A rests upon either an intention to create public disorder or incitement of violence. For any person to be booked under Section 124A it is essential that the act alleged to have committed has been committed with an intention of creating public disorder or has incited violence. The relevant part of the Kedarnath judgment reads thus:

“Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.”

“..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)). The Bengal Immunity Company Limited v. The State of Bihar (1) and (2) R.M.D. Chamarbaugwalla v. The Union of India (2). 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.”

However, more than fifty years after *Kedarnath judgment*, the provision under Section 124A is being allowed to be put to use irrespective of whether or not the alleged act or words are, in fact, seditious acts, or words constituting a “tendency to cause public disorder or incitement to violence”. In carrying out arrests and slapping charges, the police and the governments have rarely, if ever, respected this restriction. Successive governments have blatantly used Section 124A to stifle the voice of dissent and to further their political goals.

It is submitted that according to the National Crime Records Bureau (NCRB) Report, 2014 as many as 47 sedition cases were reported in 2014 alone, across nine Indian states. Many of these cases did not involve violence or incitement to violence, which is a pre-requisite for a sedition charge. It is submitted that as per the NCRB figures total of 58 persons were arrested in connection with these cases, but the government has managed only one conviction.

In 1979, India ratified the International Covenant on Civil and Political Rights (ICCPR), which sets forth internationally recognized standards for the protection of freedom of expression. However, misuse of sedition law under Section 124A and arbitrary slapping of charges continue to restrict speech in ways inconsistent with ICCPR. In *Kedar Nath*, this Hon'ble Court unequivocally narrowed the scope of Section 124A, but it continues to be misused. Thereby, making it imperative that this Hon'ble court issues necessary directions and guidelines to uphold its decision in *Kedar Nath* which is also compatible with India's international obligations.

However, in spite of the narrowing down of the scope of the sedition law by this Hon'ble Court and the widening of the freedom of speech and expression to allow for dissent, governments have routinely invoked Section 124A with an aim to restrict dissent. The petitioner acknowledges that words which directly provoke violence or which directly threaten the maintenance of public order may deserve censure. However, that is not what the misapplication of sedition law seeks to achieve. The present practice of misapplication of sedition law violates the *Kedarnath* judgment. It further aims to crush all opposition to the ruling political party. Its regular use continues to have a chilling effect on the freedom of speech and expression in the country.

It is submitted that though a very small number of sedition cases leads to actual conviction, it causes harassment of individuals till the time judgment comes out, which in various cases takes many years to come. Meanwhile, persons charged with sedition have to live without their passport, are barred from government jobs, and must produce themselves in the court at all times as and when required. A person so charged also has to spend money on regular legal fee. The charges have rarely stuck in most of the cases, but the process itself becomes the punishment.

In order to make sure that Section 124 is not misused, it is necessary that before making arrest and filing case under sedition law, it must be compulsory for the concerned authority to produce a reasoned order from the Director General of Police (DGP) or the Commissioner of Police, as the case may be, certifying that the “seditious act” either lead to the incitement of violence or had the tendency or the intention to create public disorder, before any FIR is filed or any arrest is made on the charges of sedition against any individual. The same should also apply to cases concerning sedition pending before any trial court in the country. Similarly, in cases where private complaint alleging sedition is made before a Ld. Magistrate, it should be made compulsory that the order taking cognizance certifies that the “seditious act” either lead to the incitement of violence or had the tendency or the intention to create public disorder. Furthermore, investigations and prosecutions must be dropped in cases where such a reasoned orders as prayed for above is not provided and the act in question involved peaceful expression or assembly.

List of Dates

Dates	Events
20.01.1962	The Constitutional Bench judgment of this Hon’ble Court in <i>Kedar Nath</i> case settled the law and restricted the application of Section 124A to only those activities that had an intention or tendency to create disorder, or disturbance of law and order or incitement to violence. The judgment further stated that if these essential ingredients were not read into the meaning of sedition, Section 124A would be rendered unconstitutional.
November 2010	In November 2010, noted writer and activist Arundhati Roy and 5-6 others were charged with Sedition by Delhi Police for

allegedly having made anti-India remarks at an event organized in Kashmir on 21.10.2010.

September 2012 **Aseem Trivedi**, a noted political cartoonist was arrested on the 09.09.2012, based on a political activist's complaint that his cartoons insulted the country. The charge was in connection to a cartoon he had made depicting the national emblem in support of the anti-corruption movement in the country.

2007 **Binayak Sen**, a civil rights activist and two others were arrested by Chattisgarh Police in 2007 on the charges of Sedition and having links with Naxalites. Raipur sessions court found Sen guilty of sedition and sentenced him to life imprisonment. An appeal was filed in the Chhattisgarh High Court challenging the High Court order.

15.04.2011 This Hon'ble Court granted bail to Binayak Sen while, orally observing, as per several newspaper reports, that the evidence on record proves no sedition case against Sen. At the worst he could be termed active sympathizer of Naxals. The court also observed that mere possession of Naxal literature does not make a person a Naxalite, guilty of sedition, as one who possesses Mahatma Gandhi's autobiography cannot call himself a Gandhian.

September 2011 Anti-Nuclear activist **S.P. Udayakumar** (petitioner no.2 herein), faced several cases of sedition for protesting against Kudankulam Nuclear power Plant in Tamil Nadu. Between September and December 2011 alone, the Tamil Nadu Government slapped sedition charges on 6,000 protesters/villagers at a single police station.

- December 2014 As per the National Crime Records Bureau (NCRB) Report, 2014 as many as 47 sedition cases were reported in 2014 alone, across nine Indian states. Many of these cases did not involve violence or incitement to violence, which is a pre-requisite for a sedition charge. It is submitted that as per the NCRB figures total of 58 persons were arrested in connection with these cases, but the government has managed only one conviction.
- October 2015 Tamil folk singer **S Kovan** was slapped with a sedition case for singing songs critical of Tamil Nadu Chief Minister J Jayalalithaa and her liquor policy. He had criticized the state government for allegedly profiting from state-run liquor shops at the expense of the poor. The petition was later dismissed by this Hon'ble Court.
- 05.01.2016 A resident of Malappuram district, Kerala Anwar Sathik was arrested by police under Section 124A (sedition) for a derogatory Facebook comment.
- 12.02.2016 **Kanhaiya Kumar**, the president of Jawaharlal Nehru University Student's Union along with his colleagues Umar Khalid, Anirban Bhattacharya and one other were arrested and charged with sedition by the Delhi Police for raising anti-India slogans in a student event organized within the JNU campus. When Kumar was brought to the Patiala House court on February 15, 2016, JNU students and professors, as well as journalists, were attacked by a group of lawyers. On 17 February, Kumar was once again assaulted by some lawyers inside the Patiala House court. On February 22, 2016, India Today broadcast a video in which three lawyers

of the Patiala House court claimed that they had beaten Kanhaiya Kumar while the latter was in police custody. A six member Supreme Court-appointed panel later confirmed that the policemen present at the Court were responsible for the security lapses, and further stating that police allowed 2 persons to enter the court room, and continued to let the assault take place, in direct violation of the SC direction on Kanhaiya's safety. On 02 March 2016, Kanhaiya Kumar was released on interim bail for lack of conclusive evidence. A separate magisterial investigation appointed by the Delhi Government did not find any evidence of Kanhaiya Kumar participating in anti-national slogans. There are conflicting reports about the veracity of the videos and some of them have been found to be doctored.

15.02.2016 Former DU lecturer **S.A.R Geelani** arrested on sedition charge. On March 19, 2016 a Delhi Sessions court granted bail to Geelani.

June 2016 Karnataka state police registered a case of sedition and arrested two police officers for demanding better wages and living and working conditions. They had threatened to go on leave protesting alleged "harassment" by senior officials, lesser pay and absence of proper leave.

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. Of 2015

PUBLIC INTEREST LITIGATION

In the matter of:

1. Common Cause
(A registered society)
Through its Director
5, Institutional Area
Nelson Mandela Road
Vasant Kunj, New Delhi-110070
Email: commoncauseindia@gmail.com
Ph: 9818399055

...Petitioner No. 1

2. S.P. Udayakumar
S/o Shri S Paramarthalingom
R/o 42/27, Esankai Mani Veethy
Parakkai Road Junction
Nagercoil-629002, Tamil Nadu
Email: spudayakumar@gmail.com
Ph: 09865683735

...Petitioner No. 2

VERSUS

Union of India
Through Ministry of Home Affairs
North Block, Central Secretariat,
New Delhi-110001

... The Respondent

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES
OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of
the Petitioners above-named

MOST RESPECTFULLY SHOWETH :-

1. The Petitioners herein are filing the instant writ petition in public interest under Article 32 of the Constitution of India. The petitioner through the instant writ petition is seeking urgent intervention of this Hon'ble court to address the misuse and misapplication of Section 124A (sedition) by successive governments leading to routine persecution of students, journalists and intellectuals engaged in social activism. It is submitted that

these charges are framed with a view to instill fear and to scuttle dissent and are in complete violation of the scope of sedition as laid down by a constitution bench of this Hon'ble Court in *Kedar Nath v State of Bihar* [1962 Supp. (2) S.C.R. 769], which is the *locus classicus* on the interpretation of sedition. It is submitted that according to the National Crime Records Bureau Report, 47 cases of sedition were filed in 2014 alone. A total of 58 persons were arrested in connection with these cases, but the government has managed only one conviction.

As per the constitution bench judgment of *Kedarnath vs State of Bihar* only those acts, which involve incitement to violence or violence constitute a seditious act. In the various cases that have been filed in the recent years, the charges of sedition against the accused have failed to stand up to judicial scrutiny. The petitioner is therefore seeking a strict compliance of the Constitutional Bench judgment of this Hon'ble Court in *Kedar Nath* in which for the very first time scope of sedition as a penal offence was laid down and it was held that the gist of the offence of sedition is "incitement to violence" or the "tendency or the intention to create public disorder". The petitioner is, therefore, praying for the issuance of an appropriate writ, order or direction making it compulsory for the concerned authority to produce a reasoned order from the Director General of Police (DGP) or the Commissioner of Police, as the case maybe, certifying that the "seditious act" either lead to the incitement of violence or had the tendency or the intention to create public disorder, before any FIR is field or any arrest is made on the charges of sedition against any individual.

THE PETITIONERS

Petitioner No. 1, Common Cause, is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a bona fide public interest organization fighting for an accountable, transparent and corruption-free system. Mr. Vipul Mudgal, Director of Common Cause is authorized to file this PIL. His annual income is Rs 17.2 lakh (approx.) (PAN number: AAXPM0305P). Society

does not have a UID number. The requisite Certificate & Authority Letter are filed along with the vakalatnama.

Petitioner No. 2 is Mr. S.P. Udayakumar, an academician and anti-nuclear activist from Tamil Nadu. He is the convener of the People's Movement Against Nuclear Energy (PMANE). He is also the author of several academic papers and books on socioeconomic-political issues. His annual income is Rs.1,00,000 and PAN No. is AAMPU0632N. He does not have a UID number.

2. Section 124A IPC reads as follows:

124A Seditio- Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1. — The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2. — Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3. — Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

3. The law of sedition was originally drafted by Thomas Macaulay. It was not a part of the IPC in the 1860s and was introduced in 1870. During the freedom struggle many Indian freedom fighters including Mahatma Gandhi and Bal Gangadhar Tilak were charged with sedition. In response to charges made against him, Mahatma Gandhi said in 1922: “Section 124-A under, which I am happily charged, is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen,”
4. It is submitted that during a parliamentary debate on freedom of speech in 1951, Jawaharlal Nehru said, “Take again Section 124-A of the Indian

Penal Code. Now as far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place in any body of laws that we might pass. The sooner we get rid of it the better.” It is submitted that the use of sedition to silence the critics of the government including human rights activists, journalists and intellectuals was a regular practice before Independence and has continued till date.

5. In *Kedar Nath Singh v. State of Bihar* a constitution bench of this Hon’ble Court upheld Section 124A of the Indian Penal Code by construing it narrowly and stating that the offence would only be complete if the words complained of have a tendency of creating public disorder by violence. It was added that merely creating disaffection or creating feelings of enmity in certain people was not good enough or else it would violate the fundamental right of free speech under Article 19(1)(a).

6. *Kedar Nath* case settled the law on sedition and restricted the application of Section 124A to only those activities that had an intention or tendency to create disorder, or disturbance of law and order or incitement to violence. The judgment further stated that if these essential ingredients were not read into the meaning of sedition, Section 124A would be rendered unconstitutional. It was held:

“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 spoke 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 Art. 19(1)(a) read with clause (2).”

7. The constitutional validity of Section 124A rests upon either an intention to create public disorder or incitement of violence. For any person to be booked under Section 124A it is essential that the act alleged to have committed has been committed with an intention of creating public disorder or has incited violence. The relevant part of the Kedarnath judgment reads thus:

“Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by

the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.”

“..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)). The Bengal Immunity Company Limited v. The State of Bihar (1) and (2) R.M.D.

Chamarbaugwalla v. The Union of India (2). 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.”

8. However, more than fifty years after *Kedarnath judgment*, the provision under Section 124A is being allowed to be put to use irrespective of whether or not the alleged act or words are, in fact, seditious acts, or words constituting a “tendency to cause public disorder or incitement to violence”. In carrying out arrests and slapping charges, the police and the governments have rarely, if ever, respected this restriction. Successive governments have blatantly used Section 124A to stifle the voice of dissent and to further their political goals.
9. It is submitted that according to the National Crime Records Bureau (NCRB) Report, 2014 as many as 47 sedition cases were reported in 2014 alone, across nine Indian states. Many of these cases did not involve violence or incitement to violence, which is a pre-requisite for a sedition charge. It is submitted that as per the NCRB figures total of 58 persons were arrested in connection with these cases, but the government has managed only one conviction. A copy of the relevant pages of the National Crime Records Bureau Report 2014 is annexed herewith as **Annexure P1** (pages _____ to _____).
10. Similarly, media watchdog website *The Hoot* has reported that 11 cases were booked against 19 people in the first three months of 2016, compared to none during the same period in the previous two years. A copy of the relevant pages of the news report dated 05.04.2016 published in thehoot.org is annexed herewith as **Annexure P2** (pages _____ to _____).
11. A 2016 report of Human Rights Watch titled *Stifling Dissent – The Criminalization of Peaceful Expression in India* provides in detail how sedition is being used to limit peaceful expression in the country. A copy of the relevant extracts from the Human Rights Watch Report 2016 on

Sedition is annexed herewith as **Annexure P3** (pages _____ to _____).

12. The following paragraphs illustrate how in the recent years, governments and law agencies have used Section 124A to scuttle dissent, suppress freedom of speech and expression and to muzzle the voices of those critical of the ruling government. While some of the cases have been dismissed by courts as unfounded and in some other cases charges have been dropped, the misuse of Section 124A continues to have a chilling effect on those holding minority views or expressing criticism of the government.
13. **Arundhati Roy**, noted writer and activist Arundhati Roy and 5-6 others were charged with Sedition by Delhi Police in November 2010 for allegedly having made anti-India remarks at an event organized in Kashmir on 21.10.2010. A copy of a news report dated 06.03.2016 about the sedition charge is annexed herewith as **Annexure P4** (pages _____ to _____).
14. **Aseem Trivedi**, a noted political cartoonist was arrested on charges of sedition based on a political activist's complaint that his cartoons insulted the country. The charge was in connection to a cartoon he had made depicting the national emblem in support of the anti-corruption movement in the country. A copy of a news report dated 09.09.2016 about the sedition charge is annexed herewith as **Annexure P5** (pages _____ to _____).
15. Civil rights activist **Binayak Sen** and two others were arrested by Chattisgarh Police in 2007 on the charges of Sedition and having links with Naxalites. Raipur Sessions court found Sen guilty of sedition and sentenced him to life imprisonment. An appeal was filed in the Chhattisgarh High Court challenging the High Court order.

On 15.04.2011 this Hon'ble Court granted bail to Binayak Sen while observing that the evidence on record proves no sedition case against Sen. At the worst he could be termed active sympathizer of Naxals. The court also observed that mere possession of Naxal literature does not

make a person a Naxalite, guilty of sedition, as one who possesses Mahatma Gandhi's autobiography can not call himself a Gandhian.

16. In 2012, local authorities in Tamil Nadu filed sedition complaints against thousands of protesters campaigning against the construction of Kudankulam nuclear power plant. Those protesting the nuclear plant included ordinary villagers, many belonging to fishing communities, who were concerned about the plant's potential adverse effects on their health and livelihoods. It is submitted that many had experienced the 2004 Indian Ocean tsunami firsthand and worried about a possible catastrophe like the meltdown which occurred at the Fukushima nuclear plant in Japan after a 2011 tsunami. Till the end of 2013, anti-nuclear activist **S.P. Udayakumar** (petitioner no.2 herein) along with approximately 8000 individuals (villagers) had sedition charges against them. In 2014, SC directed TN government to withdraw bulk of cases. However, many of these cases remain pending.
17. In 2014, as many as **67 Kashmiri students** were charged with sedition by the Uttar Pradesh police for supporting Pakistan in a cricket match between India and Pakistan. Later the Uttar Pradesh government dropped the charges. A copy of a news report dated 06.03.2014 about the sedition charge is annexed herewith as **Annexure P6** (pages_____to_____).
18. In August 2014, authorities in Kerala charged seven youth, including students, with sedition because they refused to stand up during the national anthem at a state-owned movie theater in Thiruvananthapuram. Salman M., he and his friends Shiyas S., Rajesh Paul, Harihara Sharma, Deepak A. G., Thampatty Madhusood, and Sini S. S. were charged with sedition based on a complaint by one of those other movie-goers. In September 2014, Kerala High Court granted bail to the accused, after being denied bail by lower courts. The accused had to submit their passport to the court and visit the police station twice a week for six months as conditions of his bail.
19. **Aamir Khan:** Cases of sedition were filed against the film actor in 2015 in UP and Bihar for his speech at an awards function. The cases

were based on complaints filed by two individuals who found the actor's speech to be seditious. A copy of a news report dated 25.11.2015 about the sedition charge is annexed herewith as **Annexure P7** (pages_____to_____).

20. In October 2015, Tamil folk singer **S Kovan** was slapped with a sedition case for singing songs critical of Tamil Nadu Chief Minister J Jayalalithaa and her liquor policy. He had criticized the state government for allegedly profiting from state-run liquor shops at the expense of the poor. The petition was later dismissed by this Hon'ble Court. A copy of a news report dated 03.11.2015 about the sedition charge on S Kovan is annexed herewith as **Annexure P8** (pages_____to_____).

21. In December 2015 The Tamil Nadu government filed sedition charges against a **Tamil news weekly 'Namadhu Manasatchi'** for allegedly publishing a false and seditious report on public healthcare. A copy of a news report dated 10.12.2015 about the sedition charge on the Tamil news weekly is annexed herewith as **Annexure P9** (pages_____to_____).

22. In January 2016, a resident of Malappuram district, Kerala Anwar Sathik was arrested by police under Section 124A (sedition) for a derogatory Facebook comment. A copy of a news report dated 05.01.2016 about the charge is annexed herewith as **Annexure P10** (pages_____to_____).

23. **Kanhaiya Kumar**, the president of Jawaharlal Nehru University Student's Union along with his colleagues Umar Khalid, Anirban Bhattacharya and one other were arrested and charged with sedition by the Delhi Police for raising anti-India slogans in a student event organized within the JNU campus. When Kumar was brought to the Patiala House court on February 15, 2016, JNU students and professors, as well as journalists, were attacked by a group of lawyers. On 17 February, Kumar was once again assaulted by some lawyers inside the Patiala House court. On February 22, 2016, India Today broadcast a video in which three lawyers of the Patiala House court claimed that they had beaten

Kanhaiya Kumar while the latter was in police custody. A six member Supreme Court-appointed panel later confirmed that the policemen present at the Court were responsible for the security lapses, and further stated that police allowed 2 persons to enter the court room, and continued to let the assault take place, in direct violation of the SC direction on Kanhaiya's safety. On 02 March 2016, Kanhaiya Kumar was released on interim bail for lack of conclusive evidence. A separate magisterial investigation appointed by the Delhi Government did not find any evidence of Kanhaiya Kumar participating in anti-national slogans. There are conflicting reports about the veracity of the videos and some of them have been found to be doctored. A copy of a news report dated 12.02.2016 about the arrest of the JNU President is annexed herewith as **Annexure P11** (pages _____ to _____).

24. On 15.02.2016 Former DU lecturer **S.A.R Geelani** was arrested on sedition charge related to an event conducted at the Press Club in New Delhi last month. The police had claimed to have registered the FIR taking *suo motu* cognizance of media clips of the incident. On March 19, 2016 a Delhi Sessions court granted bail to Geelani. A copy of a news report dated 19.03.2016 about the arrest and subsequent bail of SAR Geelani is annexed herewith as **Annexure P12** (pages _____ to _____).

25. In June 2016, Karnataka state police registered a case of sedition and arrested two police officers for demanding better wages and living and working conditions. They had threatened to go on leave protesting alleged "harassment" by senior officials, lesser pay and absence of proper leave. A copy of a news report dated 03.06.2016 about the arrest of two Karnataka Police Officers on sedition charges is annexed herewith as **Annexure P13** (pages _____ to _____).

26. In 1979, India ratified the International Covenant on Civil and Political Rights (ICCPR), which sets forth internationally recognized standards for the protection of freedom of expression. However, misuse of sedition law under Section 124A and arbitrary slapping of charges continue to restrict speech in ways inconsistent with ICCPR. In *Kedar*

Nath, this Hon'ble Court unequivocally narrowed the scope of Section 124A, but it continues to be misused. Thereby, making it imperative that this Hon'ble court issues necessary directions and guidelines to uphold its decision in *Kedar Nath* which is also compatible with India's international obligations.

27. It is submitted that the aforesaid cases illustrate how sedition law is used to threaten activists with legal action with an aim to frighten civil rights groups into keeping quiet. Though a very small number of sedition cases leads to actual conviction, it causes harassment of individuals till the time judgment comes out, which in various cases takes many years to come. Meanwhile, persons charged with sedition have to live without their passport, are barred from government jobs, and must produce themselves in the court at all times as and when required. A person so charged also has to spend money on regular legal fee. The charges have rarely stuck in most of the cases, but the process itself becomes the punishment.
28. In the recent years, Indian jurisprudence as pronounced by this Hon'ble Court has seen substantial change. This Hon'ble Court has made clear distinction between "incitement" and "advocacy", stating that only the latter could be punished. In *Shreya Singhal v. Union of India* [(2013) 12 SCC 73] this Hon'ble Court struck down Section 66A of the Information and Technology Act as unconstitutional while holding that speech howsoever offensive, annoying or inconvenient cannot be prosecuted unless its utterance has, at the least, a proximate connection with any incitement to disrupt public order.
29. However, in spite of the narrowing down of the scope of the sedition law by this Hon'ble Court and the widening of the freedom of speech and expression to allow for dissent, governments have routinely invoked Section 124A with an aim to restrict dissent. The petitioner acknowledges that words which directly provoke violence or which directly threaten the maintenance of public order may deserve censure. However, that is not what the misapplication of sedition law seeks to achieve. The present practice of misapplication of sedition law violates the *Kedarnath* judgment. It further aims to crush all opposition to the ruling political party. Its regular use continues to have a chilling effect on the freedom of speech and expression in the country.

30. In order to make sure that Section 124 is not misused, it is necessary that before making arrest and filing case under sedition law, it must be compulsory for the concerned authority to produce a reasoned order from the Director General of Police (DGP) or the Commissioner of Police, as the case may be, certifying that the "seditious act" either lead to the incitement of violence or had the tendency or the intention to create public disorder, before any FIR is filed or any arrest is made on the charges of sedition against any individual. The same should also apply to cases concerning sedition pending before any trial court in the country. Similarly, in cases where private complaint alleging sedition is made before a Ld. Magistrate, it should be made compulsory that the order taking cognizance certifies that the "seditious act" either lead to the incitement of violence or had the tendency or the intention to create public disorder. Furthermore, investigations and prosecutions must be dropped in cases where such a reasoned order as prayed for above is not provided and the act in question involved peaceful expression or assembly.

GROUND:

- A. Because as per the constitution bench judgment of *Kedarnath vs State of Bihar* only those acts which involve incitement to violence or violence make for a seditious act. In the various cases that have been filed in the recent years, the charges of sedition against the accused have failed to stand up to judicial scrutiny.
- B. Because *Kedar Nath Singh v. State of Bihar*, [1962 Supp. (2) S.C.R. 769], a constitution bench of this Hon'ble Court upheld Section 124A of the Indian Penal Code by construing it narrowly and stating that the offence would only be complete if the words complained of have a tendency of creating public disorder by violence. It was added that merely creating disaffection or creating feelings of enmity in certain people was not good enough or else it would violate the fundamental right of free speech under Article 19(1)(a).

- C. Because more than fifty years after *Kedarnath judgment*, the provision under Section 124A is being allowed to be put to use irrespective of whether or not the alleged act or words are, in fact, seditious acts, or words constituting a “tendency to cause public disorder or incitement to violence”. In carrying out arrests and slapping charges, the police and the governments have rarely, if ever, respected this restriction. Successive governments have blatantly used Section 124A to stifle the voice of dissent and to further their political goals.
- D. According to the National Crime Records Bureau (NCRB) Report, 2014 as many as 47 sedition cases were reported in 2014 alone, across nine Indian states. Many of these cases did not involve violence or incitement to violence, which is a pre-requisite for a sedition charge. It is submitted that as per the NCRB figures total of 58 persons were arrested in connection with these cases, but the government has managed only one conviction.
- E. Because sedition law is being increasingly used to threaten activists with legal action with an aim to frighten civil rights groups into keeping quiet. Though a very small number of sedition cases lead to an actual conviction, it leads to harassment of individuals till the time judgment comes out, which in various cases takes many years to come. Meanwhile, a person charged with sedition has to live without their passport, barred from government jobs, and must produce themselves in the court at all times as and when required. A person so charged also has to spend money on regular legal fee. The charges have rarely stuck in most of the cases, but the process itself becomes the punishment.
- F. Because present practice of misapplication of sedition law violates the *Kedarnath* judgment. It further aims to crush all opposition to the ruling political party. Its regular use continues to have a chilling effect on the freedom of speech and expression in the country.

PRAYERS:

In view of the facts & circumstances stated above, it is prayed that this Hon’ble Court may be pleased to:

- a. Issue an appropriate writ making it mandatory for the concerned authority to produce a reasoned order from the Director General of Police (DGP) or the Commissioner of Police, as the case maybe, certifying that the “seditious act” either lead to the incitement of violence or had the tendency or the intention to create public disorder, before any FIR is filed or any arrest is made on the charges of sedition against any individual.
- b. Issue an appropriate writ directing the Ld. Magistrate to state in the order taking cognizance certifying that the “seditious act” either lead to the incitement of violence or had the tendency or the intention to create public disorder in cases where a private complaint alleging sedition is made before the Ld. Magistrate
- c. Issue an appropriate writ directing for a review of pending cases of sedition in various courts to produce an order from the DG or Commissioner of Police, as the case may be, certifying that the “seditious act” either lead to the incitement of violence or had the tendency or the intention to create public disorder in cases.
- d. Issue an appropriate writ directing that investigations and prosecutions must be dropped in cases where such a reasoned order as prayed for in Prayers (a), (b) and (c) is not provided and the act in question involved peaceful expression or assembly.
- e. Issue any other appropriate writ that this Hon’ble Court may deem fit

Through

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Drawn by: Ms. Neha Rathi

Drawn and Filed on:

New Delhi

INDEX

S. NO.	PARTICULARS	PAGES	C. FEES
1.	Synopsis and List of Dates	A	
2.	Public Interest Litigation in the Supreme Court of India in Writ Appeal No. of 2016	1-18	
3.	<u>ANNEXURE – P1</u> A copy of the relevant pages of the National Crime Records Bureau Report 2014 showing the list of sedition cases filed and number of convicts.	19	
4.	<u>ANNEXURE – P2</u> A copy of the relevant pages of the news report dated 05.04.2016 published in thehoot.org		
5.	<u>ANNEXURE – P3</u> A copy of the relevant extracts from the Human Rights Watch Report 2016 on Sedition		
6.	<u>ANNEXURE – P4</u> A copy of a news report dated 29.12.2010 about the sedition charge on activist/writer Arundhati Roy		
7.	<u>ANNEXURE – P5</u> A copy of a news report dated 09.09.2012 about the sedition charge on Aseem Trivedi		
8.	<u>ANNEXURE – P6</u> A copy of a news report dated 06.03.2014 about the sedition charge where 67 Kashmiri students were charged for supporting Pakistan in a cricket match.		
9.	<u>ANNEXURE – P7</u> A copy of a news report dated 25.11.2015 about the sedition charge against Amir Khan for his speech at an awards function.		

10.	<u>ANNEXURE - P8</u> A copy of a news report dated 03.11.2015 about the sedition charge on S Kovan for singing songs critical of Tamil Nadu Chief Minister.		
11.	<u>ANNEXURE - P9</u> A copy of a news report dated 10.12.2015 about the sedition charge on a Tamil news weekly for publishing a false and seditious report on public healthcare.		
12.	<u>ANNEXURE - P10</u> A copy of a news report dated 05.01.2016 on sedition charges over a facebook comment		
13.	<u>ANNEXURE - P11</u> A copy of a news report dated 12.02.2016 about the arrest of the JNU President, Kanhaiya Kumar along with his colleagues for raising anti-India slogans in JNU campus.		
14.	<u>ANNEXURE - P12</u> A copy of a news report dated 19.03.2016 about the arrest and subsequent bail of SAR Geelani		
15.	<u>ANNEXURE - P13</u> A copy of a news report dated 03.06.2016 about the arrest of two Karnataka Police Officers on sedition charges		