IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

I. A. No. OF 2021

IN

WRIT PETITION (CRIMINAL) No. 106 OF 2021

IN THE MATTER OF:

Kishorechandra Wangkhemcha & Anr … Petitioners

VERSUS

Union of India … Respondent

AND IN THE MATTER OF:

Foundation of Media Professionals

… Proposed Intervenor

PAPER BOOK

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ADVOCATE FOR THE INTERVENOR: RAHUL BHATIA

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APPLICATION FOR INTERVENTION

To

The Hon'ble Chief Justice of India and His
Companion Judges of the Supreme Court of India
The humble application of the applicant above named

MOST RESPECTFULLY SHEWETH:

1. The captioned Writ Petition has been filed challenging the constitutionality of section 124 A of the Indian Penal Code,

1860 ("**Code**"), encapsulating the crime of sedition, as has been preserved since the colonial era. The Petitioners contend that the crime of sedition is outdated and obsolete, given the various enactments which pointedly punish any and all acts against the State. The Petitioners further contend that the crime of sedition does not amount to a reasonable restriction on the fundamental right of speech and expression under Article 19(1)(a) of the Constitution of India ("**Constitution**"), as it promotes a miscellany of frivolous cases against media professionals, ruthlessly curtailed in their employment.

2. It is submitted that Professor Vincent Blasi's opinion in his paper – 'The Pathological Perspective and the First Amendment, 85 COLUM. L. REV 449 (1985)' isapposite for consideration of the seminal question, involved in this writ petition, as to whether the offence of 'Sedition' ought to continue in the statute books of an independent sovereign democratic republic. Professor Blasi argues:

> "*Constitutions are designed to control, or at least influence, future events-political events, adjudicative*

events, to some extent even interactions between private parties. Yet the future is unknowable, largely unpredictable, and inevitably variable. At any moment there exists a short-run future, a long-run future, and a future in between. The future is virtually certain to contain some progress, some regression, some stability, some volatility. How is a constitution supposed to operate upon this vast panoply?

…

My thesis is that in adjudicating first amendment disputes and fashioning first amendment doctrines, courts ought to adopt what might be termed the pathological perspective. That is, the overriding objective at all times should be to equip the first amendment to do maximum service in those historical periods when intolerance of unorthodox ideas is most prevalent and when governments are most able and most likely to stifle dissent systematically. The first amendment, in other words, should be targeted for the worst of times."

3. The Applicant submits that the fundamental right to freedom of speech and expression is one of the most cherished Fundamental Rights as it guarantees the Media's right to free speech and expression in a democracy.

> "19. *Protection of certain rights regarding freedom of speech etc*
>
> *(1)All citizens shall have the right*
>
> *(a) to freedom of speech and expression;"*

4. Fundamental Rights guaranteed under Article 19(1)(a) of the Constitution can only be restricted under the subject matters mentioned in Article 19(2) which sets out the permissible restrictions and states:

> "Art. 19*(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, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, 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."*

5. It is a settled position of law that the provisions of Article 19(2) of the Constitution of India deserve to be construed strictly so

as to ensure enjoyment of Freedom of Speech and Expression as a Fundamental Right guaranteed under Article 19(1)(a) of the Constitution of India.

6. A very brief conspectus of some relevant decisions of the Hon'ble Supreme Court on the fundamental right to freedom of speech and expression are given below:

a. In *Bennett Coleman & Co. versus Union of India (1972) 2 SCC 788,* the Hon'ble Court held that intellectual advances made by civilisation would have been impossible without freedom of speech and expression and at any rate, political democracy is based on the assumption that such freedom must be jealously guarded. In the above matter the Hon'ble Court, inter alia, opined that:-

> *"……Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working, of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so Subtle. But, like other liberties, this also must be limited."*

b. In *Express Newspapers Pvt. Ltd. & Ors. versus Union of India & Ors (1986) 1 SCC 133,*Hon'ble Supreme Court

observed that:-

> *"……..Democracy relies on the freedom of the press. It is the inalienable right of everyone to comment freely upon any matter of public importance. This right is one of the pillars of individual liberty-freedom of speech, which our Court has always unfailingly guarded."*

c. In *Sakal Papers Pvt. Ltd. & Ors. versus Union of India & Ors. AIR 1962 SC 305,* the Hon'ble Supreme Court observed that:-

> *"……..The right to freedom of speech and expression is an individual right guaranteed to every citizen by Article 19(1)(a) of the Constitution. There is nothing in clause (2) of Article 19 which permits the State to abridge this right on the ground of conferring benefits upon the public in general or upon a section of the public. It is not open to the State to curtail, or infringe the freedom of speech of one for promoting the general welfare of a section or a group of people unless its action could be justified under a law competent under clause*

(2) of Article 1."

d. *In Bennett Coleman & Co. versus Union of India (supra***),** the Court indicated that the extent of permissible limitations on this freedom are indicated by the fundamental law of the land itself viz. Art 19(2) of the Constitution. It was laid down that permissible restrictions on any fundamental right guaranteed under Part III of the Constitution have to be imposed by a duly enacted law and must not be excessive i.e., they must not go beyond what is necessary to achieve the object of the law under which they are sought to be imposed.

e. In *LIC versus. Manubhai Shah (1992) 3 SCC 637,* the Hon'ble Supreme Court observed:-

> "…….Therefore, in any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular *consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution*" . The Hon'ble Court went on to state that "*But since permissible restrictions, albeit reasonable, are all the same restrictions on the exercise of the fundamental right under Article 19(1)(a), such restrictions are bound to be viewed as anathema, in that, they are in the nature of*

curbs or limitations on the exercise of the right and are, therefore, bound to be viewed with suspicion, thereby throwing a heavy burden on the authorities that seek to impose them. The burden would, therefore, heavily lie on the authorities that seek to impose them to show that the restrictions are reasonable and permissible in law."

f. The Hon'ble Supreme Court in its judgement in *Shreya Singhal vs Union of India (2015)5 SCC 1*observed that Section 66A creates an offence which is vague and overbroad, and, therefore, unconstitutional under Article 19(1)(a) and not saved by Article 19(2). The Hon'ble Supreme Court observed that:

"……..Section 66A purports to authorize the imposition of restrictions on the fundamental right contained in Article 19(1)(a) in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action."

The said judgementsre-emphasized and re-enforced the cardinal principle that the restrictions on the exercise of rights under Article 19(1)(a) can only be strictly in accordance with

the principles of Article 19(2) and thwarted the attempt to expand the scope of Article 19(2) and going beyond the jurisdiction to impose restriction as envisaged under the said provision.

A perusal of Article 19 (2) reveals that any legislation which restricts the freedom of speech and expression guaranteed under Article 19(1) (a) must: (i) be *reasonable; (*ii) have a rational nexus with the limited objectives/grounds provided for in Article 19 (2), namely sovereignty and integrity of India, 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.

7. The Applicant submits that India acceded to the ICCPR in 1979. Article 19 of the Covenant reads as follows:

"(1) Everyone shall have the right to hold opinions without interference;

(2) Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,

either orally, in writing or in print, in the form of art or through any other media of his choice."

8. It is most humbly submitted that these are times when the internet has not only completely revolutionized the modes of communication, but also the equipped nation states to exercise control overthe minutest of actions, thoughts and speech of their citizens. Therefore, it is most humbly submitted and urged that this Hon'ble Court should adopt the 'pathological perspective' when considering this all-important question involved in the present writ petition.

I. BACKGROUND OF THE INTERVENOR

9. The Applicant society, Foundation for Media Professionals, is a not-for-profit society, set up on 25.04.2008, bearing registration number S62029/2008, under the Societies Registration Act, 1860 established with the objective of defending and expanding freedom of the press. To fulfil its objective, the Applicant society provides inputs on legislation on matters affecting the new media either directly or indirectly

and makes appropriate representations to the Parliament and other institutions and organisations at all levels of government and public life.

10. As an organization committed to protecting the freedom of speech and expression and the rights ofall journalists, the Applicantsociety has, over the years, preferred a medley of cases against any and all actions which hinder free exercise of the fundamental right protected under Article 19(1)(a) of the Constitution of India, being that of freedom of speech and expression. Notably, the Applicant society had previously before this Hon'ble Court challenged criminalization of the defamation under the Indian Penal Code[IPC] as being violative of the fundamental rights of journalists [*Foundation of Media Professionals vs Union of India (2015) 9 SCC 252*]. Further, the Applicant society had spearheaded the litigations against shutdown of media and communications in Jammu and Kashmir in 2019 and 2020 [*Anuradha Bhasin v. Union of India, (2020) 3 SCC 637; Foundation of Media Professionals vs State (UT of J&K) (2020) 5 SCC 746*], and also was heard

by the Constitutional Bench of this Hon'ble Court as intervenors in the "Media Guidelines Case" [*Sahara India Real Estate Corp. Ltd. Vs. Securities & Exchange Board of India (2012) 10 SCC 603]*.

11. The Petitioner society's founder members include eminent journalists, namely, Amitabh Thakur, Aniruddha Bahal, Ashutosh, Madhu Trehan, Manoj Mitta, S. Srinivasan, Sanjay Pugalia, Sanjay Salil, Shashi Shekhar, Vineet Narain, and Vivian Fernandes who come from the field of both print and electronic media journalism.

True copy of the Memorandum of Association and rules and regulations of the Petitioner is annexed hereto and marked as **ANNEXURE- A**. True copy of the Authorization to file this application is annexed hereto and marked as **ANNEXURE- B.**

12. It is submitted that the Applicant Society's core objective is to protect the freedom of speech and expression, and as such the Applicant is vitally interested in the outcome of the instant Writ Petition. Therefore, the Applicant seeks leave of this Hon'ble

Court to intervene in theinstant Writ Petition and make submissions.

II. COLONIAL ORIGINS OF LAW ON SEDITION

13. The crime of sedition was devised by Lord Macaulay in the Draft Penal Code, 1837, wherein the punishment proposed for sedition was life imprisonment. Lord Macaulay regarded offences against the State as one of the serious crimes, for which punishment must be imposed not only after the crime is committed. Lord Macaulay observes in the '*Report* on *Indian Penal Code*' that

> *"If the Governor-general in Council has the legal power to fix the punishment of a subject who should in the territories of the East India Company, conspire the death of the King, or levy war against the King, then the Governor-general in Council has the legal power to fix that punishment at a fine of one anna; and it is plain that a law which should fix such a fine as the only punishment or regicide and rebellion, would be a law*

virtually absolving all subjects within the territories of the East India Company from their allegiance."

14. Lord Macaulay explains in his '*Report on Indian Penal Code*' that the abetment of crimes against State is put on a different footing than abetment of any other crime for the reason as extracted below:

"*As the penal law is impotent against a successful rebel, it is consequently necessary that it should be made strong and sharp against the first beginning of rebellion, against treasonable designs which have been carried no farther than plots and preparations*"

15. It is notable that the provision of sedition (as section 113 of the Draft Penal Code, 1837) was not included in the IPC when it was enacted in 1860. The omission was rectified by Mr. James Stephen by way of an amendment in 1870, citing the reason that if section 124-A is not included under the IPC, the seditious expressions will be governed by the more severe common law of England.It is relevant that the inclusion of

section 124-A was conditioned on preserving freedom of speech and not to endanger it.

16. The colonial era rulings on section 124-A of the IPC focused on the term 'disaffection' as contained in the provision, while interpreting the scope of the provision, explaining it to mean *inter alia* ill-will or dislike towards the government [*Queen Emperor v. Jogendur Chandra Bose (1892) 19 ILR Cal 35; Queen-Empress v. Ramchandra Narayan (1897) I.L.R. 22 Bom. 152; Queen Empress v. Amba Prasad (1898) ILR 20 All 55*]. It was established by the courts that an actual rebellion or mutiny or forcible resistance is not necessary for an act to constitute sedition. Therefore, the courts had accepted that this crime without the requirement of *mens rea* or a palpable measure of consequence is dependent only upon the temperament and irritability of the government. This was done in the context of a colonial Government whose sole intent was to crush the independence movement, and not out of democratic instincts.

17. The uncertain measure of what constitutes seditious speech sparked a tussle between free speech and the law on sedition,which has been underway since the colonial era. In 1898, explanation III was inserted to the provision to clarify that fair criticism of the government shall not amount to sedition. The observations made by the Select Committee while inserting such provisions give an insight into the displeasure of the British in limiting the scope of the provision, which limited their powers to curtail rebellion.

18. The tendency of the British to ensure complete allegiance and compliance of the Indian citizens not only in action but also in thought, is blatantly evident from the evolution of the law on sedition. It is relevant to note, however, that the Indian courts have largely crusaded against regarding every unpleasant word as 'actionable' [*Kamal Krishna Sircar v. Emperor, AIR 1935 Cal 636*], championing the cause of the media. However, with the evolution of the internet-dependent society, it has become relevant more than ever, to scrutinize laws on sedition, particularly as such laws are instruments of the Government

for creating fear, coercion and harassment of journalists and media persons for revealing inconvenient truths.

III. DELIBERATIONS OF THE CONSTITUENT ASSEMBLY

19. The Constituent Assembly was staunchly against restricting the freedom of speech and expression with sedition. In fact, the Constituent Assembly was unanimous in having the word 'sedition' deleted from the draft Constitution.

20. While opposing inclusion of sedition as a curtailment of freedom of speech and expression, Prof. K.T. Shah had observed as follows:

> *"This Constitution, Sir, was drafted at a time when people were going through extraordinary stress and strain…*
>
> *…in the then prevailing goonda raj it was necessary to restrict some how the freedom of the individual… We have had no doubt the unfortunate experiences in which individuals moved by whatever sentiments had tried to*

exert violence and do injury to their fellows which no civilised State can put up with. It was therefore at the time necessary that such individuals should be apprehended immediately…

…Constitution should be framed, not for these abnormal situations, but normal situations and for reasonable people who it must be presumed will be normally law-abiding and not throw themselves entirely to the mercy of these goondas…

…We have in this Constitution as we have in many other Constitutions provisions relating to a state of emergency where the normal Constitution is suspended… But we must not, when framing a constitution, always assume that this is a state of emergency, and therefore omit to mention such fundamental things as civil liberties."

21. There has been a marked change in the governmental structure and design since independence, and therefore, following the sentiments of Prof. K.T. Shah, it is submitted that our community is in dire need of transparency in the government

and open dialogue on issues, which is the only way to promote further growth and development and to ensure that our society does not fall back on old patterns of intolerance. It is submitted that in the last decade, this Hon'ble Court has pronounced landmark judgments revolutionizing the Indian community and state of mind, by *inter alia* decriminalizing adultery, homosexuality, and recognizing the third gender. It is submitted that these pronouncements signify the evolution of our society as an independent nation rid of colonial-era mindsets about curtailment of free speech and expression.

22. In this context, it is also relevant to note the statements of Mr. K.M. Munshi on omission of the word 'sedition' from the Constitution:

> *"…public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore the*

word 'sedition' has been omitted. As a matter of fact the essence of democracy is Criticism of Government. The party system which necessarily involves an advocacy of the replacement of one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy.

…the equivocal word sedition only is sought to be deleted from the article. Otherwise an erroneous impression would be created that we want to perpetuate 124-A of the I.P.C. or its meaning which was considered good law in earlier days. Sir, with these words, I move this amendment."

23. It was with such deliberate opinions and faith in the people of the country, that the term 'sedition' was not given a place in the Constitution, as the same wasn't considered to be a reasonable restriction on the fundamental right of free speech and expression.

IV. JUDICIAL JURISPRUDENCE ON SEDITION

24. The crime of seditious speech not being accepted in the Constitution, was nevertheless retained in the IPC under section 124-A of Code, used time and again by the ruling government to suppress any and all forms of dissent.

25. 124A IPC reads as under :

> *Sedition.—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 withimprisonment 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.

26. Soon after the enforcement of the Constitution, the Government of Madras purported to issue a ban on a journal called Cross Roads, printed, published and edited by Mr. Romesh Thapar. This Hon'ble Court, however, refused to allow such a ban observing that only where a danger to the State is involved, can the law of sedition be applied[*Romesh Thapar vs. State of Madras AIR 1950 SC 124*]. This Hon'ble Court while holding the Madras Maintenance of Public Order Act, 1949 as unconditional, observed:

"Where a law purports to authorise the imposition of restrictions on afundamental right in language wide enough to cover restrictions both within andwithout the

limits of constitutionally permissible legislative action affecting such right,it is not possible to uphold it even so far as it may be applied within the constitutionallimits, as it is not severable. So long as the possibility of its being applied for purposesnot sanctioned by the Constitution cannot be ruled out, it must be held to be whollyunconstitutional and void. In other words, clause (2) of Article 19 having allowed theimposition of restrictions on the freedom of speech and expression only in cases wheredanger to the State is involved, an enactment, which is capable of being applied tocases where no such danger could arise, cannot be held to be constitutional and validto any extent."

27. A similar reasoning was adopted by this Hon'ble Court when the Chief Commissioner of Delhi sought to pre-censor the contents of an English weekly called the *Organizer*, run by Mr. Brij Bhushan. This Hon'ble Court referred back to its judgment in *Romesh Thapar case (supra)* and observed that "*every freeman has an undoubted right to lay what sentiments he*

pleases before the public; to forbid this, is to destroy the freedom of the press" [*Brij Bhushan vs. Union of India AIR 1950 SC 129*]. This Hon'ble Court while rendering the judgment held the East Punjab Public Safety Act, 1949 as unconstitutional.

28. In 1962, the constitutionality of section 124-A IPC was challenged before a five-member bench of this Hon'ble Court in *Kedar Nath Singh vs. State of BiharAIR 1962 SC 955*, whereunder this Hon'ble Court considered the judgments in *Romesh Thapar case (supra)* and *Brij Bhushan case (supra)*, and proceeded to rationalize the law on sedition by distinguishing between 'government established by law' and the person engaged in carrying out the administration. This Hon'ble Court observed the following:

> "*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…

…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."

29. With the above observations, this Hon'ble Court proceeded to debunk the argument that use of vigorous words in writing directed to a strong criticism of measures of the government or acts of public officials come within the penal section. Therefore, the test for sedition as per this Hon'ble Court laid down in *Kedar Nath Singh case (supra)* is to see whether the

seditious act subverts the institution of the government or the persons carrying out the administration.

30. It is in this background that the Law Commission of India in its Consultation Paper dated 30th August 2018 on 'Sedition' notes as under:

> *"8.2 Every irresponsible exercise of right to free speech and expression cannot be termed seditious. For merely expressing a thought that is not in consonance with the policy of the Government of the day, a person should not be charged under the section. Expression of frustration over the state of affairs , for instance , calling India no country for women' , or a country that is racist' for its obsession with skin colour as a marker of beauty are critiques that do not threaten' the idea of a nation . Berating the country or a particular aspect of it, cannot and should not be treated as sedition. If the country is not open to positive criticism, there lies little difference between the pre- and post-independence eras. Right to*

criticise one's own history and the right to offend are rights protected under free speech."

[Emphasis supplied]

31. It is submitted that the test laid down in *Kedar Nath Singh case (supra)* offers a pedantic approach towards the crime of sedition, without taking into consideration that the very existence of the provision incriminating seditious speech, combined with the fact that the same is a cognizable offence, is an excuse for public officials to harass media professionals and journalists, who often spend months in jail awaiting their trial to adjudge whether their actions are seditious or not. As one of the rare crimes, which do not require an ingredient of *mens rea*, the imposition of section 124-A IPC over journalists who are merely doing their jobs, is arbitrary,excessive and completely disproportionate.

32. It is submitted that this Hon'ble Court while rendering the judgment in *Kedar Nath Singh case (supra)* had proceeded on the reasoning that the citizens require some hand-holding to get used to the idea of a democratic nation, as opposed to colonial

imperialism whereunder the culture of rebellion was predominant. However, in the last sixty years since the *Kedar Nath Singh case (supra),* there has been a sharp rise in the literacy and awareness of the citizens of this country, and the fundamental rationale that forms the very basis of *Kedar Nath Singh* (*supra*) no longer exists, and therefore requires reimagination by this Hon'ble Court especially in light of the rise of youth activism, independent journalism, and progressing levels of education.

33. In this context, it is relevant to refer to this Hon'ble Court's judgment in *Shreya Singhal vs. Union of India (supra),* wherein while deliberating on the constitutionality of section 66A of the Information Technology Act, 2000, this Hon'ble Court referred to the test of 'chilling effect'. This Hon'ble Court has held the vice of 'chilling effect' to be a good ground for declaring a law unconstitutional:

> *"We, therefore, hold that the Section is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature*

and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth."

34. It is submitted that section 124-A IPC casts such a wide net on the speech andwriting of media professionals, that virtually any opinion on any subject would be covered by it, as any serious opinion against the governmental measures and actions, are presumed anti-government (or anti-national, to use the prevalent street slang) and seditious by the public officials. In fact any valid criticism or opinion of any legislation, policy or measures taken by the Government is interpreted to mean '*disaffection towards the Government established by law'* The term '*disaffection towards the Government established by law'* is vague, ambiguous, is capable of being interpretated subjectively and is regularly misused as a tool to persecute political dissent. Therefore Section 124 A IPC is not in consonance with the principles of law pronounced in various judgments of the Hon'ble Supreme Court, including

in the judgment in *Shreya Singhalvs Union of India (supra).*The Section gives excessive and concentrated executive discretion inbuilt into it which permits the blatant abuse, is a non bailable offence where a person can be given imprisonment for life.

35. In testing the constitutionality of a criminal offence presently engrafted and understood in law, the right of the press to report must be adjudged from the perspective of the supervening and all-important right of the public to know in any modern democracy.

36. The report released by Free Speech Collective entitled "*Behind Bars- Arrest and Detention of Journalists in India*" reveals that 67 cases have been lodged against journalists in 2020 as opposed to 10 cases in 2010. The sharp increase in the number of cases demonstrate the rising censorship imposed upon the media professionals under the garb of sedition and similar offences under state statutes.

True copy of the report released by Free Speech Collective entitled "*Behind Bars- Arrest and Detention of Journalists in India*" is annexed as **ANNEXURE C**.

37. It is now settled that a legislation which, in its operation and effect, is disproportionately harsh or onerous to the object sought to be achieved or the mischief sought to be addressed, is not a "reasonable restriction" within the meaning of Article 19(2) of the Constitution and would not pass muster under that provision. Sections 124A of the Indian Penal Code fails this standard or test of a "reasonable restriction" under Article 19(2) of the Constitution for the reasons stated herein and therefore, even though " sedition" may be a ground for enacting law to abridge the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, Section 124A IPC does not fulfill the constitutional requirements of being such reasonable restriction.

38. The Applicant submits that many countries including the United Kingdom the legislation on sedition has been repealed.

39. It is submitted that this Hon'ble Court in*S. Khusboo v. Kanniamal & Anr AIR 2010 SC 3196* had appropriately opined that "*we must lay stress on the need to tolerate unpopular views in the socio-cultural space. The framers of our Constitution recognized the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes*".

40. It is submitted that in the global age of internet, where free flow of ideas has attained more significance than ever, it is pertinent that the unreasonable restriction of sedition be abolished, especially vis-à-vis the media professionals who are impeded in their jobs with arbitrary arrests and detainment. It is submitted that in this day and age, the crime of sedition finds no place in our laws and it is humbly prayed that section 124-A of the IPC be ruled unconstitutional in view of the reasons detailed in preceding paragraphs.

PRAYER

In view of the above, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

(i) Permit the Applicant to Intervene in the aforesaid Writ Petition;

(ii) pass such other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and thereby render justice.

Drawn by:

Kotla Harshavardhan & Vishakha Gupta

Advocates

Filed By:

(RAHUL BHATIA)

Advocate for the Applicant

09.07.2021

New Delhi