IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CIVIL) NO. OF 2021

IN THE MATTER OF:

S.G. VOMBATKERE …PETITIONER

Versus

UNION OF INDIA …RESPONDENTS

With:

I.A. No. _____ of 2021

Application for Exemption from

Filing Duly Attested Affidavit

PAPER – BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: PRASANNA S.

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SYNOPSIS

This Writ Petition filed in public interest, challenges the constitutional validity of Section 124A of the Indian Penal Code, 1860 (hereinafter, "the Impugned Provision") as being ultra vires Article 19(1)(a) of the Constitution read with Articles 14 and 21. The Impugned Provision was upheld in *Kedar Nath* (AIR 1962 SC 955) subject to a partial reading down. It is the case of the Petitioner that the Impugned Provision is wholly unconstitutional as the reasoning employed in *Kedar Nath* to uphold the Impugned Provision has been overruled by the larger Constitution Bench Judgments (in *R.C Cooper v. Union of India* AIR 1970 SC 564 and later reaffirmed and strengthened in *Indira Gandhi v. Raj Narain* 1975 SCC (2) 159 (5 Judges), *Maneka Gandhi v. Union of India* 1978 SCR (2) 621 (7 Judges), *I R Coelho v. State of Tamil Nadu* AIR 2007 SC 861 and more recently in *Puttaswamy v. Union of India* (2017) 10 SCC 1 (9 Judges)) which have expanded the scope, extent and the inter-relationship between Articles 14, 19 and 21 of the Constitution. In the changed legal and constitutional landscape, the said Provision ought be unequivocally and unambiguously struck down.

As succinctly put in *I R Coelho v. State of Tamil Nadu* (2007) 2 SCC 1 "The Constitution is a living document. All constitutional provisions have to be construed having regard to the march of time and the development of law"

The Impugned Provision defines 'Sedition' and prescribes a maximum punishment of life imprisonment therefor.

The Impugned Provision reads as follows-

> 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.]

The Petitioner is a seventy-nine year old citizen of India and a public spirited person. He retired after continuous service in the army for thirty five years, and in the rank of Major-General (Retd.), from the post of Additional- Director General in charge of Discipline & Vigilance at Army HQ, New Delhi. He had been awarded Vishishta Seva Medal by the President of India for his distinguished service in Ladakh.

Every citizen is entitled to fundamental rights provided in part III of the constitution. Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, subject only to Article 19(2) which saves any law that imposes 'reasonable restrictions' on the limited grounds of 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 etc.

As seen above, the Impugned Provision makes every speech or expression that "*brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India"* is a criminal offence punishable with a maximum sentence of life imprisonment. The Impugned Provision also been classified as 'cognisable' and non- bailable.

The Petitioner contends that a statute criminalising expression based on unconstitutionally vague definitions of 'disaffection towards Government' etc. is an unreasonable restriction on the fundamental right to free expression guaranteed under Article 19(1)(a) and causes constitutionally impermissible 'Chilling Effect' on speech.

This Court in *Kedar Nath* upheld the validity of the Impugned Provision where the court held that the very existence of the State will be in jeopardy if the Government established by law is subverted. The Impugned Provision however was read down to mean that only those expressions that either intend to or have the tendency of causing violence are punishable. Despite the reading down, the continued employment of the charge of sedition to silence dissent continued undeterred and has been taken judicial notice of. This prompted the Hon'ble Supreme Court to reiterate the *Kedar Nath* law in 2016 in *Common Cause v. Union of India* (2016) 15 SCC 269, directing all authorities to scrupulously follow the *Kedarnath* dictum.

This Hon'ble Court has however not had a chance to reopen the issue of constitutionality of the Impugned Provision since 1962. It is submitted that the march of the times and the development of the law has to be taken into account in dealing with such a question now, unconstrained by the *Kedar Nath* holding. It is submitted that *Kedar Nath* reasoning has to be understood as the ratio in an era where the reading of fundamental rights was rather restrictive. There has been a sea change in understanding the scope, extent and the interrelationship of fundamental rights since the 11-Judge bench decision in *R.C. Cooper* AIR 1970 SC 564 that the entire basis of the *Kedar Nath* judgment, looking only at the intent of the Impugned Provision, ought to be read as having been impliedly overruled by the development

of both domestic fundamental rights jurisprudence, as well as International human rights jurisprudence.

Briefly stated, the Impugned Provision is assailed, *inter alia*, on the following grounds.

Firstly, the jurisprudence of fundamental rights that was established by the 11-judge bench decision in *R.C Cooper v. Union of India* AIR 1970 SC 564 and later reaffirmed and strengthened in *Indira Gandhi v. Raj Narain* 1975 SCC (2) 159 (5 Judges), *Maneka Gandhi v. Union of India* 1978 SCR (2) 621 (7 Judges), *I R Coelho v. State of Tamil Nadu* AIR 2007 SC 861 and more recently in *Puttaswamy v. Union of India* (2017) 10 SCC 1 (9 Judges). Each of these decisions now establish that fundamental rights in the constitution are not to be read as isolated silos or as water-tight compartments; but are to be read as if the content of each fundamental right animates the other. The reasonableness of the restriction of free speech under 19(2) i.e. in this case the Impugned Provision, will need to considered afresh considering procedural as well as substantive due process embodied in Articles 14 and 21.

Second, Mere testing of the intent of the Impugned Provision whether being covered under the exceptions to the freedom of speech under Article 19(2) of the Constitution is not an adequate test for a legislative provision to pass constitutional muster. The effect of the Impugned Provision also has to be taken into account. The Petitioner contends that the Impugned Provision, by employing phrases like disaffection and contempt toward government, which are incapable of precise definition, causes a chilling effect on speech, constituting an unconstitutional invasion into the right of free speech.

Third, The conjoint reading of Articles 14, 19 and 21 (from *Maneka Gandhi v. Union of India* 1978 SCR (2) 621, has now evolved the jurisprudence of testing legislation curtailing fundamental rights on the anvil of substantive and procedural reasonableness, necessity and proportionality.

Fourth, The requirement of 'necessity' in part comes from India having ratified in the International Covenant of Civil and Political Rights in 1976, which in its Article 19 requires speech-limiting state action to be backed by a law and to be *necessary* on the grounds of respect for rights and reputations of others, national security etc. the court in 1962 was not and could not have been alive to the consideration of international law and international conventions in interpreting India's fundamental rights – a practice established only since *Jolly Varghese v. Bank of Cochin*, 1980 AIR 470.

Fifth, all these developments have now led to us understanding 'necessity' in the context of state action limiting fundamental freedoms as the burden being on the state to establish that such a limiting measure is '*necessary in a democratic society'* (as approved by Justice A.K. Sikri writing for himself and four others in *Modern Dental College v. State of Madhya Pradesh*,(2016)7SCC 353.

Sixth, 'reasonableness' of restrictions in Article 19 also has to be tested on the basis of whether the impugned state action is 'proportionate'. The understanding of the doctrine of proportionality under the Indian Constitution to mean the burden being on the state to show that the rights-limiting measure to be the least restrictive of all available alternatives is of recent vintage (2 Judges in *Union of India v. Ganayutham*, [1997] 7 SCC 463 and more recently, *Modern Dental*, (2016)7SCC 353. The most recent and modern articulation of the doctrine finds place in the judgment of this

Hon'ble Court in *Gujarat Mazdoor Sabha v. The State of Gujarat* 2020 SCC OnLine SC 798 wherein, this Hon'ble Court held that the

> "(i) A law interfering with fundamental rights must be in pursuance of a legitimate state aim;
>
> (ii) The justification for rights-infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a rational connection between those measures, the situation in fact and the object sought to be achieved;
>
> (iii) The measures must be necessary to achieve the object and must not infringe rights to an extent greater than is necessary to fulfil the aim;
>
> (iv) Restrictions must not only serve legitimate purposes; they must also be necessary to protect them; and
>
> (v) **The State should provide sufficient safeguards against the abuse of such interference." (emphasis supplied)**

Seventh, the doctrine of 'Chilling effect' on speech, wherein the probability of the Impugned Provision causing psychological barriers in the free exercise of the right and the court having to consider implication of that probability and the severity of the chilling effect on the validity of such provision. It is submitted that the doctrine of chilling effect had not sufficiently developed in 1962. Even in the US, the doctrine gets established only as late as 1967 starting with Justice Brennan's dissenting opinion in *Walker v. Birmingham* 388 U.S. 307 (1967). The most concrete pronouncement on a penal statutory provision being unconstitutionally vague causing a chilling effect on speech is as recent as 2015 in *Shreya Singhal v. Union of India.*

Lastly, there is no presumption as to the Constitutionality of the Impugned Provision. The Impugned Provision was inserted in IPC, 1860 by way of

an amendment in 1870, much before the coming into force of the Constitution. Eventhough there was a post-independence amendment to the provision, the substance of the Impugned Provision was enacted prior to the coming into force of the Constitution. The lack of presumption of constitutionality for pre constitutional legislative provisions was only articulated as recently as in 2018 (in *Navtej Johar v. Union of India* (2018) 10 SCC 1. Incidentally, that was the case in which the court re-examined the constitutionality of Section 377 of the Indian Penal Code, which, among other things, criminalized consensual same-sex acts; despite an earlier judgment having examined and upheld the provision.

It is therefore contended that this Hon'ble Court must consider afresh the question as to the constitutional vires of the Impugned Provision, unconstrained by the upholding of it in *Kedar Nath* (supra), considering the reason therein having been impliedly overruled, and hold that the Impugned Provision is ultra vires Article 19(1)(a) of the Constitution read with Articles 14 and 19.

Hence this Writ Petition.

LIST OF DATES & EVENTS

1275	The offence of sedition has been traced to the Statute of Westminster 1275 when the King was considered the holder of the Divine right. However, even then, to prove an offence of sedition, not only the truth of the speech but also the intent was considered a relevant ingredient. It is said that the offence of sedition was initially created to prevent speeches 'inimical to a necessary respect to government'.
14th century	It was understood that all the subjects of the rulers owed a duty of loyalty to the king. Thus, if any person committed an act detrimental to the interests of the rulers, they would be guilty of the offence of treason. Initially, the offence required that an *overt act* be committed to qualify as treason. However, by the 14th century, the scope of the offence was expanded through legislation and judicial pronouncements to include even speech in its ambit. This modified offence was known as constructive reason.
1606	The offence of seditious libel has been said to be first devised in the Star Chamber decision in *de Libellis Famosis.*

	In this case, the defendants had confessed to ridiculing some clergymen of high status. While drawing from the common law private offence of libel, the court eschewed the requirements thereof. Instead, it condemned the criticism of public officials and the government and stressed that any criticism directed at them would inculcate disrespect for public authority. It also evaded the various safeguards of the offences of Treason and Scandalum Magnatum that it was modelled on. This judgment cited no precedent even at that time. The Impugned Provision is the continuing legacy of this decision.
1870	The Indian Penal Code, enacted in 1870 did not have an express provision to punish sedition or sedition Libel. However the Impugned Provision was enacted by way of the amendment under the Special Act XVII of 1870**.** The stated object of the amendment Act was to subdue the Anti- British agenda of Indian press.
1898	Section 124A IPC was further amended in 1898 by the Indian Penal Code (Amendment) Act 1898 (Act V of 1898) providing for punishment of transportation for life or any shorter term. While the former section defined sedition as exciting or attempting to excite feelings of disaffection to the Government established by law, the amended section also made bringing or attempting to bring in hatred or

	contempt towards the Government established by law, punishable." The reason for the amendment was stated as follows: "*The law relating to riots and unlawful assemblies is very full and elaborate, but it is remarkable that the Penal Code contained no provision at all as to seditious offences not involving an absolute breach of the peace. It says nothing of seditious words, seditious libels, seditious conspiracies or secret societies. The additions made in 1870 provide to a certain extent for the punishment of such offences."* (Source: The Consultation paper on "Sedition" by Law Commission of India dated August 30, 2018)
1922	**Gandhi's guilty plea –** The British responded to Mahatma Gandhi's criticism of their policy by charging Gandhi with the offence of sedition as defined in section 124-A of the Indian Penal Code. When Gandhi was arrested and produced before the court, instead of entering a plea of "not guilty", he pleaded guilty. He stated: *"Section 124-A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long*

	as he does not contemplate, promote or incite violence... I have no personal ill will against any single administrator; much less can I have any disaffection towards the King's person. But I hold it to be a virtue to be disaffected towards a Government which in its totality had done more harm to India than any previous system."
1947	The fundamental rights sub-committee of the constituent assembly, headed by Sardar Vallabhbhai Patel, placed a draft interim report on fundamental rights before the assembly for its consideration on April 29, 1947. Article 8(a) mentioned seditious speech, it said "the right of every citizen to freedom of speech and expression: Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.". However, seditious speech was left out was the final draft of what is now Article 19(1)(a) of the Constitution.
1950 (July)	**Case of *Romesh Thapar* and *Brij Bhushan*-** The scope of Article 19(2) and the categories defined therein for the grounds of restriction of free speech under Article 19(1)(a), came up for consideration for the first time in the case of *Romesh Thapar v. State of Madras* 1950 AIR 124 The Supreme Court declared that unless the freedom of speech and expression threaten the security of or tend to overthrow the State, any law imposing restriction upon the same would not fall within the purview of Article 19(2) of the Constitution. In *Romesh Thapar* the Supreme Court had invalidated a ban imposed by the Madras government on a

	communist publication, *Cross Roads,* which had been critical of Nehru's foreign policy. In *Brij Bhushan v. State of Delhi* 1950 AIR 129 the court had similarly struck down a prior restraint imposed by the Delhi government on a Rashtriya Swayamsevak Sangh publication. Among other things, this Hon'ble Court drew a distinction between 'public order' and 'security of the State' and how the latter is a ground under Article 19(2) while the former is not.
1951	**Statement of Jawaharlal Nehru on the floor of the Provisional Parliament-** While introducing the first Constitution of India (Amendment) Bill 1951, which sought to reverse the effect of the judgment in *Romesh Thapar* and introduce, *inter alia*, 'public order' as a ground for restriction under 19(2), The then Prime Minister Nehru referred to sedition and stated: "*Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it."*

1951	**First Amendment-** Article 19(2) of the Constitution contained very limited exceptions to the right to free speech. Broadly, these were defamation, obscenity, contempt of court and the security of state. In June 1951, India's provisional unicameral Parliament passed the Constitution (First Amendment) Act, 1951. Among other things, it introduced three new exceptions to the right to free speech. The new restriction grounds included "public order", incitement or commission of an offence, or affected "friendly relations with foreign States".
1955	**1955 Amendment to section 124A** – The provision was amended by Act No.26 of 1955, substituting the punishment which earlier read as "transportation for life or for a shorter period" as imprisonment for life and/or with fine or imprisonment for 3 years and / or with fine.
1962	**Kedar Nath v. State of Bihar AIR 1962 SC 955** *Kedar Nath* was the first case in which this Hon'ble Court considered the constitutionality of the Impugned Provision. The appellant in that case had been convicted for sedition and inciting public mischief because of a speech in which he had criticized Congress, the ruling national party, for its capitalist policies, and instead advocated for the Forward Communist Party. His appeal before the High Court of Judicature at Patna was struck down. On appeal to the Supreme Court, the appellant argued that the Indian Penal Code provisions on sedition violated the right to freedom of

	expression under Article 19(1)(a) of the Indian Constitution. Subsequently, the case was transferred to a Constitutional Bench. The Constitution Bench upheld the validity of section 124A subject to a limited reading down. The Court drew a line between the terms, 'the Government established by law' and the persons for the time being engaged in carrying on the administration‘ observing: “*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”* The Court at that time sought to strike a balance (under what was the understanding of fundamental rights jurisprudence at that time) between the right to free speech and expression

	and the power of the legislature to restrict such right observing thus: … *"the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established. ... 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."*
1967	**Walker v. City of Birmingham 388 US 307 1967-** discussed the overriding duty to insulate all individuals from the "chilling effect" upon exercise of First Amendment freedoms generated by vagueness, overbreadth and unbridled discretion to limit their exercise. It is said that this is the first known instance of the Doctrine of Chilling Effect having been articulated.
1970	**R.C. Cooper v. Union of India 1970 1 SCC 248:**

	Inter alia, the 11-Judge Bench judgment of this Court in *R.C. Cooper* has been heralded as the watershed moment in the understanding of the chapter on fundamental rights in the Indian Constitution. Later, *Maneka Gandhi*, *IR Coelho* and *Puttaswamy* cases exposit on how the judgment in *Cooper* overturned the *AK Gopalan* era theory that the fundamental rights are watertight compartments . The impact of the decision in Cooper is to establish a link between the fundamental rights guaranteed by Part III of the Constitution. the fundamental rights are inter-related, Article 21 is no longer to be construed as a residue of rights which are not specifically enumerated in Article 19. Both sets of rights overlap and hence a law which affects one of the personal freedoms under Article 19 would, in addition to the requirement of meeting the permissible restrictions contemplated in clauses 2 to 6, have to meet the parameters of a valid 'procedure established by law' under Article 21 where it impacts on life or personal liberty. The law would be assessed not with reference to its object or intent but on the basis of its effect and impact on the fundamental rights. It is important to note that *Kedar Nath* reasoning proceeded only on the object and intent of retaining the Impugned Provision and sophisticated due process test on the effect of the Impugned Provision has not been known.

1976	India ratified the International Covenant on Civil and Political Rights (ICCPR), which under Article 19 thereof allowed restriction measures on free speech only the ground inter alia, of "necessity for the maintenance of public order". It is submitted that this is a much higher standard than a measure which is merely "in the interest of maintenance of public order".
1982	**AK Roy v. UOI, 1982 1 SCC 271:** this Court highlighted the requirement of crimes being defined with appropriate definiteness as it held "it is regarded as a fundamental concept in criminal law. Vague expressions like 'bring into hatred or contempt', or 'maintenance of harmony between different religious groups', or 'likely to cause disharmony or ... hatred or ill will', or 'annoyance to the public' [Sections 124-A, 153-A(1)(b), 153-B(1)(c), and 268 of the Penal Code]. These expressions, though they are difficult to define, do not elude a just application to practical situations." It is submitted that the five judge constitution bench of this Court has already noted that the Impugned Section 124A is indeed vaguely defined. What remains in issue in this Petition is a determination of whether it is unconstitutionally vague causing a chilling effect on speech.
2007	**I.R. Coelho v. State of T.N., (2007) 2 SCC 1**

	Among other things, this Court in *Coelho* held that the Constitution is a living document and that the constitutional provisions have to be construed having regard to the march of time and the development of law. It is, therefore, necessary that while construing the doctrine of basic structure due regard be had to various decisions which led to expansion and development of the law.
2009	The crime of seditious libel was abolished through the enactment of the Coroners and Justice Act, 2009 in the United Kingdom.
2015	**Shreya Singhal v. Union of India, (2015) 5 SCC 1 -** The court held that Section 66-A suffers from the vice of vagueness because unlike the offence created by Section 66 of the same Act, none of the aforesaid terms are even attempted to be defined and cannot be defined, the result being that innocent persons are roped in as well as those who are not. Such persons are not told clearly on which side of the line they fall; and it would be open to the authorities to be as arbitrary and whimsical as they like in booking such persons under the said section. The court further recognised the chilling effect of free speech. In point of fact, Section 66-A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total.

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2016	***Modern Dental College & Research Centre v. State of M.P.*, (2016) 7 SCC 353 c**ourt observed that the exercise which is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.
2017	**K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1** The coalescence of Articles 14, 19 and 21 has brought into being a jurisprudence which recognises the interrelationship between rights. That is how the requirements of fairness and non-discrimination animate both the substantive and procedural aspects of Article 21.
2018	***Navtej Johar v. UOI 2018 10 SCC 1*** held that Parliament is deemed to be aware of the constitutional limitations and hence there is a presumption of constitutionality. Where, however, a pre-constitution law is made by either a foreign legislature or body, none of these parameters are obtained. It is therefore clear that no such presumption attaches to a pre-constitutional statute like the Penal Code.
30.08.2018	A counsultation paper was issued on the law of sedition by the Law Commission, which traced the history of sedition law and also drew upon comparisons with the UK, US and Australia and suggested several questions for further

	deliberation – including the wisdom of retaining the Impugned Provision as a criminal offence.
2019	"Crime in India. statistics,Vol 1 NCRB 2019", a report by the National Crime Records Bureau was released which showed that Between 2016 and 2019, the number of cases filed under Section 124-A (sedition) of the Indian Penal Code (IPC) increased by 160% while the rate of conviction dropped to 3.3% in 2019 from 33.3% in 2016.

IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CIVIL) NO. OF 2021

S.G. Vombatkere,

Versus

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

…Petitioner

…Respondent No.1

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS OTHER COMPANION JUSTICES OF THE HON'BLE THE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE PETITIONERS ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. This Writ Petition filed in public interest, challenges the constitutional validity of Section 124A of the Indian Penal Code, 1860 (hereinafter, "the Impugned Provision") as being ultra vires Article 19(1)(a) of the Constitution read with Articles 14 and 21. The Impugned Provision was upheld in *Kedar Nath Singh v. State of Bihar* (AIR 1962 SC 955) subject to a partial reading down. It is the case of the Petitioner that the Impugned Provision is wholly unconstitutional as the reasoning employed in *Kedar Nath* to uphold the Impugned Provision has been overruled by the larger Constitution Bench Judgments (in *R.C Cooper v. Union of India* AIR 1970 SC 564 and later reaffirmed and strengthened in *Indira Gandhi v. Raj Narain* 1975 SCC (2) 159 (5 Judges), *Maneka Gandhi v. Union of India* 1978 SCR (2) 621 (7 Judges), *I R Coelho v. State of Tamil Nadu* AIR 2007 SC 861 and more recently in *Puttaswamy v. Union of India* (2017) 10 SCC 1 (9 Judges)) which have expanded the scope, extent and the inter-relationship

between Articles 14, 19 and 21 of the Constitution. In the changed legal and constitutional landscape, the said Provision ought to be unequivocally and unambiguously struck down. A true copy of the *Kedar Nath Singh* judgment is annexed herewith and marked as **ANNEXURE-P-1** (From Pg 21 to 38).

1A. The Petitioner herein a seventy-nine year old citizen of India and a public spirited person. He retired after continuous service in the army for thirty five years, and in the rank of Major-General (Retd.), from the post of Additional-Director-General in charge of Discipline & Vigilance at Army HQ, New Delhi. He had been awarded Vishishta Seva Medal by the President of India for his distinguished service in Ladakh. He was also a Petitioner in the batch of matters challenging the Constitutionality of the Aadhaar Act, the National Population Register (vide WP No. 829/2013 and WP(C) No. 220/2015 and WP(C) 797/2016) . He is also a Petitioner in the challenge against the Aadhaar amendment ordinance and the Act. (WP(C) 679/2019 and WP(C) 1077/2019). Following are his personal details.

Mobile No: _____
Annual Income: _____
E-mail Id: _____
PAN : _____

In the event that this Hon'ble Court so directs, the Petitioner undertakes to disclose the same to the Hon'ble Court and to the Respondents. The Petitioner has not approached any authority with any representation relating to the reliefs sought for herein.

2. As succinctly put in *I R Coelho v. State of Tamil Nadu* (2007) 2 SCC 1 "The Constitution is a living document. All constitutional provisions have to be construed having regard to the march of time and the development of law"
3. A brief history of the Sedition law is given in the List of Dates and is not repeated herein for the sake of brevity. However, the same may be taken

to have been reiterated herein. The same is also traced in some detail in the consultation paper released by the Law Commission on 30.08.2021. A true copy of the same is annexed herewith and marked as **ANNEXURE-P-2** (from Pg 39 to 73).

4. Every citizen is entitled to fundamental rights provided in part III of the constitution. Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, subject only to Article 19(2) which saves any law that imposes 'reasonable restrictions' on the limited grounds of 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 etc.
5. As seen above, the Impugned Provision makes every speech or expression that "*brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India"* is a criminal offence punishable with a maximum sentence of life imprisonment. The Impugned Provision also been classified as 'cognisable' and non- bailable.
6. The Petitioner contends that a statute criminalising expression based on unconstitutionally vague definitions of 'disaffection towards Government', 'Hatered', 'Contempt', 'Feelings of Enmity' etc. is an unreasonable restriction on the fundamental right to free expression guaranteed under Article 19(1)(a) and causes constitutionally impermissible 'Chilling Effect' on speech.
7. This Court in *Kedar Nath* upheld the validity of the Impugned Provision where the court held that the very existence of the State will be in jeopardy if the Government established by law is subverted. The Impugned Provision however was read down to mean that only those expressions that either intend to or have the tendency of causing violence are punishable. Despite the reading down, the continued employment of the

charge of sedition to silence dissent continued undeterred and has been taken judicial notice of. This prompted the Hon'ble Supreme Court to reiterate the *Kedar Nath* law in 2016 in *Common Cause v. Union of India* (2016) 15 SCC 269, directing all authorities to scrupulously follow the *Kedar Nath* dictum.

8. This Hon'ble Court has however not had a chance to reopen the issue of constitutionality of the Impugned Provision since 1962. It is submitted that the march of the times and the development of the law has to be taken into account in dealing with such a question now, unconstrained by the *Kedar Nath* holding. It is submitted that *Kedar Nath* reasoning has to be understood as the ratio in an era where the reading of fundamental rights was rather restrictive. There has been a sea change in understanding the scope, extent and the interrelationship of fundamental rights since the 11-Judge bench decision in *R.C. Cooper* AIR 1970 SC 564 that the entire basis of the *Kedar Nath* judgment, looking only at the intent of the Impugned Provision, ought to be read as having been impliedly overruled by the development of both domestic fundamental rights jurisprudence, as well as International human rights jurisprudence.
9. It is submitted that even in the United Kingdom, where the idea of criminalising sedition and seditious libel began, sedition has ceased to be an offence. The seditious libel was deleted by section 73 of the Coroners and Justice Act, 2009. The reasons for the abolition of sedition as an offence were stated as follows – *Firstly*, it may have a chilling effect on freedom of speech and sends the wrong signal to other countries which maintain and actually use sedition offences as a means of limiting political debate; *Second*, having an overbroad common law offence of sedition, when the same matters are dealt with under other legislation (the United Kingdom Terrorism Act, 2000), was felt unnecessary. It can be observed that in the past twelve since the repeal of criminal sedition, there have not

been any military coups or attempts to destabilize the Government of the UK. Similarly, it is submitted that India's democracy is also stable enough to sustain despite doing away with the offence of sedition – whether legislatively or vide a judicial order as sought for in this Petition.

GROUNDS

10. The Impugned Provision is challenged on the following grounds which are taken alternatively and cumulatively, without prejudice to one another. The Petitioners crave liberty to urge additional grounds at a later stage in these proceedings.

I. MARCH OF THE LAW & THE READING OF THE FUNDAMENTAL RIGHTS

A. **BECAUSE** the basis reasoning employed in *Kedar Nath* v. *State of Bihar* AIR 1962 SC 955 has been taken away by the development of fundamental rights jurisprudence and international human rights jurisprudence over the past fifty years. Particularly, the this Court has significantly expanded and exposited on the scope, extent and inter-relationship of fundamental rights – with the first radical shift and articulation finding place in the 11-judge bench decision in *R.C Cooper v. Union of India* (1969), later reaffirmed and strengthened in *Indira Gandhi v. Raj Narain* (5 Judges, 1975), *Maneka Gandhi v. Union of India* (7 Judges, 1978), *I.R. Coelho v. State of Tamil Nadu* (9J, 2007) and more recently in *Puttaswamy v. Union of India* (9J, 2017).

B. BECAUSE the constitutionality of the Impugned Provision will have to be considered based on the development of the fundamental rights and human rights jurisprudence over the past fifty years. The Constitution is a living document and each generation pours its wisdom on the understanding of fundamental rights. It is submitted

that the time is ripe for considering the constitutionality of the Impugned Provision in light of such development.

C. **BECAUSE** it has been held by a unanimous nine-judge bench of this Hon'ble Court in *I.R. Coelho v. State of T.N.*, (2007) 2 SCC 1 at page 79 that:

> **"42.** The Constitution is a living document. The constitutional provisions have to be construed having regard to the march of time and the development of law. It is, therefore, necessary that while construing the doctrine of basic structure due regard be had to various decisions which led to expansion and development of the law."

D. **BECAUSE** the entire philosophy and jurisprudence of the fundamental rights chapter of the Constitution had undergone a radical change since *R.C Cooper* (11 J) and *Maneka* (7J) and more recently reinforced by *Puttaswamy* (9J). Each of these decisions now establish that fundamental rights in the constitution are not to be read as isolated silos or as water-tight compartments; but are to be read as if the content of each fundamental right animates the other. When the Impugned Provisions were last examined for its constitutional validity, the reading of the fundamental rights chapter was based on the understanding as advanced by the Supreme Court in *A.K. Gopalan* (AIR 1951 SC 1) i.e. each fundamental right in effect excluding the other and the content of each of them being isolated silos.

E. **BECAUSE** it is also clear that the court in *Kedar Nath* merely tested the intent of the provision whether being covered under the exceptions to the freedom of speech under Article 19(2) of the Constitution; it did not for instance take into consideration the effect of the right to equality (Article 14) or due process (Article 21).

F. **BECAUSE** the conjoint reading of Articles 14, 19 and 21 (from *Maneka Gandhi*), has now evolved the jurisprudence of testing legislation curtailing fundamental rights on the anvil of substantive and procedural reasonableness, necessity and proportionality.

II. INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS

G. **BECAUSE** the requirement of 'necessity' in part comes from India having ratified in the International Covenant of Civil and Political Rights in 1976, which in its Article 19 requires speech-limiting state action to be backed by a law and to be *necessary* on the grounds of respect for rights and reputations of others, national security etc. Article 19 of the ICCPR reads as follows:

> *Article 19*
>
> 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.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and **are necessary**:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals. (**emphasis supplied**)

It is therefore submitted that the measure i.e. the penal statute needs to be shown to be "necessary" for maintaining public order and not merely "in the interest of public order" as held in *Kedarnath*.

H. **BECAUSE** the court in *Kedar Nath* was not and could not have been alive to the consideration of international law and international conventions in interpreting India's fundamental rights – a practice established only since *Jolly Varghese v. Bank of Cochin*, in 1980)

III. PROPORTIONALITY & NECESSITY

I. **BECAUSE** the understanding 'necessity' in the context of state action limiting fundamental freedoms as the burden being on the state to establish that such a limiting measure is 'necessary in a democratic society', as approved by Justice A.K. Sikri writing for himself and four others in *Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353), as follows:

> **63.** In this direction, the next question that arises is as to what criteria is to be adopted for a proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. Here comes the concept of "*proportionality*", which is a proper criterion. To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. This essence of doctrine of proportionality is beautifully captured by Dickson, C.J. of Canada in *R.* v. *Oakes* [*R.* v. *Oakes*, (1986) 1 SCR 103 (Can SC)] , in the following words (at p. 138):
> "To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be "of" sufficient importance to warrant overriding a constitutional protected right or freedom … Second … the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves "a form of proportionality test…" Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be … rationally connected to the objective. Second, the means … should impair "as little as possible" the right or freedom in question … Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance". **The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society." (emphasis supplied)**

J. **BECAUSE** the Impugned Provision fails the test of proportionality. The most recent and modern articulation of the doctrine of proportionality finds place in the recent decision of this Court in *Gujarat Mazdoor Sabha v. The State of Gujarat* 2020 SCC OnLine SC 798, wherein it was summarised as follows:

> "(i) A law interfering with fundamental rights must be in pursuance of a legitimate state aim;
>
> (ii) The justification for rights-infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a rational connection between those measures, the situation in fact and the object sought to be achieved;
>
> (iii) The measures must be necessary to achieve the object and must not infringe rights to an extent greater than is necessary to fulfil the aim;
>
> (iv) Restrictions must not only serve legitimate purposes; they must also be necessary to protect them; and
>
> (v) **The State should provide sufficient safeguards against the abuse of such interference." (emphasis supplied)**

It is submitted that penalising speech with criminal consequences, coupled with the classification of the offence as cognizable and non-bailable manifestly fails the test of proportionality as the measure is neither least restrictive, nor can be stated as being necessary in a democratic society.

IV. CHILLING EFFECT & OVERBREADTH

K. **BECAUSE** the Impugned Provision is ultra vires Article 19(1)(a) for having a chilling effect on political speech and expression. 'Chilling effect' on speech, i.e. the likely effect of state action creating psychological barriers in the free exercise of the right. The probability and severity of the chilling effect has a bearing on the validity of the vires of any provision.

L. **BECAUSE** the doctrine of chilling effect was first articulated in *Walker v. City of Birmingham, 388 U.S. 307 (1967)* **thus:**

> In the present case we are confronted with a collision between Alabama's interest in requiring adherence to orders of its courts and the constitutional prohibition against abridgment of freedom of speech, more particularly "the right of the people peaceably to assemble," and the right "to petition the Government for a redress of grievances." See, e. g., Stromberg v. California, 283 U.S. 359 ; De Jonge v. Oregon, 299 U.S. 353 ; Thornhill v. Alabama, 310 U.S. 88 ; Edwards v. South Carolina, 372 U.S. 229 ; Cox v. Louisiana, 379 U.S. 536 . Special considerations have time and again been deemed by us to attend protection of these freedoms in the face of state interests the vindication of which results in prior restraints upon their exercise, 4 or their regulation in a vague or overbroad manner, 5 or in a way which gives unbridled discretion to limit their exercise to an individual or group of individuals. 6 To give these freedoms the necessary "breathing space to survive," NAACP v. Button, 371 U.S. 415, 433 , the Court has modified traditional rules of standing and prematurity. See Dombrowski v. [388 U.S. 307, 345] Pfister, 380 U.S. 479 . **We have molded both substantive rights and procedural remedies in the face of varied conflicting interests to conform to our overriding duty to insulate all individuals from the "chilling effect" upon exercise of First Amendment freedoms generated by vagueness, overbreadth and unbridled discretion to limit their exercise. (Emphasis supplied)**

M. **BECAUSE** this doctrine of chilling effect has received recognition under Indian jurisprudence in *Shreya Singhal* (2015) 5 SCC 1, where this Court while striking down Section 66A of the Information Technology Act, 2021 exposited on the chilling effect and overbreadth thus:

> *Chilling Effect And Overbreadth*
>
> **87.** Information that may be grossly offensive or which causes annoyance or inconvenience are undefined terms which take into the net a very large amount of protected and innocent speech. A person may discuss or even advocate by means of writing disseminated over the internet information that may be a view or point of view pertaining to governmental, literary, scientific or other matters which may be unpalatable to certain sections of society. It is obvious that an expression of a view on any matter may cause annoyance, inconvenience or may be grossly offensive to some. A few examples will suffice. A certain section of a particular community may be grossly offended or annoyed by communications over the internet by "liberal views"—such as the emancipation of women or the abolition of the caste system or whether certain members of a non-proselytizing religion should be allowed to bring persons within their fold who are otherwise outside the fold. Each one of these things may be grossly offensive, annoying, inconvenient, insulting or injurious to large sections of particular communities and would fall within the net cast by Section 66-A. In point of fact, Section 66-A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total.

88. Incidentally, some of our judgments have recognised this chilling effect of free speech. In *R. Rajagopal* v. *State of T.N.* [(1994) 6 SCC 632] , this Court held : (SCC pp. 646-47, para 19)

> "*19*. The principle of *Sullivan* [*New York Times Co.* v. *Sullivan*, 376 US 254 : 11 L Ed 2d 686 (1964)] was carried forward—and this is relevant to the second question arising in this case—in *Derbyshire County Council* v. *Times Newspapers Ltd.* [1993 AC 534 : (1993) 2 WLR 449 : (1993) 1 All ER 1011 (HL)] , a decision rendered by the House of Lords. The plaintiff, a local authority brought an action for damages for libel against the defendants in respect of two articles published in *Sunday Times* questioning the propriety of investments made for its superannuation fund. The articles were headed '*Revealed : Socialist tycoon deals with Labour Chief*' and '*Bizarre deals of a council leader and the media tycoon*'. A preliminary issue was raised whether the plaintiff has a cause of action against the defendant. The trial Judge held that such an action was maintainable but on appeal the Court of Appeal held to the contrary. When the matter reached the House of Lords, it affirmed the decision of the Court of Appeal but on a different ground. Lord Keith delivered the judgment agreed to by all other learned Law Lords. In his opinion, Lord Keith recalled that in *Attorney General* v. *Guardian Newspapers Ltd. (No. 2)* [(1990) 1 AC 109 : (1988) 3 WLR 776 : (1988) 3 All ER 545 (HL)] popularly known as '*Spycatcher case*', the House of Lords had opined that 'there are rights available to private citizens which institutions of … Government are not in a position to exercise unless they can show that it is in the public interest to do so'. It was also held therein that not only was there no public interest in allowing governmental institutions to sue for libel, it was 'contrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speech' and further that action for defamation or threat of such action 'inevitably have an inhibiting effect on freedom of speech'. The learned Law Lord referred to the decision of the United States Supreme Court in *New York Times Co.* v. *Sullivan* [*New York Times Co.* v. *Sullivan*, 376 US 254 : 11 L Ed 2d 686 (1964)] and certain other decisions of American Courts and observed—and this is significant for our purposes—
>
> > 'while these decisions were related most directly to the provisions of the American Constitution concerned with securing freedom of speech, *the public interest considerations which underlaid them are no less valid in this country. What has been described as "the chilling effect*" induced by the threat of civil actions for libel is very important. Quite often the facts which would justify a defamatory publication are known to be true, but admissible evidence capable of proving those facts is not available.'
>
> Accordingly, it was held that the action was not maintainable in law."
>
> (emphasis in original)

89. Also in *S. Khushboo* v. *Kanniammal* [(2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299] , this Court said : (SCC p. 620, para 47)

> "*47*. In the present case, the substance of the controversy does not really touch on whether premarital sex is socially acceptable. Instead, the real issue of concern is the disproportionate response to the appellant's remarks. If the complainants vehemently disagreed with the appellant's views, then they should have contested her views through the news media or any other public platform. The law

> should not be used in a manner that has chilling effects on the 'freedom of speech and expression'."
>
> **94.** These two Constitution Bench decisions bind us and would apply directly on Section 66-A. 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.
>
> **5.** The petitioners' various counsel raised a large number of points as to the constitutionality of Section 66-A. According to them, first and foremost Section 66-A infringes the fundamental right to free speech and expression and is not saved by any of the eight subjects covered in Article 19(2). According to them, the causing of annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will are all outside the purview of Article 19(2). Further, in creating an offence, Section 66-A suffers from the vice of vagueness because unlike the offence created by Section 66 of the same Act, none of the aforesaid terms are even attempted to be defined and cannot be defined, the result being that innocent persons are roped in as well as those who are not. Such persons are not told clearly on which side of the line they fall; and it would be open to the authorities to be as arbitrary and whimsical as they like in booking such persons under the said section. In fact, a large number of innocent persons have been booked and many instances have been given in the form of a note to the Court. The enforcement of the said section would really be an insidious form of censorship which impairs a core value contained in Article 19(1)(*a*). In addition, the said section has a chilling effect on the freedom of speech and expression. Also, the right of viewers is infringed as such chilling effect would not give them the benefit of many shades of grey in terms of various points of view that could be viewed over the internet. The petitioners also contend that their rights under Articles 14 and 21 are breached inasmuch as there is no intelligible differentia between those who use the internet and those who by words spoken or written use other mediums of communication. To punish somebody because he uses a particular medium of communication is itself a discriminatory object and would fall foul of Article 14 in any case.

V. PRESUMPTION OF CONSTITUTIONALITY

N. **BECAUSE** the court in *Kedarnath* also could not have examined Section 124A shedding the presumption as to its constitutionality. It is only as recently as in 2018 (in ***Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1**), that the court found that pre-constitutional legislations have no legal presumption of constitutionality. Incidentally, that was the case in which the court re-examined the constitutionality of Section 377 of the Indian Penal Code, which, among other things, criminalized

consensual same-sex acts; despite an earlier judgment having examined and upheld the provision. The Court in *Navtej* at Pg. 81 held held:

> **360.** Given the aforesaid, it has now to be decided as to whether the judgment in *Suresh Kumar Koushal* [*Suresh Kumar Koushal* v. *Naz Foundation*, (2014) 1 SCC 1 : (2013) 4 SCC (Cri) 1] is correct. *Suresh Kumar Koushal* [*Suresh Kumar Koushal* v. *Naz Foundation*, (2014) 1 SCC 1 : (2013) 4 SCC (Cri) 1] judgment first begins with the presumption of constitutionality attaching to pre-constitutional laws, such as the Penal Code. The judgment goes on to state that pre-constitutional laws, which have been adopted by Parliament and used with or without amendment, being manifestations of the will of the people of India through Parliament, are presumed to be constitutional. We are afraid that we cannot agree.
>
> **361.** Article 372 of the Constitution of India continues laws in force in the territory of India immediately before the commencement of the Constitution. That the Penal Code is a law in force in the territory of India immediately before the commencement of this Constitution is beyond cavil. Under Article 372(2), the President may, by order, make such adaptations and modifications of an existing law as may be necessary or expedient to bring such law in accord with the provisions of the Constitution. The fact that the President has not made any adaptation or modification as mentioned in Article 372(2) does not take the matter very much further. The presumption of constitutionality of a statute is premised on the fact that Parliament understands the needs of the people, and that, as per the separation of powers doctrine, Parliament is aware of its limitations in enacting laws — it can only enact laws which do not fall within List II of Schedule VII to the Constitution of India, and cannot transgress the fundamental rights of the citizens and other constitutional provisions in doing so. Parliament is therefore deemed to be aware of the aforesaid constitutional limitations. Where, however, a pre-constitution law is made by either a foreign legislature or body, none of these parameters obtain. It is therefore clear that no such presumption attaches to a pre-constitutional statute like the Penal Code.
>
> ****
>
> **363.** It is a little difficult to subscribe to the view of the Division Bench that the presumption of constitutionality of Section 377 would therefore attach.

O. **BECAUSE** a five judge bench of the Constitution Bench in *A.K. Roy v. Union of India*, (1982) 1 SCC 271 : 1982 SCC (Cri) 152 at page 318 recognised the inherent vagueness and overbreadth in the Impugned Provision thus:

> The requirement that crimes must be defined with appropriate definiteness is regarded as a fundamental concept in criminal law and must now be regarded as a pervading theme of our Constitution since the decision in *Maneka Gandhi* [*Maneka Gandhi* v. *Union of India*, (1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597] . The underlying principle is that every person is entitled to be informed as to what the State commands or forbids and that the life and liberty of a person cannot be put in peril on an ambiguity. However, even in the domain of criminal law, the processes of which can result in the taking away of life itself, no more than a reasonable degree of certainty has to be accepted as a fact. Neither

> the criminal law nor the Constitution requires the application of impossible standards and therefore, what is expected is that the language of the law must contain an adequate warning of the conduct which may fall within the proscribed area, when measured by common understanding. **In criminal law, the legislature frequently uses vague expressions like 'bring into hatred or contempt', or 'maintenance of harmony between different religious groups', or 'likely to cause disharmony or ... hatred or ill will', or 'annoyance to the public' [*see* Sections 124-A, 153-A(1)(*b*), 153-B(1)(*c*), and 268 of the Penal Code]. These expressions, though they are difficult to define, do not elude a just application to practical situations**. The use of language carries with it the inconvenience of the imperfections of language. (Emphasis supplied)

It is therefore submitted that the Impugned Provision is unquestionably, unconstitutionally vague and has an impermissible chilling effect on free speech and ought to be struck down.

VI. <u>THE NEED TO STRIKE DOWN THE IMPUGNED PROVISION</u>

P. **BECAUSE** for all the reasons noted above, the judgment in *Kedar Nath* ought to be considered as a judgment that has been impliedly overruled vide the development of the law from *R.C. Cooper* onwards.

Q. **BECAUSE** it is therefore imperative that this Hon'ble Court considers the issue of the constitutionality of Section 124A of the Constitution of India afresh unconstrained by the judgment of *Kedar Nath* that merely read down the provision in light of the understanding of the fundamental rights jurisprudence in the *A.K. Gopalan* era.

R. **BECAUSE** reading down of the provision has not served the purpose and as the recent surge in the filing of sedition cases indicates, to ensure that the criminal process is not used to chill the free expression of citizens – particularly political expression critical of or against the government that is for the time being in power, it is imperative that a more effective judicial tool is employed i.e. the unambiguous striking down of the provision and to declare that all pending proceedings in respect of sedition stand closed.

11. The Petitioner has not filed any other similar petition on the same cause of action before this court or any other court. There is no pending civil,

criminal or revenue litigation filed by the Petitioner seeking similar reliefs. The Writ Petition is *bona fide*. The Petitioner has no personal interest, motive, gain or oblique reasons in the filing of the accompanying Petition and the same is being filed purely in general public interest

PRAYERS

It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:

1. Issue a writ of mandamus or any other appropriate writ, order, or direction declaring Section 124A of the Indian Penal Code, 1860 as void and inoperative for being *ultra vires* Article 19(1)(a) of the Constitution of India read with Articles 14 and 21 thereof;
2. Issue a writ of mandamus or any other appropriate writ, order, or direction declaring that all subsisting criminal proceedings before any court to the extent of such proceedings in anyway relate to a charge under Section 124A of the Indian Penal Code, 1860 stand closed to such extent;
3. Issue a writ of mandamus or any other appropriate writ, order, or direction declaring that all complaints and reports under Section 154(1) of the Code of Criminal Procedure, 1973 i.e. first information reports, to the extent that such report/s accuse/s anyone of an offence under Section 124A of the Indian Penal Code, 1860 stand quashed to such extent;
4. Issue a writ of mandamus or any other appropriate writ, order, or direction directing that no authority including any state or central police shall take any step in furtherance of investigation or prosecution of any cases in respect of and to the extent that the accusation is of an offence under Section 124A of the Indian Penal Code, 1860;

5. Pass such or other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY:

PRASANNA S,
Advocate for the Petitioner
[redacted]

New Delhi
23.06.2021