THE OFFENCE OF SEDITION- DOES INDIA REALLY NEED IT?

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"I have no desire whatsoever to conceal from this court the fact that to preach disaffection towards the existing system of Government has almost become a passion with me," declared Mahatma Gandhi in 1922, while pleading guilty to sedition as charged. "Affection cannot be manufactured or regulated by law," he went on to say memorably, describing Section 124A as the "prince among the political sections of the Indian Penal Code designed to suppress liberty of the citizen." If Gandhi thought it was a "privilege" to be charged under Section 124A, it was because "some of the most loved of India's patriots have been convicted under it" — most famously, Bal Gangadhar Tilak who, when prosecuted for his speeches and writings twice, asked each time whether he was guilty of committing sedition against the British government or against the people of the country. That this is an archaic colonial-era law that has no place in any democracy that values freedom of expression was recognised by no less than Prime Minister Jawaharlal Nehru, who told Parliament in 1951 that he found Section 124A "highly objectionable and obnoxious." "The sooner we got rid of it the better," was his opinion of the broad and inexact provision that punishes those who, by use of words, signs or visible representation, "bring into hatred or contempt" or "excite disaffection" towards the government with a maximum of life imprisonment.[1]

SECTION 124A: SEDITION[2]

Section 124-A, Indian Penal Code, 1860: Whoever by words, either spoken or written, or attemp6s 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 I- 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.

Classification of offence- Punishment—Imprisonment for life and fine, or imprisonment for 3 years and fine, or fine—Cognizable—Non-bailable—Triable by Court of Session—Non- compoundable.

[1] Repeal the seditious law- Hindu Editorial (http://www.thehindu.com/opinion/editorial/repeal-the-sedition-law/article1715761.ece) Retrieved on 8th August 2016.
[2] Indian Penal Code, 1860.

SEDITION: MEANING: ENGLISH LAW

The word Sedition does not occur in section 124-A or in the defence of India Rule. It is only found as a marginal note to section 124-A and is not an operative part of the section but merely provides the name by which the crime defined in the section will be known. There can be no justification for restricting the contents of the section by the marginal note.[3] As stated in KENNY: The law of sedition relates to the uttering of seditious words, the publication of seditious libels, and conspiracies to do an act for the furtherance of a seditious intention, sedition, whether by words spoken or written, or by conduct, is a misdemeanor at common law punishable by fine and imprisonment sir James Stephen defined a seditious intention as an intention to bring into hatred or contempt or to excite disaffection against the person of His Majesty, his heirs or successors. Or the government and constitution of the UK by law established, or either House of Parliament, or the administration not justice, or to excite His Majesty subjects to attempt otherwise than by lawful means, alteration or any mater in Church or state obey law established...or to raise discontent or disaffection amongst his majesty subjects or to promote feelings of ill will and hostility between different classes of such subjects. But an intention to show that His majesty has been misled or mistaken in his measures, to point out errors to defects in the government or Constitution, as by law established, with a view to their reformation or to exe4rcise His majesty subjects to attempt by lawful means the alteration of any matter in church or state bylaw established or to point out, in order to their removal matters which are producing or have a tendency to produce feelings of hatred and ill will between the classes of his majesty subjects is not a seditious intention.

It is the right of every citizen to discuss public affairs fully and freely but such discussions must not be directed to the incitement of unlawful acts or calculated to excite disaffection. In a twentieth century prosecution for sedition the judge told the jury that they could take into account the state of public feeling.[4]

HISTORY

This law was introduced in India in 1870 in response to increasing Wahabi activities between 1863 and 1870., This law was amended in 1898 and, according to Arvind Ganachari the framework of this section was imported from various sources- the Treason Felony Act (operating in Britain), the Common law of seditious libel, and English law relating to seditious words. Between 1870 and 1898, the British sought to suppress criticism through two legislations; the Dramatic Performances Act, 1876 that introduced

[3] Emperor v. Sadashiva Narayan, AIR 1947 PC 82.
[4] KENNY on Outlines of Criminal Law, 19th ed., para 426, p. 410.

pre-censorship of theatre, and the Vernacular Press Act of 1878 meant to control publishers and printers of the native press by introducing a system of security.[5]

The section corresponding to s. 124A was originally s. 113 of Macaulay's Draft Penal Code of 1837-39, but the section was omitted from the Indian Penal Code as it was enacted in 1860. This was a peculiar decision, given the circumstances of the First War of Indian Independence in 1857. Section 124-A was added to the Code in 1870 and at that time it was not in the present form. This section was amended in 1891 and explanations were added to it. During 1870 to 1898 the meaning of the word 'disaffection' was discussed in a number of cases. The first judicial interpretation of section 124A was rendered in the case of Queen v. Jogendra Chandra Bose,[6] where C.J. Petheram explained 'disaffection' to mean as a feeling contrary to affection; in other words dislike or hatred. Disapprobation means simply disapproval. If a person uses either spoken or written words calculated to create in the minds of the person to whom they are addresses a disposition not to obey the lawful authority to the government, or to subvert or resist the authority, if and when the occasion should arise and if he does son with the intention of creating such disposition among his hearers or readers, they will be guilty under the section.

In Queen v. Balgangadhar Tilak, strachey[7], J., agreed with the above ruling, holding that a man must not make or try to make others feel enmity of any kind towards the Government. Amount and intensity of disaffection is absolutely immaterial except perhaps in dealing with the question of punishment.

INGREDIENTS

- **Bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards, the Government of India**- The offence does not consist in exciting or attempting to excite/mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by the publication of seditious articles is absolutely immaterial. If the accused intended by the article to excite rebellion or disturbance, his act would doubtless fall within this section, and would probably fall within other sections of the penal code. If he tried to excite feelings of hatred or contempt towards the Government, that is sufficient to make him guilty under this section.[8] The quintessence of sedition is intention. Thus where a speech addressed to an audience consisting mostly of ignorant Zamidars and the intention for holding the Darga in which the speeches were delivered was unknown it was held that the intention has to be gathered solely from the speeches themselves and the effect they were likely to create on that ignorant audience. When the speaker told the audience that the government wanted to ruin those people who

[5] We are all seditious now, but when did this start? By Lawrence Liang (https://kafila.org/2010/12/06/we-are-all-seditious-now-but-when-did-this-start/) retrieved on 6th August 2016.
[6] ILR 19 Cal 35.
[7] ILR 22 Bom 112.
[8] Bal Gangadhar Tilak, (1897) 22 Bom 112.

were trying to set them on the right path, that the Englishmen had come to India to make the people addicted to drink, opium and bhang, that the executive and judiciary are partial to white men and exhorted the audience to resolve not to live under Englishmen; it was held that the speech was calculated to excite disaffection against the government and to bring into hatred and contempt.[9] It is true that it is not sedition to criticize administrative machinery or the officers of govt. but where the speaker exceeds the limits of fair criticism and his object in attacking the existing govt. is to create disaffection the speech amounts to sedition.[10]

- **Such act, attempt etc. may be done by words, either spoken or written by signs or by visible representations**- Not only the writer of seditious articles but whoever uses in any way words or printed matter for the purpose of existing feelings of disaffection to the government is liable under the section, whether he is the actual author or not.[11] For everything that appears in his paper the editor printer or publisher is as much responsible as if he had written the article himself. Whoever the composer might be, whosoever wrote or caused it to be written, the person who used it for the purpose of exciting disaffection is guilty of sedition. it is not sufficient for an accused person to say that what was put into his paper of a seditious character was put in during his absence and without his authority. If he did not authorize it, it is for him to prove that a s a fact, because it must be within h is knowledge whether any such authority was given.[12]

LANDMARK CASES WHERE SUPREME COURT INTERPRETED THE LAW

In post-independence India, however, the judgment with the most impact came in January 1962. In the case of Kedarnath versus the State of Bihar[13], the constitutional bench of the Supreme Court defined the scope of sedition for the first time and this definition has been taken as precedent for all matters pertaining to Section 124A since. Kedarnath Singh was convicted by the high court for his speech that lampooned the Crime Investigation Department and the Congress party. He accused the Congress of corruption, black-marketing and tyranny and talked about a revolution that would overthrow capitalists, zamindars and Congress leaders. The constitutional bench upheld the punishment given to Kedarnath by the high court but at the same time limited the section's scope. Towards the end, the judgment states that the section penalizes words that reveal intent or tendency to disturb law and order or that seem to incite violence. And then, it draws a line: "It has been contended that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public

[9] Kidar nath sahgal v. Emperor, AIR 1929 Lah 817.
[10]Vishambhar dayal v. Emperor, AIR 1941 Oudh 33.
[11]Bal Gangadhar Tilak, (1897) 22 Bom 112.
[12] Phanendra Nath Mitter, (1908) 35 Cal 945.
[13] AIR 1962 SC 955.

officials, might also come within the ambit of the penal section. But, in our opinion, such words written or spoken would be outside the scope of the section."[14]

Subsequent cases have further clarified the meaning of this phrase. In Indra Das v State of Assam and Arup Bhuyan v State of Assam, the Supreme Court unambiguously stated that only speech that amounts to "incitement to imminent lawless action" could be criminalized. In Shreya Singhal v Union of India, the famous 66A judgment, the Supreme Court drew a clear distinction between "advocacy" and "incitement", stating that only the latter could be punished.[15]

Therefore, advocating revolution, or advocating even violent overthrow of the State, does not amount to sedition, unless there is incitement to violence, and more importantly, the incitement is to 'imminent' violence. For instance, in Balwant Singh v State of Punjab[16], the Supreme Court overturned the convictions for 'sedition', (124A, IPC) and 'promoting enmity between different groups on grounds of religion, race etc.', (153A, IPC), and acquitted persons who had shouted – "Khalistan zindabaad, Raj Karega Khalsa," and, "Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da", late evening on 31 October 1984, i.e. a few hours after Indira Gandhi's assassination – outside a cinema in a market frequented by Hindus and Sikhs in Chandigarh.

Thus, words and speech can be criminalized and punished only in situations where it is being used to incite mobs or crowds to violent action. Mere words and phrases by themselves, no matter how distasteful, do not amount to a criminal offence unless this condition is met.

CONSTITUTIONALITY OF PROVISION OF SEDITION

An Allahabad case having held that section 124-A imposed restriction on freedom of speech not in the interest of general public declared section 124-A as ultra vires the constitution. But overruling this decision Supreme Court held section 124-A intra vires.[17]

On this point reference may be made to another SC case, which focused our attention to deletion of the words sedition from draft Art. 13(2) Constitution. It held Deletion of the word sedition from the draft Article 13(2), therefore, shows that the criticism of government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press unless it is such as to undermine the security of or to tend to overthrow the state. It is also significant that the corresponding Irish formula of undermining the public order or the authority of the

[14] A History Of The Infamous Section 124A By ATUL DEV (http://www.caravanmagazine.in/vantage/section-124a-sedition-jnu-protests) retrieved on 6th august 2016.
[15] (https://kafila.org/2016/02/12/arrest-of-kanhaiya-kumar-a-short-summary-of-the-law-of-sedition-in-india/) retrieved on 5th August 2016.
[16] 1976 AIR 230.
[17] Kedar Nath Das v. state of Bihar, AIR 1962 SC 955.

state, Article 40(6) (i) of the Constitute of Eire, 1937 did not apparently find favor with the farms of the Indian Constitution. Thus, very narrow and stringent limits have been set to the permissible legislative abridgment of the right of free speech and expression, and this was doubtless due to the realization that freedom of speech and of the press lay at the foundation of all democratic organizations for without free political discussion no public education, so essential for the proper invoke risks of abuse. Therefore, unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the state or the overthrow of it, such law cannot fall within the reservation under clause (2) of Art. 19, although the restrictions which it seeks to impose may have been conceived generally in the interest of public order. It follows that section 9(1-A) of Madras Maintenance of Public order Act, 1949 (XXIII of 1949) which authorized imposition of restrictions for the wider purpose of securing public safety or maintenance of public order falls outside the scope of authorized restrictions under clause (2), and is therefore void and unconstitutional.[18]

RECENT INCIDENTS

1. Cartoonist Aseem Trivedi, 2011. He was arrested in Mumbai under IPC Section 124 (sedition), section 66 A of Information Technology Act and section 2 of Prevention of Insults to Nation Honour Act.

2. Dr Binayak Sen was accused of sedition by the Chhattisgarh government in 2011. An Indian pediatrician, public health specialist and activist, Dr Binayak Sen is the national vice-president of the People's Union for Civil Liberties. He was accused of acting as a Maoist messenger.

3. Arundhati Roy, Hurriyat leader Syed Ali Shah Geelani and others were booked on charges of sedition by Delhi Police for their "anti-India" speech at a seminar in 2010, for advocating independence for the disputed Kashmir region.

4. Praveen Togadia was in 2003 slapped with the charge of sedition by the Rajasthan government. The charges include an attempt "to wage a war against the nation."

5. Latest case was against JNUSU President Kanhaiya Kumar who was charged by the Delhi police under this law for speaking against the hanging of the Afzal guru and was termed anti Indian. Kumar's arrest led to a public outcry over government attacks on free speech, attempts to shut down dissent, the role of media in public discourse, the rights of marginalized communities, human rights violations by security forces, vigilante politics, and even the death penalty — crucial issues that need to be debated and addressed.

These incidents have led to question At the heart of this controversy regarding the Section124-A lies a black-and-white issue: Can an Indian citizen justify and support a call for a part of the country to secede??Can a citizen point of the shortcomings of the

[18] Ramesh Thappar v. State of Madras, AIR 1950 SC 124.

government machinery?? Does he have a right to freely express himself without being charged with the offence of "Sedition"??Does he have a right to voice his opinion when he feels that his right is infringed??? The Answer to all these questions still remain unanswered, irrespective of the fact that these sentiments against such behavior is legally enshrined in Section 124A of the IPC, written in the late 19th century — more than a hundred years ago — by the imperialist British.

VOICE OF CONCERN

The Law Commission in its 42nd report had favored amendments to Section 124A. While it wanted the scope of actions that would be punishable under the clause to be widened, it wanted the punishment to be fixed at a maximum seven years and/or a fine. At present, a person convicted under the section can be sentenced to a prison term, either up to three years or for life — nothing in between. However, nothing was done to implement those recommendations.

Even England from where we got the law in the first place has also repealed it in early 2010. One of the reasons cited for scrapping these offences — obsolete though they had become — was that their formal existence in Britain was used by other countries to justify their retention and use them to suppress political dissent. There is no place in a democracy for a law that conflates disaffection with disloyalty and regards trenchant criticism as a form of treason.

Amnesty international has voiced its concerns against the misuse of the law stating that… "However the law continues to be used to suppress critics. Successive governments in India have deployed it against journalists, activists and human rights defenders. In 2015, the law was used to arrest a Dalit folk singer in Tamil Nadu for songs criticizing the state government, and a community leader in Gujarat protesting for quotas in education and employment."

Soli Sorabjee, an eminent jurist has also spoken against the archaic law in the light of the aftermath of the incident involving Kanhaiya Kumar.

"In India, we cannot possibly countenance — we simply cannot live under — a regime that expresses like sentiments."

DRAWBACKS AND IRRELEVANCE OF THE SECTION 124A

Since its origin in the court of Star Chamber in England, the law of sedition has been defined by uncertainty and non-uniformity in its application. By keeping its scope deliberately vague, generations of members of the ruling political class have ensured that they have a tool to censor any speech that goes against their interests. The courts have also been unable to give a clear direction to the law. While the final position on the law in India was laid down as early as 1960, the law of sedition is characterized by its incorrect application and use as a tool for harassment. Thus, some of the reasons for which people

have been booked under the provision (and often incarcerated) include liking a Facebook page,[19] criticizing a popular yoga expert,[20] cheering for the Pakistani team during a cricket match versus India,[21] asking a question about whether the stone peddlers in Jammu and Kashmir were the real heroes in a university exam,[22] making cartoons that allegedly incite violence[23] and making a speech at a conference highlighting the various atrocities committed by the armed forces.[24] An analysis of the judgment of the Supreme Court in Kedar Nath itself demonstrates certain deficiencies in how the law is currently understood. There has been a shift in how we understand 'security of the state' as a ground for limiting the freedom of speech and expression. Further, a change in the nature of the government and the susceptibility of the common people to be incited to violence by an inflammatory speech has also reduced considerably. Even the maintenance of 'public order' cannot be used as a ground to justify these laws as it is intended to address local law and order issues rather than actions affecting the very basis of the State itself. Drawing inspiration from the repeal of the law of sedition in England, it may also be argued that the law of sedition is now obsolete. Various other statutes govern the maintenance of public order and may be invoked to ensure public peace and tranquility. In light of the above observations, it is time that the Indian legislature and judiciary reconsider the existence of provisions related to sedition in the statute books. These provisions remain as vestiges of colonial oppression and may prove to undermine the rights of the citizens to dissent, protest against or criticize the government in a democracy

The procedural compliance in making an arrest on mere filing of complaint under section 124A is inevitable and carries the effect of causing "chilling effect" on the right of free expression. We must remember that procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. If the procedure has the potential of being misused and abused, then it is the responsibility of the legislature and the judiciary to mold it to bring it in consonance with the constitutionally guaranteed rights. The Supreme Court in 2014,

[19] Times News Network, Facebook "like" case: No evidence of sedition, govt. tells HC, January 30, 2013, available at http://articles.timesofindia.indiatimes.com/2013-01-30/kochi/36635179_1_national-flag-facebook-post-sedition (Last visited on august 5th, 2016).
[20] The Indian Express, Sedition charge against Digvijay over remark against Ramdev, June 6, 2011, available at http://www.indianexpress.com/news/sedition-charge-against-digvijay-overremark-against-ramdev/799912 (Last visited on august 6th , 2016).
[21] NDTV, Outrage over Sedition Charges against Students who cheered Pakistan, March 6, 2014, available at http://www.ndtv.com/article/india/outrage-over-sedition-charges-againststudents-who-cheered-pakistan-492250 (Last visited on august 6th, 2016).
[22] India Today, Kashmir University lecturer released, January 2, 2011, available at http://indiatoday.intoday.in/story/kashmir-university-lecturer-released/1/125303.html (Last visited on August 5th, 2016).
[23] India Today, Anti-corruption cartoonist Aseem Trivedi arrested on sedition charges, September 9, 2012, available at http://indiatoday.intoday.in/story/anti-corruption-cartoonistaseem-trivedi-arrested-on-sedition-charges/1/216643.html (Last visited on 8th august 2016)
[24] Press Trust of India, Sedition case registered against Arundhati Roy, Geelani, November 29, 2010, available at http://www.ndtv.com/article/india/sedition-case-registered-against-arundhati-roy-geelani-69431 (Last visited on 8th august, 2016).

in the case of *Arnesh Kumar v State of Bihar* has issued the guidelines to be followed before making an arrest under section 498A of IPC due to the misuse of the section. Similar guidelines may also be provided in the light of judicial interpretation of section 124A making it obligatory to establish a prima facie case and obtaining of Courts permission before arresting a person under section 124A.

SCRAP IT ALTOGETHER OR AMEND IT?

The problem with the law of sedition is despite being interpreted by the Supreme Court in various judgments; the government in power continues to misuse it against those who are actively involved in disowning the policies of the government of the day. There is urgent need to either repeal the law in entirety or to provide guidelines so that it can't be misused. Ironically being England, who introduced us to this law, has itself repealed it in 2010. But democratic India even with all its bitter experience of the operation of this law by the colonial government retained it and used it liberally against its people taking refuge under a Supreme Court decision validating it.

A close examination of IPC clearly points out that there are other offences against public tranquility as well ranging from the member of, joining, hiring people to join, or continuing an unlawful assembly to Rioting, assaulting or obstructing a public servant trying to suppress a riot, provocation with the intent to spark a riot, and promoting enmity between different groups on the basis of religion, race, place of birth, residence, language etc. Section 149 to section 155 deals with such acts, which are seditious, violent, and against public order by applying these other provisions of IPC. Hence there will be no need for specific provision for the maintenance of issue of public order.

There is no place in a democracy for a law that conflates disaffection with disloyalty and regards trenchant criticism as a form of treason. What was once an instrument by British colonialism to suppress the freedom struggle cannot be retained by the state to silence the voices of its own people. It's time Section 124A was sent to where it really belongs — to the scrapheap of repealed laws.[25]

Democracy has no meaning without freedoms and sedition as interpreted and applied by the police and governments are a negation of it. Hence, before the law loses its potency, the Supreme Court, being the protector of the fundamental rights of the citizens has to step in and evaluate the law and may declare **Section 124A unconstitutional if necessary.**

The sedition law is excessively vague and broad, making it an easy tool to stifle dissent and debate. There is no good way to apply Section 124A. It does not comply with international human rights law. It violates the right to freedom of expression under the Indian Constitution. And it goes against India's tradition of tolerance.

[25] The Indian Penal Code, 1860

At this juncture, it is important to point out that the democratic edifice of our country is not fragile to be easily shattered by ways of speeches in public places or by printing an article in the print media. In other words, the unity and integrity of India and the legitimacy of the Indian state are not as weak as it was in the case of the British colonial regime to be threatened and shattered by the speeches or the writings of a section of the political class.

- Despite the fact that sedition was a colonial law meant to suppress the voice of Indian people, the law enforcement agencies today have been using it against artists, public men, and intellectuals criticizing the governments.
- It appears that the government and its agencies are following the law enunciated by the Privy Council and not by the Supreme Court in Kedarnath. It is also being said that the governments in free India continue to use it for the very purpose for which the colonial government used it.

CONCLUSION

There is an urgent need to review this judgment of the Supreme Court and declare sedition unconstitutional or alternatively, parliament should repeal it at the earliest. If someone raises slogans against India or endangers the security of India, he should be dealt with under appropriate laws. The law of sedition is too colonial, too dangerous and too destructive of the basic freedoms of the people. It should be scrapped.

Criticism against the government policies and decisions within a reasonable limit that does not incite people to rebel is consistent with freedom of speech and expression. Currently the section is slapped against any discording entity, without any fairness. It is this grey area, which needs to be corrected. What place does a colonial legacy which, in its logic, believes that people are bound to feel affection for the state, and should not show any enmity, contempt, hatred or hostility towards the government established by law, have in a modern democratic state like India? This question lies at the heart of this essay, which examines how these laws impact the ability of citizens to freely express themselves and limit the ability to constructively criticize or express dissent against governments. However, in spite of the Supreme Court narrowing the scope of sedition, and in spite of the more recently evolved tests to determine when mere speech or expression can be prosecuted, governments have routinely invoked Section 124-A with a view to restricting even benign forms of dissent. To argue against sedition does not tantamount to arguing in favor of absolute free speech. That words which directly provoke violence or which directly threaten the maintenance of public order deserve censure is unquestionable, especially given India's constitutional structure. But that's not what the offence of sedition seeks to achieve. At its core, it is a devastating provision that is meant to assist in crushing all opposition to the ruling dispensation. Its use continues to have the effect of chilling free speech and expression in India. *Section 124-A of the IPC, negates the right to dissent, which is an essential condition of any reasonable government. Viewed thus, it is Section 124-A that is 'anti-India', that is opposed to the idea of a legitimate, liberal democratic state.*

