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Revisiting the Law of Sedition in India: A Critical Study in the Light of the Jnu Fiasco

by
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I. INTRODUCTION

When looked at from a general point of view, the term sedition implies an act which causes or incites hatred or contempt towards the established government of the state. The words treason and sedition are deeply interconnected.

Black's Law Dictionary defines sedition as: "*..... communication or agreement which has as its objective the stirring up of treason or certain lesser commotions, or the defamation of the government. Sedition is advocating, or with knowledge of its contents knowingly publishing, selling or distributing any documents which advocates, or, with knowledge of its purpose, knowingly becoming a member of any organization which advocates the overthrow or reformation of the existing form of government of this state by violence or unlawful means. An insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquility of the state....*"¹

Also, treason is defined as: "*.....a breach of allegiance to one's government usually committed through levying war through against such government or by giving aid or comfort to the enemy....*"²

Thus, it is clear that sedition as an action may or may not result in treason. Treason is a more serious offense as compared to sedition.



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Sedition, as a concept, has a very wide horizon, which includes all the acts (whether by publication, visual representation, selling and distribution of seditious matter, etc.) that may incite hatred, contempt, violence or even treason against the government. From the meaning, it is quite clear that the ultimate motive behind every seditious activity is to overthrow or reform the established government. It is also important to note that violence and other unlawful means are used to attain such objective.

The flipside may be that citizens of state may, by using lawful or peaceful means, advocate positive reforms in the existing government. That, of course, is the essence of every genuine democracy. But, the moment the citizens resort to acts of violence, grave insurrection or rebellion, sedition is constituted, which ultimately incites treason, offense against state of the highest degree.

Attempting to or actually inciting violence or waging war against the state of one's allegiance is without a shred of doubt a vile activity which should not go unpunished. It is also a fact that acts of sedition may vary in degree of graveness, but no such degree, no matter how trifling, should go unnoticed.

II. LAW OF SEDITION IN INDIA

Now, let us analyze law of sedition as it stands in India. The law is heavily influenced by the provision of UK's Sedition Act, 1661.

Section 124A of the Indian Penal Code, 1860 reads: "*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



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to excite hatred, contempt or disaffection, do not constitute an offence under this section.

It may be further provided that sedition is a cognizable, non-bailable and non-compoundable offence triable by the Court of Session.

It is clear from Explanations (2) and (3) that, attempting to bring about reformation in the policies of the government by using lawful means and without inciting violence, hatred or contempt does not constitute sedition.

Also, when we look at Explanation (1), it shows that the expression "disaffection" is wide enough to include all feelings of enmity which might also be expanded to include treason, which is a grave offence in the US jurisdiction. This could well be the reason to provide for "imprisonment for life" because all other seditious acts that do not amount to treason are reasonably subject to lesser degree of punishment, as it is provided.

So, it can be deduced that the law of sedition in India is somewhat an intersection of US and UK jurisdictions and is pretty much runs on the right track. It is only the implementation of this provision that seems to have fluttered in the past and is even baffling in the current scenario.

III. THE JNU FIASCO: A CASE AGAINST THE LAW OF SEDITION

The recent arrest of the JNUSU President Kanhaiya Kumar on sedition charges has caused an outrage among the masses. Moreover, Congress Vice-President Mr. Rahul Gandhi, Delhi Chief Minister Mr. Arvind Kejriwal and several other renowned personalities were also booked for sedition because they condemned state action and visited JNU campus to support the students against whom police had moved. This drastic move by the government has resulted into political turmoil. Also, academicians and activists across the country are marching against government policies. Arguments are extended that the Indian government is coming rather heavily and ruthlessly on acts of dissent. While, a larger part of the nation is arguing that JNU has been engaged in anti-nationalist activities for a long time and such gross acts by the students in the name of freedom of speech and expression must not go unpunished.

Amid this polarisation, the fact that begs the question is that whether Section 124-A of the IPC that has recently been denounced as being obsolete and redundant should be done away with.



The critics of Section 124-A have raised the following arguments and have contended that the said provision should be repealed because:

- (1) The provision was formulated so as to be used by the British government to suppress acts of rebellion;
- (2) The provision is draconian and is an arbitrary instrument in the hands of the state to suppress acts and speeches of dissent and disapproval; and
- (3) The provision is in derogation of the Indian Constitution and stifles the freedom of speech and expression which also includes right to dissent and right to criticize the policies of the existing government.

These arguments can be countered by asking several reasonable questions:

- (1) Should acts of violence and the attempts to incite hatred and contempt against the government be condoned in all cases and circumstances?
- (2) Isn't there is a dividing line between freedom of speech and expression and anti-national propaganda?
- (3) Doesn't Section 124-A provide adequate protection to peaceful dissents and lawful assemblies where such acts aim at reforming the established government?
- (4) Is there an issue with the provision itself or the implementation of it?
- (5) Even if someone is falsely or unreasonably charged with sedition, isn't the judiciary, which is considered to be the guardian of rights of the citizens, there to protect the victims against such state actions?

So, ultimately it all boils down to the fact that it's not the provision that is obsolete and redundant but the faulty implementation of it that is causing such commotion. Of course, one can't ignore the political undertones and ideological disparities that give rise to such national polarisation over an issue as miniature as a criminal provision which has been there for over a century. So, it is not the provision to blame but the political mindset of the country which is being controlled by the influential few.

One may agree that the police action against the student was rather harsh and uncalled for. Universities like JNU have always been known for providing productive learning environment and erudite debates which aim at constructive criticism and proficient changes in order to promote social, political and economic welfare of the nation. But, somewhere the fact that political propagandas are manipulating the atmosphere of the University cannot be ignored. Some of the activities in which the JNUSU was engaged



can hardly be qualified as patriotic and in national interest. There was a pungent smell of radical ideology and political mind game.

In other words, Section 124-A is considered as an enabler for those in power. Since, an educational institution is one of the most sacred places for the exchange of ideas and opinions, for debates, peaceful assemblies, reformative initiatives, etc. and it certainly is not a wise thing for the officials to invade and slap sedition charges merely because they don't agree with the views supported by a particular student base. But we are constantly forced to think as to where one draws a line between healthy exchange of intellectual resources and downright rebellion against the government. It

is an issue which seeks debate.

The cardinal question that knocks on our conscience is: "...would the removal of Section 124-A really help the citizens against state actions of suppressing their dissent?"

IV. JUDICIAL TRENDS RELATING TO THE LAW OF SEDITION

The Indian judiciary has been of a varied opinion regarding the constitutional validity of Section 124-A. In *Kedar Nath Singh v. State of Bihar*², Section 124-A was struck down as unconstitutional being contrary to freedom of speech and expression as guaranteed under Article 19(1)(a). However, the first amendment to the Constitution by inserting the words "in the interest of public order" removed the difficulty to a certain extent. In my view, Section 124-A was never in derogation of Article 19(1)(a) and the first amendment only but reinforced the provision.

The essence of the offence of sedition under section 124-A, I.P.C., is the intention with which the language of a speech is used and that intention has to be judged primarily from the language itself. In forming an opinion as to the character of speech charged as sedition, the speech must be looked at and taken as a whole, freely and fairly, without giving undue weight to isolated passages and without pausing upon an objectionable sentence here or a strong word there, and, in judging of the intention of the speaker, each passage, should be considered in connection with the others and with the general drift of the whole.⁴

It is important to note that under the Indian law of sedition, the events at the public meeting, even if completely true, do not even come close to



establishing an offence. In *Kedar Nath Singh case*⁵, 5 judges of the Supreme Court - a Constitution bench - made it clear that allegedly seditious speech and expression may be punished only if the speech is an 'incitement' to 'violence', or 'public disorder'. Subsequent cases have further clarified the meaning of this phrase. In *Indra Das v. State of Assam*⁶ and *Arup Bhuyan v. State of Assam*⁷, the Supreme Court unambiguously stated that only speech that amounts to "incitement to imminent lawless action" can be criminalized. In *Shreya Singhal v. Union of India*⁸, the famous 66A judgment, the Supreme Court drew a clear distinction between "advocacy" and "incitement", stating that only the latter could be punished.⁹

It is true that it is not sedition to criticise 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. In cases under Section 124-A, I.P.C., the Courts have not to see the effect on the mind of the people and they are concerned with the construction of the speech, and the speech has to be taken as a whole and not just in pieces. A man may criticize or comment upon any measure or act of the Govt. and freely express his opinion upon it. He may express condemnation but so long as he confines himself to that he will be protected, but if he goes beyond that he must pay the penalty for it. The question of intention is always an important factor in such cases.¹⁰

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*¹¹, 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.¹²



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V. SEDITION UNDER SECTION 124-A VIS-à-VIS ARTICLE 19(1)(A)

There is a huge debate that Section 124-A, as it stands, is in violation of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution.

According to Article 19(1)(a), all citizens shall have the right to freedom of speech and expression.

Now, proponents and champions of freedom of speech and expression advocate that the freedom guaranteed under Art. 19(1)(a) is of the highest magnitude and is the living essence of a democracy. It is further contended that every citizen of India has the right to form an opinion about the nation and to freely express it.

But, these crusaders comfortably ignore Article 19(2) which runs as: *"....nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.."*

Now, according to me, Section 124-A is nothing but an embodiment of the principle laid down under Article 19(2). Section 124-A can be easily understood as a guard or the protector of sovereignty and integrity of India.

So, while repealing Section 124-A, why not get rid of reasonable restrictions provided under Articles 19(2), 19(3), 19(4), 19(5) and 19(6) of the Constitution? Did the makers of our Constitution envision an unbridled and unfettered freedom to the citizens without having the slightest regard being given to the interest of the nation itself?

Further, repealing Section 124-A would decriminalize anti-nationalist and anti-government activities not only by the citizens but also by aliens. The defenders of the freedom of speech and expression should know that the fundamental freedoms under Article 19(1) are available to citizens only while Section 124-A punishes seditious acts by citizens as well as non-citizens. So, while advocating the repeal of Section 124-A as a derogator of Article 19(1), these defenders are giving freedom in the hands of non-citizens to resort to anti-nationalist movements.



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Here, an analogy can be drawn of Section 377. Liberals and LGBT rights activists are pressing hard for the repeal of Section 377 as being unconstitutional. They should know that Section 377 doesn't criminalise homosexual relations only. It also criminalizes vile unnatural acts such as bestiality. By advocating the repeal of Section 377, we are also legalizing and motivating sexual crimes against animals.

The point being, instead of resorting to extremism and denouncing your own legal system as unconstitutional and unfair, why not call for a reasonable debate about bringing harmonious and beneficial changes which would lead to maximum justice and minimum commotion.

VI. SECTION 124-A VIS-à-VIS SECTION 66-A (IT ACT): A MISCONCEIVED ANALOGY

Many activists are drawing parallels with the law against cyber abuse i.e. Section 66-A if the Information Technology Act, 2000 which is again a fallacious assertion.

The Supreme Court, on a petition filed by an activist (Shreya Singhal) struck down Section 66-A for being vague and unambiguous. Section 66-A didn't define any particular crime coming within the ambit of cyber jurisprudence. Further, it was quite clear from the language of the provision that it was meant for stifling freedom of speech and expression on cyberspace. It was debated to be against internet freedom, and to a great degree, it was so.

However, a direct comparison of the draconian nature of Section 66-A with Section 124-A is misconceived and misguided. The major point in support is that Section 66-A nowhere protects the integrity and sovereignty of the established government in a democracy. It just creates a cage for the cyberspace within which netizens have to operate. Section 124-A, on the other hand, is concerned with those acts which have an effect of causing hatred and contempt for the government, and if interpreted in the light of current scenario, the provision will also include seditious acts committed through internet or through any other means of modern communication.

Section 66-A is much restricted in its scope of operation (*i.e.* internet and computer resource) and there is no reason to believe that other relevant provisions of the IPC will not include acts of intimidation committed by using computer resources. So, in true sense, it is Section 66-A which is redundant not Section 124-A.

Anti-sedition activists have also asserted the fact that other provisions of the IPC are sufficient to deal with the acts of inciting violence and hatred



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against the state and that Section 124-A (which was added later in the IPC by the British Government to stifle the people from raising their voices against the Crown) is nothing but an instrument to suppress dissent and freedom of speech and expression. It has also been contended that Section 124-A has been used time and again by the Indian government to suppress meaningful debates which is against the sacrosanct nature of democracy.

First of all, in my view, there is no such provision in the IPC that guards the state from insouciant representations from people that cause or tend to instill in persons ill-will, hatred, contempt or enmity against the state. Also, the law in itself doesn't seem to be unreasonable or draconian. But, if a certain law is arbitrarily used by those in power to promote their ideology and agenda and to blithely stifle any reasonable and reformative voice, then it turns into a whole different ball game.

VII. CONCLUSION

Political strategies should not be allowed to be premised on the fact that the Indian Penal Code is an obsolete law and needs an overhaul. Considering the dynamic nature of our society, well regulated debates across the nations should be conducted so that a peaceful solution can be attained. These haphazard ventures of extremism and libertarianism should be averted in the interest of peace and prosperity of the nation.

The law of sedition as provided under Section 124-A is quite clear in its meaning

and intent and a person with reasonable prudence would not see it as an obstacle in the way of free speech and expression but as a legal instrument to keep a check on anti-state activities.

Further, judicial pronouncements in this regard have clearly laid down the principle that anyone can fairly criticize government policies and actions and demand reformations as long as they don't incite or attempt to incite violence, rebellion, hatred or contempt against the established government of the state.

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¹ Black's Law Dictionary, Sixth Edition, St. Paul, Minn. West Publishing Co., 1990.

² *Ibid.*

³ AIR 1962 SC 955 : 1962 Supp (2) SCR 769.

⁴ *Hanumanthaiya v. Govt. of Mysore*, (1948) 52 Mys HCR 265.

⁵ AIR 1962 SC 955 : 1962 Supp (2) SCR 769.

⁶ (2011) 3 SCC 380.

⁷ (2011) 3 SCC 377.

⁸ (2015) 5 SCC 1.

⁹ Lawrence Liang, A Short Summary of the Law of Sedition in India, available at <http://thewire.in/2016/02/13/a-short-summary-of-the-law-of-sedition-in-india-21472/> (accessed on 16-03-2016).

¹⁰ *Vishambhar Dayal Tripathi v. Emperor*; 1940 SCC OnLine Oudh 43 : AIR 1941 Oudh 33.

¹¹ (1995) 3 SCC 214.

¹² Lawrence Liang, A Short Summary of the Law of Sedition in India, available at <http://thewire.in/2016/02/13/a-short-summary-of-the-law-of-sedition-in-india-21472/> (accessed on 16-03-2016).

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