1. USE AND MISUSE OF SEDITION LAW: SECTION 124A OF IPC

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In recent times, there has been an increase in the instances in which sedition charges were pressed against intellectuals, human rights activists, filmmakers, university teachers, students, and journalists.

Origin of sedition law in modern India

- The law was originally drafted in 1837 by Thomas Macaulay, the British historian-politician, but was inexplicably omitted when the IPC was enacted in 1860.
- Section 124A was inserted in 1870 by an amendment introduced by Sir James Stephen when it felt the need for a specific section to deal with the offence, as a response to the rising Wahabi movement. It was one of the many draconian laws enacted to stifle any voices of dissent at that time.

What is sedition?

124A Sedition. -- Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished 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.

Initially, the section only used the term “disaffection", which was interpreted by colonial judges to refer to acts or speeches that incited people to disobey the government. However, once the British realized that clever Indian nationalists were taking advantage of the loophole in the law to frame incendiary speeches that made no mention of disobedience, they added the words “hatred" and “contempt", more or less turning the offence into one for capturing thought crimes.

Left ambiguous and vague, the law of sedition came to good use for the country's rulers as a method of crowd control, in a way. Open to ambiguous interpretation with an added clause, it was used to famously smack down the dissenting" Bal Gangadhar Tilak, and later, in prosecuting Mahatma Gandhi in 1922. "Section 124-A under, which I am happily charged, is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen," said Mahatma Gandhi, in response to the charges against him, and he couldn"t have been more correct.

Sedition and Article 19 of Constitution of India

Article 19 of Constitution of India provides that: -

Art 19(1) All citizens shall have the right (a) to freedom of speech and expression;

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

Sedition and Art 19 during Constituent Assembly debates

Despite the widespread opprobrium and contempt in which sedition was held, as a tool of the colonial rulers, in a rather surprising turn of events, the Fundamental Rights Sub-Committee of the Constituent Assembly expressly included it as grounds for restricting free speech in its first draft of the fundamental rights. The Assembly objected strongly, with Somnath Lahiri sarcastically asking Sardar Vallabhbhai Patel whether he needed even more protection from his own people than the tyrannical British did. The next day, sedition was quietly removed from the draft, only for it to make another appearance during the second reading of the Constitution. Once again, the Assembly protested vehemently, with many members recalling their own prosecutions during the nationalist movement; and once again, it was swiftly withdrawn. When Article 19(1)(a) finally came into being, "sedition" was not among the permissible restrictions under Article 19(2).

Arguments in support of Section 124A:

Section 124A of the IPC has its utility in combating anti-national, secessionist and terrorist elements

It protects the elected government from attempts to overthrow the government with violence and illegal means. The continued existence of the government established by law is an essential condition of the stability of the State

If contempt of court invites penal action, contempt of government should also attract punishment

Many districts in different states face a Maoist insurgency and rebel groups virtually run a parallel administration. These groups openly advocate the overthrow of the state government by revolution

Against this backdrop, the abolition of Section 124A would be ill-advised merely because it has been wrongly invoked in some highly publicized cases

Arguments against Section 124A:

Section 124A is a relic of colonial legacy and unsuited in a democracy. It is a constraint on the legitimate exercise of constitutionally guaranteed freedom of speech and expression.

- The British, who introduced sedition to oppress Indians, have themselves abolished the law in their country. There is no reason, why should not India abolish this section.
- The terms used under Section 124A like 'disaffection' are vague and subject to different interpretation to the whims and fancies of the investigating officers.

  IPC and Unlawful Activities Prevention Act have provisions that penalize "disrupting the public order" or "overthrowing the government with violence and illegal means". These are sufficient for protecting the national integrity. There is no need for Section 124A.
- Dissent and criticism of the government are essential ingredients of robust public debate in a vibrant democracy. They should not be constructed as sedition. Right to question, criticize and change rulers is very fundamental to the idea of democracy.

Development in 1979

India ratified the International Covenant on Civil and Political Rights (ICCPR), which sets forth internationally recognized standards for the protection of freedom of expression.

What is the viewpoint of the Law Commission of India?

- In its 39th Report (1968), the Law Commission had rejected the idea of repealing

the section.

- In its 42nd Report (1971), the panel wanted the scope of the section to be expanded to cover the Constitution, the legislature and the judiciary, in addition to the government to be established by law, as institutions against which 'disaffection' should not be tolerated.
- In August 2018, the Law Commission of India published a consultation paper recommending that it is time to re-think or repeal the Section 124A of the Indian Penal Code that deals with sedition

In the recent consultation paper on the sedition, the Law Commission has suggested invoking 124A to only criminalize acts committed with the intention to disrupt public order or to overthrow the Government with violence and illegal means. People should be at liberty to show their affection towards their country in their own way. For doing the same, one might indulge in constructive criticism or debates, pointing out the loopholes in the policy of the Government.

The consultation paper adds expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and and illegal means.
Every irresponsible exercise of right to free speech and expression cannot be termed seditious. For merely expressing a thought that is not in consonance with the policy of the Government of the day, a person should not be charged under the section.

Landmark judgements

I. The Queen-Empress vs. Bal Gangadhar Tilak (1897)

Bal Gangadhar Tilak, staunch advocate of India's freedom was charged with sedition on two occasions. The first in 1897 for speeches that allegedly incited the violent behaviour of others, which resulted in the death of two British officers. He was convicted and released on bail in 1898, and in 1909 prosecuted again for seditious writing in his newspaper Kesari. Incitement to violence and insurrection was immaterial in the eyes of the presiding Privy Council in regards to the culpability of a person that's been charged with sedition.

II. Kedar Nath Singh vs. State of Bihar (1962)

This was a landmark case, the first case of sedition tried in the court of Independent India, where the constitutionality of the very provision was challenged and the Supreme court clearly differentiated between disloyalty to the country"s government and commenting on the measures of the government without inciting public disorder by acts of violence.

The Supreme Court imposed a narrower scope of interpretation, holding only those matters that had the intention or tendency to incite public disorder or violence as legally seditious.

III. Dr. Binayak Sen vs. State of Chhattisgarh (2007)

Dr. Binayak Sen was charged for sedition, amongst other things, for allegedly aiding naxalites, and sentenced to life imprisonment at the Session Court in Raipur. He was accused of helping insurgents, who were very active in the region at the time, by passing notes from a Maoist prisoner that was his patient to someone outside the jail. Denying all charges against him, Dr. Sen stated he was under the constant supervision of prison officials during his treatments so such an action would not be possible. It was his criticism of the killings committed by a vigilante group that prompted his arrest and subsequent accusations, Dr. Sen stated to The Wall Street Journal. Salwa Judum, is the group he"s referring to, designed and supported by the state government of Chhattisgarh to curb the insurgency in the villages of indigenous tribes where it thrived, according to them. But Dr. Sen, who"s a human-rights activist apart from being a paediatrician, claims that the group's real job is to clear village land that is rich in iron ore, bauxite and diamonds for it to be quarried.

His arrest gained a lot of international attention, and the U.S.-based Global Health Council awarded Dr. Sen its 2008 Jonathan Mann Award for global health and human rights in recognition of his services to poor and indigenous communities in India. In May later that year, 22 Nobel laureates sent a letter to the Indian government criticizing the incarceration and asking that he be released to receive the award in person. "We also wish to express grave concern that Dr. Sen appears to be incarcerated solely for peacefully exercising his fundamental human rights…and that he is charged under two internal security laws that do not comport with international human rights standards," they said in the letter.

IV. Aseem Trivedi vs. State of Maharashtra (2012)

Controversial political cartoonist and activist, Aseem Trivedi, best known for his anti-corruption campaign, Cartoons Against Corruption, was arrested on charges of sedition,

in 2010. The complaint, filed by Amit Katarnayea who is a legal advisor for a Mumbai-based NGO, condemns Trivedi"s display of insulting and derogatory sketches, that depicted the Parliament as a commode and the National Emblem in a negative manner having replaced the lions with rabid wolves, during an Anna Hazare protest against corruption, as well as posting them on social networking sites.

As reported by India Today, members of India Against Corruption (IAC) claimed that the cases were foisted on Trivedi by the government, as the government was angry with their anti- corruption crusade. Mayank Gandhi of the IAC said, "The case has been registered simply because Aseem had participated in the BKC protest organized by Anna Hazare and had raised his voice against corruption. So the government is trying to scuttle his protest in this manner." Trivedi"s case seriously questioned freedom of speech and expression in the country we a young man got arrested for lampooning evident corruption in the country. It"s acceptable that some may find his cartoon offensive and in bad taste, but sentencing a person to life in prison for such an act is too extreme.

V. Shreya Singhal vs. Union of India (2012-15)

This case is monumental in India"s jurisprudence as its judgement took down Section 66A of the IT Act, sought to be in violation of Article 19 (1) of the Constitution of India that guarantees the right to freedom of speech and expression to all citizens. A student of law at the time, Shreya Singhal filed a petition in 2012 seeking an amendment in the section 66A, triggered by the arrest of two young girls in Mumbai, for a post on Facebook that was critical of the shutdown of the city after the death of Shiv Sena leader, Bal Thackeray; one of them posted the comment, the other merely liked" it.

VI. In **Common Cause & Another v. Union of India,** Writ Petition (Civil) No. 683 Of 2016. 05-09-2016, Mr. Prashant Bhushan, learned counsel for the petitioners prayed for the following reliefs

a. Issue an appropriate writ making it mandatory for the concerned authority to produce a reasoned order from the Director General of Police (DGP) or the Commissioner of Police, as the case may be, certifying that the 'seditious act' either lead to the incitement of violence or had the tendency or the intention to create public disorder, before any FIR is filed or any arrest is made on the charges of sedition against any individual.

b. Issue an appropriate writ directing the Ld. Magistrate to state in the order taking cognizance certifying that the "seditious act" either lead to the incitement of violence or

had the tendency or the intention to create public disorder in cases where a private complaint alleging sedition is made before the Ld. Magistrate.

c. Issue an appropriate writ directing for a review of pending cases of sedition in various courts to produce an order from the DG or Commissioner of Police, as the case may be, certifying that the "seditious act" either lead to the incitement of violence or had the tendency or the intention to create public disorder in cases.

d. Issue an appropriate writ directing that investigations and prosecutions must be dropped in cases where such a reasoned order as prayed for in Prayers (a), (b) and (c) is not provided and the act in question involved peaceful expression or assembly."

The Court held that 'we are of the considered opinion that the authorities while dealing with the offences under Section 124A of the Indian Penal Code shall be guided by the principles laid down by the Constitution Bench in Kedar Nath Singh v. State of Bihar [1962 (Suppl.) 3 SCR 769].' Except saying so, we do not intend to deal with any other issue as we are of the considered opinion that it is not necessary to do so.. The writ petition was accordingly disposed of.

VII. S.G. Vombatkere Versus Union of India WP (C) No.682 OF 2021, CJI N.V. Ramana, Justice Surya Kant and Justice Hima Kohli on May 11, 2022, held that all pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused. If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration.

Conclusion: The rigors of Section 124A of IPC is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime. There is conflict of security interests and integrity of the State on one hand, and the civil liberties of citizens on the other. There is a requirement to balance both sets of considerations, which is a difficult exercise. Sedition law dates back to 1898, and pre-dates the Constitution itself, and is being

misused. Till the re-examination of the provision is complete, it will be appropriate not to continue the usage of the aforesaid provision of law by the Governments.