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SEDITION — ILLOGICAL EQUATION OF GOVERNMENT WITH STATE

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'The real issue is that the law of sedition contained in Section 124A of the IPC is unconstitutional' | Photo Credit: Getty Images/iStockphoto

In its 279th Report, the Law Commission of India has recommended the retention of Section 124A of the Indian Penal Code which contains the Law of Sedition. It has also recommended enhanced punishment for this offence in the name of national security. While Section 124A provides for a minimum imprisonment of three years, the commission recommends a minimum of seven. In 2022, the Supreme Court of India had ordered a stay on all existing proceedings and also on the registration of fresh cases (S.G. Vombatkere vs Union of India) under sedition upon the Union Government assuring the Court of a review of this law at the earliest. The Court's stay order was in consideration of the fact that this law was widely misused by the law enforcement authorities.

The law of sedition in India has a long and infamous history. Section 124A was incorporated in the Indian Penal Code in 1870. The purpose was to suppress the voice of Indians who spoke against the British Raj, as the government did not want any voice of dissent or protest. The wording of Section 124A clearly reveals the intention of the colonial government. Sedition is an offence against the government and not against the country, as many think. The offence is in bringing or attempting to bring in hatred or contempt or exciting or attempting to excite disaffection towards the government established by law. The offence is committed by spoken or written words, by signs or by any other means. Thus, the gist of the offence is bringing a government into hatred or contempt or causing disaffection towards the government of the day.

Editorial | **End the debate: On the Law Commission's recommendation on sedition**

The law of sedition was defined and applied in two different ways during the British period. The first major case was Queen Empress vs Bal Gangadhar Tilak 1897 in which the Bombay Court found Bal Gangadhar Tilak guilty of sedition for writing a couple of articles in Kesari, a Marathi weekly, invoking Shivaji, which was interpreted as exciting disaffection towards the British government. Judge Stratchy explained the law as: "The offence (Sedition) consists in exciting or attempting to excite in others certain bad feelings towards the government. It is not the exciting or attempting to excite mutiny or rebellion or any sort of actual disturbance great or small.... but even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance

to the authority of the government that is sufficient to make him guilty under the Section." Later, the Privy Council upheld this exposition of law. Thus,sedition meant exciting or attempting to excite bad feelings towards the government. It was a very draconian law.

The second case was Niharendu Dutt Majumdar And Ors. vs Emperor which was decided by the Federal Court. Acquitting the accused Majumdar, Sir Mauris Gwyer, Chief Justice, explained the law as: "Public disorder or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence."

These two statements of the law of sedition given by two courts in British India differ from one another. One defines sedition as disaffection, which was interpreted as 'political hatred of government' and comes within the mischief of sedition. The other interprets it to mean that the offence is committed only when there is incitement to violence or disorder.

It may be noted that the Privy Council, the highest appellate court of that time, approved the law stated by Justice Stratchy in Tilak's case. Further, it is said that the opinion of the Privy Council on sedition was not brought to the notice of the Federal Court when it decided Majumdar's case. Otherwise it would have followed the Privy Council's decision.

The brief journey into the British era is necessary to better understand the judgment in Kedarnath vs State of Bihar (1962) by the Constitution Bench of the Supreme Court and the Law Commission's recommendations for incorporating the essence of that judgment.

Kedarnath decided the constitutionality of sedition. The Court held that it is constitutionally valid for two reasons. One, sedition, though an offence against the government, is against the state because the government is a visible symbol of state and the existence of the state will be in jeopardy if the government is subverted. Second, Article 19(2) imposes restrictions in the interest of the security of the state which has wider amplitude and which includes the law on sedition.

Sedition is an offence against the government. Anyone who causes disaffection towards the government is liable to be prosecuted under this law. Disaffection has been defined as 'political hatred' towards the government by the full Bench of the Bombay High Court which upheld the punishment of Tilak. So, causing political hatred towards the government in the minds of the public is the offence of sedition. In this sense, it clearly violates the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution. In a democratic republic where people have the freedom to change a bad government, disaffection towards a government cannot be an offence. In fact, it is a part of the democratic process and experience. Therefore, making it an offence directly conflicts with the fundamental rights of citizens. We cannot expect citizens to have any affection towards a bad government.

The law declared by the Privy Council was final, according to which even a gesture which indicates political hatred towards the government comes within the mischief of sedition. Obviously, sedition contained in Section 124A goes against Article 19(1)(a).

However, the Supreme Court had, in an attempt to declare sedition constitutionally valid, admittedly adopted the Federal Court's approach and held that Section 124A is valid but can be invoked only when the words or gestures have a tendency to incite violence. The Court was aware that sedition, as it is worded in Section 124A in IPC and interpreted by the Privy Council, could not have remained in the statute book after the Constitution came into force in 1950. The Court was also conscious of the fact that sedition, as a reasonable restriction on the right of speech and expression, was deleted from the draft Constitution by the Constituent Assembly.

The implication was clear. Sedition was not meant to be a reasonable restriction. But the Court wanted to retain sedition because it was genuinely worried about an imminent communist revolution in the country, which Kedarnath, a local communist in Begu Sarai in Bihar was advocating. But, on a closer scrutiny, we will find that the position taken by the court in Kedarnath is not radically different from Tilak. As per Kedarnath, a tendency to incite disorder would amount to sedition, and actual disorder need not occur. So, in substance there is not much difference between Kedarnath and Tilak.

The Law Commission has suggested that the tendency to incite disorder should be incorporated in Section 124A. The commission defines tendency as a slight inclination. It is a policeman who will detect the tendency to incite disorder in a speech or article, and the citizen will be behind bars for seven years or even for life. In fact, the Kedarnath judgment did not soften the law on sedition. If anything it has brought it closer to the judgment in Tilak without mitigating the rigour of the law. The recommendation for the enhancement of punishment defies common sense when there is a universal demand for the scrapping of this law. The commission could not see the absurdity of a law which punishes citizens of a democratic country for making comments which may cause disaffection towards a government which they have the power to remove.

The real issue is that the law of sedition contained in Section 124A of the IPC is unconstitutional. The Law Commission failed or did not want to see the fallacy in the Kedarnath judgment which did not in effect soften this harsh law but declared that it is constitutionally valid. Kedarnath equates government with state, which is illogical in the context of a democratic republic. Therefore, its attempt to bring sedition within the framework of reasonable restriction under Article 19(2) is constitutionally impermissible.

P.D.T. Achary is a former Secretary General, Lok Sabha

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