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Sedition Laws of India: An Analysis of the 279th Law Commission Report

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ABSTRACT

Law Commission of India is a government made executive body with the role of researching and advising the government about legal reforms in India. In its 279th Report, the Commission concluded, by upholding the sedition laws of India i.e. Section 124A of the Indian Penal Code (IPC). Instead of striking down the law, it gave certain recommendations to the government for its proper implementation, after observing the reasons as to why it was being asked to be repealed in the first place. It aimed to fix the alleged misuse and misapplication of the law, and answered the remark on these laws being outdated with respect to contemporary times. The paper deals in detail the analysis of this particular Report of the Law Commission by using a doctrinal method of research.

Keywords: *Sedition, Report, Law Commission, Section 124A, IPC.*

I. INTRODUCTION

The 279th Law Commission Report was published on 2nd June 2023 which was aimed at discussing the future of sedition laws of India. Section 124A of the Indian Penal Code (IPC) describes sedition as 'attempts to excite disaffection towards the Government established by law in India.'[2] In the report, the Law Commission broadened the scope and ambit of Section 124A of the IPC, making the punishments stricter and laying down procedural guidelines to avoid its misuse. Thus, retaining the sedition laws.

The topic was brought into limelight when the Supreme Court while adjudicating the case of S.G.Vombatkere v. Union of India (2022)[3], looked into sedition laws of India and the relevant section of the IPC, where they were challenged to be violative of the fundamental right of freedom of speech provided to every citizen of India. It was the 'misuse of the law' that was the fundamental reasoning of the petitioners, given its non-bailable provisions with punishment which can range from up to three years to life imprisonment, making it no less than a Draconian Law.

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[2] Indian Penal Code, 1860, No. 45, Acts of Parliament,1860.
[3] S.G. Vombatkere v. Union of India, (2022) 7 SCC 433

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Through an order, the special bench of the then Chief Justice of India N.V. Ramana, Justice Surya Kant and Justice Hima Kohli had put all FIRs, pending cases and proceedings relating to Section 124A of the IPC into abeyance. An affidavit was presented by the Union Government, wherein, the government agreed the sedition laws of India had a tag of colonial baggage and highlighted the importance of free speech in a democracy like that of India. It talked about the importance of protection of civil liberties and respect for human rights. The affidavit however had a primary condition with reference to the review of sedition laws of India. It was that any review should be done with respect to the idea of protection of the sovereignty and integrity of India.

The then Chief Justice of Indian N.V. Ramana had also called out sedition laws to be a 'colonial law' which was originally brought into force to suppress the Indian Independence Movement and the associated freedom fighters. He questioned as to whether these laws are still required in India, post 75 years since it gained its independence from the colonial rule.

II. KEDAR NATH SINGH JUDGEMENT

The very first time that the constitutional validity of Section 124A of IPC was challenged before the Supreme Court of India was in the case of 'Kedar Nath Singh v. State of Bihar'[4]. The five-judge bench gave its verdict by upholding the validity of Section 124A.

The Court had observed that the sedition laws which were brought into effect in the British ruled India was not a product of colonization but rather the same had been imposed in England itself for centuries, thus emphasizing its importance and need by a State, to bring about stability in its territory and punish those who jeopardize the same. This part of the report was aimed to curb the comments made by Justice N.V. Ramana on the 'colonial' nature of sedition laws.

The Court further explained the reason as to why Section 124A was put in Chapter VI of the IPC which talks about the offences against the State. It was held that Sedition is one such offence which can subvert the government that has been established by the law or bring about public disorder by the use of actual violence or incitement to violence. The Court also acknowledged the Explanation Clauses that have been added to the Section in question. These clauses clarify the distinction between penal and non-penal actions including words, signs or visible representation, which are used to express disapproval towards the government. Only those actions, which while expressing such disapproval, would result in incitation of violence and destruction of public order would be penal and those which fail to do so would be non-penal in

[4] Kedar Nath Singh v. State of Bihar, 1962 Supp (2) SCR 769

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nature. The Court thus struck a balance between the right to freedom of speech and expression and the restrictions that can be put on them by the government.

It is critical to note that according to the Court, proof of violence is not essential to establish the offence of sedition. While adjudicating the case, the "tendency test" of the United Kingdom was relied upon rather than the "imminent danger test" of the United States of America.[5] The reason being that the main idea revolves around the tendency or incitement of violence and not the actual violence or its imminent threat. This was a crucial factor which led to the conviction of Kedar Nath Singh by the Supreme Court.[6]

III. GROUNDS FOR RETENTION OF SECTION 124A

The following five grounds were used by the Law Commission in its 279th report to substantiate the reasons for the retention of Section 124A of the IPC:

- P.J. Fitzgerald states that "the fundamental requirement of any society is the ability to protect itself against annihilation or subjection; and the chief duty of any government is to safeguard the State and its institutions against external and internal attack." [7] Section 124A of the IPC serves as the primary and traditional means to address the terror cases by suppressing tendencies in the immediate interest of the nation, even after the presence of Central or State made legislations such as Unlawful Activities (Prevention) Act, 1967 or the Maharashtra Control of Organised Crimes Act,1999 etc.. Also, the ever increasing use and impact of social media as tools of propagation of ideas, be it productive or destructive, often as a result of foreign powers, demands the presence of a piece of legislation in the country, to deal with the cases arising of this fashion. Section 124A fits quite appropriately to such needs and demands to suppress all subversive activities before their inception.
- The report finds Section 124A to not be violative of the fundamental right of speech and expression as provided to each and every citizen of the nation under Article 19(1)(a) of the Indian Constitution. The Supreme Court in *Kedar Nath Singh*, held Section 124A of IPC to be constitutional on the grounds that it was considered as a reasonable restrictions to the right to freedom of speech and expression as under Article 19(2).
- The presence of special laws and anti-terror legislations which are in force in India such

[5] Manoj Kumar Sinha & Anurag Deep, *Law of Sedition in India and Freedom of Expression* 248 (The Indian Law Institute, New Delhi, 2018).
[6] *Ibid.*
[7] P.J. Fitzgerald, *Criminal Law and Punishment* 83 (Oxford University Press, I962).

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as the Unlawful Activities (Prevention) Act, 1967 and the National Security Act, 1980 do not eliminate the need of Section 124A of IPC. While of the two above mentioned Acts, the former was formulated to deal with activities of a terrorist or subversive nature, the latter was formulated to deal with preventive detention only. Such types of legislations aim to prevent and punish the commission of offences which are detrimental towards the State. However, Section 124A of IPC seeks to curb the unlawful or violent overthrow of a democratically elected government established by the law. Therefore, the presence of counter-terror legislations in India does not fulfil the role of sedition laws in place, given in the absence of the sedition laws, much more stricter provisions of the counter-terror legislations would be applied on an accused, who tries to incite violence against the government established by the law.

- The report stated that the colonial origin of any piece of legislation is not a valid ground for its abrogation. This argument would leave the framework of the entire legal system of India to be unconstitutional and void as it is all a result of colonial legacy. The report stated that the analysis of the contemporary usage and need of any piece of legislation associated with colonial legacy is required to find about its actual relevance in present day India.
- According to the report, the mere fact that other countries such as Canada, Australia, and others with past colonial experience have repealed sedition laws in their respective countries does not provide sufficient grounds for India to do the same. The primary reason stated by the Commission being that parameters such as history, geography, population, diversity etc. of these countries including USA and UK cannot be compared to India and its circumstances. Most of these countries in the name of abrogation of sedition laws have either made cosmetic changes to the existing sedition laws without effecting the core substance of the offence or have merged their sedition laws with pre-existing anti-terror legislations.

IV. RECOMMENDATIONS MADE BY THE COMMISSION

The Commission through its report made the following four recommendations to the Government in relation to the sedition laws of India:

- To prevent the vague interpretation of the law, and to bring about greater clarity in its usage and understanding, the report recommended through amendments, the incorporation of the ratio of the *Kedar Nath Singh* in the Section 124A of IPC. This would prevent the misinterpretation and misapplication of the law by the concerned

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authorities, thus preventing its misuse.

- The report also recommended procedural guidelines for preventing misuse of Section 124A. It recommended the addition of a proviso to Section 154 of Code of Criminal Procedure, 1973 (CrPC) which states that no FIR shall be registered for an offence under Section 124A of IPC without a preliminary inquiry being conducted by a police officer of rank not less than that of Inspector and based on the report, the Central or State Government shall allow the registering of FIR on that matter.
- The report highlights the odd nature of the punishment awarded under Section 124A of IPC which is either up to three years of imprisonment with fine or life imprisonment with fine or just fine. This gives the courts no room to award punishments based on circumstances and material substances of the case. Thus, a punishment of up to seven years of imprisonment has been recommended instead of three years. This is also recommended to bring about uniformity in the punishments as mentioned under Chapter VI of the IPC which talks about offences against the State.
- The report also proposed amendments to the Section 124A of IPC by means of insertion of certain new words to the already existing clauses. The Report recommends the insertion of the words 'tendency to incite violence or cause public disorder' in the provision. It more clearly defines 'tendency' as provocation of violence or public disorder rather than proof of actual violence or imminent threat to the same.

V. CONCLUSION

The 22nd Law Commission of India in its 279th Report recommended the Indian Government to retain the existing sedition laws under Section 124A of the Indian Penal Code,1860 with certain amendments. The report emphasized heavily on the judgement of *Kedar Nath Singh*, which was the first time when the constitutional validity of Section 124A was challenged before the Supreme Court. The Court had upheld its validity in its judgment.

The entire issue was brought up again in *S.G. Vombatkere*, wherein, the then CJI N.V. Ramana had put all pending cases, appeals and investigations relating to Section 124A into abeyance. The court recognized the vulnerability of the said laws to misuse and misapplication by the concerning authorities. Also, the fact that sedition laws in India were representatives of colonial legacy was also kept as a ground by Bench for its abrogation. Through an affidavit filed by the Central Government in the case regarding the same matter, there arose the need for input of the Law Commission of India.

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The Commission analyzed the rulings prior and post the judgement of *Kedar Nath Singh*, while keeping this particular judgement at its core of analysis. It acknowledged the existence of circumstances prevailing in different parts of India and the threats to India's internal security and the need for imposition of anti-terror legislations to counter such state of affairs and above all how they are insufficient to replace the sedition laws of the country. It also talked about how the sedition laws are structured and/or repealed in different countries of the world, be it commonwealth nations or otherwise. It aimed to bring about more clarity as to why the sedition laws in force in India are and need to be different than these countries.

It justified its recommendation for retention of Section 124A of IPC on grounds of safeguarding unity and integrity of India, proving sedition as reasonable restrictions under Article 19(2), incapability of special terror laws to replace sedition laws, colonial legacy being invalid reason for its abrogation, and difference in applicability of such laws in different parts of the world due to incomparable circumstances of countries.

It thus recommended incorporation of the ratio of *Kedar Nath Singh* to Section 124A, procedural guidelines to prevent its misuse, removal of oddity of punishment under the said law and amendments to the language of the law by addition of certain words and phrases, thus removing ambiguity in interpretation.

In the commendable Report of 88 pages by the Law Commission of India, it favors the retention of the alleged 'Draconian Laws' of India. It has acknowledged and subsequently provided recommendations to curb its misuse and misapplication by the concerning authorities. However, the bigger challenge that remains, is the success in practical application of these recommendations. In the world's biggest democracy of India, sedition stands out as one of the most controversial and talked about provisions of the law and the upcoming success or failure of the nation and its politics would largely depend upon the proper implementation of the same. Where voice of the people is of utmost importance in the functioning and existence of a democracy, laws of sedition even after such amendments could prove detrimental for the people.

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