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Persistence of Colonial Legislations in India through the Lens of Sedition

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Sedition, enshrined in Section 124A of the Indian Penal Code[1] has been the fulcrum of a wide spectrum of discourse across social, political as well as legal spheres wherein it has largely been villainised, and rightfully so as I will argue. However, in this paradigm of extensive discourse, it is imperative to understand the origins of the law on sedition in India and the manner and form in which it has developed into the look it has adopted today. Such an analysis aids an understanding of the basis with which sedition crept into the Indian legislative set-up and the pillars on which it continues to stand. In addition to this, it also helps contextualise the critical discourse surrounding the law of sedition in a manner that helps gauge the rationale behind this critique. Finally, it does a good job of answering the overarching question, one that is omnipresent, of what happens next as far as the legal status of sedition is concerned. This paper aims to effectively conduct this very analysis of the legislative position of sedition and, thus, in the process answer all the questions that such an analysis promises to answer.

Keywords: *sedition, law, legislation, Indian penal code, constituent assembly*

CONTEXTUALISING SEDITION: HISTORY OF THE LAW ON SEDITION IN INDIA

Sedition, as a crime, was birthed in monarchical England to protect the King and the unelected parliament from dissent and criticism. The position of this law in 18th century England can be

[1] Indian Penal Code 1860, s 124A

captured effectively through Chief Justice Holt's explanation wherein he says, "If the people should not be called to account for possessing an ill opinion of the government, no government can subsist. For it is necessary for all governments that people should have a good opinion of it."[2] Contrary to typical defamation, the 'truth' of the ill opinion in question did not weigh a defence. This truth possessed the capability of causing greater damage to the reputation of the Government because of which, keeping it mum was high up their priority list.

With India being subject to over two centuries of British colonialism, Bhatia (2018) argues, it was reduced to a reflection of their ideas and a "laboratory for British legislators."[3] Unsurprisingly, sedition pervaded India and found a place in Indian criminal law. The codification of Indian laws began only in the 1830s. Before this, Indian laws were a complex amalgamation of English common law, East India Company rules, personal laws like Hindu and Muslim law, Parliamentary Charters and Acts and so on.

The legislative history of sedition in India can thus be traced back to 1860 when it was first introduced into the realms of Indian law through the Indian Penal Code. It has, since then, proliferated many folds into the robust legislation it finds itself in today. In this context, it becomes imperative to analyse the development of these very legislations from their rudimentary stages and, in the process, dissect how the legislators have approached this issue over time.

Indian Penal Code (IPC)

The Indian Penal Code[4] was first drafted in 1837 by the First Law Commission. This Commission was chaired by Thomas Babington Macaulay, someone who is deemed the architect of most ills of the Penal Code. The provision on sedition can be found in Section 113 of this draft, wherein the punishment proposed for sedition was life imprisonment.[5] The year 1857 saw the 'Great

[2] Gautam Bhatia, *Offend, Shock or Disturb: Free Speech under the Indian Constitution* (Oxford University Press 2018)
[3] *Ibid*
[4] Indian Penal Code 1860
[5] Siddharth Narrain, 'Disaffection' and the Law: The Chilling Effect of Sedition Laws in India' (2011) 46 (8) Economic and Political Weekly <http://www.jstor.org/stable/41151791> accessed 18 April 2023

Indian Rebellion' unfold, following which Queen Victoria, the British monarch at the time, proclaimed in 1858 that formally placed India under the governance and rule of the British monarchy. This resulted in the attempt at codification of criminal law in India in the form of the Indian Penal Code of 1860. The section on sedition, however, was absent from this version of the Code written by Macaulay due to what legal experts believe was an 'oversight' and an 'accident'.

Post the 1857 revolt, the Wahabi Movement led by Syed Ahmed Barelvi which was initiated to revive the true meaning of Islam turned into an armed resistance against the British authorities. This led to the British labeling the Wahabis as traitors and carrying out operations to suppress their dissent. In light of this, albeit with some verbal alterations by Sir James Fitzjames Stephen, the sedition provision was added to the Penal Code in 1870 through s.5 of Act 27 of 1870[6]. The section, thus enacted, read:

124A. *Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.*

This section remained, as enacted in 1870, till 18th February 1898. The nearly three decades between these two dates saw innumerable cases arise before the courts whose discourse was mainly centered around the meaning of the word 'disaffection' in Section 124A of the 1870 Indian Penal Code. The Bangobasi case (Queen Empress v Jogendra Chander Bose)[7], the Tilak Trial (Queen Empress v Bal Gangadhar Tilak, 1897)[8] and the Ram Chandra Narayan case (Queen Empress v Ram Chandra Narayan, 1890)[9] were three among the several noteworthy cases that debated the issue.

[6] Indian Penal Code (Amendment) Act 1870
[7] *Queen Empress v Jogendra Chander Bose* [1892] I.L.R 19 Cal 35
[8] *Queen-Empress v Bal Gangadhar Tilak* [1898] I.L.R 528
[9] *Queen-Empress v Ram Chandra Narayan* [1898] I.L.R 155

Amalgamating the court's interpretations in these cases, the section was amended again in 1898 through the Indian Penal Code (Amendment) Act 1898.[10] The singular explanation of the term 'disaffection' was replaced by three independent explanations of the same. This was a significant move at the time as it helped erase a considerable degree of ambiguity that surrounded the application of this law. The earlier construction of the Section accorded greater flexibility to the State apparatus in applying it in their favour, while also being protected in the courts due to the wide interpretation of the same.

While this amendment brought the sedition section to appear closer to as it stands today, there was still a gap between the two stages of the section. It was only after multiple amendments in the form of several Adaptation Orders of 1950, 1951 and 1955, among others, that this gap was bridged. Section 124A of the Indian Penal Code thus read and continues to read even today:

124A. *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.*[11]

The constitutionality and validity of this section have been a subject of much debate since then, in cases like Romesh Thappar v State of Madras (1950)[12], Tara Singh Gopi Chand v The State (1950)[13] and Kedar Nath v State of Bihar (1962)[14]. However, this section has withstood various examinations and inquiries by the judiciary to find a place in the Indian Penal Code even today.

The sedition provision is a colonial construct first brought to the fore by Thomas Babington Macaulay. The legislators have, thus, altered and refined this law time and again to make the section more comprehensive and less ambiguous but have refrained from interfering with its

[10] Indian Penal Code (Amendment) Act 1898
[11] Indian Penal Code 1860, s 124A
[12] *Romesh Thappar v State of Madras* (1950) AIR 124
[13] *Tara Singh Gopi Chand v The State* (1950) CriLJ 449
[14] *Kedar Nath v State of Bihar* (1962) AIR 955

essence and main idea. This refrain coupled with the continued existence of Section 124A[15] serves as evidence of the Indian legislature's yearning to maintain a law that prohibits dissent against the Government and is symbolic of their general attitude towards voices critical of them that creep into public discourse.

Criminal Procedure Code (CrPC)

The offence of sedition is extensively covered in the Indian Penal Code and doesn't form a comprehensive part of the Criminal Procedure Code[16]. In Section 124A[17], the act of sedition has been criminalised and the CrPC lays down the procedure for the administration of substantive criminal law. The CrPC was passed for the first time by the British Parliament in 1882 and was subsequently amended several times after that, the most notable of these amendments coming in 1898, and 1973 through the 41st Law Commission report.

As per the former two versions of the Code, sedition was listed as a non-cognizable offence that could be tried by a Court of Session, Chief Presidency Magistrate, District Magistrate, or Magistrate of the first class. This meant that police officers had the authority to carry out arrests for this crime without warrants. The Criminal Law (Second Amendment) Act, of 1983[18] brought significant changes to the sections surrounding sedition. It listed sedition as a cognizable offence, requiring the police to arrest without warrants, which could be tried only by Courts of Session.

In addition, if the magistrate of a district sees the words of an individual as capable of giving rise to riots and public nuisance, they can invoke Section 144 of the CrPC[19] which, in brief, deals with the power of the magistrate to issue written statements ordering the material facts, in cases of nuisance or apprehended danger. This gives the magistrates excessive authority bearing in

[15] Indian Penal Code 1860, s 124A
[16] Code of Criminal Procedure 1973
[17] Indian Penal Code 1860, s 124A
[18] Criminal Law (Amendment) Act 1983
[19] Code of Criminal Procedure 1973, s 144

mind the fact that the terms 'nuisance' and 'apprehended danger' are not well defined and allow the authorities to interpret them in a manner suitable to themselves.

The amendment to shift the crime of sedition from Section 155[20] of the CrPC, dealing with non-cognizable offences to Section 154[21], dealing with cognizable offences elucidates how legislators have approached this topic over the years. Through various decisions, they have made the law more stringent and increased the degree with which it can be enforced and used to quash dissent against the Government – essentially meaning that along with the criminalisation of sedition, even the procedures to bring such criminalisation into effect have consciously been made harsher.

Dramatic Performances Act, 1867[22]

This Act was introduced as Act No. 19 on 16th December 1876 by the lawmakers of British India to control and police Indian theatre. Theatre, through acts and plays, was transformed into an important medium for Indians to voice their dissent against the colonial rule in place. As a result of this, an act that gave the authorities the power to control theatre in India was of utmost priority to them. In this paradigm, the Dramatic Performances Act was passed in 1876 which empowered the state governments to prohibit any play that they found to be scandalous or capable of exciting disaffection against the Government. It further made those disobeying these prohibitions liable to be penalised with imprisonment up to a maximum of three months, a fine, or both. This Act continues to survive for the better part of post-independence India and was repealed only in 2017 through the Repealing and Amending (Second) Act, 2017.[23]

Constituent Assembly debates

The Constituent Assembly, under the presidency of Rajendra Prasad, was the chief body formulated for framing the Constitution of the newly independent India. The Assembly, in its

[20] Code of Criminal Procedure 1973, s 155
[21] Code of Criminal Procedure 1973, s 154
[22] Dramatic Performances Act 1876
[23] The Repealing and Amending (Second) Act 2017

166 days of sitting, oversaw a great deal of discourse and debate that has been compiled into 12 volumes and safely stored in the archives. A major chunk of these deliberations centred around the Draft Constitutions which were prepared by the Drafting Committee, headed by B.R. Ambedkar.

Since its inception, sedition was always a topic that commanded the Assembly's time and attention, and a lot of the discourse surrounded it. Section 124A[24] was a tool of the British empire to quash the Indian fight for freedom, with nationally popular figures being their primary targets. The use of this law by the British transcended just the political sphere and entered the fields of art and culture as well with authorities repressing music, dance, tales and so on. On account of this history of the law, the topic of sedition was high on the priority list of the makers of India's Constitution.

The Fundamental Rights Committee, chaired by J.B. Kripalani, was one of the 22 committees that were appointed to oversee the different aspects of constitution-making. It was a sub-committee of the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas, which was chaired by Sardar Vallabhai Patel. In the Interim Report on Fundamental Rights articulated by the Committee, sedition was overtly included as a restriction on free speech in Clause 8(a)[25].

Clause 8(a). *The right of every citizen to freedom of speech and expression:*

Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable. [26]

This draft Bill was debated extensively in the Constituent Assembly on 29th April 1947, wherein it was tabled for discussion by Patel before the president of the Assembly, Rajendra Prasad. The draft was heavily criticized by Somnath Lahiri, a member of the Assembly from Bengal. He

[24] Indian Penal Code 1860, s 124A
[25] Kumar Satyam, 'Comparative Study on Fundamental Rights: Interim Report and Present Status' (*Manupatra Articles*, 05 March 2021) <https://articles.manupatra.com/article-details/Comparitive-Study-On-Fundamental-Rights-Interim-Report-And-Present-Status> accessed 19 April 2023
[26] *Ibid*

lamented the fact that Patel's draft criminalised seditious speech and unlike England, the Indian version of the law only required a seditious speech, albeit unaccompanied with an overt act, to punish. The next day, on 30th April 1947, Lahiri moved an amendment (Amendment No. 49 of Supplementary List I) to delete the word 'seditious' from clause 8(a) of the Interim Report. This amendment was supported by Patel himself and the provision was eventually done away with.

The limitation of sedition in free speech once again found a mention in the Draft Constitution of 1948, in Article 13(2)[27]. Article 13(1) listed the wide array of rights and freedoms that Indian citizens possess, while Article 13(2) laid down its limitations such that it vested the State with the power to prevent any level of libel, slander, defamation or sedition which threatens its authority.

Seditious speech, thus, was listed once again as a limitation to the right of free speech and expression of Indians. This once again became a focal point of debate for the Assembly and was met with many critics who strongly voiced their dissent.

Damodar Swarup Seth, a member of the Assembly representing the United Provinces, argued that the limitation of sedition was counter-intuitive as it negated the freedom that the law provided to the citizens. He also raised a concern about the text of the law being vague enough to give the Government and the legislature leeway in interpreting it. These issues amalgamated into a demand for the provision of sedition to be repealed or altered.[28]

The opposition to this debate, the supporters of the limitation of sedition, argue that no right, not even that of free speech and expression is absolute and that it must be curbed to the extent that it doesn't undermine the authority of the country. Mahboob Ali Baig Sahib Bahadur even quoted B.R. Ambedkar to strengthen his point of fundamental rights not being absolute.[29]

[27] Draft Constitution of India 1948, art 13(2)
[28] 'December 1, 1948' (*Constitution of India*) <*https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-01*> accessed 23 May 2023
[29] *Ibid*

One of the staunchest dissenters of the provision on sedition was K.M. Munshi, a member of the Assembly from Bombay, who also argued for the departure of the word 'sedition' from the concerned article of the Draft Constitution. He argued that the Government in India has evolved into a democratic one, and said, "…the essence of democracy is Criticism of Government."[30] He, thus, challenged the very validity of sedition in a democracy and subsequently moved an amendment (Amendment No. 453) calling for a replacement of the word 'sedition' from Article 13(2)[31] of the Draft with 'undermining the security of, or tends to overthrow, the State'. This view was reinforced by Krishnamachari, a member of the Madras Legislative Assembly. The amendment was accepted and the mention of sedition was eventually dropped from the restrictions to the fundamental rights.

When the final draft of the Constitution was published, the provisions of Article 13[32] were found in Article 19[33], with the rights elaborated in sub-clause 1 and its limitations in sub-clause 2. Article 19(2)[34] has undergone multiple amendments through the years. None of these amendments successfully restored the mention of sedition which was parted with in 1948. The relevant articles presently read as follows:

19(1)(a). *All citizens shall have the right to freedom of speech and expression.*[35]

19(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 about contempt of court, defamation or incitement to an offence.*[36]

[30] *Ibid*
[31] Constitution of India 1950
[32] Constitution of India 1950, art 13
[33] Constitution of India 1950, art 19
[34] Constitution of India 1950, art 19(2)
[35] Constitution of India 1950, art 19(1)(a)
[36] Constitution of India 1950, art 19(2)

An overview of the debates in the Constituent Assembly provides an account of how its members approached the issue of sedition in the early days of independent India. While sedition crept into first, the report on fundamental rights and then, the Draft Constitution as a limitation to the right of free speech, it was vehemently opposed by prominent figures of the Assembly. The framers of the Constitution staunchly detested the criminalisation of sedition and translated this abhorrence into the various speeches and amendments that they authored, which later proved to be successful. The deletion of the word 'sedition' from Article 19(2)[37] suggested that it was no longer a constitutional limitation on the right to free speech. Despite this, the continued presence of Section 124A in the Indian Penal Code[38] still faced post-colonial India with a stark incongruity.

Law Commission of India reports

The Law Commission of India (LCI) is a, currently defunct, statutory body that is constituted by a notification of the Government of India, Ministry of Law & Justice, Department of Legal Affairs, designated the task of carrying out research in the field of law in accordance to which the Commission makes recommendations to the Government. The Commission has taken up various subjects based on references made by the courts and the Department of Legal Affairs and has provided relevant insights and reviews on the same.

The topic of 'sedition' has been visited and revisited multiple times by the Law Commission of India throughout the years. Across its broad range of 277 reports, 3 reports of the Commission in particular strike a relevance in the context of sedition.

- *39th Law Commission of India Report (July 1968): 'Report on the punishment of imprisonment for life under the Indian Penal Code*[39]

[37] Constitution of India 1950, art 19(2)
[38] Indian Penal Code 1860, s 124A
[39] 'Report on the punishment of imprisonment for life under the Indian Penal Code' (*Law Commission of India*, July 1968) <https://lawcommissionofindia.nic.in/report_fifth/> accessed 19 April 2023

The 39th Report dealt with the issue of life imprisonment and reviewed whether it should be a simple imprisonment or a rigorous imprisonment. It considered the views adopted by the High Courts of Kerala and Orissa, as well as an independent third possible course of action. Upon such consideration, it concluded that the view adopted by the Orissa High Court, i.e., life imprisonment should be rigorous, is the most suitable course of action. Subsequently, it made a recommendation to the Government down the same lines. The report also noted the need to consider the requirement of the punishment of life imprisonment in numerous fewer grave offences like sedition. While it took Section 60 of the Indian Penal Code[40] into account, which left it up to the competent Courts to decide on cases a sentence may be wholly or partially simple or rigorous, the Commission was cognizant of the fact that there is an anomaly in the section on sedition which punishes the crime with either life imprisonment or imprisonment that may be simple or rigorous. The report argued, "It strikes one as extremely anomalous that an offence like sedition is punishable with either imprisonment for life or with rigorous or simple imprisonment which may extend to 3 years."[41]

Through this report, the Commission implicitly conveyed its uneasiness with sedition being punishable with imprisonment for life and recognised the need to deal with the said anomaly. It was unable to delve deeper into the issue in this particular report because its scope was limited to resolving the doubts around the issue of life imprisonment. As a result, it deferred this question to a future report wherein the Indian Penal Code would be reviewed, a report that eventually arrived only three years hence, in 1971.

- *42nd Law Commission of India Report (June 1971): 'Indian Penal Code*[42]

In 1959, the Law Commission of India voiced its intention to undertake a revision of the Indian Penal Code (IPC) as well as the Criminal Procedure Code (CrPC). In 1969, the Commission finally completed its review of the CrPC and only post that could it get down to reviewing the IPC in detail. Its revision of the IPC thus arrived in the 42nd report released in June 1971.

[40] Indian Penal Code 1860, s 60
[41] *Ibid*
[42] *Ibid*

This report took up the question referred to it by the 39th Report and along with it, suggested certain major changes to the provision on sedition. In particular, it propounded three primary alterations to enhance the comprehensiveness of the law.

First, it noted the absence of a relation between the pernicious tendency or intention behind the seditious comment and the integrity, security or public order of the country. In essence, it highlighted that one may be liable for sedition despite lacking the intention to fulfil the conditions of the crime. To bridge this gap, it suggested including the requirement of a men's rea by altering the provision to read, "…intending or knowing it to be likely to endanger the integrity or security of India or any State or to cause public disorder."

Second, the Commission took notice of the fact that the provision on sedition does not take into account dissent against the Constitution, the Legislatures, and the administration of justice and considers only the executive arm of the Government. They deemed disaffection against these institutions to be as harmful to the security of the nation as that against the executive and suggested a revision of Section 124A[43] of the IPC to this effect.

Third, in responding to the question posed to itself by the 39th Report, the Commission raised the issue of the punishments for committing sedition being odd and anomalous. Section 124A[44] prescribes either imprisonment of life or imprisonment up to three years. This places the punishment on two extremes and makes its actualisation difficult. In attempting to find a middle ground, the Commission suggested that the maximum punishment for the offence be fixed at seven years of rigorous imprisonment and a fine.

Thus, as per their proposition, the section would be revised to look as follows:

124A. *Sedition- Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, disaffection towards the Constitution, or the Government or Parliament of India, or the Government or Legislature of any State, or to cause public disorder, shall be*

[43] Indian Penal Code 1860, s 124A
[44] *Ibid*

punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

In line with this report, the Government introduced the Indian Penal Code (Amendment) Bill of 1978 in the Rajya Sabha. The Bill was passed in the upper house but the lower house was dissolved before the Bill could be voted upon. This, coupled with the various new problems regarding sedition that have come to the fore Report, meant that the provisions of this Bill couldn't find a place in the statute books.

- *267th Law Commission of India Report (March 2017): 'Hate Speech*[45]

In 2014, the Supreme Court, through the case of Pravasi Bhalai Sangathan v Union of India & Ors., recognised that the issue of 'hate speech' required a healthy consideration by the Law Commission of India and as a result, requested the Commission to examine the same thoroughly. In consonance with this, the Commission dwelled on the issue and analysed the various provisions surrounding hate speech.

While performing this task, they conceded that it is of utmost importance to distinguish sedition from hate speech. As the report put forth, 'sedition' is an offence that is committed directly against the State, and threatens the sovereignty, integrity and security of the State. On the other hand, 'hate speech' affects the State indirectly by disturbing public tranquillity. Through Section 124A[46] of the Indian Penal Code, sedition has been codified as a distinct offence and it would be aberrant to place it within the section criminalising hate speech.

By clearly carving out this distinction, the Law Commission of India sought to reduce the otherwise broad scope of the provision on sedition. It considered only those cases wherein there is an intention to threaten the sovereignty and security of the State as worthy of being brought under the ambit of sedition and left out statements that only affect public tranquillity and bother the State merely indirectly.

[45] Indian Penal Code 1860, r 237
[46] Indian Penal Code 1860, s 124A

However, it is noteworthy that while the Law Commission of India has given a wide range of suggestions, it has never suggested a complete rescindment of the law on sedition, unlike the Law Commission of England.[47] Equally noteworthy is the fact that despite this wide range of suggestions the Government has refrained from taking them into account, a decision that talks about their hesitance towards a more liberal approach to speech and expression.

Proposed Amendments

The Indian Penal Code (Amendment) Bill, 2011 By D. Raja[48]

This was a private member amendment bill introduced in the Rajya Sabha by the leader of the Communist Party of India, D. Raja. This bill proposed to omit Section 124A, the provision on sedition, from the Indian Penal Code of 1860. The idea of D. Raja behind this bill lay in his belief that the law on sedition was being misused by its arbitrary application at the hands of the Government. In the 'Statement of Objects and Reasons' of this bill, he rightfully spoke about this law being a colonial instrument to oppress critics of the British rule in India and its long and continuing history of existence in India statutes is antithetical to the foundation upon which a post-colonial independent India was constructed.

The response of the upper house to this amendment, however, was typical and characteristic of what has been the legislature's attitude towards this law. The broad consensus among the Rajya Sabha against this bill led to the issue being left as 'open' by its author and subsequently led to its withdrawal by leave of the House.

The Indian Penal Code (Amendment) Bill, 2015 By Dr. Shashi Tharoor[49]

This amendment bill was introduced in the Lok Sabha by Shashi Tharoor, a Member of Parliament from the Indian National Congress. Through the Statement of Objects and Reasons,

[47] Law Commission of India, *Codification of the Criminal Law Treason, Sedition and Allied Offences* (Law Com No 72, 1977) <https://www.lawcom.gov.uk/app/uploads/2016/08/No.072-Codification-of-the-Criminal-Law-Treason-Sedition-and-Allied-Offences.pdf> accessed 19 April 2023

[48] Indian Penal Code (Amendment) Bill 2011

[49] Indian Penal Code (Amendment) Bill 2015

Tharoor emphasized the need to safeguard the freedom of speech and expression of Indian citizens while also ensuring suitable limitations on this right to maintain peace and harmony. In line with this, the Bill attempted to amend, by way of edition, Section 124A of the Indian Penal Code. As the law reads, any words or actions fuelling hatred and disaffection towards the Government may be held seditious. This bill proposed to narrow the provision down further by holding only those words and actions liable that "directly result in incitement of violence and commission of an offence punishable with imprisonment for life under this Code."

This additional layer that this bill tried adding to the provision is important and is something that is imminently required if the law is to remain in the statutes. It would ensure that the provision is not applied arbitrarily and that only those words and actions that truly endanger the security and sovereignty of the State are penalised. This bill too, however, was not adopted into the Indian Penal Code and remained merely a positive un-implemented idea.

While the 2011 bill spoke about doing away with the repressive law, the bill proposed by Tharoor in 2015 merely included an important limitation to the application of the law in an attempt to make it more watertight. Without much codified comprehensive debate and deliberation on the bills, they were hastily put to vote and subsequently voted against in Parliament. The fate of these two amendment bills is an appropriate demonstration of the legislators' attitudes towards any restrictions on the law on sedition. They aim, it seems, to preserve the draconian nature of this law and staunchly oppose any movement that puts even a slight restriction on the use of the law to curb dissent and criticism.

RECENT DEVELOPMENTS & THE WAY FORWARD

On 9th May 2022, an affidavit filed on behalf of the Union of India spoke, in great detail, about Section 124A[50] of the IPC and the concerns of the Government surrounding it. In this affidavit, the Government acknowledged cases of the sedition law being used at the cost of civil liberties and human rights.[51] Accordingly, they decided to re-examine the relevant section and bring in

[50] Indian Penal Code 1860, s 124A

[51] *S.G. Vombatkere v Union of India* (2022) SCC 609

changes if necessary. This move evokes a sense of hope and optimism because it effectively means that they, albeit late, are taking cognizance of the grave misuse of the sedition provision by authorities and signifying their intention and willingness to alter this.

To add to the Government's decision, a three-judge bench of the Supreme Court led by Chief Justice N.V. Ramana put a hold on the operation of the said law until it is reconsidered and its future is decided.[52] This can be perceived as a clear signal that the Court would like an erasure of the sedition law from the statute books.

The effect of this is that the Court has very much opened the avenue of overruling a decision made in favour of sedition in 1962 and striking down Section 124A[53] of the IPC. This presents itself as a big challenge to the Government which sought to win some time with the sedition law when it decided to re-examine it on its own. This Court ruling, however, negates the effectiveness of this plan and requires the Government to either amend the section and narrow its scope greatly or have the section struck down and lose an important tool that is often used to shut out dissent against it.

CONCLUSION

What the future of this section must hold is an appetite for change and alteration. Eradication of the law on sedition altogether arguably provides for a straightjacket solution to problems around the ambiguous application of the law. This, however, is evidently extreme and too idealistic for the Indian Government's liking. In this paradigm, the most suitable solution would be a modification of the existing law, like the one proposed by Tharoor in 2015, to narrow down the law and make it more incontrovertible. An alteration like this presents itself as a solution suitable to the needs of both parties, the Government and the subjects of this law. It preserves the criminalisation of sedition in the Indian Penal Code, while at the same time watering down the authority of the Government to shut out dissenting voices. In doing this, it presents itself as a solution suitable to the needs of both parties, the Government and the subjects of this law.

[52] *Ibid*

[53] Indian Penal Code 1860, s 124A

Against this background, the recent decision of the government to re-examine Section 124A and its misuse is positive. What is required then is that this decision be acted upon expeditiously, such that a thorough review of the law and subsequent suggestions are not just stated, but also implemented and accomplished. Only an amalgamation of these ideas will help in cementing a comprehensive and effective future for the law on sedition in India.