# The Law on Sedition in India: scrutinized against Rule of Law

*PRANAV GANESAN

Sedition laws occupy an important place in jurisprudence and have led to debate and discussion in various countries. These laws evoke extreme passion and emotion as the persons aggrieved by these laws are generally public figures or leaders, firmly committed to a cause popular or unpopular. Thus, the two sides to the debate on amendment of sedition laws are such that taking a neutral stand may be difficult. That is what makes the debate lively and thought provoking. This essay takes the reader through the status, nature and popular opinion on India's sedition law and also ventures into how the laws can be amended for India's sedition laws to be at par with contemporary standards of a modern liberal democracy.

The law on sedition in India had shot into limelight following the allegedly virulent "attack" on the JNU student leader, Kanhiya Kumar's freedom of speech by the concerned executive in Delhi. However it is essential to note that Section 124 A of the Indian Penal Code, 1860[2] had all along remained a bone of contention considering its unsuitability ever since the historical trial of Mohandas Karamchand Gandhi and Shri Shankerlal Banker. Gandhi in his written statement to the Sessions Court of Ahmedabad pointed out that Section 124 A was the "prince" among the political sections of the IPC, the sole purpose of which was to suppress the liberty of the citizen. To put it succinctly, the problem with the provision, as Gandhi put it, is that "*Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression of his disaffection, so long as he does not contemplate, promote, or incite violence*."[3]

Owing to its controversial history, the sedition law found its way into several Constituent Assembly debates. Sardar Vallabhai Patel in his attempts to comprehensively lay down the 'Rights of Freedom' indicated that an exception be made for "seditious, obscene, blasphemous, slanderous, libellous or defamatory" language. It was Somanth Lahiri, the leader of Communist Party of India, who opposed the use of the word "seditious" and said that *"even in England, a speech, however seditious it may be, is never considered a crime unless an overt act is done".*[4] This prompted a chain of debates that ultimately demanded reform. An amendment was then moved to drop the word entirely and not allow it to infringe upon the freedom of speech and expression guaranteed to all citizens. The word was absent in the Constitution of India when it was adopted on 26 November 1949, however, section 124A stayed in the Indian Penal Code.

In 1951, Prime Minister Jawaharlal Nehru publicly expressed his disapprobation of Section 124 A and called the provision "highly objectionable" and "obnoxious". The sedition law however did not die until 1958, when the Allahabad High Court declared it *ultra vires* because of its inconsistency with Article 19 of the Constitution of India.[5] However the sedition law was revived by the Supreme Court of India in 1962.[6]

Taking into account the scope for its abuse and the nature of Section 124 A the Supreme Court of India has played a major role in reconstructing the provision. In the landmark *Kedarnath Singh case*[7]where Mr. Kedarnath Singh had accused the then Congress government of corruption, black-marketing and tyranny and called for a revolution to overthrow the capitalist government and had also lampooned the Crime Investigation Department of India. The Supreme Court upheld the judgement of the High Court and convicted Kedarnath Singh under Section 124A and at the same time substantially limited the scope of the provision. So as to ensure that Section 124 A does not impinge

on the Fundamental Right to free speech[8], the court laid down a test to decide sedition cases. The test was whether the words written or spoken incite "imminent violence". Thus, irrespective of how strong and acrimonious the statement is, if it does not rouse an inclination to cause public disorder by acts of violence, Section 124 A would not apply. This position has been reiterated in various subsequent judgements.[9]It is noteworthy that the same reduced scope of applicability of sedition law was supported by M.K. Gandhi when he was tried under Section 124 A in the year 1922.

The following section of this essay shall draw a comparison between Section 124 A of the IPC and the status and nature of sedition laws in other modern liberal democracies. The United Kingdom had abolished seditious libel under the Coroners and Justice Act 2010 because it was in contravention of the UK's Human Rights Act 1988. Prior to this abolition, there existed a rule that seditious libel would not apply to cases where there was no provocation to violence.[10] In New Zealand, sedition was abolished in 2007[11] not only because it was in contravention of the *New Zealand Bill of Rights* but also because the Parliament believed that it was irrelevant in the contemporary context considering the "chilling effect" that such laws have upon free speech.[12]In the United States of America and Australia, the laws on sedition have not been abolished but the text of the respective statutes expressly embody the requirement of immediate violence subsequent to the making of the statement written or spoken.[13] In India however, though the judiciary has attempted to protect free speech to the best possible extent by requiring the condition of "imminent violence" to be fulfilled for a statement to be considered seditious, this has not curbed the evils and possibility of misuse associated with sedition law. Sedition is a cognizable[14] and non-compoundable[15] non-bailable offence. Also, the person charged with sedition is forced to live without his passport, is barred from government jobs, and must produce himself in the court time and time again. All of this is in addition to bearing the legal fee of the proceedings. Even though the sedition charges, in most cases, do not generally stick, it is the process which is the real punishment. The interlude between the arrest and the trial of the accused makes it possible for law enforcement agencies and other organs of the executive to victimize the accused. Considering that the accused can be arrested for sedition at the discretion of the executive and also that there is a gap between the arrest and the trial, it can be said that the sedition law in India is subversive of the basic principles of Rule of Law, propounded by Albert Venn Dicey,[16] and expanded by Joseph Raz.[17] Rule of Law is supposed to be intrinsic to law in India,[18] and it is a principle of rule of law that the discretion of the crime-preventing agencies should not be allowed to pervert the law.[19] Despite there being a judicially developed condition that "imminent violence" must succeed the making of the statement for it to be seditious under Section 124 A, the fact that this condition is not explicitly mentioned in the text of Section 124 A and also that this condition is not known to most, causes the arrest of the accused under Section 124 A, to be justified irrespective of whether there were violent consequences following the making of the statement. There exists a wide berth between the rule developed in the *Kedarnath Singh* case[20] and the way in which the police and the lower judiciary implements sedition law in India. This is what makes sedition law in India run counter to the basic principles of Rule of Law.

Looking at the status and nature of sedition law in various modern liberal democracies, it is discernable that the state of India's sedition law, which has not changed since it was introduced during the colonial era, does not conform to the ideals of a modern liberal democracy which must protect free speech. Criminalisation of dissenting views in the name of "sedition" is inappropriate in the contemporary context, as was rightly pointed out by the New Zealand Parliament while debating

the abolishment of the sedition law. In fact, the irrelevance of Section 124 A in the contemporary political setting was even explained by Chief Justice Eric Weston, who said that the law on sedition had become inappropriate because of India's independence from the British colonial rule.[21] The healthy and informed criticism of the Government is what keeps the fire of democracy burning and it is the criticism of the existing system that lead to the birth of a better system and gives vitality to a democracy. An amendment to the sedition law in India is necessary and overdue, despite the fact that its scope has been significantly curtailed after the *Kedarnath Singh* case,[22] because the text of the Section 124 A does not explicitly state that violent consequences disrupting public order is a *sine qua non* for the statement to be considered seditious.

Now, there are two courses of action that can be taken with respect to amendment of the provision on sedition in India. The first and the most straightforward one being the deletion of Section 124 A from the IPC. The case for repealing the provision is rooted in its impact on the ability of citizens to freely express themselves as well as to constructively criticise or freely express dissent against their government without any anxiety or fear that the law enforcement agencies will arbitrarily arrest and victimize the individual. Furthermore, there already exists other criminal law provisions which penalize incitement to violence and offences against the State. Moreover, it can also be argued that since Section 124 aims to penalize disaffection towards the government and not towards the State, the provision does not fit within Chapter VI of the IPC which deals with "Offences against the State". However, this argument essentially relies on the validity of the assertion that the Government and the State are not the same. The difference between government and State is that governments may change but the State remains the same. Section 124 A is a law which compels a citizen to show "affection" towards the government and not the State and thus the provision can neither be justified on the grounds of "nationalism" nor can it be said that it fits within Chapter VI of the IPC. However, the provision still continues to be valid. Even the Law Commission of India, after a careful re-examination of the section, published in1971, that it wanted the Section to be extended to include disaffection towards the Constitution of India, Parliament and State Legislatures and the administration of Justice. The recommendation of the Law Commission was not implemented. However, it can be discerned that the Law Commission did not favour the deletion of the section. Moreover, the section has stood the test of time and has also been upheld in various judgements. From this, we can conclude that the judiciary has seen this section as essential for the maintenance of government, thus resulting in public harmony. The second course of action could be to edit the provision and bring about clarity in section 124 A so as to guide the executive and make it impossible for the police or the law enforcement agency to wrongly arrest and victimize the accused. This can be done by incorporating the rule developed in the *Kedarnath Singh* case[23] in the section. The sedition provisions in the United States of America and Australia, necessitate violent consequences to follow the making of the statement for it to be termed seditious, and incorporating the *Kedarnath Singh* rule in section 124 A would bring about the same effect. Not only will this amendment make India's sedition law conform to the enlightened standards of a modern liberal democracy, but it will also prevent the police from arbitrarily arresting innocent activists and harbingers of change, with honourable intentions.

The answer to the question of whether to amend India's law on sedition is undoubtedly affirmative. A healthy and informed debate on how the laws can be amended needs to be sustained, to arrive at a stance which shall stand the scrutiny of equity and justice to the aggrieved, who in many cases have turned out to be innocent individuals. The guiding dictum shall be –"Let hundred persons suppress on

their own, their honest and well-intended feelings. But there shall be no curb on the freedom of one person in expressing such feelings". The last word on sedition law has not yet been uttered. It is one law where it is better to debate without settling too soon, than settle without debating.

## (Endnotes)

1 * Third Year; The National Law Institute University, Bhopal
2 Indian Penal Code, 1860 (Act 45 of 1860) [hereinafter: 'IPC'].
3 M.K. Gandhi, *The Voice of Truth Part-I: Some Famous Speeches,* 14-24 (Shriman Narayan, 1969).
4 *Constituent Assembly of India Volume –III*, Parliament of India, available at http://www.parliamentofindia.nic.in/ls/debates/vol3p2.htm, last accessed on 28/06/2017.
5 Ram Nandan v. State 1959 CrilJ 1.
6 Kedar Nath Singh v. State of Bihar, 1962 AIR 955.
7 Ibid.
8 Art. 19, the Constitution of India.
9 S. Rangaragan Etc v. P. Jagjivan Ram, 1989 SCR(2) 204; Bilal Ahmed Kaloov. State of Andhra Pradesh, AIR 1977 SC 3483; Balwant Singh v. State of Punjab, AIR 1995 SC 1785; Sri Indra Das v. State of Assam (2011) 3 SCC 380; Arup Bhuyan v. State of Assam (2011) 3 SCC 377.
10 R v. Chief Metropolitan Stipendiary Magistrate ex parte Choudhury, 1 All ER 313 (1991, House of Lords).
11 Crimes (Repeal of Seditious Offences) Amendment Act 2007, (New Zealand).
12 *Sedition, Incitement and Vilification: Issues in the Current Debate,* NSW Parliamentary Library Research Service, available at https://www.parliament.nsw.gov.au/researchpapers/Documents/sedition-incitement-and-vilification-issues-in-t/Sedition%20FINAL.pdf, last seen on 27/06/2017.
13 18 U.S.C. S. 2385 (United States); Ss. 24, 30A Federal Crimes Act 1914, (Australia).
14 S. 2(c), Code of Criminal Procedure 1973.
15 S. 320, Code of Criminal Procedure 1973.
16 A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 107 (8th ed., 1915).
17 Joseph Raz, *The Authority of Law: Essays on Law and Morality*, 214- 219 (2nd ed., 2009).
18 Upendra Baxi, *The Rule of Law in India,* 4 Sur - Revista Internacional de Direitos Humanos 6, 12-14 (2007), available at http://socialsciences.scielo.org/pdf/s_sur/v3nse/scs_a01.pdf, last seen on 27/06/2017.
19 Supra 16, at 218.
20 Supra 5.
21 Tara Singh Gopichand v. The State, 1951 CriLJ 449.
22 Supra 5.
23 Supra 5.