Why India's Sedition Law Needs to be Buried

(This editorial is based on the article "Why India's sedition law needs to be buried" which appeared in Livemint on 18th January 2019.)

There have been many incidents in recent times where "misguided" people have been termed "anti-national". The sentiment could have been demonstrated through a slogan, a cheer, a statement, protest against a nuclear power project, or an innocuous post on social media. In all these cases, the state, across regimes, has filed charges of sedition.

Sedition can't be applied to instances of criticism of the government or a political functionary**. More importantly, words alone are not enough for such a charge to be stricken. The inducement to violence is the most crucial ingredient of the offense of sedition.**

Recently, the Delhi Police filed a charge sheet against 10 people, including student leaders Kanhaiya Kumar, Umar Khalid, and Anirban Bhattacharya, in a sedition case for allegedly raising "anti-national slogans" during an event on the Jawaharlal Nehru University (JNU) campus.

The offense of sedition is provided under section 124A of the Indian Penal Code, 1860 (hereinafter IPC). The relevance of this section in an independent and democratic nation is the subject of continuous debate.

Background

- **Before Independence, this charge was used by the British to suppress the freedom movement.**
- As a result of the ardent opposition in the Constituent Assembly, the word sedition' does not find a place in our Constitution.

- **Presently, section 124 A IPC defines sedition as an act that brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government** established by law in India by words, either spoken or written, or by signs, or by visible representation, or otherwise.

The Relevance of Sedition Law

- **The freedom of speech often poses difficult questions, like the extent to which State can regulate individual conduct.** Since an individual's autonomy is the foundation of this freedom; any restriction on it is subject to great scrutiny.
- However, **reasonable restrictions can always be imposed on this right in order to ensure its responsible exercise** and to ensure that it is equally available to all citizens.
- **According to Article 19(3) of the International Covenant on Civil and Political Rights 1966 (ICCPR)**, this freedom may be subjected to restrictions, provided they are prescribed by law and are necessary for respecting the rights or reputation of others' or for the protection of national security, public order, public health or morals.
- **Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression to all citizens.** However, this freedom is subjected to certain restrictions namely, 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 offense.
- **The courts have stressed the importance of contextualizing the restrictions while ascertaining the permissibility of expression.** Balancing freedom of expression with collective national interest is one of the key ingredients of this law.
- **Though it is argued that this law is a colonial vestige, the Indian courts have upheld its constitutionality.**
- The **Kedar Nath judgment upholds the restrictions imposed by Section 124A (sedition)** of the Indian Penal Code on the fundamental right to free speech and expression. But the court makes it clear that such restraints apply only to "acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence".
- The judgment explains what it means by "acts inciting violence against the government". "Any written or spoken words, etc., which have implicit in them the idea of subverting government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question,".
- The Supreme Court held that **"comments, however strongly worded, expressing disapprobation of actions of the government"** and which shun violence are not sedition.
- Denunciating the sedition law for 'rampant misuse' concedes ground that there exist instances where its 'use' may be necessary

- **The impact on public tranquility is but one of the consequences of any seditious activity.** However, far more alarming potentialities include calls for violent revolutions seeking to overthrow the government, appeals for a separate state, **For Example**- Demand for separate Khalistan or separate Kashmir and other atrocity propaganda, which does not qualify as protected speech and has the ability to denude the legitimacy of a democratically elected government.
- **The Supreme Court has repeatedly observed that the mere possibility of misuse of a provision does not per se invalidate the legislation.** In such cases, the vulnerability extends only to the 'action' and not the 'section'.

Why this Law Should be Scrapped?

- The foremost objection to the provision of sedition is that its definition remains too wide. '**Overbroad' definitions typically cover both what is innocuous and what is harmful.**
- Under the present law, strong criticism against government policies and personalities, slogans voicing disapprobation of leaders and stinging depictions of an unresponsive or insensitive regime are all likely to be treated as 'seditious', and not merely those that overtly threaten public order or constitute actual incitement to violence.
- **In recent years that the core principle enunciated by the Supreme Court — that the incitement to violence or tendency to create public disorder are the essential ingredients of the offense — has been forgotten.**
- According to the National Crime Records Bureau, 35 cases of sedition (all over India) were reported in 2016.
- However, as long as sedition is seen as a reasonable restriction on free speech on the ground of preserving public order, it will be difficult to contain its mischief. There can only be two ways of undoing the harm it does to citizens' fundamental rights: it can be amended so that there is a much narrower definition of what constitutes sedition, but the far better course is to do away with it altogether.
- **For Example, Beyond the high-profile urban cases, the reach of Section 124-A has extended even to faraway places.** An entire village in Kudankulam, Tamil Nadu had sedition cases slapped against it for resisting a nuclear power project. Adivasis of Jharkhand, resisting displacement, topped the list of those slapped with sedition in 2014. Most of these cases don't end in conviction. But when the legal process itself becomes the punishment, the slapping of sedition charges is an attempt to force the protesters into submission.

Way Forward

- The argument used against the scrapping of the sedition law is that the Supreme Court has repeatedly observed that the mere possibility of misuse of a provision does not per se invalidate the legislation.

- **While the arguments are right in their own way, in a country where public discourse automatically reduces to binaries, it is hard to imagine navigating through the dark areas that lie between the actual law and its implementation on the ground.**
- Till then, to uphold the idea of democracy that the founders of the Constitution envisioned, India should keep away the word sedition from its statute books and everyday vocabulary.
- The issue of sedition would come into play only if the territorial integrity of India as well as the sovereignty of the country are questioned by an individual or a group.
- In other words, sedition is relevant only in the context of a demand for secession. 'Waging war' with India or other inimical acts against the country will be met by other legal provisions but cannot replace 124-A if a situation arises.
- **The word 'sedition' is thus extremely nuanced and needs to be applied with caution. It is like a cannon that ought not to be used to shoot a mouse; but the arsenal also demands possession of cannons, mostly as a deterrent, and on occasion for shooting.**

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