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RETHINK THE RETENTION OF SEDITION

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The Supreme Court of India, in S.G. Vombatkere v. Union of India on May 11, 2022, prima facie felt that Section 124A of the Indian Penal Code (IPC) on ‘sedition’ was not in tune with the current social milieu. | Photo Credit: The Hindu

The Law Commission of India in its 279th report, released in April 2023, has recommended retaining one of the most controversial sections of recent times i.e., Section 124A of the Indian Penal Code (IPC) on ‘sedition’. The Supreme Court of India, in S.G. Vombatkere v. Union of India on May 11, 2022, had directed all State governments and the central government to keep in abeyance all pending trials, appeals, and proceedings with regard to Section 124A IPC, as prima facie it felt that this Section was not in tune with the current social milieu. The Law Commission, however, concluded that it was necessary to retain it as it was useful in countering the threat to India’s internal security. The Commission also felt that the Unlawful Activities (Prevention) Act (UAPA), 1967, does not cover all elements of the offence envisaged under Section 124A IPC. The Commission also recommended certain procedural guidelines to prevent the misuse of Section 124A IPC.

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

The Law Commission elaborated on the violence perpetrated by the Maoists under Chapter 6 of the report pertaining to ‘Threats to India’s Internal Security’. The Ministry of Home Affairs data, quoted in the report, show that the number of Maoist incidents ranged from 1,533 in 2004 to 509 in 2021 and the fatality varied from 566 to 147 in the same period. It is also undisputed that the central agenda of the Maoists is to capture political power by overthrowing the democratically elected government through a protracted armed struggle and they need to be tackled stringently.

Despite a dip in the overall Maoist violence over the years, Chhattisgarh still reports the maximum number of Maoist incidents. While the number of Maoist incidents registered in the State varied from 445 in 2014 to 253 in 2021, the National Crime Records Bureau (NCRB) data show that the number of cases registered (only) under Section 124A IPC was zero in the years 2015, 2016, 2017, and 2020, and varied from one to a maximum of three in the remaining years between 2014 and 2021. Even the cases registered under the UAPA were close to three per year in the same period. Thus, it is clear that the use of Section 124A IPC in fighting Maoism has been negligible. As the use of Improvised Explosive Devices (IED) and resorting to ambush attacks remain the most potent weapons in the hands of Maoists, the most frequently used provisions are sections under the Explosive Substances Act and the IPC. In some cases, the

specially enacted State law, the Chhattisgarh Vishesh Jan Suraksha Adhiniyam (Chhattisgarh Special Public Safety Act), 2005, is applied to curb unlawful activities by the Maoists.

Second, ‘unlawful activity’ defined under Section 2(1)(o) of the UAPA includes ‘any action taken by such individual or association which causes or is intended to cause disaffection against India’. The punishment prescribed is imprisonment for up to seven years and a fine. The only difference between Section 124A IPC and this provision of the UAPA is that in place of the words ‘Government established by law in India’, the word ‘India’ is used in the UAPA. As the Supreme Court, in a catena of cases, has held that ‘criticising government’ does not fall within the ambit of sedition, the ‘unlawful activity’ as defined in the UAPA seems more objective and less problematic. Any hurdle before any such prosecution under the UAPA that requires central government sanction can be removed by tweaking Section 45 of the UAPA to authorise State governments to act as well as grant sanction for prosecution.

As mentioned by the Commission, the United Kingdom abolished the law on sedition by an Act of 2009 citing two reasons: the first being that there are ‘sufficient range of other offences’ and the second reason being the political nature of the offence. The Indian case is hardly any different from the U.K. one.

Third, the procedural guidelines for conducting a preliminary inquiry to check ‘...whether prima facie a case is made out and some cogent evidence exists’ (as recommended by the Law Commission) are in conflict with established jurisprudence of writing the First Information Report (FIR), and settled by the Constitution Bench of the Supreme Court in Lalita Kumari v. Govt. of Uttar Pradesh and others (2014). So, if information given to a police station discloses the commission of a cognisable offence, the officer-in-charge has to register an FIR and commence investigation. A preliminary inquiry is permissible only in cases (for example, commercial, matrimonial, related to medical negligence or corruption) that do not disclose the basis of a cognisable offence. Even if it is assumed that a case of sedition could fall under such a category, the purpose of such an inquiry cannot be to ensure whether cogent evidence exists to support the allegations. If such a provision is inserted by an amendment to the Code of Criminal Procedure (CrPC) (as suggested by the Law Commission), there is every likelihood of such an amendment being hit by Article 14 of the Constitution and declared arbitrary by the Supreme Court. Similar could be the fate of the provision to mandatorily seek permission from the central or the State government before registering an FIR.

Comment | **Sedition and its roots in rudeness as an offence**

Therefore, it would be more democratic if all State governments and political parties deliberate on the Law Commission’s report, and public opinion sought to arrive at a more participative (if not unanimous) and agreeable decision.

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