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Indian law students are reporting for JURIST on law-related developments in and affecting India. This dispatch is from Nakul Rai Khurana, a law student at Jindal Global Law School.

Earlier this month, in its 279th report, the Law Commission of India (an advisory body for legal reforms under the Ministry of Law and Justice) released its recommendation on the "Usage of Law of Sedition". The recommendation comes after the Central Government's response last year where it told the Supreme Court of India that the government would re-examine the necessity of retaining Section 124A of the Indian Penal Code, 1860 (IPC) and determine its relevance. It has been recommended by the 22nd Law Commission of India to retain Section 124A with some amendments. Section 124A defines the law of sedition as "attempts to excite disaffection against the Government established by law."

The Law Commission Report, instead of pacifying the colonial era provision, paves the way for its further enhancement, by proposing to amend the prescribed term of punishment from 3 years to 7 years of imprisonment. The established jurisprudence on the subject has often dissented from the feeble interpretation made by those who challenge victims based on hyper-nationalist tendencies. However, the Law Commission ignores years of such jurisprudence by providing weak clarity on what must construe a "tendency" to incite hostility or violence towards the government by stating in its report that a "mere inclination to incite violation or cause public disorder" would be a fit interpretation of sedition.

The attempt to justify the constitutionality of Section 124-A by relying on the judgement made in Kedar Nath Singh v. State of Bihar in principle goes against what the court envisioned for the provision, which was to reduce its scope to less ambiguity with an underlying aim to prevent any dissatisfaction from being termed as 'sedition'. A subjective interpretation will serve negatively the individuals who are dissatisfied with their government as a matter of their right, but fearful of expression since a much wider import of grievances is now capable of falling within the wide and ill-fitted ambit. The Supreme Court in its viewpoint has often affirmatively supported the misuse of the provision by the authorities. Recently, the Supreme Court directed the Government of India in SG Vombatkere v Union of India to re-evaluate and re-consider the provision, in the name of "civil liberties" and "human rights" at stake.

Furthermore, an important observation that called for its critique is the ignorant justification for the usage of colonial law, pointing out how a colonial legacy is not a valid ground for repeal. The Report blatantly disregarded the systems of suppression and oppression that were maintained by provisions such as sedition laws, used as tools by the British to wield their sovereign power over its subjects. The period of colonialism must be viewed distinctively from a temporal period and a period of prolonged subjugation in the name of maintaining the "national order".

As per the Law Commission, the question of in whose hands the power subsists defines the extent to which it can be used or misused; in the hands of the colonial system it may be oppressive but for a democratic government it is fairly necessary. The retention of such a provision still, however, casts doubt on the democratic strength of the nation, and whether it can withstand criticism since it fails to understand colonialism, the embedded laws we find today in the modern democratic setup and how they are frivolously misused. It is further conflicting on the part of the Commission to observe the fact that the very first charges of sedition were made against Bal Gangadhar Tilak, Gandhi, Maulana Azad, and Nehru; the prominent freedom fighters of India, implicitly recognising how the sedition law was used to repress anti-colonial sentiment.

The primary research used by the Commission involving literature is indicative of pre-conceived support for sedition law which fails to engage with pragmatic concerns such as its abuse, the moral compass of an accused indicted with such offence or the blatant disregard for human rights and civil liberties.

Reports submitted by the Law Commission are of importance since they are used by Courts, in the exercise of justice, to determine constitutionality or broaden jurisprudence. Despite the fact that the recommendations of such reports are not binding, they are nonetheless largely indicative of the informed opinion of jurists, how they engage with the social and legal developments of the society they reside in, and for whose benefit the preparation of such reports occurs. Thus, such reports must not be one-sided or heavily pre-conceived in favour of one narrative, rather they should indulge in a holistic viewpoint of all stakeholders involved, especially when one considers the scholarly value these reports hold.

The Central government while taking cognizance of the validity of the law, must show a wilful determination towards decolonisation of Indian laws that prove to be relics of our colonial past and simply do not fall in line with modern democratic principles.