

IS SECTION 124A OF INDIAN PENAL CODE A THREAT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA?

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ABSTRACT

In India the law of sedition means whoever by words either spoken, written, signs, visible representation or attempts to excite or feelings of disaffection to the Government or established by law that shall be punished with transportation for life or any term which may fine or imprisonment for a term three years and such a disapprobation of the measures of the Government as is reconcilable with a temperament to exhibit subservience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to contaminate or resist that authority is not disaffection. Therefore, the making of comments on the methods of the Government with the intention of exciting merely this species of disapprobation is not an offence within section 124A (1) of IPC.

Although, this provision of the law of sedition is based on the principle that every State whatever its form of Government has to be armed with the power to punish those who by their conduct prejudice the safety and stability of the State or disturbance such feelings of unreliability as have the inclination to lead to the disruption of the State or to public disorder. The very existence of the State will be in jeopardy if the Government established by law is contaminated. Hence, the continued existence of the Government established by law is an essential condition for the stability of the State and that is why "sedition" as an offence in section 124A which has been placed under Chapter VI relating to offences against the State in Indian Penal Code. Though this law was used by the British to extinguish opposition and detain the freedom fighters like Mahatma Gandhi and BalGangadharTilak who criticised the policies of the colonial administration. This paper aims to evaluate on the issue of judicial observations between section 124A IPC and Article 19 (1) (a) of the Constitution of India.

INTRODUCTION

The law of sedition in India has assumed controversial importance largely due to the change in Constitutional provision of Freedom of Speech and Expression guaranteed as a fundamental right under article 19 (1) (a) of the Constitution of India. The law of sedition is contained in sections 124A, IPC and 153A IPC and in order Statutes. However, the general statement of law is similar in all the provisions and can be well understood from looking at the provisions given in section 124A, IPC. The section had a chequered career and a historical genesis would reveal the various vicissitudes it has undergone through legislative amendments and judicial interpretation.

The offence of sedition corresponding to section 124A was originally section 113 of Macaulay's Draft Penal Code, 1837, but for some unaccountable reasons it was omitted from the Penal Code came into operation and in 1870 on the suggestion of Sir James Stephen, the then law member of the Government of India added section 124A in the Code by the Indian Penal Code (Amendment) Act, 1870.

SEDITION LAW IN INDIA

The sedition is nothing but libel (defamation) of the established authority of law such as Government. In the ordinary sense means a stirring up of rebellion against the Government. However, in law it has a technical meaning and includes all those acts and practices which have for their object to excite discontent or dissatisfaction towards the Constitution or the Government or Parliament to create public disturbance to lead to civil war which generally all endeavor to promote public discord and disorder. In other sense, sedition is used to designate those activities of a man whether by words, deeds or writing which are calculated to disturb the tranquility of the State and lead people to subvert the Government established by law. Thus, sedition is a crime against society nearly allied to that of treason and it frequently precedes treason by a short interval. The object of sedition generally are to induce discontent and insurrection to stir up opposition to the Government and to bring the administrative of justice into contempt. The tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discount or dissatisfaction to create public disturbance or to lead to civil war or to bring into hatred or contempt the sovereign or

the Government the laws or Constitution of the realm and general all endeavours to promote public disorder.

The section 124A, IPC defines the offence of sedition and prescribes punishment for sedition which may extent up to imprisonment for life, and fine or imprisonment up to 3 years and fine. The word sedition does not occur in the body of the section. It finds place only as a marginal note to the section which is not an operative part of the sedition but simply States the name by which the offence defined in the section is known.

The following are the essential ingredients of section 124A of IPC-

- Bringing or attempting to bring into hatred.
- Exciting or attempting to excite disaffection against the Government of India.
- Such act or attempt may be done by words either spoken or written or by signs or by visible representation.
- The act must be intentional.

The sedition law sets out scope of disaffection and what is considered sedition intention as indicated under English Law and the criticism of Government measures an administrative and other actions of the Government if done without exciting or attempting to excite hatred, contempt or disaffection towards the Government established by law that is not sedition.

BRILLOPEDIA

JUDICIAL APPROACHES TO THE INTERPRETATION OF SECTION 124A AND ARTICLE 19(1)(A)

After the Constitution of India came into force an important question relating to the constitutional validity of section 124A IPC in relation to Article 19 was raised in a few cases leading to a conflict of decisions in High Courts. There are two divergent views in this regard. The protagonists of one view hold that section 124A IPC is ultra vires of the Constitution as it seeks to punish merely illegal feelings against the Government and it is an unreasonable restriction on freedom of speech and expression guaranteed under article 19 (1) (a) and is not saved under article 19 (2) of the Constitution by the expression "in the interest of public order"¹.

¹Ram Nandan V. State of Uttarpradesh, AIR 1961.

In **Tara Singh v. State of Punjab**² section 124A IPC was struck down as unconstitutional being contrary to freedom of speech and expression guaranteed under Article 19(1)(a).

Chief Justice Watson while delivering the judgment of the court observed that –

India is now a sovereign democratic State and Government may go and caused to go without the foundation of the State being impaired. A law of sedition though necessary during the period of foreign rule has become inappropriate by the very nature of the change which has come about.

To avert the constitutional difficulty as a result of the above referred cases the Constitutional First (Amendment) Act, 1951 inserted in article 19 (2) two words of widest import such as 'in the interest of' and 'public order' thereby including the legislative restrictions on freedom of speech and expression.

The advocates of the other view held that section 124A IPC is constitutional and is not in contravention of article 19 (1) (a) as it is saved by the expression "in the interest of public order" in Article 19 (2). It has been stated that the expression in the interest of public order is of wider connotation and includes not only the acts which are likely to disturb public order but something more than that. In accordance with this interpretation section 124A IPC has been held intra vires of the Constitution. This view found blessings from the Supreme Court in **KedarNath V. State of Bihar**³ wherein it was held that any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. Chief Justice Sinha speaking through the court observed that --

The provisions of the section read as a whole, along with the explanations, make it reasonably clear that the section aims at rendering penal merely such activities as would be intended, or have a tendency, to create disorder or disturbance, of public peace by resort to violence. The explanations appended to the main body of the section make it clear that the criticism of public measures or comment on government action but strongly worded and it would be within reasonable limits and consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. Therefore, construed the section

²Tara Singh v. State of Punjab, AIR 1951, EP 27.

³KedarNath V. State of Bihar, AIR 1962, SC 955.

strikes the correct balance between individual fundamental rights and the interest of public order

The Court further stated that the right guaranteed under article 19 (1) (a) is subject to such reasonable restrictions as would come within the purview of article 19 (2) which comprises-

- security of the State.
- friendly relations with foreign States.
- public order.
- decency or morality.

With these references to the constitutional validity of section 124A of the Indian Penal Code as to how far they are consistent with the requirements of article 19 (2) with particular reference to security of the State and public order. It must be noted that penalize any spoken or written words or signs or visible representations, etc. which have the effect of bringing or which attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards "the Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration and "Government established by law" is the visible symbol of the State. The very existence of the State would be in jeopardy where the Government established by law is subverted.

The continued existence of the Government established by law is an essential condition of the stability of the State. Hence, any act within the meaning of section 124A which has the effect of subverting the Government by bringing that Government into contempt or hatred or creating disaffection against it that would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words which have implicit in them the idea of subverting Government by violent means, which are compendious included in the term 'revolution' which have been made penal by the section in question. However, the section has taken care to indicate clearly that strong words under lawful means used to express disapprobation of the measures of the Government with the view to their improvement or alteration would not come within the section. Besides, comments, strongly worded, expressing disapprobation of actions of the Government without exciting those feelings which generate the inclination to cause public

disorder by acts of violence that would not be penal. On the other side, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of the those acts or measures by lawful that is to say that without exciting those feelings of enmity and disloyalty which imply excitation to public disorder or the use of violence.

CONCLUSION

Hence, it can be concluded that an offence of sedition is not be constructed if there is no intention. The Malafide intention or Mens Rea is the basis for the crime and so there must be an intention to attack the existing government or to create hatred or contempt against it the whole speech should listen or the complete writing should be read in an unbiased manner. The minimal statement used in a writing or speech for expressing feelings of art does not amount to sedition the whole expression should attack the government established by law for such offence. Sedition laws and their growing misuse by governments including opposition-ruled states are a matter of serious concern. Personal liberty and the right to free speech of liberal democracy and sedition laws and their gross misuse attack the very foundation of these liberties enshrined in the Constitution of Indian. The judiciary necessitate to review this draconian law. Even if abolishing this law may not be feasible or toning it down and issuing strict guidelines to limit its indiscriminate use can definitely help India's democratic standing apart from safeguarding freedom of expression in the country.

The Government made it clear that it not taking any steps to repelled the law, *“there is no proposal to scrap the provision under the IPC dealing with offence of sedition there is a need to retain the provision to effecting combat anti-national, secessionist and terrorist elements”* Minister of State for Home Nityanand Rai in written reply in Rajya Sabha in July, 2019.