LAW OF SEDITION IN INDIA

Today, the law of Sedition in India, has assumed controversial importance largely on account of change in the body politic and specially because of constitutional provision of freedom of speech guaranteed as a fundamental right. The law of sedition as contained in S. 124-A Indian Penal Code was also embodied in some other statutes.[1] However the general statement of law was similar in all the provisions and could be gathered from S. 124-A, Indian Penal Code. The legislative history of this section of the Penal Code dealing with sedition is of interest. The draft prepared by the Indian Law Commissioners in 1837 contained a provision [2] on the topic and it was proposed to include it in the Penal Code. It was omitted from the Indian Penal Code as enacted in 1860 for some unaccountable reason. In 1870, S. 124-A was inserted by Indian Penal Code (Amendment) Act.[3] This provision was later on replaced by the present S. 124-A, by an amending Act of 1898.[4] Some changes of an inconsequential character were made by Adaptation of Laws Orders issued in 1937, 1948 and 1950 and by the Part B States (Laws) Act, 1951. Together with these changes S. 124-A Indian Penal Code now stands as follows :—

"Whoever by words, either spoken or written, or by signs, or by visible representation ; or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life to which fine may be added, or with

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1. *e.g.* Press Emergency Powers Act, 1931 ; Defence of India Rules, 34.
2. "Whoever by words whether spoken or intended to be read attempts to excite feelings of disaffection to the Government established by law in the territories of the East India Company, among any class of people who live under the Government shall be punished with punishment for life or for any term......to which fine may be added, or with simple imprisonment for a term which may extend to three years, to which fine may be added or with fine".

   "Explanation—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority is not disaffection. Therefore, the making of comments, on the measures of the Government, with the intention of exciting only this species of disapprobation is not an offence within this clause".
3. Section 5 of Act XXVII of 1870.
4. Section 4 of Act IV of 1898.

imprisonment which may extend to three years, to which fine may be added, or with fine. Explanation—1. The expression "disaffection" includes disloyalty and all feelings of enmity. Explanation—2. Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation—3. Comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

The difference between the old S. 124-A and the present one is that in the former the offence consisted in exciting or attempting to excite feelings of "disaffection" but in the latter, 'bringing or attempting to bring into hatred or contempt the Government of India' is also made punishable.

The provisions of S. 124-A Indian Penal Code are based on the common law. While introducing the bill in the Legislature Sir James Fitz James Stephen emphatically reiterated that this section freed from obscurity and stripped away of technicalities corresponds to the English law of sedition.

The Common law on the subject was too wide and severe in the initial stages.[5] In England the growth of liberty of speech and expression, particularly with regard to the criticism of government, was

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5. In the seventeenth century (*Seven Bishop's* Case, 1688, 12 St. T. 183) it was held to be right of the State to punish any one who had the temerity to arraign the sovereign or any of his acts or the policy of his government either while uttering seditious words or writing or publishing seditious libel.

Sir James Fitz James Stephen has defined the common law of sedition thus :—

"Everyone commits a misdemeanour who publishes verbally or otherwise any words or any document with a seditious intention".

"A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs, and successors or the Government and the constitution of the United Kingdom (U.K.) as by the law established or either House of Parliament, or the Administration of justice, or to excite Her Majesty's subjects to attempt otherwise than by lawful means the alteration of any matter in Church or State by law established, or to raise discontent or disaffection amongst Her Majesty's subjects, or promote feeling of ill-will and hostility between different classes of Her Majesty's subjects."

An intention to show that Her Majesty has been misled or mistaken in her measures, or to point out errors or defects in the Government or constitution as by law established, with a view to their defamation, or to excite Her Majesty's subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing or

gradual.[6] Consequently, the courts began to introduce guiding principles so as to govern the judges in deciding when an intention to excite ill-will and hostility is seditious and when it is not. Fitzerald, J., in *R.* v. *Sullivan* [7] which was later followed and approvingly quoted in *R.* v. *Burns and Others* [8] observed :

"Sedition in itself is a comprehensive term and it embraces all those practices 'whether by word, deed, or writing which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the Empire. The objects of Sedition generally are to induce discontent and insurrection, and stir up opposition to the Government...and the very tendency of sedition is to incite the people to insurrection or rebellion."

A substantially similar view was expressed by Coleridge, J., in *R.* v. *Aldred* [9] when he said that the "word 'sedition' in its ordinary natural signification denotes a tumult, an insurrection, popular commotion or an uproar ; it implies violence or lawlessness in some form".

Thus in English law it can now be taken to be established that in order to constitute sedition the feelings expressed or the acts done must not only bring the government into hatred or contempt or disaffection but should generate or tend to generate or excite the feelings to a degree likely to lead to tumult or public disorder.[10]

Two important factors may be noted in connection with the operation of law of sedition in England, *viz.*

have a tendency to produce, feelings of hatred and ill-will between different classes of Her Majesty's subjects is not a seditious intention."

6. The abolition of Star Chamber in 1641 and the expiry of Licensing Act in 1694 did not make much difference with respect to law of seditious libel (Holdsworth History of English Law Vol. VII, 341) in *R.* v. *Tutichin* (1704) S.T.I. 1125 it was held that it was very necessary for all governments that the people should have a good opinion of it. A century later Lord Ellenborough gave vent to similar feelings in *R.* v. *Covett* (1804) S.T.I. The passing of Fox's Libel Act, 1792 (32 Geo. III C. 60) however, improvised a safeguard in such trials by leaving the whole matter in the hands of the Jury.

7. 11 Cox. C.C. 44.

8. 16 Cox. C.C. 355, 361.

9. 22 Cox. C.C. 1, 3.

10. Since the passing of the Reform Act, 1832, prosecution for seditious offences have become both infrequent and unsuccessful. The trend in English decisions ever since has been on the lines of the proposition laid down by Sir James Fitz James Stephen, namely, that the rulers rule by the sufference of the people and if the former did not discharge their duty properly the ruled had the right to correct them or change them. (See Stephen, History of Criminal Law Vol. II p. 298).

(i) that the law of sedition has not been used since 1909.[11]

(ii) Jury is the sole Judge to determine 'seditious intention' according to circumstances. This acts as a checkmate on the efforts of touchy rulers to push forward their annoyance successfully.

II

A glance at the provisions of S. 124-A will disclose that the main body of the section is phrased in language used by English judges and jurists. Explanation I to the Section sets out the scope of disaffection and in Explanations II and III is indicated what under the English Law is not considered seditious intention. It is, however, not clear from the provisions of the section whether exciting or attempting to excite feelings of disaffection, hatred or contempt is punishable *per se* or whether exciting or attempting to excite people to tumult and disorder is a necessary ingredient of the offence.

An examination of the judgments of the courts of law would reveal the existence of two different views on the question. One view is that the statutory offence of sedition in India is different from the Common Law offence of sedition inasmuch as it seeks to punish expression of all types of bad feelings and unlike the English law fails to prescribe what has been described as an external standard for the purposes of measuring the nature and quality of bad feelings.[12] The other view is that S. 124-A is substantially the same as the law of England "though much more compressed and more distinctly expressed."[13]

By far the largest number of cases take the view that exciting or attempting to excite feelings of disaffection hatred or contempt is punishable as such irrespective of whether or not disorder follows or

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11. *R.* v *Aldred* 22 Cox C.C.I., is the last reported case. The modern tendency is to ignore offences falling under this category but to try them as ordinary libel. *R.* v. *Mylins* (1911) Times News. In this case *King George V* was alleged to have contracted a morganatic marriage, before marrying the queen. It was tried as an ordinary libel although it was sedition also. See, however, *R.* v. *Caunt* (1947). The Times Newspapers, Nov. 18, 1947. Also Comment by Prof. Wade (1948) 64 L.Q.R. p. 203.

12. See *Queen Empress* v. *B. G. Tilak* I.L.R. (1897) 22 Bom. 112 and also *King Emperor* v. *Sadashiv N. Bhalerao* L.R. 74 I.A. 89.

13. Per Ranade, J., in *Queen Empress* v. *Ramachandra Narain* I.L.R. (1897) 22 Bom. 152, 160; and also Gwyer, C.J., in *Niharendu Mujumdar* v. *K. E.* 1942 F.C.R. 38, 43,

is likely to follow.[14] In *Q.E.* v. *Balagangadhar Tilak*[15] Strachey, J., pointed out that S. 124-A I.P.C. is a statutory offence and differs in this respect from its English counterpart which is a common law misdemeanour elaborated by the decisions of the judges. He observed that "the amount or intensity of the disaffection is absolutely immaterial... if a man excites or attempts to excite feelings of disaffection great or small, he is guilty under this section."[16]

The observations of Strachey, J., in *Tilak's* case[17] on the scope of S. 124-A were approved by the Privy Council as having indicated the correct law on the question of sedition. The rule as laid down in that case was followed by the High Courts[18] in India and was again affirmed by the Privy Council in the case of *K. E.* v. *Sadashiv Narayan.*[19]

The other view rejects the strict and literal interpretation of S. 124-A Indian Penal Code and attempts to bring the offence of sedition in line with the English law on the question. Ranade, J., was the first Judge to give expression to it in *Q. E.* v. *Ramachandra*[20] as follows :

"Disaffection...........is a positive feeling of aversion which is akin to disloyalty, a defiant insubordination of authority, or when, it is not defiant......makes men indisposed to obey or support the laws of the realm, and promote discontent and public disorder."[21]

Another case relating to sedition, which marks a departure from the strict rule of construction, is *Niharendu Majumdar* v. *K. E.*[22]

14. In *Queen Empress* v. *Jogendra Chunder Bose,* I.L.R. (1891) 19 Cal. 36, Sir Petheram, C. J., in the charge to the jury explained that the words "disaffection" in S. 124-A " means a feeling contrary to affection and therefore to excite or attempt to excite a feeling contrary to affection would render a person liable to prosecution under the section.

15. I.L.R. (1897) 22 Bom. 112.

16. *Ibid,* 134 ; at p. 135. Strachey, J., further observed : "The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistence to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section."

17. *B. G. Tilak* v. *Queen Empress* I.L.R. (1897) 22 Bom. 528 (P.C.).

18. *Queen Empress* v. *Amba Prasad* I.L.R. (1897) 20 All. 55 ; *In re Mylapore Krishnaswami* 21 C. 33, *Mrs. Besant* v. *Emp.* I.L R. (1916) 39 Mad. 1085 ; 1133.

19. L.R. 74 I.A. 89.

20. I.L.R. (1897) 22 Bom. 152.

21. *Ibid,* 163.

22. 1942 F.C.R. 38.

Gwyer, C. J., explained the need for the law of sedition in the following words :—

"The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilisation and the advance of human happiness. The duty has no doubt been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of Government that in our opinion the offence of sedition stands related. It is the answer of the State to those who, for the purpose of attacking or subverting it, seek to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds, or writings constitute sedition, if they have this intention or this tendency, and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Governments, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."

The liberal interpretation of the provisions of S. 124-A of the Penal Code in *Niharendu Majumdar's* case brought the Indian Law of Sedition at par with English law.[23] However, the binding effect of the rule in *Niharendu's* case was nullified by a subsequent decision of Privy Council in *K. E.* v. *Sadashiv Narayan.*[24] In the absence of any

23. The grounds for a liberal interpretation of the law were thus stated by Gwyer, C. J.

"The language of S. 124-A of the Penal Code; if read literally, even with the explanations attached to it, would suffice to make a surprising number of persons in this country guilty of sedition ; but no one supposes that it is to be read in this literal sense."

".....that in England the good sense of Jurymen, can always correct extravagant interpretations sought to be given by the executive government or even by judges themselves, and if in this country that check is absent, it becomes all the more necessary for the courts, when a case of this kind comes before them, to put themselves as far as possible in the place of jury, and to take a broad view, without refining out much, in applying the general principles which underlie the law of sedition to the particular facts and circumstances brought to their notice".

24. L.R. 74 I.A. 89.

Supreme Court decision *Sadashiv Narayan's* case will continue to be binding on the High Courts in India by virtue of Article 372 read with Article 225 of the Constitution of India.[25]

III

Inter-related to the above problems of meaning and scope of S. 124-A Indian Penal Code is the question of *vires* which arises because of the guarantee of freedom of speech in the Constitution of India and the power of the courts under the Constitution to act as the guarantors and protectors of liberties. Clause (1) of Art. 19 secures "freedom of speech and expression" and clause (2) of Art. 19 contains a limitation on the right of freedom of speech guaranteed by Art. 19(1) of the Constitution. The limits set on the freedom of speech and expression by article 19(2) as originally enacted came to be considered by the Supreme Court in a few cases.[26] Referring to the limits set out by Art. 19(2) to permissible legislative abridgement of the right of free speech and expression, the court held, that they were very narrow and stringent.[27]

In *Tara Singh* v. *State*[28] the validity of S. 124-A of the Penal Code was directly in issue. The East Punjab High Court declared the section void as it curtailed the freedom of speech and expression in a manner not permitted by the Constitution. The court was of the opinion that S. 124-A had no place in the new democratic set up.[29]

By the Constitution (First Amendment) Act, 1951, two changes of consequence were introduced in the provisions relating to freedom of speech and expression. Firstly, that Act considerably widened the latitude for legislative restrictions on free speech by adding further grounds therefor; Secondly it provided that the restriction imposed on the freedom of speech must be reasonable.

25. *Punjabai* v. *Shamrao* I.L.R. (1954) Nag. 805, 811; A.I.R. 1955 Nag. 293; In this case it was held that any law laid down by the Privy Council which does not conflict with any decision of the Supreme Court is binding on the Indian High Courts, because S. 212 of the Government of India Act, 1935, invested the Privy Council decisions with binding authority and Art. 225 of the Constitution lays down that the law administered in any existing High Court remains the same as immediately before the commencement of the constitution.

26. *Romesh Thappar* v. *State* [1950] S.C.R. 594. *Brij Bhushan* v. *State* A.I.R. 1950 S.C. 129.

27. See *Romesh Thappar's* case. p. 602.

28. *Tara Singh Gopichand* v. *State* A.I.R. 1951 E.P. 27.

29. "India is now a sovereign democratic state. Governments may go and be caused to go without the foundations of the State being impaired. A

It is to be seen now, whether S. 124-A of the Penal Code is in conflict with the amended clause (2) of the Article 19 or not. There appear to be three different views on the question as reflected by the decisions of the courts. These can be summarised as under :

(i) S. 124-A Indian Penal Code is *ultra vires* of the Constitution inasmuch as it infringes the fundamental right of freedom of speech in Art. 19(1)(a) and is not saved by the expression "in the interest of public order".[30]

(ii) S. 124-A is not void because the expression " in the interests of public order " has a wider connotation and should not be confined to only one aspect of public order *viz.* to violence.........It has a much wider content, and embraces such action as undermines the authority of Government by bringing it into hatred or contempt or by creating disaffection towards it......From this point of view S. 124-A Indian Penal Code is saved under cl. (2) of Art. 19.[31]

(iii) S. 124-A Indian Penal Code is partly void and partly valid. In *Indramani Singh* v. *State of Manipur* [32] it has been held that S. 124-A which seeks to impose restrictions on exciting mere disaffection or attempting to cause disaffection is *ultra vires,* but the restriction imposed on the right of free-speech which makes it punishable to excite hatred or contempt towards the Government established by law in India, is

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law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about." Per Weston, C. J. *ibid* p. 29.

30. *Ram Nandan* v. *State* A.I.R. 1959 All. 101.

31. *Debi Soren* v. *State* A.I.R. 1954 Pat. 254. The Supreme Court has also endorsed the view of Patna High Court in so far as the expression "in the interest of" is concerned. The S.C. is also of the opinion that the expression has a wider connotation, see *Ramji Lal Modi* v. *State* A.I.R. 1957 S.C. 620 and also *State of U. P.* v. *Ram Manohar Lohia* 1960 S.C.J. 567.

Another view is that the words " in the interests of public order " is equivalent to " for reasons connected with public order ". Walliullah, J., observed in *Basudev* v. *Rex* A.I.R. 1949 All. 523 (F.B.), that the expression 'for reasons' connected with " must mean a real and genuine connection between the maintenance of public order on the one hand and the subject of legislation on the other ". See also *Ram Nandan* v. *State* A.I.R. 1959 All. 101.

It may be suggested that the mere excitement of bad feelings in the nature of disaffection, hatred or contempt, not accompanied by any lawlessness or violence has no real and genuine connection with the maintenance of public order. Moreover the framers of the Constitution could not have contemplated that a freedom granted by them could be infringed on the ground of a remote or problematical contingency; otherwise all freedom would be liable to infringement on one excuse or another and the granting of them would be in name only.

32. A I.R. 1955 Manipur 9.

covered by clause (2) of Art. 19 of the Constitution of India and can be held *intra vires.*

The desirability of having such a law as S. 124-A has been questioned in the present context of events.[33] Thus it may be observed that the courts appear to be differing in their view points with regard to its constitutional validity. The desirability of having a law of sedition in our statute book may be examined and its proper meaning and scope determined so that a law of sedition, if it is necessary must fit in not only within the four corners of the constitutional provisions but must also be in consonance with the democratic spirit and traditions which pervade our Constitution. A suitable amendment, therefore, of S. 124-A in the light of the Federal Court decision in *Niharendu Majumdar's* case would perhaps remove the conflict which appears to confront the problem of freedom of speech in this country.*

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33. See Report of Press Commission. The Press Commission has recommended that S. 124-A should be repealed. See also the observations of Beg, J., In *Ram Nandan* v. *State* A.I.R. 1959 All. 101.

* The Supreme Court has held in *Kedarnath* v. *The State of Bihar*, A.I.R. 1962 S.C. 955 that the provisions of S. 124-A Penal Code are not unconstitutional as being violative of the fundamental right of freedom of speech and expression under Art. 19 (1) (a) of the Constitution. After discussing the case law on the matter the Court observes that if we accept the interpretation of the Federal Court in *Niharendu Majumdar's* case (1942) F.C.R. 38, as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof the section will lie within the ambit of permissible legislative restrictions mentioned in cl. (2) of Art. 19, but that if on the other hand we are to hold that, even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government the offence of sedition is complete then such an interpretation of the section would make it unconstitutional in view of Art. 19 (1) (a) read with cl. (2).

The Supreme Court held (i) that it is well settled that if certain provisions of law construed in one way would make them consistent with the constitution and another interpretation would render them unconsitutional, the court would lean in favour of the former construction; (ii) that the provisions of Section 124-A read as whole, along with the explanations make it reasonably clear that the section aims at rendering penal only such activities as would be intended or have a tendency to create disorder or disturbance of public peace by resort to violence, (iii) that even assuming that Section 124-A is capable of being construed in the literal sense in which the Judicial Committee of the Privy Council contrued it, it is open to the Court to construe the section in such a way as to avoid the unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it (applying the *ratio decidendi* of the case in *R. M. D. Chamarbaugwalla* v. *Union of India*, [1957] S.C.R. 930). The Court in the end declared that the provisions of S. 124-A impose restrictions on the fundamental right of freedom of speech but those restrictions cannot but be said to be in the interests of public order and within the ambit of permissible legislative interference with that fundamental right. [Ed.]