

CHAPTER VI

CRIMINAL LAW AMENDMENT ACT, 1961

The common law of seditious libel in its origin was designed to punish persons disseminating matter in a permanent form defamatory of the sovereign. But subsequently its object became the punishment of persons causing in a permanent form breach of peace or by the same means expressing ideas which have a likelihood or tendency to disturb public tranquillity. Spoken words are not punishable as seditious, although they may be punished sometimes under the English law of treason or under the Treason-Felony Act.

In the event of questioning the integrity of India or the territorial frontiers, State cannot be expected to wait until an overt act is done by the wrong-doer and then deal with him under the law. Under the English law, if the concepts are analysed, it can be seen that words leading to questioning the territorial integrity of the State would certainly fall under the law of treason because the King's Sovereignty over a part of the territory of the State is threatened, and if reduced to writing, also under the law of seditious libel, because such words involve danger to public peace. But such question never seems to have arisen in England. Any appeal in the metropolitan area for recognition of freedom in a colony may be taken as containing words questioning the sovereignty of the King over his Dominions. It must be said to the credit of England as well as of France that there has always been a section of people in these countries advocating the freedom of the colonial people. Such advocacy was never considered as penal. But in countries having national minorities, or ideological sympathisers with neighbouring states, questioning the territorial integrity or frontiers of a state cannot be viewed with indifference, because such activities may easily take the form of subversion in course of time.

This was the situation which India had to face when Chinese maps showing large chunks of Indian territory as belonging to China, and Indian sympathisers were spreading reports of the justice of the Chinese cause. This situation coupled with the Chinese occupation of strips of Indian territory on the border created a serious problem for the Government of India. The result was the enactment of the Criminal Law Amend-

ment Act, 1961. It is a permanent piece of legislation added to the criminal law of the land. Section 2 of the Act makes questioning of the territorial integrity or frontiers of India in a manner prejudicial to the interests of safety or security of India criminal. Section 124-A of the Indian Penal Code made criminal words or other kinds of representations bringing the Government established by law, which is the representative of the state for all purposes, into contempt or hatred or exciting disaffection towards it. Section 2 of the Criminal Law Amendment Act made criminal any kind of attack, by means of words or other kinds of representation, against the abstract entity, the State itself. Thus in substance section 124-A of the Penal Code stands amended by section 2 of the Criminal Law Amendment Act, 1961.

Section 2 says :

“Whoever by words either spoken or written, or by signs, or by visible representations or otherwise questions the territorial integrity or frontiers of India in a manner which is, or is likely to be prejudicial to the interests of the safety or security of India, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.”

The questioning, in order to be criminal, should be as to the territorial integrity or frontiers of India. Territory of India is defined in the Constitution.¹ Any inquiry about an area which is included in India, and leading to a doubt as to the correctness of the inclusion, is certainly questioning the territorial integrity of India. Political, historical and geographical facts made India what it now is. To go behind the Constitution to the origin and examine the desirability of inclusion of any area involves a question of territorial integrity. It is difficult to suppose that a purely historical or other discussion unrelated to the present events is intended to be made penal. Therefore, the question in every case reduces as to what is the intention of the person in discussing such matter. Even a discussion concluding that it is justifiable to include an area in India may amount to questioning the territorial integrity, if the presentation is not fair. Discussion leading to inference that one of the states of the Indian Union should not have formed part of it, or that people inhabiting a particular area and claiming separate statehood are rightfully entitled to it on account of their ethnic origin, or that a part of an area now lying in India and another lying in a neighbouring state ought to be formed into a separate state, certainly fall within the scope of the section as questioning the territorial integrity of India.

1. Article 1.

When the section refers to the frontiers of India, it refers to sea as well as land frontiers of India. The sea frontier is settled by custom and convention under International Law. The land frontiers of India mostly are not internationally demarcated. Frontier with Pakistan is defined. Frontier with China is partly undefined but is settled fairly by custom. Part of the frontier is defined by convention but not demarcated. That part of it which is supposed to be settled by convention and also the undefined part are being disputed by China. To act or say in a manner prejudicial to India's cause in this regard is questioning the frontiers.

The greatest protection to the freedom of speech of an individual lies in the requirement that the questioning in order to be criminal, should be in a manner "which is, or likely to be, prejudicial to the interests of safety or security of India." This requirement is determination of a question of fact and the answer depends upon time, place, circumstances and occasion if the publication is to be regarded as criminal. Again in such cases, judge should bear in mind that he discharges the functions of jurymen as well. If a representation prejudicial to the safety or security of India is made criminal, constitutionality of the provision cannot be called in question. But the section also seeks to make the representation which is likely to be prejudicial to the interests of safety or security criminal. The interests of safety or security are not identical with safety or security. But the interests supposed to be threatened should not be remote or problematical. Thus a line has to be drawn in each case between the alleged questioning directly threatening the interests of safety or security and remotely threatening these interests. If there is a likelihood of these interests being threatened by the representation it falls within the letter of the statute. Again, the likelihood cannot be understood as a distant or possible one, but has to be understood as a probable one likely to happen in the near future.

By giving wide meanings to the words "prejudicial", "likely" and "interests" in the section, its constitutionality may be seriously brought into question and it may even be unconstitutional when extensive meanings are given to them. Even though the intention of the legislature is to express itself in an unequivocal manner due to its varied composition and the necessity to obtain an agreement of a majority of members, it is often not easy to avoid generality. Therefore, the courts evolved a principle that statutes should be so construed as to avoid any serious question of unconstitutionality in order to make them constitutional. If the limits of Parliament's power to impose restrictions are borne in mind, and the general

words are construed subject to these limits, the words of wide import may be understood in narrow limits and thus a possible question of unconstitutionality may be avoided.

Under section 2 as it is now worded, possession of a document containing objectionable material is not punishable, although on a notification made by a state or Central Government under section 4(1) of the Act, the document becomes liable to be forfeited. There seems to be no point as a matter of principle in not making conscious possession of material of such gravity which at any time may be circulated or cause to be circulated, an offence. This is a serious lacuna in the drafting of the section.

To question the frontiers of India in such a way as to enlarge the territory of India does not seem to fall normally within the scope of the section for in such a case safety or security of India is not involved. But in times of tension, even such questioning may involve safety or security of India and hence becomes criminal.

The effects of the provision are likely to be more far reaching. A debate in any of the political organs of the United Nations or a wireless transmission, broadcast from a station in a foreign country containing matter falling within section 2 of the Act may become criminal in India if given publicity. A debate in any organ of the United Nations contained in the official documents of that body probably may be allowed to be circulated because they are privileged under convention and municipal law. But a reprint cannot be considered to be equally privileged.

A similar provision was made in Rumania by a decree of July 1958. Article 184 says:²

“Rumanian citizens who commit any act which could lead to the subjugation of the territory of the state or a part of it to the sovereignty of a foreign State, or by which the independence of the state would be destroyed or harmed, commit the crime of treason to the fatherland and shall be sentenced to death. The same penalty shall be imposed if an act is committed which leads to the undermining of the unity of the State.”

From the tenor of the legislation as it appears “acts” include words spoken or written. Compared to this provision, section 2 of the Criminal Law Amendment Act is milder in respect of the

2. Bulletin of the International Commission of Jurists, No. 9 August 1959, p. 47.

penalty. If discreetly administered, its constitutionality or justness is unquestionable.

French Penal Code also contains a similar provision.³ Of this provision it is said as follows:⁴

“This provision is very far-reaching. It is in fact interpreted in such a way that any form of agitation to get France to give up part of her territory is regarded as coming under the jurisdiction of the provision. There is no distinction between the attempt and the completed crime.”

The outstanding differences between section 124-A of the Indian Penal Code and section 2 of the Criminal Law Amendment Act lie in the enforcement of the provisions. For a prosecution under section 124-A, prior sanction of the State Government is a requisite. No such sanction is necessary for a prosecution under the latter act. The offence under section 124-A is triable by a Court of Session and other Magistrates designated in Schedule II of the Criminal Procedure Code and the offence under the newly enacted provision is triable by any Magistrate. Thus it is liable to abuse.

Section 3 of the Act

Section 3(1) of the Act⁵ empowers the Central Government to declare any area of India adjoining the frontiers to be a notified area, if they consider that in the interests of the safety or security of India or in the public interest it is necessary or expedient to do so. The section says that the area so notified shall remain as a notified area so long as the notification remains in force. But there is no provision in the act empowering the Central Government to revoke or modify the notification. Nor does the section say that the Central Government may make a notification as and when they think fit. Therefore, it seems that a notification once made in respect of an area is irrevocable. This is again a defect in the drafting of the section. If the section is amended so as to convey that the Central Government have the power as and when they

3. See Frede Castberg, *Freedom of Speech in the West*, p. 54 (1960).

4. *Ibid.*

5. Section 3(1) of the Act says: “If the Central Government considers that in the interests of the safety or security of India or in the public interest, it is necessary or expedient so to do, it may, by notification in the official Gazette, declare any area adjoining the frontiers of India to be a notified area; and thereupon, for so long as the notification is in force, such area shall be a notified area for the purposes of this section.”

consider necessary to make a notification and also the power to alter, vary, amend or revoke such notification, the purpose will be better served.

The consequences which follow from the notification are serious. Severe restraints on movement and residence of citizens may be imposed. So far as restrictions on speech may be imposed section 3(2) is relevant. It says:

“Whoever makes, publishes or circulates in any notified area, any statement, rumour or report which is, or is likely to be, prejudicial to the maintenance of public order or essential supplies or services in the said area or to the interests of the safety or security of India, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.”

Without reference to truth or the purpose of making any prejudicial statement or report or for publishing or circulating it, a person may be punished. Even an innocent representation made for the purpose of obtaining its lawful redressal of a grievance comes within its ambit. Thus it is a very drastic restriction on the freedom. But section 3(2) comes into operation only on a notification under section 3(1) of the Act being made. It is difficult to assess in advance the circumstances under which the notification will be made. If the Central Government have that in mind a proclamation will be made under Article 352 of the Constitution in the first instance before section 3(2) is brought into operation. Then, no question of constitutionality of section 3(2) is likely to arise.

If such a proclamation under Art. 352 were not made and section 3(2) is brought into operation several questions regarding its validity may arise. First, is the determination of the Central Government of the conditions laid down in section 3(1) for bringing section 3(2) into operation conclusive? So long as freedom of speech and expression is a guaranteed right of a citizen, the existence of the conditions and their validity should be objectively determined by the courts. Secondly, if the restrictions only operate in remote and vulnerable areas in the genuine interests of safety or security of the country or in public interest or for maintenance of public order, there is no doubt as to the constitutionality of section 3(2). On the other hand, if a notification bringing into force of section 3(2) of the Act is made on grounds which have no bearing on the interests

sought to be protected by the section or made with reference to an area which in no sense can be said to be "adjoining the frontier of India", as for instance, the whole of the Uttar Pradesh or the whole of Andhra Pradesh, different questions will arise. As the notification determines the time and area of operation of section 3(2) of the Act, constitutionality of it has to be judged with reference to them both.

By the rules now made under sub-section (1) of section 3 of the Criminal Law Amendment Act, 1961, the Central Government notified⁶ parts of Uttar Pradesh, Himachal Pradesh and Bengal adjoining the frontier with China as notified areas. In the context of the transfrontier developments, tension across the border and the vulnerable nature of the areas it may be presumed that the notification has been made under urgent political necessity. On account of their comparative smallness in size, the restriction on the freedom of speech and expression placed in those areas cannot be said to be unreasonable. In *Virendra v. State of Punjab*,⁷ the Supreme Court laid down that if the restrictions on the freedom of speech are for a short duration and are operative only in one State and if there is choice for the Government to reconsider their decision and revoke it after considering the representations made against their order, constitutionality of the order as well as of the statute under which it was made may be sustained. In the Punjab, restrictions on the freedom of the Press were imposed by the State Government in connection with agitation of the language groups. In the instant case, the Central Government imposed restrictions on the freedom on account of their proximity to the frontier which is disputed. There may not be any serious difficulty in sustaining its constitutionality. But it is better, as suggested above, if section 3 of the Criminal Law Amendment Act is amended so as to enable the Government to revoke their notification or alter the limits of the areas notified.

6. *The Gazette of India*, March 31, 1962 Part II Sec. 3(i) 372, 373 and 374. It notified that June 1, 1962 as the date from which the movements of persons, other than those specified in the rules, are restricted.

7. [1958] S.C.R. 308.