CHAPTER 1

SEDITION: ITS PLACE IN INDIA

1. DEFINITION AND PLACE OF SEDITION IN INDIAN LAW

The word sedition is derived from the Latin *seditio* which means "a going aside."[1] All separatist tendencies within a State are called seditious. Now the word sedition "has come to be applied to practises which tend to disturb internal public tranquillity by deed, word or writing but which do not amount to treason and are not accompanied by or conducive to open violence."[2]

The substance of the Indian law of sedition may be thus stated: Whoever by words spoken or written or by signs or by visible representations or otherwise by any communicable means—

(1) brings or attempts to bring into contempt or hatred, or excites or attempts to excite disaffection, against the Government established by law in India,[3] or

(2) promotes or attempts to promote feelings of enmity or hatred between different classes of Indian citizens[4], or

(3) with the deliberate and malicious intention of outraging the religion or religious feelings of any class of Indian citizens insults or attempts to insult the religion or religious beliefs of that class[5] in such a manner as to endanger the interests of public order or prejudicial to the safety or security of the State, or

(4) brings into question the territorial integrity or frontiers of India in a manner which is actually or likely to be prejudicial to the interests of safety or security of India[6], is guilty of the offence of sedition.

The offence described in (1) above may be known as the poli-

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1. *Webster's New International Dictionary*, 2nd ed. (1956).
2. *Encyclopaedia of Social Sciences*, Vol. 13 p. 636,(1934) (1951 reprint)
3. Section 124-A of the Indian Penal Code.
4. Section 153-A of the Indian Penal Code.
5. Section 295-A of the Indian Penal Code.
6. Section 2 of the Criminal Law Amendment Act, 1961.

tical offence of sedition and is contained in section 124-A of the Indian Penal Code. That in (2) above may be known as sedition by class hatred and is contained in section 153-A of the Code. That in (3) above may be known as sedition by promoting religious insult and is contained in section 295-A of the Code. That in (4) above may be known as sedition by questioning the territorial integrity or frontiers and is now provided in section 2 of the Criminal Law Amendment Act, 1961. The political offence of sedition is provided in Chapter VI of the Code dealing with offences against the State. The offence of provoking class hatred is to be found in Chapter VIII of the Code dealing with offences against public tranquillity. The offence of religious insult is in Chapter XV of the Code which purports to provide for offences relating to religion. Lastly, the offence of questioning the territorial integrity or frontiers is embodied in an altogether separate law, the Criminal Law Amendment Act. Though the above provisions are distributed in different chapters and have been introduced into the Indian legal system at different periods, the nature and object of them all is the same, namely, they are all laws enacted in the interests of public order and their object is the protection of the safety and security of the State.

Under the common law much of the above mentioned offences which operated through the medium of writing is, generally speaking, covered by the misdemeanour of seditious libel.

All the provisions of the Indian law mentioned above, except the one in the Criminal Law Amendment Act, 1961, were enacted before the Constitution when freedom of speech and expression was not a fundamental right.[7] It may also be stated at the outset that the dimension of freedom of speech as a right is not rigid but a variable one depending upon time, place and circumstances. The content of the right depends, amongst others, upon the following factors:

(1) the political situation of the times,

(2) the economic prosperity of the society,

(3) the audience to which the speech is addressed or amongst

7. The problem therefore arises now of finding out to what extent those provisions satisfy the criterion of reasonableness under the Constitution, because to the extent that they do not satisfy that criterion they have to be adopted. In the case of the Criminal Law Amendment Act, the question of construction, not of adoption, is material. In the case of all these laws the question of construction to satisfy the criterion of reasonableness is material.

whom the writing is circulated,

(4) extent of toleration developed by the people, and

(5) the police force available to the State.

In enlightened and contented times, there might arise no occasion for enforcement of these laws. Even when the laws are there, and prosecutions at times become necessary, much harm might not be done even if the courts acquit the accused because the courts generally pronounce their verdicts long after the time when the provocative atmosphere in which the words were spoken or published and which apparently justified prosecution existed. This is not to belittle the need for sternness in judicial enforcement of this class of law, for, at proper periods the public tranquillity of the community could well be established by such stern enforcement. But if the period is not propitious, and if the times are such that systematic attempt is made to violate any of the laws, prosecution and punishment for violation will scarcely be effective. About the policy of the Indian Government regarding such stern enforcement, at the turn of the present century and after, in British India, when the overwhelming national and patriotic sentiments made the conditions unfavourable for the success of such a policy, a member of the Governor-General's Executive Council wrote in 1910:

> "The policy of systematic prosecution seems to me, therefore, to have completely failed to stop the forms of seditious publication which falls clearly within the description given in Section 124-A."[8]

In recent years mass reaction to the partition of India in 1947 brought law enforcement to the verge of breakdown when people behaved generally as if they were possessed of class hatred and religious insult as a creed. Unrest in Assam in 1960 supposed to have started on the basis of linguistic differences, and those in Jubbalpore and Aligarh in 1961 considered to have had its sustenance in religious bickerings, show how delicate is the problem of timely judicial sternness on the one hand and organised disorderliness on the other.[9]

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8. This note is made by Mr. Stuart on Jan. 14, 1910 and is found in the confidential papers of Act I of 1910 at page 6 (National Archives).

   On 3rd June, 1908, the Governor-General-in-Council issued a warning to the Newspapers against publication of seditious material. Upto the end of 1909, there were 47 press prosecutions. But the tendency in the press to publish such writings did not abate.

9. Agitations of language groups in Assam in 1960, the conflicts between the religious groups in Jubbulpore and Aligarh in 1961 proved that the laws could not be put into force. Any attempt to put them into force, would have aggravated the feelings of the groups.

These phenomena, however, indicate the importance of judicial statesmanship in this area of the law compared to technically exact definitions of terms.

Nevertheless presence of the laws on the Statute Book goes a long way in acting as a deterrent in normal times and certainly against isolated acts in the initial stages.

2. JUSTIFICATION FOR THE LAW

(*1*) *Sedition as a political crime*

The offence defined in section 124-A of the Indian Penal Code is here called a political crime for two reasons. First, the decision whether or not to prosecute a person for the alleged offence is taken by the Government on political considerations and a court cannot proceed with the trial of the case except with the previous sanction of the State Government.[10] Secondly, as the offence is against Government established by law in India, the content of the matter for which prosecution may successfully be maintained varies with the structure of the Government for the time being.

As the Government in the republican India is of the people and is in theory run according to the public opinion, it cannot be said that the Government is brought into contempt or hatred by the words uttered by a person, still less there can be any excitation of disaffection towards it. Therefore, it may be argued that the political offence of sedition has no place under the system. This argument assumes that there is a basic agreement in regard to the form of government and that the ultimate interests of the members of the body politic for all practical purposes is identical. One may well be justified in making the assumptions in countries like the United Kingdom and Switzerland. But in vast majority of states, there is no such agreement. Tradition and law-abiding instinct of the people largely contribute to the tranquillity in the state. But in states which recently became free, it is difficult to expect that these conditions invariably exist. On the other hand the economic backwardness of the countries contains roots of discontent, which in turn create affiliations accross the territorial lines. In all countries of the East, there is an awakening of the hitherto unprivileged for their legitimate share of political power which in itself requires careful handling in order to be constructive and evolutionary instead of developing in the opposite directions. India therefore cannot take the risk of dispensing with the legal weapons to counteract the political crime of sedition altogether.

10. Section 196 of the Criminal Procedure Code, 1898.

India became free after an agitation extending over three quarters of a century against the established Government. Ideas and habits acquired by the people in the course of that agitation do not die down until the lapse of a considerable time. Ideas, very often, long outlive their utility and only time can bring about a change in the outlook of the people. An average Indian even now entertains a distrust against the government and the police force. The very methods by which freedom was secured are being used against the present Government by the language, political and other groups in pressing forward their claims.

The Press Commission of India recommended[11] in 1954 that section 124-A of the Code should be repealed and that a new section 121-B should be enacted making punishable "expressions which incite persons to alter by violence the system of Government with or without foreign said".[12] Such expressions fall short of waging war[13] against the Government and their use is not an offence under the provisions of the Code other than the section proposed to be repealed. This recommendation follows part of Art. 2, clause (b) of the Geneva Draft Covenant of the United Nations Conference.[14] But this does not cover that part of the draft Covenant which restricts freedom of speech when it is likely to promote disorder.

When it is suggested that sedition as an offence may be retained, it is never meant that a person should be made punishable for mere words spoken or written however unfair they may be. But when the words used are tantamount to conduct leading to disorder, it cannot be argued that a person's legitimate freedom of speech is abridged. There is no doubt that words are as good as actions under certain circumstances. It is only when the words assume the character of actions, that persons uttering them may be punished for sedition in Republican India.

The object of inciting people is to make them commit crime. Therefore it may be argued that the person inciting may be punished

11. Report of the Press Commission Part I, p. 403 (1954).

12. *Ibid.*

13. See section 121 of the Indian Penal Code.

14. It says: Freedom of speech in particular carries with it duties and responsibilities "and may therefore be subject to necessary penalties, liabilities and restrictions clearly defined by law, but only with regard to:
    (a) . . .
    (b) Expressions which incite persons to alter by violence the system of government or which promote disorder."

for abetment of the crime attempted or incited and that the provision for the political crime of sedition making illegal conduct punishable is superfluous. This statement is not wholly correct. It defies the wit of man[15] to exhaustively define the ways by which seditious activities may be carried on. Sometimes they may involve a call for the people to commit offences and at other times they may not. It is a fact that by saying "Brutus is an honourable man," people were excited to commit misdeeds. In the post-Constitution period in India several cases have arisen,[16] where attempts were made to infuriate people by irresponsible statements. No crime can be said to have been committed by uttering any of them. Nevertheless such statements are harmful and it is desirable to put a stop to their spreading.

No state can be expected to concede freedom to those who profess to put an end to it by availing of that freedom. In that case, there is also no point in waiting until an overt act is done towards the commission of the crime when their cherished aim is to destroy that freedom itself.

In the comparatively tranquil times of 1870 the occurrence of a disturbance which had political significance opened the eyes of the then Indian Government to the lacuna in the laws of India in the matter of legislative provisions to take care of public disturbances of the type illustrated by section 124-A of the Indian Penal Code.

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15. Sir Lawrence Jenkins is said to have made a statement to this effect. See, the official papers of Act I of 1910.

16. In *State of Bihar* v. *Shailabala Devi*, A.I.R. 1952 S.C. 329, 332, the appellant wrote:

> "Labourers, raise now the cry of revolution. The heavens will tremble, the Universe will shake and the flames of revolution will burst forth from land and water. You who have been the object of exploitation, now dance the fearful dance of destruction on this earth, truly, labourers. Only total destruction will create a new world order and that this will bring happiness to the whole world."

In *Kedarnath Singh* v. *State of Bihar*, A.I.R. 1962 S.C. 955 the speech in respect of which one of the prosecutions in question was filed was as follows:

> "The Forward Communist Party does not believe in the doctrine of vote itself. The party had always been believing in revolution and does so even at present. We believe in that revolution, which will come and in the flames of which the capitalists, zamindars and the Congress, leaders of India, who have made it their profession to loot the country, will be reduced to ashes and on their ashes will be established a Government of the poor and the down-trodden people of India."

To dispense with it in the more troublesome times of the present day seems to be not well advised. When the section was supposed to be unconstitutional before the First Amendment to the Constitution the courts felt uneasy on the score that incitements to commit offences by newspaper articles could not be penalised.[17] One of the reasons for replacing Art. 19(2) in 1951 is to get over this situation.[18] Recommendation to repeal section 124-A of the Penal Code does not therefore seem to be appropriate at the present time.

Australia,[19] Canada,[20] France,[21] Gold Coast,[22] the United Kingdom[23] and the United States[24] have laws similar to the political crime of sedition in India. To retain such a law cannot be considered a sign of a reactionary legal system.

(2) *Justification for making the provocation of class hatred and class enmity a crime*

No individual has the freedom to provoke class war. Not only is class enmity and hatred destructive of political harmony but it also leads to tension and disorder in the community. In the caste-

17. *In re Bharati Press*, A.I.R. 1951 Patna 12,21, Sarjoo Prasad J. said:
"I am compelled to observe that from the above discussions of the Supreme Court, it follows logically that if a person were to go on inciting murder or other cognizable offences either through the press or by word of mouth, he would be free to do so with impunity in as much as he would claim the privilege of exercising his fundamental right of freedom of speech and expression. I cannot with equanimity contemplate such an anamolous situation but the conclusions appears to be unavoidable. . . ."

18. See *Statement of Objects and Reasons* to Bill No. 48 of 1951 introduced in the Provisional Parliament on May 12, 1951. See Gazette of India 1951, Pt. II, Sec. 2, p. 357.

19. Barry, Patan and Sawer, *An Introduction to the Criminal Law in Australia*, 90 (1948).

20. Sec. 134 of the Criminal Code of Canada. cf. Lewis Whatson, *A Manual of Canadian Criminal Law*, 43 1st ed. (1951).
Sedition is classified to be an offence against public order. Sec. 60-62 Criminal Code of Canada, 1954 (Revised),
Snow, *Criminal Code of Canada*, pp. 53-55 (1955).

21. Article 76 of the Penal Code. See Frede Castberg, *Freedom of Speech in the West*, 52 (1960).

22. Sec. 326 of the Criminal Code (1936 Revision). It is extracted in [1940] A.C. at 237.

23. See Kenny, *Outlines of Criminal Law*, 17th. ed. pp. 376-78 (1958).

24. Burdick, *The Law of Crimes: Insurrection and Sedition*, paragraph 246 (1946); Perkins, *Cases and Materials on Criminal Law and Procedure*, 260, 2nd ed. (1959).

ridden and communal background, it is not difficult to provoke people to disorder. Not only that the law relating to class hatred was not sufficient to deal with the new situation, it was found necessary to tighten the law and the Parliament has enacted a law.[25]

In the earlier times, State consisted of a number of groups and there was no direct link between the State and the individual. Loyalties were then tribal; now they are national.

For successful functioning, the State has to effectively maintain direct relation with the individual and the group loyalties should be disregarded to the maximum possible extent. As law and public opinion influence each other, the penal law of class hatred may be so used as to reduce the evil effects of group loyalties to a minimum.

(*3*) *Justification for making religious insult a crime*

Religious insult is the result of intolerance. This again leads to class hatred, but the classes involved are those grouped on the basis of religion. India was divided on religious basis and the mass migration that followed partition was the greatest that ever occurred in the world history. The miseries suffered by individuals cannot be forgotten for a very long time to come. The State is justified in taking firm measures against any provocation of a religious kind so that there may not be a relapse to the pernicious ideas and the same do not spread to a wider extent.

(*4*) *Justification for making the questioning of the territorial integrity of India a crime*

Prima facie it would be a suspicious act on the part of an Indian citizen to controvert the correctness of the official version of his national frontiers. Its propensity for mischief becomes apparent if this disbelief is directed to areas which a neighbouring power claims as her own. The urgency for curbing such tendency becomes imminent when the situation between a neighbouring power and India becomes tense. In such situations a State is justified in punishing a person for a publication of rumour or report having such evil consequences. The Criminal Law Amendment Act, 1961 of India has to be viewed in this background.

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25. Act 41 of 1961.