

SEDITION¹

The word “Sedition” does not occur in Section 124-A of the Indian Penal Code or in the Defense of India Rule. It is only found as a marginal note to Section 124-A, and is not an operative part of the section but merely provides the name by which the crime defined in the section will be known.

As stated in KENNY- the Law of Sedition relates to the uttering of the seditious words, the publication of seditious libels, and conspiracies to do an act for the furtherance of a seditious intention. Sedition, whether by words spoken or written, or by conduct, is a misdemeanor at common law punishable by fine and imprisonment. Sir JAMES STEPHEN defined a seditious intention as “an intention to bring into hatred or contempt, or to excite disaffection against, the person of his Majesty, his heirs or successors, or the Government and the constitution of the United Kingdom by law established, or either House of Parliament, or the administration of Justice or to excite his Majesty’s subjects to attempt otherwise than by lawful means, the alteration of any matters in Church or State by law established.....or to raise discontent or disaffection amongst his Majesty’s subjects, or to promote feelings of ill will and Hostility between different classes of such subjects.” But an intention to show that his Majesty has been misled or mistaken in his measures to point out errors or defects in the government or constitution, as by law established with a view to their reformation, or to excite his Majesty’s subjects to attempt by lawful means the alteration of any matter in Church or State

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by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill will between classes of His Majesty's subjects, is not a seditious intention. It is the right of every citizen to discuss public affairs fully and freely but such discussions must not be directed to the incitement of unlawful acts or calculated to excite disaffection. In a twentieth century prosecution for sedition, the Judge told the jury that they could take into account the State of Public feelings. HALSBURY lays down: the essence of the offence of treason lies in the violation of the allegiance owed to the sovereign. Allegiance is due from all British subjects wherever they may be local allegiance is owed by an alien under the protection of the crown so long as he is resident within the realm and by a resident alien who goes abroad leaving his family or effects within the realm or goes abroad in possession of a British Passport. An ambassador who is not a subject of the State to which he is accredited does not owe any temporary allegiance to that State.

The English law does not make mere spoken or written words treason where they do not relate to any act or design then actually on foot against the life of the King or the levying of war against and in contemplation of the speaker. But under the Penal code in India the aiding or levying of war and the abetment thereof are put on the same footing of section 121 and the abetment is as much an offence of treason as the aiding of war itself.

In the case of Ram Nandan v. State of U.P.². The Hon'ble High Court held that section 124-A imposed restriction on the freedom of speech which is not in the interest of the general public and hence declared 124-A as **ultra vires**. But this decision of the Hon'ble High Court was overruled by the Hon'ble Supreme Court

² AIR 1959 All. 101

in the case of *Kedarnath Das v. State of Bihar*³, and held Section 124-A, **intra vires**.

In *Tara Singh v. State of Punjab*⁴, section 124-A, of Indian Penal Code was struck down as unconstitutional being contrary to freedom of speech and Expression guaranteed under Art 19(1) (a).

To avert the constitutional difficulty as a result of the above referred case. The constitutional 1st (Amendment) Act, 1951 added in Art 19 (2) two words of widest import, wiz., “in the interest of” “public order”. Thereby including the legislative restrictions on freedom of speech and expression. The advocates of the other view held that section 124-A, of I.P.C is constitutional and is not in contravention of Art 19(1) (a) as it is saved by the expression “in the interest of public order” in Art 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 124-A, I.P.C. has been held *intra vires* of the constitution. This view found blessings from the Supreme Court in the case of *Kedarnath v. State of Bihar* (*supra*) wherein it was held that any law which is enacted in the interest of public order may be saved from the voice of constitutional invalidity.

The court had further observed in the said case that the right guaranteed under Art 19(1) (a) is subject to such reasonable restriction as would come within the purview of clause (2), to Art 19 which comprises (a) security of the State, (b) friendly relations with foreign states, (c) public order, (d) decency or morality, etc.

³ AIR 1962 SC 955

⁴ AIR 1950 SC 124

with reference to the constitutionality of section 124-A, of the I.P.C, as to how far they are consistent with the requirements of clause (2) of Art 19 with particular reference to security of state and public order, the section, it must be noted penalizes any spoken or written words or science 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. “Government established by law” is the visible symbol 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 124-A, which has the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, 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, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term ‘revolution’, have been made penal by the section in question. But 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. Similarly, comments, however, 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, would not be penal. In other words,

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 measure by lawful means that is to say, without exciting those feelings of enmity and disloyalty which imply excitation to public disorder or the use of violence.

This section requires two essentials:-

1. Bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards, the Government of India.
2. Such act or attempt may be done (i) by words, either spoken or written, or (ii) by signs, (iii) by visible representation.

The law of sedition as codified in India represents in substance. The English law of sedition. In a charge under section 124-A of the penal code, the prosecution must prove to the hilt that the intention of the writer or the speaker, whoever he may be, is to bring into hatred or contempt or excite or attempt to excite disaffection towards the Government established by law in British India. The essence of the crime of sedition, therefore, consists in the intention with which the language is used and what is rendered punishable by section 124-A of the penal code is the intentional attempt, successful or otherwise, to rouse as against Government the feelings enumerated in the section, a mere tendency in an Art. to promote such feelings is not sufficient to justify a conviction; in other words, the prosecution must bring home to the accused that his intention was as is described in the section

itself.⁵ The essence of the offence of sedition under section 124-A, I.P.C., is the intention with which the language of a speech is used and that intention has to be judged primarily from the language itself. In forming an opinion as to the character of speech charged as sedition, the speech must be looked at and taken as a whole, freely and fairly, without giving undue weight to isolated passages and without pausing upon an objectionable sentence here or a strong word there, and, in judging of the intention of the speaker, each passage, should be considered in connection with the others and with the general drift of the whole.⁶ The provisions of section 124-A, I.P.C. are very wide and in strict law they would cover everything that amounts to defamation of the Govt. excluding any criticism in good faith of any particular measures or acts of administration. If the Govt. comes into Court and asks for a decision from a judge or a Magistrate whether particular conduct is or is not within the terms of section 124-A, the Court must express a perfectly fair opinion as between the parties apart from its own ideas of political expediency and the terms of section 124-A, are so wide that much they may generally be regarded as justifiable speech would come within its terms.

A speech suggesting generally that the Govt. established by law in India was thoroughly dishonest and unfair and that steps should be taken either by violence or by threat of violence to abolish it, comes within the provisions of section 124-A.⁷ the gist of the offence under section 124-A lies in the intention of the writer to bring into hatred and contempt the Government and is not to be gathered from isolated or stray passages here and there but from a fair and generous reading of

⁵ Satyaranjan Bakshi v. Emperor (AIR 1927 Cal 698)

⁶ Hanumanthaiya v. Govt of Mysore, (1948) 52 Mys HCR 265.

⁷ Paramanand v. Emperor, AIR 1941 All 156, 1941 All LJ 26, 42 Cr LJ 46.

the article as a whole. Further, in gathering the intention allowance must be made for a certain amount of latitude for writers in the public press.⁸

The offence does not consist in 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 the publication of seditious articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within this section, and would probably fall within other sections of the penal code. If he tried to excite feelings of hatred or contempt towards the Government, that is sufficient to make him guilty under this section.⁹ The Federal Court of India had, however, held that the gist of the offence of sedition is incitement to violence; mere abusive words are not enough.¹⁰ The view of the Federal Court was subsequently overruled by the Privy Council,¹¹ as being opposed to the view expressed in several cases.

The quintessence of sedition is intention. Thus here a speech addressed to an audience consisting, mostly of ignorant zamindars and the intention for holding the Darga in which the speeches were delivered as unknown it was held that the intention has to be gathered solely from the speeches themselves and the effect they were likely to create on that ignorant audience. When the speaker told the audience that the Government wanted to ruin those people who were trying to set them on the right path, that the Englishmen had come to India to make the people addicted to drink, opium and bhang, that the executive and judiciary are partial to white men and exhorted the audience to resolve not to live under Englishmen: It

⁸ Ramchandra v. Emperor, 29 Cr LJ 381 (Lah)

⁹ Bal Gangadhar Tilak, (1897) 22 Bom 112

¹⁰ Niharendra Dutt Majumdar, (1942) FCR 38

¹¹ Sadashiv Narayan, (1947) 49 Bom LR 526

was held that the speech was calculated to excite disaffection against the Government and to bring it into hatred and contempt.¹² Where the accused in one of his speeches advocated the boycott of foreign goods, not as a means for helping industries but to get rid of the English from India and followed it up by imprecations as to the presence of the English in India as a curse to the country, it was held that it amounted to sedition punishable under section 124-A and 153-A, I.P.C. Where in course of a speech at a meeting of the labourers, the accused urged upon the labourers to unite in order to fight against their to enemies, the Govt. and the capitalists, characterizing them as sucking the blood of the labourers and dilated upon the advantages which would be conferred upon them by a general strike, and emphasized that the Govt. were getting afraid of labour and were putting labour leaders in jail for long periods, it was held that the speech was not strong enough to promote or attempt to promote feelings of enmity or hatred against the capitalists, whether they constituted or not, a class within the meaning of Section 153-A and that no offence punishable under that section was committed. Dissenting from this view the minority held the whole effect of the effect, so far as Govt. was concerned, was to suggest to the persons to whom it was addressed that Govt. in taking sides against them, was taking the part of their opponents, and that to make a charge of gross partiality on that sort against Govt. was calculated to feelings of enmity and disaffection towards Govt. and that an offence under section 124-A, was committed.¹³

It is true that it is not sedition to criticize administrative machinery or the officers of Govt. but where the speaker exceeds the limits of fair criticism and his object in attacking the existing Govt. is to create disaffection the speech amounts to sedition.

¹² Kidar Nath Sahgal v. Emperor, AIR 1929 Lah 817

¹³ Maniben Liladhar v. Emperor, AIR 1933 Bom 65

In cases under Section 124-A, I.P.C., the Courts have not to see the effect on the mind of the people and they are concerned with the construction of the speech, and the speech has to be taken as a whole and not just in pieces. A man may criticize or comment upon any measure or act of the Govt. and freely express his opinion upon it. He may express condemnation but so long as he confines himself to that he will be protected, but if he goes beyond that he must pay the penalty for it. The question of intention is always an important factor in such cases.¹⁴ Authorship of seditious material alone is not the gist of offence of sedition. Distribution, circulation of seditious material may also be sufficient.¹⁵

Where a speaker said that the Govt. had wounded the feelings of the Sikhs in the matter of Sis Ganj Gurdwara at Delhi and any one could see the grief-provoking picture showing thousands of bullet marks on the walls of the Gurdwara and that in the name of law and order bullets were showered on the people: held, that the reference to the Sis Ganj Gurdwara and to the motive of the authorities to rain bullets under the cover of maintaining law and order was undoubtedly such as to bring the Govt. established by law in India into hatred and the speaker guilty of sedition.¹⁶ The essence of the crime of sedition consists in the intention with which the language is used. The intention of a speaker, writer or publisher, may be inferred from the particular speech, article, or letter. The intention is gathered from the articles. The requisite intention cannot be attributed to a person if he was not aware of the contents of the seditious publication. If, on reading the articles or speeches the reasonable and natural and probable effect of the articles or speeches on the minds of those who read them, or to whom they were addressed appears to be that feelings of hatred, contempt or disaffection, old be excited towards the

¹⁴ Vishambhar Dayal v. Emperor; AIR 1941 Oudh 33

¹⁵ Raghuvir Singh v. State of Bihar, AIR 1987 SC 149

¹⁶ Nirinjan Das v. Emperor, AIR 1931 Lah 31

Govt. the offence is committed. Where a person says in his speech that he himself is the follower of the precept of non-violence but at the same time says that he is nobody to find fault with people who in their anger at oppression as is witnessed under the present Govt. use more violent methods and shoot at members of the assembly and where throughout his speech he insinuates various disabilities of village life to be due to the present Govt. there is an intention on his part to bring the Govt. into hatred and he commits the offence under section 124-A. In order to decide whether or not a speech constitutes an attempt to excite hatred, contempt or disaffection, it should be viewed from the standpoint of the types of persons to whom it was primarily addressed. On the one hand, their limitations, if any, have to be taken into account; on the other, the fact that the words may convey to them a literal meaning must not be lost sight of. The time and the place are also factors which should be considered.¹⁷

The section places absolutely on the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them. It is not an essential ingredient of sedition that the act done should be an act which is intended or likely to incite to public disorder. But this view of the law does no longer seem to be correct, in view of the decision of the Supreme Court in Kedar Nath's case, wherein SINHA, C.J. observed "comments, however strongly worded expressing, disapprobation of actions of Govt., without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Govt. established by law is not the same thing as commenting in strong terms upon the measures or acts of Govt. or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without

¹⁷ U. Damadaya, (1923) 1 Ran 211.

exciting those feelings of enmity or disloyalty which imply excitement to public disorder or the use of violence”. In this very case it was further held that viewed in the context of antecedent history of the legislation, its purpose and the mischief it seeks to suppress the provisions of S. 124-A and S. 505 of the Indian Penal Code should be limited in their application to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. Where the propaganda secretary of a Gurdwara addressed a gathering of Sikhs, some of whom were wearing black clothes and turbans, and in course of his speech though he did not give direct incitement to violence but he nevertheless gave exaggerated figures of casualties following army action in Punjab, it was held that it would be quite proper to infer from the text and tenor of the speech made by the accused that the same was intended to bring the Govt. into contempt with the likelihood of eruption of violence and public disorder contemplated in *Kedarnath’s* case. In the circumstances, his petition for quashing the criminal proceedings against him under S. 482, Cr. P.C., was rejected.¹⁸

In a Supreme Court case it has been held that the casual raising of slogans once or twice by two individuals alone cannot be aimed at exciting or attempt to excite hatred or disaffection towards the Govt. as established by law in India.¹⁹

In order to sustain a conviction under section 124-A, it must be proved (a) that the accused spoke the words in question, (b) that he thereby brought or attempted to bring into hatred or contempt or excites or attempts to excite disaffection, and (c) that such disaffection was towards the Govt. established by law in India. An

¹⁸ *Naurang Singh*, 1986 Cr LJ 846 (P&H)

¹⁹ *Balwant Singh v. State of Punjab*, (1995) 3 SCC 214, 1995 SCC (Cri) 432.

accused person may be legally tried and convicted in one trial under sections 124-A and 153-A, I.P.C. on charges framed on three disconnected articles.

In a case a complaint was filed under Penal Code, Section 124-A but no original or translation of alleged speech was attached to it. The complaint was held not proper. It has however been held in earlier case a complaint on a charge of sedition need not contain or set out the speeches or the alleged seditious words. A complaint is not intended to give information to the accused; and even if a complaint should set out the seditious words, the omission is an irregularity within section 537 (a), Cr.P.C. (old).

In view of section 196, Cr.P.C., 1973 no Court shall take cognizance of any offence punishable under chapter VI or a criminal conspiracy to commit such offence except with the previous sanction of the Central Government or of the State Govt. Section 196, Cr.P.C. reserves to the State Govt. the power of determining whether cognizance shall be taken by the Court of any of the offences enumerated in that Section. When the question is only of the machinery for the institution of the proceedings and not of the mischief which Section 196 is designed to prevent, it is a mere irregularity not an illegality which would vitiate the proceedings. When the sanctioning authority directed the Senior Superintendent of Police to “institute a complaint against the appellant” it could not have been the intention of the state Govt. that the ministerial task of signing the complaint must be done by the Senior Superintendent of Police himself. The senior Superintendent of Police was directed to institute a complaint merely because he was the head of the Police administration of the district.