Sedition in Today's India: Validity with Regards to Fundamental Rights

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Introduction

A person is entitled to his opinions, such as feelings of disaffection disloyalty towards the ruling government. Such opinions become seditious when he does something in furtherance of such feelings through words, either spoken or written, or by visual representations.

Sedition in itself is 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 endeavor to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion.[2]

The gist of the offence of 'sedition' is incitement to violence or the tendency or the intention to create public disorder by words spoken or written, which have the te[3]ndency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State.[4]

Section 124A of IPC

"124A. Sedition- 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 imprisonment which may extend to three years, to which fine may be added, or with fine."

In simpler words, sedition is an act by any person who incites disaffection against the Government of India by words or any kind of visual representation. A plain reading of the section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the government established by law in India, by words either spoken or written or visible signs or representations etc.[5]

But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means 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 those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.[6]

History of Section 124A

The infamous sedition law like the penal code is a gift of Colonial Rule in India. The section was not present in the initial draft of the code by Macaulay, but later it was incorporated in IPC possibly to counter the Wahabi activities in the country.Likes of freedom fighters such as BalGangadharTilak and Gandhi were prosecuted

under the charges of sedition.

Mahatma Gandhi hoped that India would do away with such suppressive laws. The section, said Gandhi, was 'established by naked sword, kept ready to descend upon us at the will of the arbitrary rulers in whose appointment the people have no say'.[7]

But, contrary to what Gandhi wanted, we have retained and even strengthened section 124A. Colonial laws have been used and abused to stifle freedom of expression in our postcolonial area as well.

The constitutionality in post-independence period was first challenged in *Ram Nandan v. State of U.P*,[8] where the section was struck down as ultra vires of Article 19(1) (a), it was held that, "According to Article 13(1) of the Constitution, all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part III, shall, to the extent of such inconsistency, be void. Article 19 is contained in part III of the Constitution. Section 124-A, I. P. C., is admittedly a law which restricts the fundamental right to freedom of speech and expression conferred by Article 19(1) of the Constitution, and is, therefore, inconsistent with it."

This decision was later overruled in the landmark Kedarnath judgment,the judgment reasoned this by saying, "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. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order.[9]"

Interpretation of Section 124A

Section 124A, over the years of its inception has been interpreted differently prior to and after the independence of India. In *Emperor vsBalGangadharTilak*[10], where BalGangadharTilakJi was accused of three seditious speeches he made in Marathi language. The court 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 Section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government still if he tried to excite feelings of enmity to the Government, which is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible, makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guild."

In the above case, the court extended the scope of section 124A by a wide interpretation of the section. A mere speech which may excite feelings of enmity to the government was sufficient to make a person guilty of sedition.

Later in the case of *NiharenduDuttMajumdarAndOrs. v. Emperor*[11] the court tried to restrict the scope of section 124A, where it was held that the acts or words must either incite to disorder or must be such as to satisfy reasonable men that that is their

intention or tendency.

Constitutional Validity of Section 124A

The reasonable restrictions provided under Article 19 (2) suggest that any law enacted in the view to impose reasonable restrictions on the exercise of the right conferred by article 19 (1) (a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence shall not be held violative of article 19 (1) (a).but what is the line of demarcation between the aforesaid Article and section 124A is yet to be determined.

Section 124A and Freedom of Speech and Expression

In the case of *KedarNath Singh v. State of Bihar*,[12] the Supreme Court has stated, "It is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the *sine quo non* of a democratic form of Government that our Constitution has established."

But the freedom has to be guarded again becoming a license for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

"Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were 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 sections would make them unconstitutional in view of Art. 19(1) (a) read with cl. (2)."

Even in the recent judgments, Supreme Court has relied upon the dictates of *KedarNath Singh*[13] in demarking the line between sedition and freedom of speech and expression, "every man has fundamental right of freedom of speech and expression under Article 19 of the Constitution of India, but citizen has no right to create public disorder or disturbance of law and order, such fundamental right is required to be exercised within reasonable limit. The organizations have right to oppose the public policy and the Government in lawful manner, even they may oppose to the extent of their condemnation, but they are not authorized to excite or attempt to excite disaffection towards the Government established by law or to excite disorder.[14]"

In ArunJaitley v. State of UP,[15] the High Court had the view that, "it is clear that the section aims at rendering penal only such activity which is intended to or which would have a tendency to create disorder or disturbance of public peace. In order for the words written or spoken to fall within the ambit of section 124A, they would necessarily have to be of a category which would qualify as having a '"pernicious tendency" of creating public disorder or disturbance of law and order. Only then would the law step in to prevent such activity.

The Danger Rule in US

The danger rule was born in *Schenek v. United States*,[16] Justice Holmes for a unanimous court, evolved the test of "clear and present danger". He used the danger test to determine where discussion ends and incitement or attempt begins. The core of his position was that the

First Amendment protects only utterances that seeks acceptance via the democratic process of discussion and agreement. But "Words that may have all the effect of force" calculated to achieve its goal bycircumventing the democratic processes are however, not so protected."

The case resulted in a pragmatic "balancing test" allowing the Supreme Court to assess free speech challenges against the state's interests on a case-by-case basis. However, the "clear and present danger" test only lasted for 50 years. In 1969, the Court in *Brandenburg v. Ohio*[17] replaced it with the "imminent lawless action" test, one that protects a broader range of speech. This test states that the government may only limit speech that incites unlawful action sooner than the police can arrive to prevent that action. The "imminent lawless action" test is still used.

Conclusion

On a perusal of the aforesaid judgments, it is clear that provisions of section 124A cannot be invoked to penalize criticism of the persons for the time being engaged in carrying on administration or strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means. 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. But at the same time, the Courts have time to time stated that the freedom has to be guarded against becoming a license for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

(Endnotes)

1 * VIT School of Law
2 RatanLal and DhirajLal, *The Indian Penal Code*, 34th Edition.Pg. 262.
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4 NiharenduDuttmajumdar v. The King Emperor, AIR 1939 Cal 703.
5 Balwant Singh v. State of Punjab, AIR 1995 SC 1785.
6 SanskarMarathe v.The State Of Maharashtra, 2015 SCC OnLineBom 587.
7 RamachandraGuha, *Democrats and Dissenters*, 2016
8 AIR 1959 All 101.
9 KedarNath Singh v. State of Bihar, 1962 AIR 955.
10 (1917) 19 BOMLR 112.
11 AIR 1939 Cal 703.
12 1962 AIR 955.
13 Supra.
14 Dr. BinayakSen v. State of Chattisgarh, 2011 Indlaw CTH 364.
15 2016 92 ALLCC 352.
16 249 U.S. 47.
17 395 U.S. 444 (1969).