



DECODING SEDITION LAW

By *Tom Pous*

From *Delhi University, Faculty of Law*

Sedition law has once again attained public attention, thanks to the virtual media for making the discourse again in the limelight. Sedition law has always been part of the Indian legal system, the law which has its origin in the colonial British legal framework like most of the existing laws in India. It was originally section 113 of the Macaulay's Draft penal code of 1837. It was omitted from the penal code when the Indian Penal Code was enacted in 1860. However, the need for such a provision was felt in 1870 when section 124A was placed in the statute book by Indian Penal Code (Amendment Act) 1870. It was later replaced with minor changes by section 124A of the Indian Penal Code Amendment Act 1898. Some changes were made in 1937, 1948 and 1950 and the present 124A reads as under.

124A.Sedition. Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, bring or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the government establishment 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.

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 colonial government in India inserted Section 124A in the code for the purpose of suppressing the Indian Voice. So the law of Sedition was made stringent which was different from the English Law. The English law did not define sedition but the Indian code defined it.

In **Queen Empress v Jogendra Chunder Bose** the then chief justice of Calcutta High court held that a person who excites or attempt to excite a feeling contract to affection is liable for sedition. In **Queen Empress v Bal Gangadhar Tilak** also offered some interpretation to section 124A wherein he held that the offence of sedition as outlined in section 124A Consists in Exciting or attempting to excite in other certain feeling towards the Government and not in the exciting or attempting to excite mutiny or rebellion or any sort of actual disturbance, great or small. The Privy Council therefore said that if the law defines the offence in clear terms the court should go by that definition and as per the text of section 124A a simple speech or statement which can cause disaffection towards the government and nothing more shall bring it



within the mischief of sedition. This is how the law of sedition was always enforced in India.

Post 1947 saw many cases as well as public demand to scrap the sedition Law which many consider as the classical example British Legal suppression. In **Kedar Nath Singh v State of Bihar** Supreme court of India upheld the constitutional validity of section 124A of Indian Penal code however with certain caveats of safeguards. It held that only those matters that had the intent or tendency to incite public disorder or violence would be made penal in this section of Indian Penal Code. Kedar Nath Singh case is considered as the water mark event in the entire sedition law related issues. On one side the apex court recognized the constitutional validity of the section 124A but also laid down certain safeguards like seditious speech and expression may be punished only if the speech is an incitement to violence or public disorder.

In **Balwant Singh v State of Punjab**, 1995, Supreme Court of India held that the casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exiting or attempt to excite hatred or disaffection towards the government established by law in India. The prosecution case is that the appellant raised provocative slogans on the day of assassination of Indira Gandhi in front of a cinema hall. Supreme Court in this case held that section 124A of Indian Penal Code would in the fact and circumstances of the case have no application.

In another landmark case **Arup Bhuyan V State of Assam** the Supreme Court held that only speech that amount to incitement to

imminent lawless action can be criminalized. In **Shreya Singhal v Union of India** the supreme court of India drew a clear distinction between advocacy and incitement, stating that only the latter would be punished. It is in this case that the court considered section 66A of Information Technology Act 2000 as unconstitutional, thus making it clear that Right to freedom of expression is fundamental in nature and thus should not be curbed in any means. In **Bilal Ahmed Kaloo v State of Andhra Pradesh**, a Kashmiri youth was arrested in Hyderabad in charge of sedition. The only evidence adduced against him was that he was spreading news that members of the Indian army were indulging in commission of atrocities against Kashmiri Muslims. Even the charge framed against him was bereft of any allegation that the accused acted in any manner against Government of India or the state government. The Supreme Court deprecated the manner in which the trial court recorded conviction, when there was not only no evidence, but also even the charges framed did not contain the essential ingredients of the offence. The court condemned the mechanical order of conviction of citizens in such serious offences and advised that more care should be taken before the liberty of a citizen is interfered with.

THE MUCH NEEDED REFORME

Delving into the law related to sedition as outlined in section 124A of IPC the fifth Law Commission has identified three major defects in it. First, section 124A, because of the pernicious tendency or intention underlying the seditious utterance, has not been expressly related to the interest of integrity or security of India or of public



order. Secondly, section 124A does not take into account disaffection towards the constitution, the legislatures and the administration of justice, even though disaffection towards all these would be as disastrous to the security of the state or disaffection towards the government of India. Thirdly the punishment provided under section 124A for sedition is very odd as it would be either imprisonment for life or an imprisonment for a period up to three years and nothing in between. The commission suggested that these defects, by redrafting section 124A be removed.

The Twenty first Law commission in a working paper also noted that criticizing the government does not amount to sedition and that people have a right to express dissent and criticize the government. The report says "Sedition as an act trying to destabilize the government should only be invoked in cases where there is a real threat or actual use of violent means to overthrow the democratically elected government. Therefore, advocating revolution or advocating even violent overthrow of the state does not amount to sedition, unless there is incitement to violence and more importantly the incitement is to imminent violence.

Right to freedom of speech and expression being part of the fundamental Right, the concept of Human Right and liberty is evolving day by day and new areas are added to the scope of Human Right. At this crucial juncture when dynamics of freedom of speech and expression changing drastically it is disturbing to find a provision like sedition which is colonial in nature still holding position in Indian legal system. It is plain contrast that India tries to place itself

as the country of tolerance and freedom of expression and still hold rules like Sedition; it is high time that we need to alter this law.

