

# AN ANALYSIS OF SEDITION IN INDIA DEFINED U/S SECTION 124A OF INDIAN PENAL CODE, 1870

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## INTRODUCTION

Every citizen has been given freedom to speak and express their views under Article 19(1)(a) of the Indian Constitution. However, this freedom is not absolute and some reasonable restrictions have been imposed on freedom of speech and expression under Article 19(2). But when a person does an act by his words, signs or representation which is held to be contemptuous towards the Government of India, then such act is punishable under section 124-A of Indian Penal Code, 1860. Sedition is an offence that criminalizes speech that is regarded to be disloyal to or threatening to the state.

## MEANING OF THE TERM

The term 'Sedition' means "conduct or speech which results in mutiny against the authority of the state". Law of Sedition deals with section 124A of IPC, 1860, is considered as a reasonable restriction on freedom of speech. It was drafted by Thomas Macaulay and introduced in 1870.

## PROVISION 124A IPC

Following is the language of provision italics

*Section 124A deals with law of sedition in India. In 1870 Section 124A was placed in the statute book.*

*(S 124A) Section- 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.*

*Explanation - The expression disaffection includes disloyalty and all feelings of enmity.*

*Explanation - 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 - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred contempt of disaffection do not constitute an offence under this section.*

*Based on the principle that every State whatever its form of Government has to be armed with the power to punish those who by their conduct jeopardise the safety and stability of the State. The very existence of the state obviously will be in jeopardy if the Government by law is subverted. The continued existence of the Government is an essential condition for the stability of the state.*

## **ESSENTIAL INGREDIENTS OF SECTION 124A**

### ***Words Signs Visible Representation or otherwise***

The terms “words” and “signs” present no difficulty in understanding. The next term used is “visible representation”. These terms are not defined. It really means any form of communication, which is visible to the eye. It includes pictures or dramatic performances in a mime show where no words are spoken. Gestures, motions, and dramatic actions of the performers convey the meaning. The next words “or otherwise” indicate other universality of the means by which the offence may be committed. Distribution or circulation of the seditious material will also constitute an offence.

### ***Brings or attempts to bring into hatred or contempt***

What is contemplated under this section is not the actual causing of hatred or contempt but even an attempt to do so. So, ultimately, whether he actually fails or succeeds is not material. It is sufficient if he even attempts at causing hatred or contempt.

### ***Excite Disaffection***

Explanation 1 to the section states that “disaffection” includes disloyalty and all feelings of enmity. In **Kedar Nath v. State of Bihar**. In this case a constitutional Bench of the Supreme Court after exhaustive discussion of the case law authoritatively laid down as to what is the meaning of the words “excite disaffection”.

It analysed judgments of various High Courts and even Federal Court. The Full Bench of the Allahabad High Court in *Queen Express v Amba Prasad*, interpreted the word “disaffection” not as meaning mere absence or negation of love or goodwill but a positive feeling of aversion which is akin to ill-will a definite insubordination of authority or seeking to alienate the people and weaken the bond of allegiance a feeling which tends to bring the Government into hatred and discontent by imputing base and corrupt motives to it.

The Federal Court of India in *Nibarender Dutt Majumdar v. King Emperor*, AIR, 1942 , struck a different note. Sir Maurice Gwyer CJ, speaking for the Court, held that the gist of the offence of sedition is incitement to violence, mere abusive words are not enough.

The acts or words complained of must incite public disorder or must cause reasonable anticipation or likelihood of public disorder in order to constitute “disaffection”. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that is their intention or tendency.

The Supreme Court of India in *Kedar Nath’s case*, however, opined that the interpretation given by the Federal Court is what would be in harmony with Article 19 of the Constitution.

In *Balwant Singh v. State of Punjab*, AIR 1955, SC 1785, the accused were alleged to have raised some slogans on the day Smt. Indira Gandhi, the then Prime Minister of India was

assassinated, in a crowded place. The accused were Government servants. The prosecution case was that they raised slogans a couple of times, which however did not, evoke any response from the public. No disturbance whatsoever was caused and the people in general were unaffected and carried on with their activities.

The Supreme Court held that mere raising of casual slogans, once or twice by two individuals, alone cannot be said to be aimed at exciting or attempting to excite hatred or disaffection towards the Government as established by law in India. The Court felt that the police officials “read too much” into the slogans and exhibited lack of maturity and sensitivity in arresting the two Government servants.

In *Bilal Ahmed Kaloo v. State of Andhra Pradesh*, AIR, 1997, a Kashmiri youth was arrested in Hyderabad on charges 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. 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.

## **GOVERNMENT ESTABLISHED BY LAW**

Section 17, IPC, defines government as denoting “the Central Government” or the “Government of a State”. The term “government established by law” has to be understood as being distinct from the Government formed by a particular ruling party or the bureaucracy running the Government.

In an article, Tilak made a distinction between the criticism of a Government and the criticism of a bureaucracy. Carson in the course of cross-examination asked, “But a Government must consist of officials. It is not an abstract entity.” Tilak replied, “A house consists of rooms, but a room does not mean a house.” The Supreme Court, in *Kedar Nath’s* case, held that the expression “the Government established by law” has to be distinguished from the persons for

the time being engaged in carrying on the administration. “Expressing Disapprobation” – Explanation 2 and 3 the word “disapprobation” means disapproval. Commenting in strong terms upon the measures or acts of the Government or its agencies, so as to ameliorate the conditions of the people or to secure the cancellation or alteration of these acts or measures by lawful means, is not attracted by this section. The purpose of the explanations is to give adequate protection from penal action to freedom of speech and expression. It is for the purpose of giving greater latitude to the media and others to openly criticise the Government and the ministers.

### **CONSTITUTIONAL VALIDITY OF SECTION 124A**

In *Tara Singh Gopichand v. State*, AIR, 1951, in which for the first time the constitutional validity of Section 124A was put to judicial scrutiny, it was contended that the section goes against the letter of spirit of Article 19(1) (a) of the Constitution that guarantees the freedom of speech and expression. The East Punjab High Court declared the section ultra vires to the Constitution as it curtailed the freedom of speech and expression in a manner not permitted by the Constitution.

Subsequently, the Constitution First (Amendment) Act, 1951, added two words of wide amplitude, namely, “in the interest of the security of the State” and “public order” in Article 19(2) dealing with the restrictions that can be put through law on the freedom of speech and expression guaranteed under Article 19 (1) (a). A constitutional Bench of the Supreme Court, through its pronouncement in *Kedar Nath v. State of Bihar*, has put the judicial ambivalence to rest. Recalling that Article 19 (2) allows reasonable restriction thereon “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”, the Constitution Bench held that any law which is enacted “in the interest of public order” can be save from the vide of Constitutional invalidity.

### **PROBLEMS WITH THE SEDITION LAWS**

As per the Kedar Nath judgment in 1962, the sedition law was supposed to be applied in rare instances where the security and sovereignty of the country is threatened. However, there are growing instances to show that this law has been weaponised as a handy tool against political rivals, to suppress dissent and free speech. As per the latest data presented by Article 14, as many as 25 sedition cases were filed after the anti-Citizenship Amendment Act protests, 22 after the Hathras gang rape, and 27 after the Pulwama incident. In all, 96 percent of the sedition cases filed against 405 Indians over the last decade were registered after 2014.

Further, the data provided by National Crime Records Bureau indicates that sedition cases have risen from 47 in 2014 to 93 in 2019, a massive 163 percent jump. However, the conversion rate from cases to conviction is a mere 3 percent. This shows that the police and related state authorities are using the sedition laws indiscriminately to create fear amongst the citizens and silence any criticisms or dissent against the regime.

## **CONCLUSION**

Sedition is the serious offence in the violation of Article 19. So there is a need that sedition laws should have expressly contained words which satisfied the restrictions of Article 19(2). The purpose of restricting speech under Sedition Act is the protection of National Security. Sedition laws should be interpreted and applied according to the guidelines given by the Supreme Court.

To conclude, sedition laws and their growing misuse by governments of all stripes (including opposition-ruled states) are a matter of serious concern. Personal liberty and the right to free speech are hallmarks of liberal democracy and sedition laws and their gross misuse attack the very foundation of these liberties enshrined in the Indian Constitution. The need of the hour requires the judiciary to review this draconian law. Even if abolishing this law may not be feasible, toning it down and issuing strict guidelines to limit its indiscriminate use can definitely help India's democratic standing apart from safeguarding freedom of expression in the country.