

CONSTITUTIONAL FREEDOM OF SPEECH AND EXPRESSIONS V. THE SEDITION



India being a democratic republic, the government is for the people, of the people and by the people. Freedom to express and speak freely is the forth pillar of the Democracy. Unlike a country run by a dictator, where the leader immediately after attaining the power, suppresses all the free speech except his own. A democracy is no democracy without free speech. The constitutional freedom of speech and expression in the Indian Constitution is different from the freedom guaranteed under the US Constitution. The First Amendment to the US Constitution specifies that the government should make no law so as to abridge the freedom of speech. While in India, this freedom is not absolute. It is subjected to reasonable restrictions.

One such reasonable restriction is the sedition law. Section 124 A IPC specifies that if a person by his 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 disaffectionⁱ towards the Government established by law shall be punished with imprisonment for life. But an important question is that whether affection towards the government can be manufactured or regulated by law? Mahatma Gandhi, has referred to section 124 A as the prince of all the political sections under IPC. He said, "*Section 124*

*A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, **so long as he does not contemplate, promote or incite to violence.** But the section under which Mr. Banker and I are charged is one under which mere promotion of disaffection is a crime.”*

The importance of free speech is well observed by Justice Patanjali Shastri in *Romesh Thapar v. State of Madras*ⁱⁱ, wherein he said, “*The Freedom of speech and expression lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible*”.

Clause (2) of Article 19 of the Indian constitution enables the legislature to impose certain restrictions on free speech under following heads:

- security of the State,
- friendly relations with foreign States,
- public order,
- decency and morality,
- contempt of court,
- defamation,
- incitement to an offence, and
- Sovereignty and integrity of Indiaⁱⁱⁱ.

Sedition Laws in India can be found in the following laws:

- Section 124 A IPC,
- Section 95 CrPC,
- Seditious Meetings Act, 1911; and
- Unlawful Activities (Prevention) Act.

All the sedition laws above have a word “disaffection” common to them. Disaffection means lack of acceptance of the ruler or the government of the

day. The original draft of the constitution included the term sedition. But it was due to the efforts of K M Munshi and other eminent constituent assembly members that our original Constitution did not include the word sedition.

While moving the amendment to omit the use of the word sedition, K M Munshi said, *"The word sedition has been a word of varying import and has created considerable doubt in the minds of not only the members of this House but of Courts of Law all over the world. Its definition has been very simple and given so far back in 1868. But practice it has had a curious fortune. A hundred and fifty years ago in England, in holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards Government, was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124-A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State."*^{iv}

VALIDITY OF SEC. 124 A IPC

The question as to the constitutional validity of section 124 A arose in the case of Kedar Nath Singh vs. State of Bihar^v. The petitioner in this case had delivered a speech criticizing the Congress (the then govt. of the day) to be goondas. He said, *"you play with the people and ruin them by entangling them in the mesh of bribery, black-marketing and corruption. To-day the children of the poor are hankering for food and you Congress men are assuming the attitude of Nawabs sitting on the chairs....."*

The petitioner in the present case had been convicted under section 124 A IPC by the Judicial Magistrate First Class and their conviction was upheld by the High Court of Judicature at Patna. But interestingly the Supreme Court

acquitted the petitioner observing that the word used by the petitioner did not come within the purview of the definition of sedition. But the SC upheld the constitutional validity of the of the sedition law in the following words:

“This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But 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. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambits of a citizen's fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order”.

It is important to refer to Article 13(1) which specifies that any law which violates the fundamental rights would be void to the extent that it violates the fundamental rights. Thus sec. 124 A has to be viewed from the constitutional perspective. It is also clear that the fundamental freedoms guaranteed under the Constitution are not absolute but are subjected to certain reasonable restrictions. The term “reasonable” has to be construed on factual basis and may vary from case to case.

The implication of this decision is that a law which was referred to be colonial era legislation is now become a law which is accepted by the Indian Courts. Now, a person can comment upon the government and its policies and may even criticize them, so long as there is no INCITEMENT of violence against the

government. The only require of the law is that there should no incitement or creation of ill-will against the government.

JUDICIAL INTERPRETATION OF LAWS/ PROVISIONS RESTRICTING THE FUNDAMENTAL RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

In **Romesh Thapar v. State of Madras AIR 1950 SC 124** the Government of Madras, the respondents herein, in exercise of their powers under section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 purported to issue an order No. MS. 1333 dated 1st March, 1950, whereby they imposed a ban upon the entry and circulation of the Petitioner's journal namely Cross Roads in that State. This section was challenged by the Petitioner as being inconsistent with Article 13 (1) of the Constitution. The SC held that criticizing the Government which in turn excites disaffection towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, **unless it is such as to undermine the security of or tend to overthrow the State.**"

In **Niharendu Dutt Majumdar vs. The King Emperor**^{vi} the Supreme Court explained "sedition" as a crime against society nearly allied to that of treason and the very tendency of sedition as, to incite the people to insurrection and rebellion. In view of same the Bombay High Court in **Sanskar Marathe v. State of Maharashtra**^{vii} had observed that a citizen has a right to say or write whatever he likes about the Government or its measures, by way of criticism or comments, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. In **Manubhai Patel vs. State of Gujarat & Anr**^{viii}, the Gujarat High Court observed that, "*there can indeed be no real freedom unless thought is free and unchecked, not free thought for those who agree with us but freedom for the thought we hate*".

In **Arun Jaitley vs. the State of U.P**^{ix}, the petitioner had published an article criticizing the judgment of the Hon'ble SC in Supreme Court Advocates on Record Association v. Union of India which ruled upon the validity of the

Constitution Ninety Ninth Amendment. The Allahabad High Court observed that the well-settled view of healthy criticism or even intellectual disagreement with a particular view of a judge contained in a judgment of the court is not a crime and held that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, would be outside the scope of the sedition. The Court said, *“A citizen had a right to say or write whatever he likes about the Government, by way of criticism or comments so long as he did not incite people to resort to violence. The article merely seeks to voice the opinion and the view of the author of the need to strike a balance between the functioning of two important pillars of the country. It is not surely a call to arms.”*

In **Indra Das v. State of Assam**^x, the Supreme Court had observed that only such speech that would be considered “incitement to imminent lawless action” could be criminalized. Thus, there are numerous cases decided by the Hon’ble Supreme Court and various High Courts which particularly focus on incitement as the most important ingredient in order to attract section 124 A IPC.

CONCLUSION

The freedom of speech is regarded as the first condition of liberty. It enjoys important position in the hierarchy of liberty. The sole of freedom of speech lies in free thinking and expression which is independent from any type of censorship. And most importantly it is a tool for self-governance. Expression through speech is one of the basic guarantees provided by civil society. However, in the recent times, freedom of speech and expression is not limited to express ones’ view through words but it also includes circulating one's views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press etc. It is a right to express and self realization and must be protected.

REFERENCES

1. Freedom of Speech and Expression India v America - A study; by DHEERENDRA PATANJALI available at:
https://www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html
2. Section 124 A- Where to draw a line; by Akshay Anurag and Dibya Prakash Behera, available at:
<https://www.scconline.com/blog/post/2017/10/03/section-124-a-ipc-where-to-draw-the-line/>

ⁱ Queen-Empress vs. Amba Prasad MANU/UP/0084/1897

Kedar Nath Singh vs. State of Bihar (20.01.1962 - SC) : MANU/SC/0074/1962

ⁱⁱ Romesh Thapar v. State of Madras AIR 1950 SC 124

ⁱⁱⁱ The Constitution (Sixteenth Amendment) Act, 1963, had inserted the words Sovereignty and integrity of India in clause 2 of Article 19.

^{iv} Constituent Assembly Debate on Dec. 1, 1948, Part I, Volume VII available at:

<https://indiankanoon.org/doc/1107530/>

^v Kedar Nath Singh vs. State of Bihar AIR 1962 SC 955; MANU/SC/0074/1962

^{vi} 1942 F.C.R. 38 (Federal Court)

^{vii} 2015 ALL MR (CRI) 4637

^{viii} 1972 Cri.L.J. 388

^{ix} AIR 1954 SC 224

^x (2011) 3 SCC 380