

The tendency of
sedition is to incite



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The full meaning of sedition was explained by Lord Fitzgerald thus: "Sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the Empire. The objects of sedition generally are to induce discontent and insurrection, and to 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 into insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or disaffection, to create public disturbance or to lead to civil war, or to bring into hatred or contempt the sovereign or the Government, the laws or constitution of the realm and generally all endeavours to promote public disorder." According to Tamblin's Law Dictionary, in the Scotch Law, 'sedition' is defined to consist in attempts made by meetings, or by speeches or publications, to disturb the tranquillity of the State.

Under English Law, according to Stephen's Observations: "Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society. The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of accused. This may be either. 1) To exercise disaffection against the king, Government or constitution, or against

Parliament or the administration of justice; 2) To promote, by unlawful means any alteration in church or State; 3) To incite a disturbance of the peace; 4) To raise discontent among the king's subjects; 5) To excite class hatred.

It must be observed that criticism on political matters is not of itself seditious. The test is the manner in which it is made. Candid and honest discussion is permitted.

The law only interferes when the discussion passes the bounds of fair criticism. More especially will this be the case when the natural consequence of the prisoner's conduct is to promote public disorder." Regarding sedition, Section 124A of the Indian Penal Code states, " 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 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. ' Sedition' means disturbing the tranquillity of the

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State by word, deed or writing and leading ignorant persons to subvert the Government.

According to Section 124A, the essential ingredients of sedition are: i) Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India. ii) Such act or attempt may be done (a) by words, either spoken or written or (b) by signs or (c) by visible representation. Any act within the meaning of Section 124A 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 offence. 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 within the term 'revolution' have been made penal by Section 124-A of the code. An offence under Section 124-A is cognizable, but warrant may be issued in the first instance. It is both non-bailable and non-compoundable.

It is triable by the Court of Session. Exciting disaffection: Disaffection means anything which is contrary to affection. It includes disloyalty and all feelings of enmity. It is very much nearer to 'hatred' or 'dislike'. 'Feeling of enmity' includes ill-will, hostility to the Government. 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'. To constitute an offence under Section 124A, it is not necessary that one should excite or attempt to excite mutiny or rebellion or any kind of actual disturbance, it would be sufficient that one tried to excite feeling of hatred or contempt towards the Government. A person may be charged not only with exciting but also with attempting to excite and both successful and unsuccessful attempts to excite disaffection were placed on the same footing. So even if a person had only tried to excite the feeling he could be convicted. The offence under Section 124A does not require an intention to incite violence, of public disorder. The essence of the offence under this section 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 article. 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, 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, would be excited towards the Government, the offence is committed. Government established by law: Section 17 of the IPC defines Government as denoting 'the Central Government' or 'the State 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. Criticism of a particular Government or campaigning to bring down a particular Government by a particular ruling party, will not amount to exciting disaffection towards ' the Government established by law.' In Kedar Nath v. State of Bihar [AIR 1962 SC 955] the Supreme Court held, ' Government established by law' is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State.

Government does not mean the person or persons in power for the time being. Government means the person or persons collectively, in succession who are authorised to administer Government for the time being. One particular set of persons may be open to objection, and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government because they are only individuals and are not representatives of that abstract concept which is Government.

To suggest a change in the form of Government cannot be said to be causing disaffection towards the Government established by law or to bring present Government into hatred or contempt. A general criticism of certain officers cannot be deemed to be a criticism of Government established by law in India. Similarly an attempt to remove from power the minister in office in any State or any agitation for the repeal of an Act of Parliament cannot fall under Section 124A of the code if no unlawful means are employed. Words signs, visible representation or otherwise: As per Section 124A, the manner in

which seditious activities can be carried out is by words, either spoken or written, or by signs or by visible representation, or otherwise.

The terms ' words', and ' signs' present no difficulty in understanding. ' Writing' may be in the form of any kind - poem, drama, story, novel or essay. The next term used is ' visible representation'. This term is 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. The meaning is conveyed by gestures and motions, and dramatic actions of the performers. The next words ' or otherwise' indicate the universality of the means by which the offence may be committed.

Distribution or circulation of seditious material will also constitute an offence.

Defences: Following are the defences available to a person charged with the offence of sedition to get exemption from the criminal liability: 1) That he did not speak or write the words or make the sign or representation, or did not do any other act in question; or 2) That he did not thereby bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection; or 3) That such disaffection was not towards the Government of India.

In *Queen Empress v. Bal Gangadhar Tilak*, [ILR 22 Bom 112], a well known Indian leader during freedom struggle was charged for the offence of sedition and was convicted by the Privy Council. In *Re.*

Amrita Bazar Patrika Press Ltd., [ILR 47 Cal. 1919], the security deposit of appellant press, *Amrita Bazar Patrika Press Ltd.*, was forfeited by the Government of Bengal for publishing two articles ' To whom does India belong' and ' Arrest of Mr. Gandhi - More Outrages' in its issues dated 10th

and 12th April 1919, which excited the disaffection towards the Government under Section 124 A. The application was dismissed. In *Re.*

Surendra Narayan Adicharya [(1911) 39 Cal. 522], it was held that sending through the post a packet containing a copy of a manuscript of a seditious publication with a covering letter requesting the addressee to circulate it to others, when the same was intercepted by another person and never reached the proper address, it constitutes an attempt to commit an offence under Section 124A of the code. Constitutional Validity of Section 124A of the Code: After the Constitution of India came into operation the constitutional validity of Section 124A of the code was challenged as being violative of the fundamental right of freedom of speech and expression under Art 19(1)(a) of the Constitution.

For the first time, in *Tara Singh Gopi Chand v. State* [AIR 1951 East Punjab 27] the constitutional validity of Section 124 A was put to judicial scrutiny. It was contended that the section goes against the letter spirit of Art 19(1)(a) of the Constitution that guarantees the freedom of speech and expression. The 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. The Court was of the opinion that Section 124A has no place in the new democratic pattern of policy adopted by India. In *Ramesh Thappar v. State of Madras*, [1950 SCR 594], the petitioner contended before the Supreme Court that the said order of banning his paper 'Cross Roads' by the Madras State as it has contravened his Fundamental Right of freedom of speech and expression conferred on him by Article 19(1) of the Constitution.

The Supreme Court held that clause (2) of Art 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to public security is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent. Finally the Supreme Court allowed the application of the petitioner under Article 32 of the Constitution and quashed the order of Madras State prohibiting the entry and circulation of the paper in the State of Madras. In *Ram Nandan v. State of Uttar Pradesh* [AIR 1959 All 101], the Court held that Sec.

124 A imposed restrictions on the freedom of speech and expression not in the interest of general public and thereby infringed the fundamental right of freedom of speech. It, therefore, declared Section 124 A as ultra vires to the Constitution as it cannot be saved by the expression 'in the interest of public order'. In *Kedar Nath v. State of Bihar* [AIR 1962 SC 955] it was held that the provisions of Section 124A are not unconstitutional as being violative of the fundamental right of freedom of speech and expression under Art 19(1)(a) of the Constitution. The Explanations to the section make it clear that criticism of public measures or comment on Governmental action, however strongly worded within reasonable limits and consistent with the fundamental right of freedom of speech and expression is not affected. It is only when the words have the pernicious tendency of intention of creating public disorder or disturbance of law and order that the law steps in.