



Changed Perspectives of Speech and Expression, 'Interest of State Vis-À-Vis of People, and Sedition

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I. INTRODUCTION

No freedom is *carte blanche* not only in our Constitution but in any Constitution of the world. Though restrictions may be expressed or implied with reasonability supplied or inherited. The preamble of the Constitution of India declares the people of India shall be governed by themselves through elected people elected by them for themselves, i.e. Democratic government. What and How people will decide and elect their representatives, if people are unknown what their elected representatives are doing for them? If their representatives are not up to their expectations, what they can do or what generally happens? Either they do take some actions or express themselves in some really harsh words. Acts done or words spoken, if act or expression is with the intention which is prohibited and declaring as punishable, no doubt, must be considered as per the need of the time.

II. FREEDOM OF SPEECH AND EXPRESSION UNDER THE CONSTITUTION OF INDIA

Freedom of speech and expression is termed and established as the cornerstone of democracy. The founding fathers of the Indian Constitution had their experiences of repressive measures applied by the British rule, and how the nationalist voices and expressions were crushed under the toes of their shoes. They had unforgettable memories how nationalist press was bludgeoned by the sedition trials and expected conclusions in form of forfeiture of security deposits and ultimately ceasing of their expressions.

During discussion on freedom of speech and expression in the Constituent Assembly, sedition was considered as one of the heads in the draft Constitution, subject to which freedom of speech and expression was to be exercised. The sedition was obvious consideration because this was evident that most of the prominent faces of the nationalist movement; like B.G. Tilak, Mahatma Gandhi and Pt. Jawahar Lal Nehru, had the experiences of sedition being invoked by the state against them. But, despite of the fact that there is very close relation between the speech and expression, as fulcrum to realize the life in its fullest meaning and the speech

and expression, which is considered as one of the mightiest weapon to create a feeling of disaffection, non-allegiance in the minds of the people of the state, sedition was not considered as a ground to curtail that freedom under clause (2) of Article 19 of the Constitution of India.¹

Under clause (2) of Article 19 of the Constitution of India following grounds are provided:

- a. In the interests of the Sovereignty and integrity of India²,
- b. The security of the state
- c. Friendly relations with foreign states,
- d. Public order
- e. Decency or Morality or
- f. In relation to contempt of court,
- g. Defamation or incitement to an offence

Though none of the abovementioned ground for the reasonable restriction on the freedom of speech and expression is mentioning 'in the interest of the people' but if, we take the ultimate effect of any of the aforesaid ground, would be the people of India. The Preamble of the Constitution declares "WE THE PEOPLE OF INDIA", axis of the whole Constitutional philosophy. Everything done or carried or taken care that is ultimately for the people of India. All three organs of the state i.e. Executive, Legislature and Judiciary separate with Constitutionally mandated independence in their purview but to achieve the ultimate goals enshrined in the Constitution. Justice, Social, economic and political; is to be secured to the people of India through the Democratic, Republic, Socialistic and Secular kind of state that is India, which is not subject to any external power because of being sovereign.

All the six freedoms guaranteed under Article 19 are very specific. Distinctive features of these freedoms are their availability only to the citizens of India and to natural persons, not to legal persons as well as these can be curtailed only as provided clause (2) of Article 19. To restrict any of the freedom provided herein must conform with the three requirements, these are the following:

- a. Restriction is on one of the ground provided in clause (2) of Article 19.
- b. There must be a law passed by the Legislature. It means this action must not be purely executive order not supported by the legislative action.
- c. Third and most important the said restriction must be reasonable.

So, despite the fact that first two requirements were fulfilled but that is not reasonable, must not be upheld and should be declared unconstitutional.

¹ Article 19 of the Constitution of India, reads as (1) "All citizens shall have the right (a) to freedom of speech and expression ..." clause (2) of Article 19 is stipulating grounds for reasonable restriction therefor.

² This was inserted by the Constitution (Sixteenth Amendment) Act, 1963

The Supreme Court of India, in case of *Romesh Thappar*³ speaking through Patanjali Shastri J., observed

“We are, of the opinion that unless a law restricting freedom of speech and expression directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interest of public order”

In *Sagolsem* case⁴, the court held that the restriction of the right of freedom and expression of speech in so far as a speech merely tends to excite disaffection towards the Government would not be reasonable and that to this extent Section 124-A must be held ultra vires and inoperative as being repugnant of Art.19 (1) (a) and (2) is correct as far as it goes. The court pointed out even though ‘Public Order’ has been added in the amended clause (2) of Art.19, it can hardly be expected that mere criticism of the Government without inciting to any offence would be punishable “in the interest of public order.”

Law and order, Public order and Security of the State often used as substitute of one another. Though all these three terms are very specific has their specific characteristics to bring any restriction under the ambit of any of them. In the case of *Kishori Mohan*⁵ modifying the view of *Dr. Ram Manohar Lohia*⁶, the Supreme Court explained the difference among the three terms. The Court said difference between and among law and order, public order and security of the State can be explained by three functional concentric circles, the largest representing the law and order, the next public order, and the smallest, the security of the State. Every infraction of law must necessarily affect law and order but not necessarily public order an act may affect public order but not necessarily security of the state. And an act may fall under two concepts at the same time affecting public order and security of the State. One act may affect individual in which case it would affect law and order while another act though of a similar kind may have such and impact that would disturb even the tempo of the life of the community in which case it would be said to affect public order, the test being the potentiality of the act in question.

III. SEDITION LAW IN INDIA AND JUDICIAL INTERPRETATION

Sedition is defined under Section 124-A of the Indian Penal Code, 1860.⁷ This Section has been framed under Chapter-VI of the IPC, which reads as “Offences against the State”. Law Commission of India, in its 42nd

³ A.I.R. 1950 S.C. 124

⁴ *Sagolsem Indramani Singh v. Manipur State*, 1955 Cr.L.J. 184.

⁵ A.I.R. 1973 SC 1749.

⁶ A.I.R. 1966 SC 740

⁷ “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 I- The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation II- 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 of disaffection, do not constitute an offence under this Section.

Report analyzing the relevancy of IPC in the changed circumstances and if any need to amend or change, if so, what it should be. It opines that the heading of this chapter itself inadequate, it becomes complete when it is read with other existing laws to protect the State in light of the variety of functions own and discharged by the state.⁸ The Commission was of the view that law contained in I.P.C. related to sedition is very wide. It was not in favour to remove this provision, but may be specified.

Section 121-130 under this chapter are dealing with all those matters ranging from waging war to attempt or conspire to do so or do collects arms or ammunitions or conceal with the said intention or in that process assault the Constitutional heads of the union and state Governments or somebody who despite being under an obligation let the prisoners harbour or aid in the said process of waging war. “Sedition” as defined by Fitzgerald J.

“Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval.the objects of sedition generally are to induce discontent and insurrection and stir up opposition to the government and bring administration of Justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. ...”

Stephen defines “Sedition” as

“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 or existing order of society. The seditious conduct may be by words, by deed or by writing.”⁹

He enumerates heads of sedition as following;

- a. To excite disaffection against the king/ Government/ Constitution/ administration of Justice,
- b. To promote by unlawful means, any alteration in the state,
- c. To incite a disturbance of peace,
- d. To raise discontent among the people of the state
- e. To excite class hatred.

From the reading of the above heads it becomes very clear that merely criticizing the political decision is clearly covered here until and unless either this is resulting into any of above enumerated or act intended to do so. Stephen’s definition is close to Section 124-A of I.P.C.

So, Sedition under this chapter is a specific instance which may not be of that effect which is covered by rest of the Sections of this chapter. This Section has close affinity with the Defence of India Rules.¹⁰ This

Explanation III- 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.

⁸ Law Commission of India, Report 42, 145.

⁹ Stephen, Commentaries on the Laws of England (1950)

Section was inserted in 1870 and further amended in 1898. Law of sedition was enacted to balance the freedom of speech and its affect on the security of the state. The word “sedition” is only used in marginal note in the Section. It does not appear in the phraseology used to define this Section. So, what it suggest that if the said act is done or committed and that results in to the mentioned consequences, it would be called sedition. Meaning thereby, as usual principle of criminal law, here too, the said Section establishes that to be an offence of sedition all the requirements mentioned therein must be fulfilled. These requirements are:

- a. There must be a government established by Law in India.
- b. The act of the offender must result into bringing hatred to such government or contempt such government or excites disaffection to such government.
- c. This act of the offender may be by words, which may either be spoken or be written, or by signs, including visible representations or otherwise.

Plain reading of the abovementioned essentials of the offence of sedition, it becomes very clear to us that act results into hatred, contempt or disaffection towards the government and such act is result of expressions, through words spoken or written or other means of expression, like gestures, symbols, signs, billboard, slate or like means. How the term “otherwise” be supplied the meaning under this Section? Whether that should be in the light of the words referred earlier in this sequence or it should be defined to cover those acts which are not covered by specifically given words but result of such act is same as that of the referred words? Disaffection has been used in a very relative sense, as explained by the first explanation that ‘disaffection’ includes disloyalty and feelings of enmity. Keeping in mind the explanation and basic principle of interpretation of statutes that as far as possible words should be supplied their literal meaning, if that fulfills the objective and particularly in cases where the term in question has been prefixed with some illustrated words, the natural meanings should be drawn in light of such prefixed words. So, I think the meaning of the word ‘otherwise’ be the like act as has been mentioned by spoken or written words or visible representations which are causing the impugned effect.

Prior to the commencement of the Constitution the relevancy of sedition law was just to be decided by what kind of approach the British rule had towards the people of India and their concerns. This is evident that Indians were not ensured even a single right in any of the government of India Acts, of 1909, 1919 and 1935. So, what was important to mind at that time what one was not permitted to speak was simply a denial irrespective the reason behind that. After the commencement of the Constitution the Fundamental rights in Part-III of the Constitution of India, are guaranteed rights and any law either the pre-constitutional or the post constitutional to the extent of being inconsistent with the fundamental right would be void.¹¹

¹⁰ Rule 34 (6) (e) of the Defence of India Rules, reads as “An act intended or likely to bring into hatred or contempt or to create disaffection towards the Government established by law in British India”

¹¹ Art. 13 (1) and (2).

So, in case of *Tara Singh v. State of Punjab*¹² Supreme Court struck down the Section 124-A, unconstitutional, being contrary to the freedom of speech and expression. To avert the Constitutional difficulty, because of the said pronouncement, Parliament Amended the Constitution. The Constitution (First Amendment) Act, 1951, inserted two words of very wide amplitude, i.e. 'in the interest' and 'public order'.

In the case of *Ram Nandan v. State of U.P.*¹³ the opinion of the High Court of Allahabad that Section 124-A, imposes restriction on freedom of speech and expression and not in the interest of the general public, hence ultra vires, was set aside by the Supreme Court, in case of *Kedarnath*¹⁴

In the case of *Parmanand v. Emperor*¹⁵ the court opined that the sedition is libel though it is not subject to the same rule. Where a person defames he is punishable under Section 500, if it affects a class, it would amount as an offence under Section 153A but if it affects in any of the way mentioned in this Section it would amount as Sedition.

In the case of *Bal Gangadhar Tilak v. Queen-Empress*¹⁶ the charge was under Section 124-A as it then existing, confined to disaffection without any reference to hatred or contempt. This interpretation was approved by the Privy Council in the appeal of the same case which was declined by the Apex Court at that time.

In '*Wallace –Johnson v. King*¹⁷, "seditious intention" was defined as an intention "to bring into hatred or excite disaffection... against Government .. as established by Law." But the Federal Court in *Niharendu case*¹⁸ held that to constitute an offence under this section acts or words complained of must be such as to satisfy a reasonable man that those were the intentions or tendencies.

But Privy Council overruled this view of Federal Court in *Emperor v. Sadashiv Narayan*¹⁹ and said the law laid down in *Tilaks's*²⁰ Case is correct position. Privy Council explained that a tendency to disorder cannot be said to be inherent in "disaffection", that there may at the same time be "disaffection" within the meaning of Section 124-A. Disaffection does not necessarily have an inherent tendency to disorder, therefore, in making all disaffection punishable, there has undoubtedly been placed by Section 124-A a restriction on freedom of speech which is not in the interest of the Public order.

In this discussion *Kedarnath Das*²¹ main issue before the Constitutional Bench of the Supreme Court, which of the two existing view is the correct one. The federal Court was of the view that words, deeds and writings

¹² AIR 1950 SC 124

¹³ AIR 1959 All.101

¹⁴ Kedarnath Das v. State of Bihar, AIR 1962 SC 955

¹⁵ A.I.R. 1941 All 156

¹⁶ I.L.R. 22 Bom. 528

¹⁷ 1940 AC 231

¹⁸ Niharendu Dutt v. Empero A.I.R. 1942 FC 22(N)

¹⁹ A.I.R. 1947 P.C. 82

²⁰ *Supra*, 16

²¹ *Supra*, 14

constitute sedition only when they had the intention or tendency to disturb the public tranquility, to create public disturbance or to promote public disorder, whilst the Privy Council was of the view that under Section 124-A it is not essential that the words etc. should be intended to or likely to incite public disorder. Which of the view is correct and therefore be accepted? Or what is the effect of these two views in light of the Constitutional mandate of the Fundamental right of speech and expression?

If, view of the Federal Court was to be accepted Section 124-A remains very much within the Constitutional ambit so not unconstitutional but if, go by the view of Privy Council it would lead to declare the said provision unconstitutional. Applying the basic rule of interpretation which says if two interpretations of any statute are possible and one interpretation leads to the provision being unconstitutional while the other one upholds its constitutionality, the latter should be preferred over the first one. So, Sedition must be construed as to limit its application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. Meaning thereby, act or words which are resulting into any of the said consequences is to be inferred very much in the light of settled principle of criminal law, *actus non facit reum, mens sit rea*. How the intention is to be inferred in the impugned acts alleged to be seditious? Causal relation must be established, that this is the act or words, spoken or written which have given the effect to the impugned seditious acts.

IV. CHANGED CIRCUMSTANCES AND RELEVANCY OF SECTION 124-A

Speech and Expression, in a democratic set up of Government, where people are governed by themselves through their elected representatives. In the case of *Union of India v. Association for Democratic Reforms*²² upheld that voters have right to know the antecedents of the candidates hopeful to be elected by them. There is no doubt to say that 'known citizenry' is the symbol of healthy democratic culture and its development. Hiding information and restricting them to be opinionated about the policies and functioning of the government, that is their own. In the case of *Reliance Petrochemicals Ltd.*,²³ the Supreme Court observed

“ We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broad horizon of the right to live in this age on our land under Art 21 of the Constitution. That right has reached new dimension, and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform” (Emphasis supplied)

This observation has been fructified in India, through the Legislation called, Right to Information Act, 2005. Evolution or envisioning a system is one thing, its survival to its nomenclature is different thing and its functioning to the fullest prospective is quite different. So is the case of democratic set up of Government by

²² A.I.R. 2002 SC 2112

²³ A.I.R. 1989 SC 190

the Constitution in India. Our forefathers, thought it to be the most appropriate because the life of sufferings and dependence they had, that made them very clear of the mindset, first difference of civilized society and differentiating factor between existence of animal and human being, is of the liberty. Freedom to think and to convey the same is the gist of freedom of Article 19(1)(a), speech and expression. Democracy survives on the people, people have to survive or to realize their life to the maximum, will very much depend how free they are to express themselves. What the philosophy of fundamental right has been developed by the Supreme court of India through its passage since the commencement of the Constitution. In Case of *Maneka Gandhi*²⁴ the Supreme Court observed that to see whether the impugned act is violative of fundamental right or not, we should applied the effect test. The subject-matter test or immediate of indirect effect test is not proper one. What matters is the effect on the fundamental right, it may be through direct or indirect act, may be immediate or deffered act but if it is resulting into restriction of the said right, the action is the infringement of the fundamental right.

This changed perspective of freedom of speech and expression has reached to unprecedented and unimaginable dimensions due to rapid progress of information technology. This is very good to see strives India has made in this field as well as the ease which is brought in the life of the people of this country due to this development. But, simultaneously, it has brought some very tricky issues to be solved. In these changed circumstance, how the 'interest of the people' has changed with this development. A ground provided under clause (2) of Article 19, providing 'in the interest of sovereignty and integrity of India' to curtail this freedom of speech and expression. How this 'interest' of the state is different from the 'interest' of the people? In a democratic and welfare state how to gauge this 'interest'. Why state require to put restriction on the freedom because safety of the people is the responsibility as well as the primary concern of the state. People in any of the state, whether they are conferred such supreme importance by the Constitution, as in ours or so necessarily implied, are as safe as the state itself.

So, what I mean to say, speech and expression is gist of democracy. Democracy is pragmatic way of governance. Any system of governance may sustain only when the security of the state itself is not at stake. For the said reasons, restrictions are very natural and must be so followed. But there must be a balance sustenance of the people for who the state is vis-à-vis sustenance of the state which ensure the dignified existence of human being in modern time.

Similarly, the so called act of treason or sedition must be judged in this changed perspective and emerging dimensions of freedom of speech and expression. This is a fact that the Judicial approach to solved these fundamental concerns, have to be more cautious and practical. More or less law laid down in that case of *Kadarnath* still holding the fort. Law of sedition is termed as 'relic' and 'of British legacy', so must be gone

²⁴ *Maneka Gandhi v. union of India*, A.I.R. 1978 SC 594

now. But since the independence time and again all views by the Commissions²⁵ and judicial pronouncement²⁶ that “every citizen has fundamental right to speak and express oneself but by doing so this right does not condone their intended act to disturb the public order and disturbance of law and order.

V. CONCLUSION

In sum and substance, I would like to summarize to aforesaid discussion that in the rapidly changing society and technological development state, has to change its sense of fear that the mere speech and expression may bring that government to disaffection of the people of it. As more the people would be informed, so they would be critical analysts. So, in that position also, it depends very much on the state what kind of opinion maker state wants its people to be. If, people are dissatisfied with the ways and consequences of their representative. This is not prima facie suggesting that people are expressing themselves, in a right or wrong way, but more to the government rather than the people to realize how their policy are being formed, these are workable or not. So, if people are forming a wrong opinion, it may be due to misinformed or non-informed people.

As far as the law relating to sedition is concerned, it must be judged in light of the actual consequences it leading to rather than the supposed to be intention of the impugned offender. How the investigating agencies proceed is only the tip of the problem but how quickly that is responded by the courts and interpreted that is the true existence of law, though that may not be justice, because Law, at certain occasion is lagged behind to its know impeccable feature of being dynamic. In such circumstances role of judiciary becomes of more importance than that of the stipulated one.

²⁵ Law Commission of India, 42nd, 43rd and 101 reports

²⁶ Kedarnath Das, Vinayaks Sen, Arundhati Roy,