CHAPTER-1

INTRODUCTION

"*No man can have in his mind a conception of the future, for the future is not yet. But of our conceptions of the past, we make the future. Out of which arise sedition and ware, is among men; among beasts no such ... But the tongue of man is a trumpet of ware, and sedition; and it is reported of*" ***Thomas Hobbes***[1]

The society is continuously growing between two conflicting values liberty and security. The entire history of the human civilization presents ample testimony of the perpetual conflicts between them. The competing claims of liberty and security have created and presented many new problems in the society, the resolution of which appear to be difficult, if not impossible. The conflict between them becomes shaper and complicated in a developing, plural and multilingual society like India. Although many formulas have been adopted in the administration of the criminal justice in order to strike just balance between them, the search of the satisfactory mechanism so far, has eluded the society.

The security of the society is ensured by the criminal law of the country and the liberty of the individual appears to be the prime concern of the Constitution of India. The citizens of India have the freedom of speech and expression, freedom to move freely, right to life and liberty and right to protection against arrest and detention, guaranteed by the Constitution of India, which is, however, restricted by the Laws of Sedition contained in the Indian Penal Code, 1860.[2] Sedition is the act of inciting hatred or contempt against the institutions of the State - including acts tending to excite disaffection against the Sovereign or institutions of Government.[3]

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[1] Retrieved from http://keith-perspective.blogspot.in/ on 30th November 2012

2 Madhvender Chauhan, Sedition laws in India and the National Security Act 1980 – A necessity or a deprivation of constitutional and statutory rights? ,Retrieved from egal-articles.deysot.com/criminal-law/sedition-laws-in-india-and-the-national-security-act-1980-%2525e2%252580%252593-a necessity-or-a-deprivation-of-constitutional-and-statutory-rights-sedition-laws-in-india-and-the-national-security-act-1980-%2525e2%252580%252593-a-necessity-or-a-deprivatio.html on 26th November 2012

3 Retrieved from http://www.pressgazette.co.uk/node/43966 on 26th November 2012

1.1 MEANING OF SEDITION

Sedition is a term of law which refers to overt conduct, such as speech and organization, that is deemed by the legal authority as tending toward insurrection against the established order. Sedition often includes subversion of a constitution and incitement of discontent (or resistance) to lawful authority. Sedition may include any commotion, though not aimed at direct and open violence against the laws. Seditious words in writing are seditious libel. A seditionist is one who engages in or promotes the interests of sedition.[4]

The word Sedition has been derived from Latin word *'seditio'* which means 'going apart' or separation. Sedition is a conduct or language inciting to rebellion against a lawful government[5].Sedition is the federal crime of advocacy of uprising or overthrow against the government or support for an enemy of the nation during time of war, by speeches, publications and organization. Sedition usually involves actually conspiring to disrupt the legal operation of the government and is beyond expression of an opinion or protesting government policy. Sedition is distinguished from treason, which requires actual betrayal of the government, or "espionage."[6]

Sedition is an overt subversive act which leads to incitement against status quo or authority or order. It is a challenge to the establishment. It may be a book, a painting, an idea, a speech, pretty much anything that can act as a vehicle of an anti-establishment idea. Treason, on the other hand, involves colluding with anti-national forces in terms of providing material support to people or groups who work against the idea of one's nation. So sedition is against a government in power where as treason is violation of one's allegiance to one's country or sovereign.

In legal parlance, sedition means any conduct that tends towards insurrection against establishment. Sedition includes subversion of constitutional authority and institutions. Sedition slightly differs from treason. Treason is direct collusion with enemy. This implies giving aid to enemy or wage war against state. Sedition is the act of causing

4 http://en.metapedia.org/wiki/Sedition last retrieved on 7th November 2012
5 Retrieved from http://www.etymonline.com/index.php?term=sedition on 8th November 2012
6 http://definitions.uslegal.com/s/sedition/ retrieved on 26th November 2012

resentment against the constitutional authority. This may help enemy indirectly. Inciting people to rebel against government is sedition whereas treason is actual betrayal.[7] Sedition threatens a government or individuals in power and treason threatens the entire country with its entire people. However, in many societies the differences between the two have become blurred and sedition has been closely linked to acts of terrorism and public safety violation.[8]

For in-depth understanding of the concept of sedition, an endeavour has been made to explain the term sedition with the help of some operational definitions.

The ***Oxford Dictionary*** defines Sedition as,

> "Conduct or speech inciting people to rebel against the authority of a state or monarch." [9]

According to ***Webster Dictionary***, Sedition is

> *"The raising of commotion in a state, not amounting to insurrection; conduct tending to treason, but without an overt act; excitement of discontent against the government, or of resistance to lawful authority."*[10]

The ***Lectric Law Dictionary*** defines sedition as,

> *"Conduct which is directed against a government and which tends toward insurrection but does not amount to treason."*[11]

In the ***Halsbury's Law of England*** Sedition has been defined as follows,

> *"Sedition is a misdemeanour at common law consisting of acts done, words spoken and published, or writings capable of being a libel published, in each case with an intention*

7 Retrieved from http://www.boddunan.com/articles/miscellaneous/51-general-reference/20332-why-law-on-sedition.html on 28thNovember2012
8Retrievedfromhttp://ibnlive.in.com/news/sedition-and-treason-the-difference-between-thetwo/290417-3.html on 10th November 2012.
9 http://oxforddictionaries.com/definition/english/sedition last retrieved on 6th November 2012
10 http://dictionary.webster.us/sedition last retrieved on 6th November 2012
11 http://www.lectlaw.com/def2/s020.htm last retrieved on 6th November 2012

i) to bring into hatred or to excite disaffection against , the queen or the government and the constitution; or

ii) to excite the Queen's subjects to attempt , otherwise than by lawful means , the alteration of any matter in church or state by law established; or

iii) to incite persons to commit any crime in general disturbance of the peace; or

iv) to raise discontent or disaffection amongst her Majesty's subjects; or

v) to promote ill-will and hostility between different classes of those subjects.

TYPES OF SEDITION

Stephen, delving into definition of sedition under English law enumerated five specific heads of sedition according to the object of the accused.[12] These are as follows:

i) to excite disaffection against the king, government or constitution, or against Parliament or the administration of justice;

ii) to promote , by unlawful means , any alteration in church or state;

iii) to incite a disturbance of the peace ;

iv) to raise discontent among the king's subjects;

v) To excite class hatred.

1.2 SEDITION AT COMMAN LAW

In England the crime of sedition has been known for centuries. There were mainly three statues which provided punishment for the publication of written or spoken words against the Government. These were the Common Law of Seditions Libel, the Statues of Treason and the Treason Felony Act 1848.In Sixteenth Centaury, the British parliament enacted Slander and Sedition Act in 1275 which outlawed the telling or publishing of "any false news or tales whereby discord or occasion of discord or slander may grow between the

12 Stephen ,Commentaries on the Law of England(1950) , Vol. IV, Page-141-142

king and his people or the great men of the realm." Violations were punished by the King's council presiding in Star Chambers.

In Seventeenth Centaury, the doctrine of seditious libel originated, which prohibited the publishing of scandalous or discordant opinions about the crown, its policies or its officers. By Eighteenth Century the ambit of this offence was widened and it constituted any written censure upon public men for their conduct as such or upon the laws, or upon the constitutions of the country.[13]

1.2.1 WHAT WAS SEDITION AT COMMON LAW?

Sir James Stephen in his 'Digest of the Criminal Law' defined the offence of sedition at Common Law in the following words:

> "Everyone commits a misdemeanour who publishes verbally or otherwise any words or any document with a, seditious intention. If the matter so published consists of words spoken, the offence is called the speaking of ' seditious words.' If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a ' seditious libel."

In the case of ***Reg. v .Alexander Martin Sullivan***[14] Lord Fitzgerald defined sedition in the following words:

> *"Sedition is a crime against society, 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 the 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 to insurrection and rebellion....."*

13 Stone, Geoffrey R.; Kahan, Dan M. Sedition and Domestic Terrorism, Encyclopaedia of Crime and Justice 2002 retrieved from http://www.encyclopedia.com/topic/Sedition_Act.aspx on 11th November 2012.

14 (1868) 11 Cox's Criminal Cases 44

Further, Sedition was been described as disloyalty in action, and the law considered all those practices as sedition which had object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; 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.

a) ELEMENTS OF SEDITIOUS LIBEL

i) Publication of the material

" To publish a libel," is to deliver it, read it, or communicate its purport in any other manner, or to exhibit it to any person other than the person libelled, provided that the person making the publication knows, or has an opportunity of knowing, the contents of the libel if it is expressed in words, or its meaning expressed otherwise.

ii) Seditious Intention must be there

Article 114 of the Stephen's Digest defines Seditious Intention in the following words:

> *"A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs or successors, or the Government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to raise discontent or* disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects."[15]

b) LAW IN ENGLAND WHICH MADE SEDITION AN OFFENCE

Section 3 of the Treason-Felony Act 1848 envisaged the comprehensive definition of sedition in England and made it a punishable offence. The Section reads as follows:-

" If any person whatsoever after the passing of this Act shall, within the United Kingdom or without compass, imagine, invent, devise or intend to deprive or depose our most

15 Stephen's Digest ,9th Edition,Art.114 cited by Gupta H.P & Sarkar P.K , Law relating to Press and Sedition in India , 2002, Orient Publishing Company , New Delhi Page-147

Gracious Lady the Queen, Her heirs or successors, from the style, honour, or royal name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against Her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their- measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both houses or either house of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other Her Majesty's dominions or countries under obeisance of Her Majesty, her heirs or successors, and such compassing, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing and printing or writing, or by open and advised speaking, or by any overt actor deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the Court shall direct."

1.2.2 WHAT WAS NOT SEDITION AT COMMON LAW?

Since 1692 there was complete liberty of the Press in Great Britain and Ireland. In other words, the Press had complete freedom to write and publish without censorship and without restriction. Even at that point of time freedom of press was considered to be absolutely necessary for the preservation of English society. Every Public Journalist was allowed to criticise the acts of the government but within his legitimate bounds. The imperative position of a free press along with the parameters of legitimate criticism was outlined by Lord Fitzgerald[16] in the following words:

"Our civil liberty is largely due to a free Press, which is the principal safeguard of a Free State, and the very foundation of a wholesome public opinion. Every man is free to write as he thinks fit, but he is responsible to the law for what he writes; he is not, under the pretence of freedom, to invade the rights of the community, or to violate the constitution, or to promote insurrection, or endanger the . Public peace, or create discontent, or bring

16 Reg. v .Alexander Martin Sullivan , (1868) 11 Cox's Criminal Cases 44

justice into contempt or embarrass its functions. Political or party writing, when confined within proper and lawful limits, is not only justifiable, but is protected for the public good, and such writings are to be regarded in a free and liberal spirit. A writer may criticise or censure the conduct of the servants of the Crown or the acts of the Government—he can do it freely and liberally—but it must be without malignity, and not imputing corrupt or malicious motives."

Thus, from above discussion it can be deduced that, fair and legitimate criticism of the acts of the Government and its officials was allowed. But in case legitimate limits were crossed the acts were categorised as seditious acts. In other words, when a public writer exceeded his limits and used his privileges to create discontent and dissatisfaction he became guilty of sedition.

CHAPTER-2

SEDITION – A GLIMPSE INTO PAST

2.1 POLITICAL AND SOCIAL CONDITIONS DURING BRITISH INDIA

Impact of British rule in India had been widespread throughout the country and affected the cultural, technological, religious, social, political and economic state of India. India had persistently tolerated the British rule for one hundred and ninety years, with their everlasting impression been forever etched upon the succeeding Indian citizens.[17]

India provided capital to the nascent industrial revolution in England by providing cheap raw materials, capital and a large captive market for British industry. In certain areas, farmers were forced to switch from subsistence farming to commercial crops such as opium, indigo, jute, tea and coffee. This resulted in famines and uprisings on a large scale. In all these plundering exploits, the British company successfully used the local people to extract revenue from their own fellow citizens at the grassroots level. Weapons was used indiscriminately and often at inhuman scale to clear the way to exploitation and destitution. Later on, as soon as the company secured Diwani or Tax collection rights for Bengal, Bihar and Orissa, they fuelled their exploitation of India by Indian resources. Excessive and atrocious taxing policy loosened widespread devastation in the agrarian sector with a height of inhumanity that killed millions of toiling Indians through frequent famines and perpetual pauperization.[18]

But the changes effected by the British hardly did any good to the people of India. Rather it may be said without any fear of contradiction that under the British rule all the classes of Indian people-from the educated middle class to the peasants and labourers-suffered

[17] ImpactofBritishRulesinIndia,retrievedfromhttp://www.indianetzone.com/40/impact_british_rule_india.htm on 11th November 2012.

[18] Retrieved from British Atrocities Against Indians, http://karsevakindia.blogspot.in/2010/11/british-atrocities-against-indians.html on 11thNovember2012.

degeneration.[19] The Indians had to suffer and their plight has been explained with the help of following points:

a) Despondency of the Educated Unemployed

The introduction of the English education under the British rule in course of time led to the emergence of a section of the people who developed modern outlook. But they found that their education could not provide them any employment. Their material condition remained same as before. Naturally they felt dejected. Also those who had somehow got a job were subjected to discriminatory treatment.

b) Distress of the Peasantry

The burden of taxes imposed upon the peasants was unbearable to them, yet they were not accorded any right on the soil. In such a situation the peasantry considered the British rule to be the cause of their sufferings.

c) Distress of the Indigo Cultivators

The greatest example of the distress of the peasantry suffered under the British rule was that of the indigo cultivators. Forcible employment of the peasants to grow indigo and deprivation of the cultivators of their legitimate wages formed the background of the Indigo Rebellion of 1859.

d) Distress of the Craftsmen, etc.

Under the British colonial economy the self-sufficiency of villages came to an end, the village community also had shattered. The village artisans left their villages to become city-workers. Thus like peasantry the artisans also were discontented against the British rule.

[19] Sharma Mayank, What were the reasons for the discontent of the Indians against the British rule? ,retrieved fromhttp://www.preservearticles.com/2012010119325/what-were-the-reasons-for-the-discontent-of-the-indians-against-the-british-rule.html on 11th November2012

e) Drain of Wealth

India's poverty due to the drain of wealth was an important factor that caused discontent among the Indian people. They were amazed to see how India was made a country that supplied only raw materials to feed the British industrial houses. This realization of the people helped them to sink their mutual differences and unite against the British imperialist rule.

f) Racial Arrogance of the British

Another important factor that aroused discontent against the British rulers was the policy of racial discrimination adopted by the British in their dealings with the Indians.

In fact, the British rulers treated their Indian subjects as sub- humans. Thus when discontent of the Indians loomed large the British government imposed various restrictions one after another curbing the rights Indians had been enjoying for long. As a consequence the Indian people gradually built up a strong anti-British movement that eventually led to their expulsion from the country.

Jogendera Chunder Bose in his articles published in 'Bangobasi' articulated the pathetic condition of Indians during the British rule in the following words:

"The English ruler is our lord and master, and can interfere with our religion and usages by brute force and European civilisation. Hindu civilisation and the Hindu religion are in danger of being destroyed. The Englishman stands revealed in his true colours. He has the rifle and bayonet and slanders the Hindu from the might of the gun... Our chief fear is that religion will be destroyed, but the Hindu religion will nevertheless remain unshaken. We suffer from the ravages of famine, from inundations, from the oppressive delays of the law courts, from accidents on steamers and railways. All these misfortunes have become more prevalent with the extension of English rule in India; but our rulers do not attempt to remove these troubles or to ameliorate our condition. All their compassion is expended in removing the imaginary grievances of girl-wives and

interfering with our customs. We are unable to rebel. We have been conquered by brute force...."[20]

The above discussion evidently states the plight of Indians during British raj. The circumstances at that point of time compelled the Indians to take steps in order to restrain Britisher's from their unjust activities. At the same time, these decades were marked by a rich profusion and elaboration of voluntary organizations; a surge in publication of newspapers, pamphlets and posters; and the writing of fiction and poetry as well as political, philosophical, and historical non-fiction. With this activity, a new level of public life emerged, ranging from meetings and processions to politicized street theatre, riots, and terrorism. The vernacular languages, patronized by the government, took new shape as they were used for new purposes, and they became more sharply distinguished by the development of standardized norms. The new social solidarities forged by these activities, the institutional experience they provided and the redefinitions of cultural values they embodied were all formative for the remainder of the colonial era, and beyond.[21]

Drastic change was experienced in Indian society, people stood up in unity against government. This change promulgated British government to enact new law in order to restrain Indians from acting against the Crown, British government and its officials. The law so enacted has been discussed underneath.

2.2 HISTORICAL OVERVIEW OF THE LAW OF SEDITION IN INDIA

The history law of Sedition in India is very fascinating. The sedition law had to face many upheavals. Its inception can be traced back to1837 .In 1837 it existed in gremio, as one of the clauses of Macaulay's draft of Indian Penal Code. It stood as Section 113 in the draft of Indian Penal Code published in 1837. That Bill was shelved for more than twenty years, and when at last it saw the light in 1860, the sedition clause for some

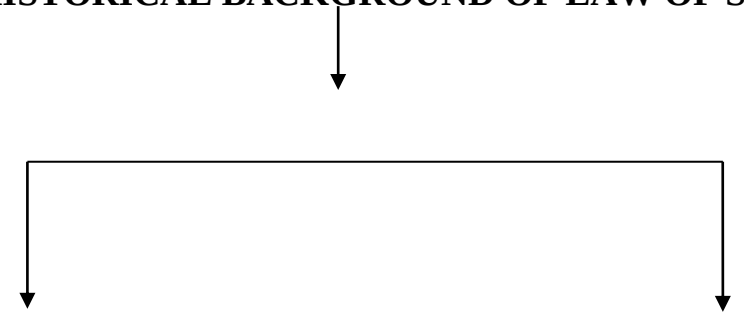
[20] These are extracts from the articles written by Jogendera Chunder Bose on 28th March 1891, which were alleged to be seditious in Queen-Empress v. Jogendra Chunder Bose and Ors. (1892) ILR 19 Cal 35

[21]Barbara D. Metcalf & Thomas R. Metcalf , A Concise History of Modern India, Cambridge University Press , 2006 ,Second Edition, Page-123

unaccountable reason had been omitted. It was not in fact till 1870, ten years later, that the want of such a provision in a complete Code of Crimes came to be recognised, as a result the Special Act (XXVII of 1870) was passed by way of amendment to the Indian Penal Code 1860, which introduced Macaulay's original clause practically unaltered, thirty-three years after its conception.[22]Sir James Stephen introduced English law dealing with Sedition in India on 25th November 1870 in the form of Section 124-A of the Indian Penal Code 1860 described its nature of in the following words:

"This law was substantially the same as the law of England at the present day, though it was much compressed, much more distinctly expressed, and freed from a great amount of obscurity and vagueness with which the law of England was hampered."[23]

HISTORICAL BACKGROUND OF LAW OF SEDITION



With the help of above diagram the historical background of the law of sedition in India has been divided into two phases. The First Phase traces the history of law from the year of its conception i.e. 1870 until it was amended in 1898. This phase envisages the provisions of law of sedition which prevailed during the period of twenty seven years and also makes a mention of all the notable trials which took place in India during this period. The Second Phase encompasses the reasons for amendment of law of sedition in 1898, the amended law and its aftermath. In order to have an in-depth knowledge of law of sedition in India, it is pertinent to consider how it operated during the long period of twenty seven years after its conception and after 1898 amendment.

[22] Walter Russell Donogh, The History and Law of Sedition and Cognate Offences, Penal and Preventive, Thacker, Spink & Co., Calcutta, 1911, Page-1
[23] Ibid-Page-3

2.2.1 FIRST PHASE (1870-1897)

a) LAW OF SEDITION IN 1870

In 1870 Section 124-A of the Indian Penal Code 1860 read as follows:

"Whoever by words, either spoken or intended to be read, or by signs, or by visible representation or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation--1The 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.

The Ingredients Of Section 124-A In 1870 Were As Follows:

i) Whoever

ii) By words, either spoken or intended to be read, or by signs, or by visible representation or otherwise.

iii) Either excited or attempted to excite feelings of disaffection to the Government established by law in British India.

Explanation-1 envisaged the ambit of the term 'disaffection'. It stated that the term disaffection includes disloyalty and all feelings of enmity.

iv) Was held liable for punishment for transportation for life or for any term, or for imprisonment for a term which may extend to three years or fine or both.

b) SOME NOTABLE TRIALS DURING 1870-1898

Ironically, some of the most famous sedition trials of the late 19th and early 20th centuries were those of Indian nationalist leaders. In 1897 three notable trials took place. Two of these were held in Bombay and the third at Allahabad. All of them had a direct bearing on the Special Act of 1898. These trials were closely followed by his admirers across the country and internationally .Section 124-A had been the subject of consideration in the following four cases.

i) Queen-Empress v. Jogendra Chunder Bose[24]

Brief facts

The first State trial for sedition on record is the case of Queen-Empress v. Jogendra Chunder Bose, better known as the 'Bangobasi case' that being the name of the newspaper in which the alleged seditious matter appeared. The articles in question were the direct outcome of the legislation of 1891, commonly known as the "Age of Consent Act." The Bangohasi, of which the four accused were respectively the proprietor, editor, manager and printer, was a weekly vernacular newspaper published in Calcutta, and having a large provincial circulation. The material passages from the article were charged with offence of sedition. At the trial, which took place in the High Court at Calcutta, it was urged on behalf of the Crown that 'no attempt at a reasonable discussion of the 'Age of Consent Bill' was to be found' in the articles charged, while the defence on the other hand contended that they 'did not exceed the bounds of legitimate criticism' of the measure in question.

Observations

Mr. Justice C. Petheram while delivering the judgement defined the term 'disaffection' in the following words:

> *"Disaffection means a feeling contrary to affection, in other words dislike or hatred. If a person uses either spoken or written words calculated to create in the minds of*

[24] (1892) ILR 19 Cal 35

the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if . and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words, or any feeling of disaffection in fact produced by them."

In order to determine that the work in question is seditious or not His Lordship observed that the following considerations should be kept in the mind:-

"The class of paper which is being prosecuted, and the class of people among whom it circulated, taking into consideration the articles which have been made the subject of indictment, and the others which have been put in during the course of the trial. Those articles are not addressed to the lowest or most ignorant mass of the people. They are addressed to people of the respectable middle class, who can read and understand their meaning—more or less the same class as the writers. You will have to consider not only the intent of the person who wrote and disseminated the articles among the class named, but the probable effect of the language indulged in. Then you will have to consider the relations between the Government and the people, and having considered the peculiar position of the Government and the consequence to it of any well-organised disaffection, you will have to decide whether there is an attempt or not to disseminate matter with the intention of exciting the feelings of the people till they become disaffected."

For determining that whether the articles intended to excite feelings of enmity against the Government, or on the other hand, were they merely expressing, though in strong language, disapprobation of certain Government measures?

His lordship observed:

"You will bear in mind that the question you have to decide has reference to the intention and, in fact the crime consists of the intention, for a man might lawfully do the act without the intention. The evidence of intention can only be gathered from the articles. The ultimate object of the writer may be one thing, but if, in attaining that

object, he uses as the means the exciting of disaffection against the Government, then he would be guilty under section 124A."

ii) Queen-Empress v. Bal Gangadhar Tilak[25]

Brief facts

In this case Tilak was the proprietor, editor, and publisher of a weekly vernacular called the Kesari, published at Poona, and having a large circulation in the province. His co-accused was the acting manager. The seditious matter charged was contained in two different series of publications, which appeared in the issue of the 5th June 1897. The first was a highly metaphorical and barely intelligible rhapsody, partly in verse, entitled 'Shivaji's Utterances.' The other purported to be a report of the proceedings at the Shivaji Coronation Festival, with a summary of the speeches delivered at the celebration by Tilak himself, who was also the President. The articles envisaged the pathetic condition of Indian's during British rule. Some of the extracts that were charged with sedition are as follows:

".....Foreigners are dragging out Lakshmi (affluence) violently by the hand (or by taxation), by means of persecution. Along with her plenty has fled, and after that health also. This wicked Akabaya stalks with famine through the whole country. Relentless death moves about spreading epidemics of diseases.... How do the white men escape by urging these meaningless pleas? This great injustice seems to prevail in these days in the tribunals of justice.....If thieves enter our house, and we have not strength in our wrists to drive them out, we should without hesitation shut them up and burn them alive. God has not conferred upon the foreigners the grant inscribed on copperplate of the Kingdom of Hindustan. Do not circumscribe your vision like a frog in a well. Get out of the Penal Code, enter into the extremely high atmosphere of the Shrimat Bhagavad-Gita, and consider the actions of great men."

It was contended by the Crown that a comparison had been drawn between the conditions of the people under Shivaji and under British rule altogether unfavourable to the latter and that this was done for the purpose of exciting disaffection. For the defence it was argued that the articles describing the sufferings of the people were quite consistent with

[25] (1897) I.L.R. 22 Bom. 112, 151

loyalty. They no doubt set forth grievances, but it was not seditious to do that. It was further pleaded that the object of the accused was only to create a national sentiment. There was no suggestion of "overthrowing the British Government."

Observations

Mr. Justice Strachey, defined 'disaffection' in the following terms:

> *"It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government."*

While dealing with the effects of 'disaffection' on punishment he observed:

> *"That the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment : if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection, and the unsuccessful attempt to excite them, so that if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded."*

iii) Queen-Empress v. Ramchandra Narayan and another[26]

The decision is of the highest value as affording not only the interpretations of the learned Judges as to the law of sedition, but also their views on its proper application, and the measure of punishment to be awarded for the crime.[27]

Brief facts

The first accused was the editor, and the second was the proprietor, publisher of a newspaper called the Pratod, which was printed and published at Islampur in the Satara

[26] (1897) I.L.R. 22 Bom. 152

[27] Walter Russell Donogh, The History and Law of Sedition and Cognate Offences, Penal and Preventive, Thacker, Spink & Co., Calcutta, 1911, Page-52

district. The article "Preparations for becoming Independent" written by the first accused and published by the second accused was charged as seditious .Some of the extracts the articles in question are mentioned below:

"Canada is a country in North America under the British rule, the people of which have now become intolerant of their subjection to England. Though they are subject to the British people, they are not effeminate like the people of India. It is not their hard lot to starve themselves for filling the purse of Englishmen: They are not obliged to pay a pie to England. Their income from land-revenue and taxes are expended for their own benefit. They enact their own laws independently, and appoint their own officers, except one or two who are sent from England..... Like us, they are not men given to prattling, but can act up to their word. There is also strong unity amongst them. Spirited men show by their actions what stuff they are made of. There are no people on earth who are so effeminate and helpless as those of India. We have become so callous and shameless that we do not feel humiliation, while we are laughed at by all nations for losing such a vast and gold-like country as India. What manliness we can exhibit in such a condition is self-evident."

Observations

Sir C. Farran, C. J., observed that:

> *"An attempt to excite feelings of disaffection to the Government is equivalent to an attempt to produce hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance."*

He further explained the difference between disaffection and disapprobation in the following words:

> *"... disapprobation of the measures of Government is not disaffection, provided that it is of such a nature as to be compatible with a disposition to obey Government and to support its lawful authority against attempts to resist or subvert it....A loyal subject who disapproves Government measures is not to be deemed disloyal or disaffected on that account if, notwithstanding his disapprobation of such measures, he is ready to obey and support Government. If he is at heart loyal, he is not disaffected merely because he disapproves certain*

measures of Government. On the other hand "he may be a rebel at heart, though for the time being prepared to obey and support Government."

Justice Parsons's interpretation of the term 'disaffection' is also important. He interpreted the terms in the following manner:

".... to be employed in its special sense as signifying political alienation or , that is to say, a feeling of disloyalty to the Government or existing power, which tends to a disposition not to obey, but to resist and attempt to subvert that Government or power. Its meaning thus exactly corresponds to the almost, if not quite, universally accepted meaning of its adjective 'disaffected.' To make or attempt to make a person disaffected, that is to excite or attempt to excite in him a feeling of disloyalty to Government, or to excite or attempt to excite in his mind a disposition to disobey, to resist the authority of, or to subvert the existing Government, is the act under this section declared an offence."

Justice Ranade's definition of the same term is a model of precision and apt phraseology he defined the term in the following words:

"Disaffection, as thus judicially paraphrased, is a positive political distemper, and not a mere absence or negation of love or good-will. It is a positive feeling of aversion which is akin to ' disloyalty,' a defiant in subordination of authority, or when it is not defiant, it secretly seeks to alienate the people, and weaken the bond of allegiance, and prepossesses the minds of the people with avowed or secret animosity to Government, a feeling which tends to bring the Government into hatred or contempt by imputing base or corrupt motives to it, make men indisposed to obey or support the laws of the realm, and promotes discontent and public disorder."

iv) Queen-Empress v. Amba Prasad[28]

This was the last of the three notable trials of the year 1897 and it took place at Allahabad.

[28] (1898) ILR 20 All 55

Brief facts

Amba Prasad was committed by the Magistrate of Moradabad to the Court of Session of Moradabad for trial on a charge that on or about the 14th of July 1897, he did attempt to excite feelings of disaffection to the Government established by law in British India by publishing in a newspaper called the Jami-ul-ulam, of which he was proprietor, editor and publisher, an article entitled "Azadi band hone se kabal namuna" and had thereby committed an offence punishable under Section 124A of the Indian Penal Code.

Decision

His Lordships while dealing with the issue that how intention of the accused of creating the feelings of disaffection among others can be ascertained observed:

> *"The intention of a speaker, writer or publisher may be inferred from the particular speech, article or letter, or it may be proved from that speech, article or letter, considered in conjunction with what such speaker, writer, or publisher, has said, written, or published on another or other occasions. Where it is ascertained that the intention of the speaker, writer, or publisher was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken or written, or published, could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or false, and, except on the question of punishment, or in a case in which the speaker, writer, or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did, in fact, excite such feelings of disaffection."*

The decisions of all the above mentioned cases are of historical importance. These decisions directly resulted into amendment of Indian Penal Code in 1898. The amendment and its aftermath have been discussed in detail underneath.

2.2.2 SECOND PHASE (1898 Amendment)

In 1898 Section 124-A of the Indian Penal Code 1860 was repealed by the Indian Penal Code Amendment Act 1898 and new law was introduced. In this part we shall discuss the reasons for the amendment, the amended law and the trials followed by the amendment.

Hon'ble Mr. Chalmers, who was the member in charge of 1898 amendment bill, outlined the objects of the amendment bill in the following terms:

> *"Every man is free to speak, write and print, whatever he pleases, without asking the leave or permission of any authority. But if he speaks, Titles, or prints anything which contravenes the law of the land, he is liable to be proceeded against and punished. As long as a man keeps within the law no one can interfere with him. But, if he breaks the law, he is liable to punishment by a Court of Justice in the ordinary course of law. This seems to us a sound and healthy guiding principle, and we have determined to adhere to it. But we are also determined that this law shall not be a dead-letter, and that offenders against the law of the land shall be capable of being promptly brought to book."*[29]

The main objective of the bill was to introduce a comprehensive law for dealing with the growing number of seditious events in India. To ensure that the individual opinions towards government were not suppressed the law was redrafted in such a manner that it provided in clear terms what amounted to sedition and what did not amounted to sedition.

a) LAW OF SEDITION IN 1898

The new provision was introduced into the Indian Penal Code by Act IV of 1898, in place of the former one. Section 124-A after amendment read as follows:

Section124A. 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 Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any

[29] Walter Russell Donogh, The History and Law of Sedition and Cognate Offences, Penal and Preventive, Thacker, Spink & Co., Calcutta, 1911, Page-62

shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation1.—The expression 'disaffection' includes disloyalty and all feelings of enmity.

Explanation2.—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.

b) SOME NOTABLE TRIALS AFTER 1898 AMENDMENTS

i) **Trial Of Mahatma Gandhi**

In March 1922, Gandhi was tried before District & Sessions Judge of Ahmadabad, for sedition in respect of two articles, which he had written in his paper "Young India". Before that, there was acute unrest and hostility to government, mainly due to the doctrines preached by Gandhi, and his campaign of non-cooperation and civil disobedience. This had resulted in some acts of violence and bloodshed. The most recent were attacks on peaceful citizens involving much bloodshed and destruction of property by an infuriated mob in Bombay on the occasion of the visit of the Prince of Wales in 1921. Another was the inhuman burning alive of a number of policemen by a maddened mob at Chauri Chaura near Agra. Of course, Gandhi deplored and denounced these acts of violence; and even suspended the campaign for some time, himself going on fast by way of penance.[30]

The trial, which was attended by the most prominent political figures of that time, was followed closely by the entire nation. The trial was presided over by Mr. Justice

[30]Retrievedfromhttp://bombayhighcourt.nic.in/libweb/historicalcases/cases/TRIAL_OF__MAHATMA_GANDHI-1922.html on 14th November 2012.

Strangman. Mr. Gandhi explained to the presiding judicial officer why from being a staunch royalist, he had become an uncompromising disaffectionist and non-co-operator, and why it was his moral duty to disobey the law. In a bold and explicit statement which also highlights the fact that the offence of sedition was best suited to a colonial regime based upon strict control over any possible criticism of the regime, Gandhi ji commented on the law that was used to try him and demanded that the judge give him the maximum punishment possible:

". . . *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*. Affection cannot be manufactured or regulated by the law. 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 I am charged is one under which mere promotion of disaffection is a crime. I have studied some of the cases tried under it, and I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. I have endeavoured to give in their briefest outline the reasons for my disaffection. I have no personal ill-will against any single administrator; much less can I have any disaffection towards the King's person. But I hold it a virtue to be disaffected towards a Government, which in its totality has done more harm to India than previous system. India is less manly under the British rule than she ever was before. Holding such a belief, I consider it to be a sin to have affection for the system. And it has been a precious privilege for me to be able to write what I have in the various articles tendered in as evidence against me."

Mr. Justice Strangman, in a remarkably respectful response, acknowledged the stature of Gandhi and his commitment to non-violence but expressed his inability to not hold him guilty of sedition under the law, and sentenced him to six years imprisonment.[31]

[31] Retrieved from http://repealseditionlaw.in/learn/book/history/victims on 14th November 2012

ii) Niharendu Dutt Mazumdar v. Emperor[32]

The so-called broad interpretation of the meaning of sedition in the Indian Penal Code had been stated earlier the prevailing views in Indian courts. This trend continued till the landmark judgment of the Federal Court of India in 1942 in the present case.

Mr. Justice Gwyer , the then Chief Justice , while interpreting what amounts to seditious speech and what does not amounts to the same observed :

> *"The first and foremost fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilization and the advance of human happiness. This duty has, no doubt, been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of the government that, in our opinion, the offence of sedition stands related. It is the answers of the State to those who, for the purpose of neither attacking nor subverting it, seek disturb its tranquility, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Governments, but because where government and the law has ceased to obeyed because no respect is felt any longer for them only anarchy can follow. 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."*

iii) Emperor v. Sadashiv Narayan Bhalerao [33]

In the present case the Privy Council while overulled the decision of the Federal Court in the previous case and observed:

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[32] AIR 1942 FC22 Pg-26
[33] A. I. R. (34) 1947 Privy Council 82

" There is nothing in the language of either S. 124A, Penal Code, or the Rule which could suggest that the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency. The offence consists in exciting or attempting to excite in others certain hard feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by the article, is absolutely immaterial. If the accused intended by the article to excite rebellion or disturbance, his act would doubtless fall within 8. 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite a rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government], that is sufficient to make him guilty under the section."

2.3 SEDITION IN THE CONSTITUENT ASSEMBLY

The irony of the sedition law used against nationalists like Gandhi and Tilak continuing in the statute books of independent India was not lost on those drafting the Constitution. While in their Drafting the Constitution, the Constitutional Framers included 'sedition' as a basis on which laws could be framed limiting the fundamental right to speech (Article 13) but in the final draft of the Constitution sedition was eliminated from the exceptions to the right to freedom of speech and expression (Article 19 (2)). This amendment was the result of the initiative taken by K.M. Munshi, a lawyer and an active participant in the Indian independence movement. He proposed these changes in the debates in the Constituent Assembly. The way in which the sedition law has been used as a convenient medium to stifle any form or expression of dissent or criticism mirrors the fears and concerns expressed by some of the constitutional drafters regarding the ease with which the sedition law can be misused and abused**.** ***Mr.K.M. Munshi*** supported his contention in the following words:

"That 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 in practice it has had a curious fortune. A hundred and fifty years ago in England, 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…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. Therefore, the word 'sedition' has been omitted."

Seth Govind Das, a freedom fighter and, subsequently, a distinguished Parliamentarian, was another supporter of removing 'sedition' from the Article. He said:

"I would like to recall to the mind of honourable Members of the first occasion when section 124A was included in the Indian Penal Code. I believe they remember that this section was specially framed for securing the conviction of Lokamanya Bal Gangadhar Tilak. Since then, many of us have been convicted under this section. It is a matter of pleasure that we will now have freedom of speech and expression under this sub-clause and the word 'sedition' is also going to disappear."

Thus the framers of our Constitution were clearly aware of the tainted history of sedition laws and did not wanted to restrict the right to free speech of independent Indians by these draconian provisions. By removing sedition from the terms included in Article 19(2) the Constitution makers signaled their wish to move away from the colonial order where legitimate dissent was denied to Indians.[34]

[34] http://www.repealseditionlaw.in/learn/book/history/ca

CHAPTER-3

CURRENT POSITION IN INDIA

The present chapter seeks to examine in detail the essential ingredients of Section 124-A of the Indian Penal Code 1860. An endeavor has been made to outline the constitutional validity of the law of sedition in India with the help of relevant case laws.

3.1 INGREDIENTS OF SECTION 124-A OF I.P.C

Section 124-A of the Indian Penal Code 1860 defines the offence of sedition and prescribes punishment for sedition .The law is placed bang in the middle of Chapter VI of the section in the Indian Penal Code that deals with "Offences against the State", a passage that deals with serious offences including waging war against the state. The punishment that this section carries extends up to life imprisonment, and the charge is both non-bailable and cognizable. All of these indicate the seriousness of the crime.[35]

The word sedition does not occur in the body of the section. It finds place only as a marginal note to the section which is not an operative part of the section, but simply states the name by which the offence defined in the section is known.[36]

Pre-Independence, 124A remained much the same as at its inception, with minor amendments, which were predominantly for the sake of clarifying and unifying the way that it had been interpreted at common law. The section reads as:

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.

[35] Siddharth Narrain, 'Disaffection' and the Law: The Chilling Effect of Sedition Laws in India', Economic & Political Weekly **EPW** february 19, 2011 vol xlvI no 8, Page33
[36] Emperor v. Sadashiv Narayan Bhalerao, A.I.R 1947 PC 82

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.

a) WHAT AMOUNTS TO SEDITION?

In order to constitute the offence of sedition the following essential ingredients should be there:

i) WHOEVER

The word "whoever" has widened the scope and ambit of the section. It has been held to include not only the writer of the alleged seditious article. But anyone who uses ,in any way, words or printed matter for the purposes of exciting feelings of the disaffection to the government would be liable under the section whether or not he is the actual writer.[37]

In the case of ***Nazir Khan and Ors v. State of Delhi***[38] the Hon'ble Supreme Court while interpreting the term 'whoever' referred to the Section 13 of the Second Law Commission Report. The law commissioners define the term as follows:

> *"The laws of a particular nation or country cannot be applied to any persons but such as owe allegiance to the Government of the country, which allegiance is either perpetual, as in the case of a subject by birth or naturalization, &c., or temporary, as in the case of a foreigner residing in the country. They are applicable of course to all such as thus owe allegiance to the Government,*

[37] Queen Empress v. Jogendra Chandra Bose , ILR 19 Cal 35 (41)
[38] AIR 2003 SC 4427

whether as subjects or foreigners, excepting as accepted by reservations or limitations which are parts of the laws in question."

In the case of ***Raghubir Singh & Others Etc v. State of Bihar***[39]

"…. the authorship of seditious material alone is not the gist of any of the offences. Distribution or circulation of seditious material may also be sufficient on the facts and circumstances of a case. To act as a courier is sometimes enough in a case of conspiracy."

In the case of **Emperor vs Bhaskar Balvant Bhopatkar** [40] the court observed:

"That is to say for everything that appears in his paper, the editor, printer, or publisher is as responsible as if he had written the article himself. No doubt the question of his liability to punishment is a matter which has to be seriously considered and circumstances may considerably mitigate the penalty which has to be imposed. "

The term 'whoever' includes the following persons:

- The publisher,
- writer,
- Editor,
- distributers and circulators;or
- the person who is found in the possession of the alleged seditious work..

ii) BY WORDS, EITHER SPOKEN OR WRITTEN, OR BY SIGNS, OR BY VISIBLE REPRESENTATION OR OTHERWISE;

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. In the word 'written' , print is included by

[39] 1987 AIR 149
[40] (1906) 8 BOMLR 421

the General Clauses Act 1896 , and therefore' by words written' means amongst other things 'by words that are printed.'[41] Seditious libel may be in writing or print, or may be contained in a drawing or engraving, or a painted picture, or a sculpture or any permanent representation.[42]

Apart from words spoke or written sedition can be practiced through thousand other means. Sedition may be in print, or may be contained in drawing or engraving, or woodcuts, or in a painted picture or sculpture or any other permanent representation.[43]

The term 'sign or visible representation' has not been defined. It really means any form of communication which is visible to 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.[44]

iii) BRINGS OR ATTEMPTS TO BRING INTO HATRED OR CONTEMPT

The terms 'Brings or attempts to bring' suggests that what is made punishable by this section is bringing or attempting to bring into hatred or contempt the people towards the government established by law in India. The attempt is made punishable as well as the effect of the attempt. It is immaterial under the section whether the attempt has effected its purpose or not, because it is the attempt that is made punishable. It is not necessary in order to bring the case within this section that it should be shown that the attempt was successful. Attempt does not imply success. It is merely trying. Whoever tries to excite, attempts to excite, etc is held to come within the section. Whether intention has achieved the result is immaterial.[45]

The section places on absolutely the same footing the successful exciting of feeling of disaffection and the unsuccessful attempts to excite them, so that, if you find that either

[41] Emperor v. Bhasker Balwant Bhopatkar (1906) 8 BOMLR 421
[42] R v. Piggot (1868) 11 Cox CC 44
[43] Dr. H.P Gupta and P.K. Sarkar , Law realting to Press and Sedition in India , First Edition 2002, Orient Publishing Company , New Delhi – Page-210
[44] Dr. KI Vibhute , PSA Pillai's Criminal Law , Lexis Nexis Butterworths Wdhwa Nagpur, Tenth Edition, Page-482
[45] Sarvaria S.K , Ralelson's Indian Penal Code, 10th Edition , Volume -I , Lexis Nexis Butterworths Wadhwa Nagpur, Page-1114

of the prisoner's has tried to excite such feelings in others , you must convict him even if there is nothing to show that he succeeded. [46]

All that is necessary to constitute such an attempt is some external act, something tangible and ostensible, of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted.[47]

In the case of ***R v. Burns and others***[48], Mr. Justice Cave, observed that

"A man cannot escape from uttering words with intent to excite people to violence solely because the persons whom he addressed may e too wise or temperate to be induced to act with violence."

Hatred or Contempt

Hatred is a passion which every wise and good man endeavors to check himself. With the feeling of hatred, the law can do nothing because it cannot see into heart and cannot reform it, but law does step in when any attempt is made to excite that feeling in others. And it does so as much for the protection of the individual as for the protection of the state. If it is the individual against whom hatred is excited, the offence is described as defamation, and the law extends similar protection to the collective body which is called the government, and which represents the community as a whole, and whose duty it is to perform the functions of preserving order and peace, which are essential to the beneficial cooperation of human beings and to the enjoyment and safety of life and property.[49]

Hatred implies an ill will, while contempt implies a low opinion. In other words, hatred and contempt are the state of mind in relation to the object. The hatred and contempt in order to be punishable under this section must relate to the hatred and contempt in order to be punishable under this section must relate to the hatred and contempt of the state or of the established form of government. Hatred and contempt towards the government

[46] ***Queen-Empress v Bal Gangadhar Tilak*** ,22 ILR Bom 112,Page-134
[47] Emperor v. Ganesh Balvant Modak 34 ILR Bom 378 , Page-381
[48] (1886) 16 Cox CC 355
[49] Emperor v. Bhasker Balwant Bhopatkar (1906) 8 BOMLR 421

may be created by writing, imputing to the government base, dishonorable, contemptuous, malicious motives in the discharge of its duties or by writing that unjustly accuses the government of hostility or indifference to the welfare of the people.[50]

iv)EXCITES OR ATTEMPTS TO EXCITE DISAFFECTION

An attempt is an intentional, premeditated action, which if it fails in its object, fails through circumstances independent of the person who seeks its accomplishment. If its failure is to be attributed to something which he cannot control, its failure is no excuse.[51]

Disaffection etymologically denotes the negation of a affection, good will, or credibility i.e. the loss of regard, positivity towards, or belief, faith, trust in those attributes of a person, organisation or object. 'To say I no longer Love you cannot be equated with 'I hate you'. Disaffection with the government signifies loss of faith, belief, or confidence in its genuinity; disaffection is thus a state of limbo of suspended emotion.[52]

The courts have interpreted the word, 'disaffection' widely as stated below[53]:

i) Disaffection means a feeling contrary to affection, in other words dislike or hatred. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection.***[54]***

ii) It is a positive political distemper, and not a mere absence or negation of love or good-will. It is a positive feeling of aversion which is akin to ' disloyalty,' a defiant in subordination of authority, or when it is not defiant, it secretly seeks to alienate the people, and weaken the bond of allegiance, and prepossesses the minds of the people with avowed or secret animosity to Government, a feeling which tends to bring the

[50] Mrs. Annie Besant v. The Advocate General Of Madras, (1919) 21 BOMLR 867
[51] Queen-Empress v Laxman 2 Bom LR 286 , Page -296
[52] Gaur K.D ,Commentary on the Indian Penal Code , Universal law Publishing Co. Pvt ltd, 2006th Edition ,Page-407
[53] Ratanlal and Dhiraj Lal, Law of Crimes,24th Edition, Vol-I , Page.505-506
[54] ***Queen-Empress v. Jogendra Chunder Bose*** ,(1892) ILR 19 Cal 35

Government into hatred or contempt by imputing base or corrupt motives to it, make men indisposed to obey or support the laws of the realm, and promotes discontent and public disorder.[55]

iii) An attempt to excite feelings of disaffection to the Government is equivalent to an attempt to produce hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance.[56]

iv) It is a political alienation or, , a feeling of disloyalty to the Government or existing power, which tends to a disposition not to obey, but to resist and attempt to subvert that Government or power. Its meaning thus exactly corresponds to the almost, if not quite, universally accepted meaning of its adjective 'disaffected.' To make or attempt to make a person disaffected, that is to excite or attempt to excite in him a feeling of disloyalty to Government, or to excite or attempt to excite in his mind a disposition to disobey, to resist the authority of, or to subvert the existing Government, is the act under this section declared an offence.

Thus from the above discussion it can be deduced that 'disaffection' means a feeling contrary to affection, in other words, dislike or hatred and in the context of this section disaffection means feeling of hatred against the government of India.

According to Explanation 1 appended to Section 124-A the expression disaffection includes disloyalty and all feelings of enmity. In the case ***Queen-Empress v. Bal Gangadhar Tilak***[57] Mr. Justice Strachey, defined 'disaffection' in the following terms:

"It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government."

[55] *Queen-Empress v. Ramchandra Narayan and another* (1897) I.L.R. 22 Bom. 152
[56] Ibid
[57] (1897) I.L.R. 22 Bom. 112, 151

v) TOWARDS THE GOVERNMENT ESTABLISHED BY LAW IN INDIA

Section 17 of the Indian Penal Code, 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 the case of ***Kedar Nath v. State of Bihar*** [58] the Supreme Court 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. The court observed:

"'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. That is why 'sedition' , as the offence in section 124-A has been characterized , comes under Chapter VI , relating to offences against the State…..In other words , any written or spoken words, etc, which have implicit in them , the idea of subverting Government by violent means , have been made penal by the section….."

A general criticism of certain officer or officers cannot be deemed to be a criticism of the government established by law. Calling bureaucrats, thugs and profiteers is not sedition. Criticism of the government and not of the officials of the government is sedition. An attack on certain police officers at a particular place does not convey any reflection upon the governing authority.[59]

vi) SHALL BE LIABLE FOR PUNISHMENT

Under this section a person can be made liable for 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. The punishment for sedition may under this section, is anything from mere fine to imprisonment for life. The sentence to be actually imposed will depend upon the circumstances of each case, and the position and age of the accused.

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[58] A.I.R 1962 SC 955

[59] Sarvaria S.K , Ralelson's Indian Penal Code, 10th Edition , Volume -I , Lexis Nexis Butterworth's Wadhwa Nagpur, Page-1120

Seditious speech must be read as whole

Debi Soren & Ors V. The State[60]

The first point is that the speeches made must be considered as a whole and in a fair, free and liberal spirit, not dwelling too much upon isolated passages or upon a strong expression used here and there; in other words, an attempt should be made to gather the general effect of the speeches as a whole. The second point is that the intention of the speaker in using the words-complained of is relevant; but the intention must be gathered from the language used, as also from the whole of the circumstances in which the speeches were made including the audience to whom they were addressed.[61]

b) WHAT DOES NOT AMOUNT TO 'SEDITION'?

Explanation 2 and 3 appended to Section 124-A of I.P.C 1860 makes provision for legitimate criticism against the government. These Explanations provide that as long as a person does not excite or attempt to excite hatred, contempt or disaffection, then mere expressing disapproval of the acts of the government in order to bring about change by lawful means or criticizing or disapproving the administration, does not constitute an offence under this section. In other words,' commenting in strong terms upon the measures or acts of the government or its agencies , so as to ameliorate the condition 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 object of these Explanations is to protect from the condemnation pronounced by the first clause certain acts which it distinguishes from the disloyal attempts which the first clause deals with. The thing protected by the explanation is 'the making of comments on the measures of the Government' with a certain intention. This shows that the explanation has a strictly defined and a limited scope. It does not apply to any writing which consists not merely of comments upon Government measures, but of attacks upon the

[60] 1954 CriLJ 758

Government itself, its existence, its essential characteristics, its motives, or its feelings towards the people**.**

Thus, it can be deduced that a man may criticise or comment on any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. He may express the strongest condemnation of such measures and he may do so severely, and even unreasonably, perversely and unfairly. So long as he confined himself to that he will be protected by the explanation. But if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers—as, for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people—then he is guilty under the section, and the explanation will not save him.[62]

3.2 CONSTITUTIONAL VALIDITY OF SECTION 124-A

"If liberty means anything at all, it means the right to tell people what they do not want tohear."

— George Orwell[63]

Today, the law of Sedition has assumed controversial importance largely on account of change in the body politic and also because of the constitutional provision of freedom of speech guaranteed as a fundamental right.[64] During the British rule in India, human rights were violated by the rulers on a very wide scale. Even access to basic rights of food, health, work, education was denied. Therefore, the framers of the Constitution, many of whom had suffered long incarceration during British regime, had a very positive attitude towards the Fundamental rights. The Fundamental Rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. These rights have been

[62] Mr. Justice Strachey in Queen-***Empress v. Bal Gangadhar Tilak*** (1897) I.L.R. 22 Bom 112, 151

[63] Retrieved from http://www.goodreads.com/quotes/tag/freedom-of-speech on 26th November 2012

[64] Tewari .R.B , Law of Sedition In India, Essays on the Indian Penal Code, The Indian Law Institute , 2005, Page-281

defined as the basic human freedoms which every individual has a right to enjoy for a proper and harmonious development of personality.[65]

The Fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his Fundamental Rights are the very essence of the democratic way of life adopted by the Constitution.[66] It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race.[67]

In ***I.R. Coelho V. State of T.N***[68]., the Supreme Court observed:

"It is necessary to always bear in mind that fundamental rights have been considered to be heart and soul of the Constitution.....Fundamental rights occupy a unique place in the lives of civilized societies and have been described in judgments as "transcendental", "inalienable", and primordial".

After the Constitution of India came into operation it entrusted all the citizens with certain Fundamental rights against State. Articles 12 to Article 35 of Part III of the Constitution of India envisage these rights. These rights have been categorized into following six categories:

i) Right To Equality (Article 14to Article 18)

ii) Right To Freedom (Article 19 to Article 22)

iii) Right against exploitation (Article 23,24)

iv) Right to Freedom of Religion (Article 25 to Article 28)

v) Cultural and Educational rights (Article 29,30)

vi) Right to Constitutional Remedies(Article 32)

65Retrieved from http://legal-articles.deysot.com/constitutional-law/history-of-introduction-of-fundamental-rights-in-indian-constitution.html on 18th November 2012

66 Daryao v. State of Uttar Pradesh, A.I.R 1961 SC 1457

[67]*M. Nagaraj & Ors V. Union of India & Ors* (2006) 8 SCC 212 Para-20

[68] (2007) 2 SCC 1 (vide paragraphs 109 and 49)

Freedom of Speech and Expression is considered to be as one of the most imperative among all the rights. Freedom of Speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succor and protection to all other liberties. It has been truly said that it is the mother of all other liberties.[69]

In the case of ***Maneka Gandhi v. Union of India***[70] Mr. Justice P.N Bhagwati has emphasized on the significance of the freedom of speech and expression in the following words:

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential."

However, this Freedom is not absolute right i.e. it is subjected to the reasonable restrictions laid down in Article 19 (2). These restrictions have been discussed in detail in the latter part of this chapter.

[69] Jain.M.P , Indian Constitutional Law, Wadhwa and Company Nagpur, Fifth Edition , 2008, Page -986
[70] A.I.R 1978 SC 597

Section 124-A of the Indian Penal Code 1860 is the product of Britisher's which was used by them at several occasions to suppress the voices of innocent Indians against them. Since the conception of the Constitution of India, the constitutionality of Section 124-A has remained a contentious issue. In order to have a profound knowledge of this issue, the constitutional status of Section 124-A has been divided into two Phases. The First phase envisages the controversies before the First Constitutional Amendment 1951 and the Second phase encompasses the controversies after the said amendment.

3.2.1 PRIOR TO FIRST CONSTITUTIONAL AMENDMENT OF 1951

Prior to the First Constitutional Amendment in 1951 the Article 19(1) (a) of the Constitution of India 1950 read as:

"All the citizens shall have the right to freedom of speech and expression"

Article 19(2) of the Constitution of India 1950 read as:

"Nothing in this clause shall affect the operation of existing law in so far as it relates to or prevents State from making any law, relating to libel, slander, defamation, contempt of court or any matter which offend against decency, morality or which undermines the security of the State or tends to overthrow the State."

The confliction between Article 19(1) (a) of the Constitution of India and Section-124 A of Indian Penal Code came into light in the case of ***Romesh Thappar v. State of Madras***[71] wherein the petitioner was printer, publisher and editor of a weekly journal called Cross Roads printed and published in Bombay. The Government of Madras, the respondents, in exercise of their powers under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 issued an order on1st March, 1950, whereby they imposed a ban upon the entry and circulation of the journal in the State of Madras. The government contended in the order that ban was imposed on the circulation of weekly Journal for 'the

[71] AIR 1950 SC 124

purpose of securing the public safety and the maintenance of public order.' The petitioner challenged the order before the Supreme Court of India under Article 32 of Constitution of India on the ground of it being voilative of Article 19(1) (a). The issue before the Court was whether the law under which the ban on entry-circulation was valid under A.19 (2) of the Constitution. Whether Art. 19(2) empowered government to make law for the purpose of securing public order and maintenance of public safety.

Mr. Justice Patanjali Sastri while delivering the majority opinion observed that:

"There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation .Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value. It is therefore perfectly clear that the order of the Government of Madras would be a violation of the petitioner's fundamental right under Article 19(1) (a), unless section 9(1-A) of the impugned Act under which it was made is saved by the reservations mentioned in clause (2) of Article 19 saves it's the operation."

In the plain words, it was held that freedom guaranteed by Art. 19(1) (a) is essential for a man's existence. It includes within its ambit the freedom of propagation of ideas through publication and circulation. The government can impose restrictions on such circulation or publication, if and only if, Art. 19(2) permit government to do the same.

The controversial issue before the court was that whether the expression 'Security of State' under Article 19(2) includes 'securing public safety' and 'maintenance of public order'. While interpreting expression 'Public Order' the Supreme Court observed:

"A 'public order' is an expression of wide connotation and signifies that state of tranquility which prevails among the members of a political society as a result of the internal regulations enforced by the government which they have established… 'Public safety' is used as a part of the wider concept of public order, "Public safety" ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context."

"....The Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Article 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression...."

It can be deduced that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrowing of it, such law cannot fall within the reservation under clause (2) of article 19.It follows that section 9(1-A) which authorizes imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorized restrictions under clause (2), and is therefore void and unconstitutional.

A similar issue was raised before the Supreme Court in the case ***of Brij Bhushan& Another v. State of Delhi***[72] wherein the court held Section 7(1)(c) of the Act unconstitutional and Void on the ground that 'public safety' and 'public order' does not undermines the 'security of the state'. The restriction imposed by the State on these grounds was held to be ultravires to the Art.19 (2).

Dissenting Opinion of Mr. Justice Fazl Ali[73]

Mr. Justice Fazl Ali while delivering the dissenting opinion in above mentioned cases opined that under Article 19(2) of the Constitution of India the restriction on 'Freedom of speech and expression' can be imposed on the ground of maintenance of public order and safety."Public order" is an expression in the general sense may be construed to have reference to the maintenance of what is generally known as law and order in the Province. It is clear that anything which affects public tranquility within the State or the Province will also affect public order and the State Legislature is therefore competent to frame laws on matters relating to public tranquility and public order.

[72] AIR 1950 SC 129
[73] AIR 1950 SC 129 & AIR 1950 SC 124

"Sedition is essentially an offence against public tranquility and secondly that broadly speaking there are two classes of offences against public tranquility: (a) those accompanied by violence including disorders which affect tranquility of a considerable number of persons or an extensive local area, and (b) those not accompanied by violence but tending to cause it, such as seditious utterances, seditious conspiracies, etc. Both these classes of offences are such as will undermine the security of the State or tend to overthrow it if left unchecked, and, as I have tried to point out, there is a good deal of authoritative opinion in favor of the view that the gravity ascribed to sedition is due to the fact that it tends to seriously affect the tranquility and security of the State."

Mr. Justice Fazl Ali was of the opinion that even a small riot or an affray could undermine the security of the State, therefore, the legislature was held to be competent to legislate and impose restrictions on the grounds of public disorder and public un-safety.

The Decisions of Apex Court in following the two cases prompted legislators to amend Article19 (2) of the Constitution of India 1950.

3.2.2 AFTER FIRST CONSTITUTIONAL AMENDMENT OF 1951

After First Constitutional Amendment Article 19(2) reads as follows:

"Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause 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 changes effected by this amendment, which have been given retrospective effect, are[74]:

[74] Sarvaria S.K, Ranelson's Indian Penal Code ,Lexis Nexis Butterworths Wadhwa Nagpur , 10th Edition(2008), Volume I, Page-1106-1107

i) Several new grounds of restriction upon the freedom of speech ,namely, friendly relations with foreign states, public order and incitement to an offence were introduced

ii) Deletion of the ground 'tends to overthrow the State'.

iii) Widening the scope of the expression relating to 'security of the state', by substituting it with the expression 'in the interest of security of state'

iv) Substitution of the words 'libel, slander' by the word 'defamation' and

v) Insertion of the expression 'reasonable restrictions' to govern all the above grounds.

After the First Constitutional Amendment came into operation an important question relating to the constitutional validity of Section 124-A of the Indian Penal Code was raised on the grounds of it being violative of Art.19 (1) (a) in few cases leading to a conflict of decisions in High Courts. There were two divergent views in this regards.

The protagonists of one view held that Section 124-A of I.P.C is ultra virus of the Constitution insofar as it seeks to punish merely bad feelings against the Government. It is an unreasonable restriction on freedom of speech and expression guaranteed under Art.19 (1) (a) and is not saved under Article (2) of the Constitution by the expression in the interest of public order".[75] They said that it should be declared void because the clause (1) of Art.13 of the Constitution of India declares that pre-constitution laws are void to the extent to which they are inconsistent with the fundamental rights.

The contentious issue constitutional validity of Section 124-A was raised in the case of ***Tara Singh v. State of Punjab***[76] , the East Punjab and Haryana High Court on the grounds of it being violative of Art.19(1)(a). Mr. Justice Weston while holding Section 124-A unconstitutional observed:

"India is now a sovereign democratic State. Governments may go and be caused to go without the foundations of the State being impaired. A law of sedition thought necessary

[75] Gaur K.D , Commentary on the Indian Penal Code, Universal Law publishing Co Pvt Ltd, 2006th Edition, Page-410
[76] 1951 CriLJ 449

during a period of foreign rule has become inappropriate by the very nature of the change which has come about. The limitation placed by Clause (2) of Article 19 upon interference with the freedom of Speech, however, is real and substantial. The unsuccessful attempt to excite bad feelings is an offence within the ambit of Section 124A. In some instances at least the unsuccessful attempt will not undermine or tend to overthrow the State. It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the constitution. The section then must be held to have become void."

This view was affirmed by the Allahabad High Court in the case of ***Ram Nandan v State***[77]**.** The court overturned Ram Nandan's conviction and declared Section 124-A unconstitutional. Mr. M. C Justice Desai while explaining his ruling observed:

"...that exciting hatred, contempt or disaffection towards the Government may in some cases affect the security of the State as for example when a violent overthrow of the existing system of Government is advocated in the teeth of the Constitution, but not in every case and a restriction on every speech exciting such a feeling towards the Government cannot be said to be in the interests of security of the State."

It was further observed that reasonable restriction can only be imposed in cases where speech has a tendency to, disturb the public order or undermine the security of the State.If a speech contains the germs of incitement to violence; they may not be completely destroyed by a final exhortation to eschew violence.

Mr. Justice Gurtu, while agreeing with Justice Desai added:

"Section124-A must be invalidated because it restricts freedom of speech in disregard of whether the interest of public order or the security of the State is involved, and is capable of striking at the very root of the Constitution which is free speech (subject of limited control under Article 19(2) ."

[77] AIR 1959 All 101

The advocates of the other view held that Section 124-A of IPC is constitutional, and is not in the contravention of Article 19(1)(a). This view originated in the case of ***Debi Soren & Ors v. The State***[78] wherein the Patna High Court held that Section 124-A is saved by the 'reasonable restrictions' enlisted in Article 19(2).While holding it constitutional the court observed:

". The expression "in the interests of public order" has a wide connotation and should not be confined to only one aspect of public order, viz., and incitement to violence or tendency to violence. Public order can be affected in other ways also; and creating disaffection, hatred or contempt towards the Government established by law (not merely comments which express disapprobation of Governmental measures or administrative and other action of Government) may seriously affect the interests of public order, even though there may be no tendency or incitement to violence. Incitement to violence no doubt directly affects the maintenance of public order; but the expression "In the interest of public order" is not confined merely to such incitement. It has a much wider content, and embraces such action as undermines the authority of Government by bringing it into hatred or contempt or by creating disaffection to-wards it…"

However, the controversy over validity of Section 124-A was set to rest by the Supreme Court in the case of ***Kedar Nath Singh v. State of Bihar***[79], wherein Section 124-A was held constitutional. While upholding the constitutionality of Section124-A of IPC 1860, the Mr. Justice B. P. Sinha observed:

"The security of the State, which depends upon the maintenance of law and order, is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established.

"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

[78] 1954 CriLJ 758
[79] A.I.R 1962 SC 955

speech and expression with which we are concerned in this case. But the freedom has to be guarded again 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.

Thus the Supreme Court upheld the constitutionality of the sedition law, but at the same time curtailing its meaning and limiting its application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. It observed that if the sedition law were to be given a wider interpretation, it would not survive the test of constitutionality.

While the Supreme Court has limited the scope of the sedition law (at the same time upholding its constitutionality), successive central and state governments in the country continue to file charges of sedition against journalists, media practitioners, human rights activists and anyone who dares express dissent. Recent examples of sedition cases reported in the media demonstrate how the law is misused.

In the case of ***State of Karnataka v. Dr. Praveen Bhai Thogadia*** [80]the court has held

"That valuable and cherished right of freedom of speech and expression may at times have to be subjected to reasonable subordination of social interests , needs and necessities, to preserve the very chore of democratic life, preservation of public order and rule of law."

[80] A.I.R 2004 SC 2081

3.4 RECENT CONTROVERSIES

The law on sedition is being used to stem any sort of political dissent in the country, and also any alternate political philosophy which goes against the ruling party's mindset. It is a throwback to the days of British Rule, when the speeches of Tilak and Gandhi used to warrant persecution for they spoke out against the British Rule, but one asks in a country providing a fundamental right to freedom of speech, is such criticism not a right of the individual, so long as it remains within reasonable restrictions? It appears as if the upper echelons of the criminal justice system are totally disconnected from the lower rungs, with the Trial Courts and the police authorities continually harassing individuals for no reason in law. The law on sedition is clearly being used to target specific people who choose to express dissent against the policies and activities of the government. Binayak Sen's case is the one of the most striking examples of the unjust nature of sedition laws.

The trials of Binayak Sen and Arundhati Roy, recent arrest of cartoonist Aseem Trivedi as well as the whole body of civil society reaction across national and social boundaries have marked a landmark in Indian jurisprudence. Apart from the personal pain and agony the victims have gone through, these incidents have also intellectually challenged many citizens of our country and forced them to look critically at the laws and statutes that govern our lives. These incidents have brought into the limelight the outdated provisions of the sedition law in India, and have forced the Indian Government to reframe these Laws, in keeping with the spirits of the time. The present controversy is that whether Section 124-A of the Indian Penal Code 1860 which makes sedition a punishable offence should be retained or not. Therefore, in order to have an in-depth knowledge of present conditions, attitude of government, citizens and social activists towards restrictions imposed on Freedom of speech and expression on account of sedition, all the three incidents have been discussed at length.

i) SEDITION TRIAL OF BINAYAK SEN

The brief facts of the trial of Dr. Binayak Sen have been discussed below with the help of the following timeline of events since the May 2007 arrest of civil rights activist Binayak Sen on unproven charges of links with Maoists in Chhattisgarh. Through this following

timeline of events an endeavor has been made to give a picture of the mental pain and agony which Dr. Sen had to undergo.[81]

DATES	EVENTS
May 14, 2007	Binayak Sen was arrested in Chhattisgarh's Bilaspur town on charges of acting as a courier between jailed Maoist leader Narayan Sanyal and businessman Piyush Guha, also accused of having links with Maoists.
May 15, 2007	Presented before local court. He was remanded to judicial custody by a local court. Bail denied.
May 18, 2007	He was produced before Sessions Court. Court ordered a search of Sen's house at Katora Talab in Raipur in presence of independent witnesses and his wife, Ilina Sen.
May 22, 2007	Sen was produced in Sessions Court along with his co-accused Piyush Guha. Judicial remand was extended to June 5. Court ordered search of Sen's personal computer.
May 25, 2007	The Sessions Court again rejected Sen's bail application as Chhattisgarh police claimed that he was a threat to State security.
May26-June4, 2007	Series of rallies and meetings in support of Sen. held across India and abroad, including Raipur, Delhi, Kolkata, Mumbai London, Boston and New York. Various delegations of physicians and human rights activists meet chief secretary and law secretary to appeal for Sen's release.
June 5, 2007	Sen was produced in court rebuts allegations by police.
June6-June11, 2007	Sen's computer was analysed by Central Forensic Science Laboratory (CFSL), Hyderabad in the absence of defense lawyers.
July 23, 2007	Chhattisgarh High Court rejects Sen's bail plea after police claimed that incriminating evidence were found in hard disc belonging to him
August 3, 2007	Police filed charge-sheets under the Chhattisgarh Special Public Security Act and Unlawful Activities (Prevention) Act in the court of Additional Chief Judicial Magistrate Satyabhama Dubey against Sen.
Dec 10, 2007	The Supreme Court dismissed Sen's bail petition.
May 30, 2008	Sen's trial commenced at trial court in Raipur
August 11, 2008	Second bail petition filed in Chhattisgarh High Court in Bilaspur.

[81] Retrieved from http://ibnlive.in.com/news/sc-grants-bail-to-civil-rights-activist-binayak-sen--watch/93311-3-p2.html on 29th November 2012

May 4, 2009	Supreme Court issued notice to Chhattisgarh government on Sen's bail plea and asked the government to provide "best medical aid" to Sen, who was suffering from a heart ailment.
May 25, 2009	Sen granted bail by a vacation bench of the Supreme Court comprising Justice Markandey Katju and Justice Deepak Verma on the grounds of deteriorating health.
December24, 2010[82]	The Additional Sessions and District Court Judge B.P Verma of Raipur found Binayak Sen, Naxal ideologue Narayan Sanyal and Kolkata businessman Piyush Guha, guilty of sedition for helping the Maoists in their fight against the state. They were sentenced to life imprisonment. Immediately after the sentencing, Dr. Sen's bail was revoked and he was taken back into custody.
January6, 2011	Against this judgment, Binayak again applied for bail before Chhattisgarh High Court. Sen's lawyer Ram Jethmalani argued for over two hours for grant of bail on 24 January 2011, and described the trial court verdict as one based only on police versions.
February9, 2011	The Chhattisgarh High Court dismissed Dr.Sen's Bail petition.
February10,2011	Dr. Sen had moved to the Apex court challenging the order of the Chhattisgarh High Court which had rejected his bail plea.
March 11, 2011	The Apex Court issued notice to the Chhattisgarh government on a petition by rights activist Binayak Sen seeking bail and stay on his life imprisonment imposed by a Session's court for his links with Maoists.
April 15, 2011	The Supreme Court of India granted bail to Dr. Binayak Sen, after questioning the sedition charge against him and adding that "the question of passing letters or documents does not arise. The Apex court bench of Justice H.S. Bedi and Justice C.K. Prasad observed: *"Even if the state government's contention that Sen was in the possession of banned material and was involved in its circulation was true, it did not justify the charge of sedition. Mocking at the contention of the state government, the court said that if a biography of Mahatma Gandhi is recovered from a person that did not make him a Gandhian."* The court ridiculed the state's submission that Sen was actively involved in spreading disharmony and disaffection against the State.[83]

Several Human rights organizations, social-activist groups and citizens all over the world extended their constant and unconditional support to Dr. Binayak Sen during his Trial.

[82] Retrieved from http://en.wikipedia.org/wiki/Binayak_Sen on 29th November 2012
[83] http://in.news.yahoo.com/supreme-court-grants-bail-binayak-sen-20110414-235458-452.html

Human Rights activists, civil society members, and legal luminaries condemned his arrest. Activists came down to the streets and even petitioned the President for Sen's release. An online signature campaign entitled 'Free Binayak Sen' was started and it attracted almost 2000 followers in 40 hours. Amnesty International had condemned Sen's sentence calling it an 'unfair trial'.[84]

Twenty-two Nobel laureates from around the world wrote to India's President and Prime Minister and Chhattisgarh State authorities. While expressing grave concern over Dr.Sen's arrest they all said:

"We also wish to express grave concern that Dr Sen appears to be incarcerated solely for peacefully exercising his fundamental human rights,…This is in contravention of Articles 19 (freedom of opinion and expression) and 22 (freedom of association) of the International Covenant on Civil and Political Rights – to which India is a state party – and that he is charged under two internal security laws that do not comport with international human rights standards,"

ii) THE CASE OF ARUNDHATI ROY AND OTHERS

Writer Arundhati Roy, Hurriyat hawk Syed Ali Shah Geelani and others were booked on charges of sedition by Delhi Police for delivering "Anti-India" speeches at a conference on "Azadi-the Only Way" on October 21, 2010. The following words of Arundhati Roy were alleged as seditious:

"Kashmir has never been an integral part of India. It is a historical fact. Even the Indian government has accepted this"

Roy and others were charged under Sections 124A (sedition), 153A (promoting enmity between classes), 153B (imputations, assertions prejudicial to national integration), 504 (insult intended to provoke breach of peace) and 505(false statement, rumor circulated with intent to cause mutiny or offence against public peace of the Indian Penal Code 1860. The Union Home Ministry had sought legal opinion on the issue which suggested that a case could be made out under sedition. However, after taking political opinion, the

[84] http://www.ndtv.com/article/india/after-life-sentence-worldwide-support-for-activist-binayak-sen-75088

Ministry decided not to file any case against Geelani and Roy. Arundhati Roy while defending her words said,

"I said what millions of people here say every day. I said what I, as well as other commentators have written and said for years. Anybody who cares to read the transcripts of my speeches will see that they were fundamentally a call for justice."[85]

iii) SEDITION CHARGE OF ASSEM TRIVEDI

Anti-corruption cartoonist Aseem Trivedi is yet another cartoonist who faced the wrath of law for allegedly insulting the constitution and the national symbol. He was arrested on 8th September 2012 on charges of sedition, cybercrime, and insulting the national flag, Parliament and the Constitution through his work. He was charged for Sedition under Section 124-A, the Information Technology (Amendment) Act 2008 and Prevention of Insult of National Honours 1971. He was sent to police custody till 11th September 2012.

Trivedi's arrest kicked off a nationwide outrage, bringing the freedom of expression to question. Several well-know personalities criticized the arrest of Trivedi.[86].

P.I.L filed on behalf of Asseem: Bombay High Court granted Bail [87]

The Bombay High Court 11th September granted bail to cartoonist Aseem Trivedi, saying if drawing cartoons was the only allegation against him, then his custody was not required. The bail order was passed by the bench on public interest litigation by city-based lawyer Sanskar Marathe who sought Trivedi's release contending his arrest was 'illegal, bad in law, and unjustified'. Marathe's PIL contended that Trivedi's cartoons cannot, by any stretch of imagination, be said to attract the serious charge of sedition. It was further stated that the right to freedom of speech and expression guaranteed under Article 19 (1) (g) of the Indian Constitution will be under a serious threat if social activists and cartoonists are arrested on sedition charges.

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[85] http://blogs.wsj.com/indiarealtime/2010/11/30/does-criticizing-india-count-as-sedition-arundhati-roy-will-find-out

[86] http://www.ibtimes.co.in/articles/383351/20120912/aseem-trivedi-cartoon-arrest-realised-bail-mumbai.htm

[87] http://www.deccanchronicle.com/channels/nation/west/bombay-high-court-grants-bail-cartoonist-aseem-trivedi-282

A division bench of Chief Justice Mohit Shah and Justice Nitin Jamdar directed Trivedi to be released on execution of a personal bail-bond of Rs 5,000.

His arrest has sparked a mounting domestic and international backlash against the government, accused by critics of using colonial era laws to crush dissent.

Maharashtra Government Dropped Sedition Charges against Aseem Trivedi[88]

Bowing to public pressure and criticism from the court, the Maharashtra government on 12th October informed the Bombay High Court that it has decided to drop sedition charge against cartoonist Aseem Trivedi for allegedly insulting national symbols. Advocate General Darius Khambata supported the decision of government in following words:

"After having a close look at the case, it can be seen that there is clearly no case under section 124(a) of IPC for sedition. Hence the government has decided to drop invocation of the charge against Trivedi,"

[88] http://articles.timesofindia.indiatimes.com/2012-10-12/india/34411298_1_aseem-trivedi-sedition-charges-trivedi-case

RECENT CASES AT A GLANCE[89]

PERSON CHARGED WITH SEDITION	OCCUPATION	WHEN	WHERE	NATURE OF CHARGES
Manoj Shinde	Editor, Surat, *Saamna*	August 2006	Surat, Gujarat	For using "abusive words" against Chief Minister Narendra Modi in an editorial while alleging administrative failure in tackling the flood situation in Surat.
Kahturam Sunani	Journalist, *OTV*	May 2007	Sinapali, Orissa	For filing a report that Pahariya tribals were consuming 'soft' dolomite stones in Nuapada district due to acute hunger
Binayak Sen	Doctor and human rights activist	May 2007	Raipur, Chhattisgarh	For allegedly helping courier messages to Maoist leadership. Sen had criticised the Chhattisgarh government's support to the vigilante Salwa Judum.
Bharat Desai and Gautam Mehta	Resident Editor, *Times of India*, Ahmadabad; photographer, *Gujarat Samachar* (Mehta)	June 2008	Ahmadabad, Gujarat	For articles and photographs that alleged links between the Ahmadabad police commissioner and the underworld
Kirori Singh Bainsla	Gujjar community leader	June 2008	Bayana, Rajasthan	For leading an agitation demanding ST status for Gujjars

[89] This table has been adapted from the work of SiddharthNarrain, Sedition and the Death of freedom of speech and expression ,retrieved from http://infochangeindia.org/agenda/freedom-of-expression/sedition-and-the-death-of-free-speech.html

Lenin Kumar	Editor, *Nishan*	December 2008	Bhubaneswar, Orissa	For publishing a special booklet on the Kandhamal riots entitled 'Dharmanare Kandhamalre Raktonadhi' (Kandhamal's rivers of blood)
Laxman Choudhury	Journalist, *Sambadh*	September 2009	Gajapati district, Orissa	For allegedly possessing Maoist literature. Chaudhury had been writing about the involvement of local police in illegal drug trafficking
V Gopalaswamy (Vaiko)	Politician, MDMK	December 2009	Chennai, Tamil Nadu	Remarks allegedly against India's sovereignty at a book launch function
Piyush Sethia	Environmentalist and organic farmer	January 2010	Salem, Tamil Nadu	Pamphlet distributed during protest against Chhattisgarh government's support for Salwa Judum
E Rati Rao	ResidentEditor, *Varthapatra*	February 2010	Mysore, Karnataka	Article in *Varthapatra* alleging encounter deaths in Karnataka
Arundhati Roy,S.Geelani, Varavara Rao, Shuddabrata Sengupta& others	Writers, political activists, and media theorists	November 2010	Delhi	Private complaint alleging that they made anti-India speeches at a seminar on Kashmir titled 'Azadi: The Only Way'.
Noor Muhammed Bhat	Lecturer, Gandhi Memorial College, Srinagar	December 2010	Srinagar	For setting a question paper for English literature students on whether 'stone-pelters were the real heroes'

CHAPTER-4

INTERNATIONAL PERSPECTIVE

An important principle of comparative law is that useful lessons can be drawn from studying how other jurisdictions approach common problems.1 This chapter examines sedition laws in a number of selected countries, focusing on how other jurisdictions seek to reconcile the need to proscribe seditious conduct with the requirements of international law.

4.1 SOME COUNTRIES WHICH HAVE RETAINED THEIR SEDITION LAWS

1. UNITED STATES OF AMERICA

One of the cornerstones of American democracy is freedom of speech and expression, a right which is enshrined in the First Amendment of the U.S. Constitution. Some forms of speech and expression, however, can be construed as an attempt to overthrow the government, and are therefore punishable as acts of sedition. While sedition prosecutions are rare, they do occur, and can be punished by a fine or imprisonment.[90]

i) Background

The History of US Sedition laws can be traced back to **the Sedition Act 1798.** The Sedition Act of 1798 was passed with an objective to provide punishment for certain offences committed against the United States. It made it a crime, punishable by five years in prison and a $5,000 fine, "if any person shall write, print, utter or publish ... any false, scandalous and malicious writing or writings against the government of the United States, or either house of Congress ... or the President, with intent to defame ... or to bring them, or either of them, into contempt or disrepute, or to excite against them, or either of them, the hatred of the good people of the United States". The law expired in 1801, shortly after

[90] Brin Quick, What Are the Treatments for Sedition in the American Judicial System? Retrieved from http://www.ehow.com/info_8090560_treatments-sedition-american-judicial-system.html#ixzz2DLI7ObNS on 26th November 2012

the election of President Thomas Jefferson, who staunchly opposed it.[91]

In 1791, US Constitution was amended for the first time. This amendment prohibited the U.S Congress from making of any law respecting an establishment of religion, impeding the free exercise of religion, abridging the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble or prohibiting the petitioning for a governmental redress of grievances.[92] In 1917 the **Espionage Act of 1917** was enacted shortly after World War I. It prohibited any attempt to interfere with military operations, to support U.S. enemies during wartime, to promote insubordination in the military, or to interfere with military recruitment.[93]

The **Sedition Act of 1918** was an Act of the United States Congress that extended the Espionage Act of 1917 to cover a broader range of offenses, notably speech and the expression of opinion that cast the government or the war effort in a negative light or interfered with the sale of government bonds. It prohibited the use of "disloyal, profane, scurrilous, or abusive language" about the United States government, its flag, or its armed forces or that caused others to view the American government or its institutions with contempt. Those convicted under the Act were generally sentenced to imprisonment for 5 to 20 years.[94]

ii) Current Position

Currently, **sedition appears in the United States in United States Code (USC) Title 18, chapter 115[95]**, which deals with treason, sedition and subversive activities.USC 18 §2384 defines Seditious conspiracy and makes it a punishable offence. The section reads as follows:

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the

[91] Retrieved from http://www.constitution.org/rf/sedition_1798.htm on 27th November 2012
[92] http://en.wikipedia.org/wiki/First_Amendment_to_the_United_States_Constitution retrieved on 27th November 2012.
[93] http://en.wikipedia.org/wiki/Espionage_Act_of_1917 on 27th November 2012
[94] http://en.wikipedia.org/wiki/Sedition_Act_of_1918#cite_ref-1 on 27th November 2012
[95] Relevant provisions retrieved from ttp://www.law.cornell.edu/uscode/text/18 on 27th November 2012

Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

The Alien Registration Act, 1940[96] is a United States federal statute that sets criminal penalties for advocating the overthrow of the U.S. government and required all non-citizen adult residents to register with the government. It is also known as 'Smith Act'. It has been described as the companion statute to the seditious conspiracy law.

Section2. (a) Of the Alien Registration Act, 1940 makes it unlawful for any person:

- to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;

- with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United byforceofviolence.

- to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

Section 3 of the Act makes it unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the Act.

[96] Relevant provisions retrieved from http://www.citizensource.com/History/20thCen/Smith.htm on 27th November 2012

Section 5 of the Act provides the punishment for violation of Section2 and 3.Any person who violates the provisions shall be liable upon conviction, for imprisonment for a term which may extend to ten years and fine not more than $10,000 or both.

iii) Constitutionality Of US Sedition Laws

In the case of ***Schenck v. United States***,[97] the Constitutional validity of the Sedition Act 1918 was challenged on the grounds of it being violative of Freedom of speech and expression introduced by U.S First Constitutional Amendment. In this case, Charles Schenck was responsible for printing, distributing, and mailing to prospective military draftees during World War I, including 15,000 leaflets that advocated opposition to the draft. These leaflets contained statements such as; "Do not submit to intimidation", "Assert your rights", "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain."

The US Supreme Court, in a unanimous opinion, held that Schenck's criminal conviction was constitutional. While upholding the constitutional validity of the Sedition Act 1918 court observed that:

"The First Amendment did not protect speech encouraging insubordination, since, when a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right."

Mr. Justice Oliver Wendell Holmes pioneered the ***"clear and present danger"*** test:

"The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [...] The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

[97] 249 U.S. 47 (1919)

In other words, the court held, the circumstances of wartime permit greater restrictions on free speech than would be allowed during peacetime. Charles Schenck consequently spent six months in prison.

In the case of **Brandenburg *v* *Ohio*[98]** the U.S. Supreme Court considered the constitutionality of sedition law. The appellant, a Ku Klux Klan leader, was convicted under the Ohio criminal syndicalism statute for "advocating ... the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform" and for "voluntarily assembling with any society, group or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism". He challenged the constitutionality of the criminal syndicalism statute.

The Court held that government cannot punish inflammatory speech unless that speech is directed to inciting, and is likely to incite, imminent lawless action. Specifically, it struck down Ohio's criminal syndicalism statute, because that statute broadly prohibited the mere advocacy of violence. The U.S Supreme Court articulated a new test — ***the "imminent lawless action" test*** ,for judging what was then referred to as "seditious speech" under the First Amendment. It was observed that:

"The Constitutional guarantees of free speech and free press do not permit State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

In other words, three elements were required before a validating any law criminalizing the advocacy of illegal conduct. Firstly, there must be express advocacy of law violation. Secondly, the advocacy must call for immediate law violation; and thirdly the law violation must be likely to occur. More generally, the United States Supreme Court has tended to invalidate criminal laws that detract from freedom of expression—and

[98] 395 U.S. 444 (1969)

especially political expression—unless they criminalize conduct that is inherently likely to cause violent reaction.[99]

2. AUSTRALIA

i) Background

The Australian states and territories inherited the common law in relation to sedition, but Western Australia, Queensland and Tasmania codified the law at the end of the nineteenth or early twentieth century. However, the code provisions mirrored the common law. The Commonwealth passed the Crimes Act in 1914, which contained a number of offences against the Government including treason, and the sedition offences were added in 1920. Section 24A to G of the Crimes Act 1914 dealt envisaged the detailed provisions related to sedition and made it punishable offence.

The first definition of sedition in Australian law appeared in the *Crimes Act 1914.*[100] This stated that, A person, who engages in a seditious enterprise with the intention of causing violence or creating public disorder or a public disturbance, is guilty of an indictable offence punishable on conviction by imprisonment for not longer than three years.

Section 24 of the *Crimes Act 1914* defined seditious intention as intention to commit the following purposes:

- To bring the Sovereign into hatred or contempt.
- To excite disaffection against the Government or Constitution of the Commonwealth or against either the House of the Parliament of the Commonwealth.
- To excite Her Majesty's subjects to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Commonwealth established by law of the Commonwealth;
- To promote feelings of ill-will and hostility between classes of Her Majesty's subjects so as to endanger the peace, order or good Government of the Commonwealth.

[99] http://en.wikipedia.org/wiki/Brandenburg_v._Ohio on 27th November 2012
[100] NZLC R96,Page-54-55,Retrived from www.lawcom.govt.nz on 26th November 2012

ii) Current Position

The new federal sedition offences were enacted by Schedule 7 of the *Anti- Terrorism Act (No 2) 2005* and commenced on 11 January 2006. The Act contains a range of measures designed to respond to the threat of terrorism by criminalizing certain terrorist acts and conferring further powers on law enforcement and intelligence agencies. Schedule 7 repealed the old sedition offences found in ss 24A–24F of the *Crimes Act*. The new offences are now located in Part 5.1 of the *Criminal Code*. This is in keeping with the Australian Government's policy of shifting updated offences and provisions dealing with criminal responsibility from the *Crimes Act* to the *Criminal Code* (with the *Crimes Act* now mainly concerned with matters of practice and procedure).The stated purposes of the new sedition provisions were to modernize the language of the offences and to address problems with those who incite directly against other groups within the community.[101]

It is pertinent to mention that after amendment the word 'Sedition' was substituted with the word 'Urging'.

Five new offences were created in Section 80.2 of the *Criminal Code 1955* under the heading 'Sedition'. All the offences have been discussed below:

i) *Urging the overthrow of the Constitution or Government* Sec. 80.2(1)

(1) A person commits an offence if the person urges another person to overthrow by force or violence:

(a) The Constitution; or

(b) The Government of the Commonwealth, a State or a Territory; or

(c) The lawful authority of the Government of the Commonwealth.

ii) *Urging interference in Parliamentary elections*, Sec 80.2(3)–(4)

[101] ALRC, Review of Sedition Laws, 2006, Page-55 Retrieved from www.alrc.gov.au on 26th November 2012

A person commits an offence if the person urges another person to interfere by force or violence with lawful processes for an election of a member or members of a House of the Parliament.

iii) ***Urging violence within the community*****, Sec 80.2(5)–(6)**

A person commits an offence if:

(a) The person urges a group or groups (whether distinguished by race, religion, nationality or political opinion) to use force or violence against another group or other groups (as so distinguished); and

(b) The use of the force or violence would threaten the peace, order and good government of the Commonwealth.

iv) ***Urging a person to assist the enemy***, **Sec 80.2(7)**

A person commits an offence if:

(a) The person urges another person to engage in conduct; and

(b) The first-mentioned person intends the conduct to assist an organization or country; and

(c) The organization or country is:

(i) At war with the Commonwealth, whether or not the existence of a state of war has been declared; and

(ii) Specified by Proclamation made for the purpose to be an enemy at war with the Commonwealth.

v) ***Urging a person to assist those engaged in armed hostilities*** **Sec 80.2(8)**

A person commits an offence if:

(a) The person urges another person to engage in conduct; and

(b) The first-mentioned person intends the conduct to assist an organization or country;

Each of the five offences carries a maximum penalty of imprisonment for seven years.

3. CANADA

i)Background

Canada is another Commonwealth jurisdiction that inherited the common law of sedition but incorporated it into statute. A Criminal Code was passed in 1892 which covered treasonable offences (derived from the English Draft Criminal Code). The sedition sections (except for the definition of seditious intention) were adopted in the 1892 Code. During the Winnipeg General Strike of 1919, the Code was amended to criminalize illegal associations, and the penalty for sedition offences was increased from two to 20 years, but this was reversed in 1930. In 1936, a partial definition of seditious intention was added, providing that seditious intention would be presumed of one who teaches or advocates, or publishes or circulates, any writing that advocates the use, without authority of law, of force as a means of accomplishing governmental change in Canada. In 1953, there were extensive revisions to the Criminal Code and treason offences were updated, but not seditious offences. Everyone who speaks seditious words, publishes a seditious libel, or is party to a seditious conspiracy is guilty of an indictable offence and liable to imprisonment for 14 years. "Seditious" is not defined and "seditious intention" is only defined partly, as above. In 1989, the Canadian Law Reform Commission proposed that seditious offences be abolished because they overlapped with other provisions, were uncertain as to scope and meaning (especially as to intention), were out of date and may well infringe the Canadian Charter of Rights and Freedoms.[102] However, they are still part of the Criminal Code RSC 1985 c C-46.

ii)Current Position

Section 59 to 61 of the Criminal Code of Canada 1985 envisages the provisions dealing with Sedition. ***Section 59 defines seditious intention***, ***seditious libel, seditious words and seditious conspiracy***. The section reads as follows:

[102] NZLC R96,Page-65,Retrived from www.lawcom.govt.nz on 26th November 2012

i) Seditious words are words that express a seditious intention.

ii) A seditious libel is a libel that expresses a seditious intention.

iii) A seditious conspiracy is an agreement between two or more persons to carry out a seditious intention.

iv) Without limiting the generality of the meaning of the expression "seditious intention", every one shall be presumed to have a seditious intention who teaches or advocates, or publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada.

Section 60 of the Criminal Code of Canada constitutes an exception to the general rule of seditious intention envisaged in Section 59(iv). It is called as 'Good faith' rule. It reads as follows:

Notwithstanding subsection 59(4), no person shall be deemed to have a seditious intention by reason only that he intends, in good faith,

a) to show that Her Majesty has been misled or mistaken in her measures;

b) to point out errors or defects in

- The government or constitution of Canada or a province,
- Parliament or the legislature of a province, or
- The administration of justice in Canada;

c) to procure, by lawful means, the alteration of any matter of government in Canada; or

d) To point out, for the purpose of removal, matters that produce or tend to produce feelings of hostility and ill-will between different classes of persons in Canada.

Section 61 provides Punishment of seditious offences. According to this Section Everyone who

a) Speaks seditious words,

b) Publishes a seditious libel, or is a party to a seditious conspiracy, is guilty of an indictable offence and liable to *imprisonment for a term not exceeding fourteen years.*

4.2 SOME COUNTRIES WHICH HAVE ABOLISHED OR ARE ABOUT TO ABOLISH THEIR SEDITION LAWS

1. NEW ZEALAND

New Zealand inherited the British common law on sedition. The law was codified in the Criminal Code of 1893, and set out again in the Crimes Act 1908.The definition of seditious intention in section 118 of the Crimes Act 1908 was similar to that in the Crimes Act 1961, with some key differences. In 1951, sedition also became an offence under the Police Offences Amendment Act 1951, punishable on summary conviction by a term of imprisonment of up to three months and/or a fine of up to £100. The Police Offences Amendment Act 1951 was repealed in 1960, but its definition of seditious intention was carried over to the Crimes Act 1961, together with the offences of seditious statements, seditious conspiracy, publication of seditious documents and use of apparatus for making seditious documents or statements that had been set out in sections 3 to 6 of the Police Offences Amendment Act 1951.[103]

Until 2007, New Zealand's seditious offences were set out in sections 81 to 85 of the Crimes Act 1961. The main offences were making or publishing a statement that expresses a "seditious intention", or conspiring with a "seditious intention". Section 81 defined Seditious offences. Section 82 made Seditious conspiracy as a punishable offence. Any person involved in seditious conspiracy was liable for imprisonment for a term up to 2 years. Under Section 83 publishing of any seditious statements was made offence punishable with imprisonment for a term up to 2years. Section 84 made Publication of seditious documents offence punishable with imprisonment for a term which may extend up to 2 years. Section 85 made use of apparatus for making seditious documents or statements offence punishable with imprisonment for a term up to 2 years.

[103] NZLC R96,Page-17-18,Retrived from www.lawcom.govt.nz on 26th November 2012

In 2007 the Law Commission of New Zealand in its 96th Report, *Reforming the Law of Sedition*, recommended the abolition of Sedition law envisaged in the Crimes Act 1961. The commission while recommending the abolition expressed concern over retaining the sedition laws in the following words:

"As long as the New Zealand sedition offences remain on the statute book there is the potential for their misuse against people who criticize the Government publicly, especially at times of civil unrest and of perceived concern for national security. It is not appropriate to modernize or clarify the provisions; nor is it necessary to do so."

Following a recommendation the New Zealand government announced on 7 May 2007 that the sedition law would be repealed. The Crimes (Repeal of Seditious Offences) Amendment Act 2007 was passed on 24 October 2007, and came into force on 1 January 2008.[104]

2. UNITED KINGDOM

The Law Commission provisionally recommended the abolition of the offence of sedition in 1977. In 1985 it recommended replacing the common law offence of defamatory libel with a narrowly drawn statutory offence. However, this proposal was not implemented until 2009, when sedition and seditious libel (as common law offences) were abolished by Section 73 of the Coroners and Justice Act 2009 which came into effect on 12 January 2010.The outdated offences of criminal libel and sedition have been abolished after the introduction of new laws.

The Parliamentary under Secretary of State at the Ministry of Justice, Claire Ward, was quoted stating[105]:

"Sedition and seditious and defamatory libel are arcane offences - from a bygone era when freedom of expression wasn't seen as the right it is today. Freedom of speech is now seen as the touchstone of democracy, and the ability of individuals to criticize the state is crucial to maintaining freedom. The existence of these obsolete offences in this country

[104]NewZealandrepealsseditionlaw,retrievedfromhttp://en.wikinews.org/wiki/New_Zealand_repeals_sedition_law on 27th November 2012
[105] Retrieved from http://www.pressgazette.co.uk/node/44884 on 27th November 2012

had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom. Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech."

However, sedition by an alien is still an offence under section 3 of the Aliens Restriction (Amendment) Act 1919.

3. MALASIYA

i)Current Position

The **Sedition Act 1948** in Malaysia is a law prohibiting discourse deemed as seditious. The act was originally enacted by the colonial authorities of British Malaya in 1948. The act criminalizes speech with "seditious tendency", including that which would "bring into hatred or contempt or to excite disaffection against" the government or engender "feelings of ill-will and hostility between different races". The law was introduced by the British in 1948, the same year that the autonomous Federation of Malaya came into being, with the intent of curbing opposition to colonial rule. The law remained on the statute books through independence in 1957.[106]

This Act was passed with an objective to provide punishment for sedition. Section 3 of the Sedition Act 1948 defines 'Seditious Tendency' and Section 4 provides punishment.

Under Section 3(1), those acts defined as having a seditious tendency are acts with a tendency:

a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;

b) to excite the subjects of the Ruler or the inhabitants of any territory governed by any government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;

[106] Retrieved from http://en.wikipedia.org/wiki/Sedition_Act_(Malaysia) on 23rd November 2012

c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;

d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State;

e) to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia; or

f) To question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of part III of the Federal constitution.

Section 3(2) provides certain exceptions, providing examples of speech which cannot be deemed seditious. It is not seditious to "show that any Ruler has been misled or mistaken in any of his measures", nor is it seditious "to point out errors or defects in the Government or Constitution as by law established". It is also not seditious "to attempt to procure by lawful means the alteration of any matter in the territory of such Government as by law established" or "to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of ill-will and enmity between different races or classes of the population of the Federation".

(1) Any person who—

a) Does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;

b) utters any seditious words;

c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

d) imports any seditious publication, shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his

trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

ii) Recent Development

On 11th July 2012, the Prime Minister of Malaysia Najib Razak has announced his plans to repeal a colonial-era law curbing free speech in the latest political reform. While announcing his plans he said that:

"The Sedition Act represented a bygone era and would be replaced with a new law to prevent incitement of religious or racial hatred. It will be the latest repressive law to be annulled as part of his pledge to protect civil liberties. …We mark another step forward in Malaysia's development. The new National Harmony Act will balance the right of freedom of expression as enshrined in the constitution, while at the same time ensuring that all races and religions are protected."[107]

[107] Retrieved from http://www.guardian.co.uk/world/2012/jul/12/malaysia-repeal-repressive-sedition-law on 23 rd November 2012

CHAPTER-5

CONCLUSIONS AND SUGGESTIONS

"If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter."

— George Washington[108]

"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."

— John Milton[109]

Freedom of Speech and Expression is considered to be as one of the most imperative among all the rights. Freedom of Speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succor and protection to all other liberties. It has been truly said that it is the mother of all other liberties.[110]

For the healthy development of democracy or for that matter for a fuller and proper growth of any country it is indispensable that every person must enjoy freedom of speech and expression. The Government must not make any unwarranted intrusions into the domain of anyone's freedom of speech and expression guaranteed by the Constitution of India 1950. It is pertinent to mention that this freedom is not absolute; it has been subjected to certain 'reasonable restrictions'. These restrictions empower the government to make laws for striking balance between the security of the State and citizen's freedom of speech and expression. This gives rise to the most contentious issue that till what extent the government can impose restrictions and how freely the citizens can exercise their bountiful freedom of speech.

[108] Retrieved from http://www.goodreads.com/quotes/tag/freedom-of-speech on 26th November 2012
[109] Ibid
[110] Jain.M.P , Indian Constitutional Law, Wadhwa and Company Nagpur, Fifth Edition , 2008, Page -986

5.1 CONCLUSIONS

In ***Chapter-1*** the meaning of the term 'Sedition' has been explained with the help of some operational definitions. The second part elucidates the Sedition at Common law. What was considered as Sedition and what was not has been mentioned.

The ***Chapter-2*** envisages the historical background of the law of sedition in India. The political and social conditions which prevailed during British rule have been outlined. The status of law of sedition in 1870 and after 1898 amendment has been explained along with some notable trials which took place during the respective periods.

The ***Chapter-3*** encompasses the Current position of Law of sedition in India .An endeavor has been made to explain the essential ingredients of Section 124-A at length. Further, the most controversial issue of the constitutional validity of section has been examined with the help of some leading decisions on the issue.

The ***Chapter-4*** traces the global position the law of sedition. It enlists the names of some countries which have retained their laws dealing with sedition. It also lists out the names of some countries which have abolished their laws of sedition.

The recent controversies in India have sparked the most contentious political debate that whether Section 124-A of the Indian Penal Code 1860 should be retained or abolished? There are two divergent opinions towards this issue. The protagonists of one view are of the opinion that Section 124-A should be abolished. However, the supporters of other view say that Section 124-A should be retained.

a) Reasons Why Section 124-A Should Be Abolished

"…That Particular Section (124-A of IPC) is highly objectionable and obnoxious and it should have no place both for practical and historical reasons…The sooner we get rid of it the better."

Jawaharlal Nehru[111]

[111] Retrieved from http://repealseditionlaw.in/ on 30th November 2012

"Section 124-A of the IPC is perhaps the prince among the political sections of the Indian Penal Code designed to suppress liberty of the citizen."

Mahatma Gandhi[112]

The protagonists who support the first view are of the opinion that Section 124-A should be abolished because:

- This 1860 draconian colonial law was created to stifle dissent during colonial rule.
- Today, the law is used to suppress legitimate criticisms of the government.
- Journalists, Human rights activists, political dissenters, public intellectuals, and even farmers and tribals are targeted by this law.
- The law goes against the inalienable fundamental right to expression enshrined in our Constitution.
- The law goes against the very nature of democratic process which relies on active consent and dissent/opposition.

b) Reasons Why Section 124-A Should Be Retained

The supporters of second view are of the opinion that the Section 124-A of Indian Penal Code should be retained because its existence is essential for the security of State and its citizens, the stability of government and if abolished it may result into gross misuse of freedom of speech and expression. In other words, free speeches and excess of liberty may result into communal disharmony.

5.2 SUGGESTIONS

The researcher is of the opinion that Section 124-A should be retained because the social and political conditions of our country do not permit us to abolish this controversial section. Its elimination will bestow the people of our country with license to exceed the limits of legitimate criticism of the acts and measures of the government. The grant excessive freedom of speech and expression might affect the social, political and technological development of India. However, the researcher is also of the opinion that Section 124-A should be amended keeping in pace with the changing conditions of

[112] ibid

society. In this part of the chapter, an endeavor has been made by the researcher to bring in light some viable suggestions which may answer the dogma of Section 124-A of IPC.

a) URGENT NEED TO AMEND THE LAW

"Law is a dynamic concept, it keeps on changing with the changes in conditions of the society"

In view of the controversy which has raged around Section 124-A, IPC since its enactment and the present conditions, it would be appropriate to revise the formulation of the offence so as to make it a patently reasonable restriction under Article 19(2). The legislature should narrow the ambit of section by amending it.

b) QUANTUM OF PUNISHMENT SHOULD BE REDUCED

The quantum of punishment provided for the offence needs to be rationalized. Perhaps a maximum punishment at seven years of rigorous imprisonment and fine would be appropriate, taking into consideration the gravity of offence.[113]

c) APPLICATION OF SECTION 124-A SHOULD BE AN EXCEPTION/ RESTRICTIVE APPLICATION

It will be unjustifiable to scrap any law only because of its tendency of being misused. Section 124-A should be applied in rarest of rare cases. The prima facie evidence of incitement to violence should be there before any person is booked under Section 124-A. In the plain words, the government should ensure that the law is used reasonably and with restraints.

[113] Gaur K.D, Commentary on the Indian Penal Code, Universal Publishing Co. Pvt. Ltd,2006th Edition, Page-412