

## SEDITION LAW - ITS RELEVANCE IN THE PRESENT TIMES\*

Amidst the Pandemic, Covid-19, the judiciary has ensured that the rights of the citizens be protected on all occasions. Let it be in matters related to supply of oxygen, vaccinations, medicine, *etc.* The Courts provided timely instructions and the order(s) to protect the health of the citizens. During these hard times, the Courts have also protected the fundamental rights of the individuals when the State simply charged the individuals with the grave section like Sedition.

### Origin of Sedition Law in India

Section 124A of the Indian Penal Code, 1860 (IPC), incorporated in the IPC in 1897 drafted by *Thomas Babington Macaulay*. Section 124A of the IPC forms part of Chapter VI - dealing of offences against the State. Section 124A though not an invention of the British Government in India, but has been known English law for centuries. It was this Section that was used to crackdown the freedom struggle and was used against the freedom fighters like *Bal Gangadhar Tilak*, including the Father of the Nation, *Mahatma Gandhi*. An offence under Section 124A of IPC is a cognizable offence, non-bailable and will be tried before the Court of Session. The Section 124A of IPC 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.”.*

It is worthwhile to note that Britain in 2009 repealed the provision dealing with Sedition, while India still continues to retain Section 124A in the Code. Some other democratic countries like Australia, Canada, Ireland dealing with Sedition law held it as undemocratic when such laws become impediments for freedom of speech and expression.

### Constitutional validity of Section 124A of IPC

The Hon'ble Supreme Court upheld the constitutional validity of the Section 124A of IPC in the *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955. The Hon'ble Supreme Court has then clearly interpreted the Section 124A along with the explanations, wherein it held that only such activities that are intended or have a tendency to create *public disorder or disturbance of public peace by resort of violence* will trigger invocation of Section 124A. The Hon'ble Court further held that *“the explanations provided to Section 124A make it clear that criticism of public measure or comments on Government action however strongly worded would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression.”* The Hon'ble Supreme Court in *Balwant Singh and another v. State of Punjab*, AIR 1995 SC 1785, declared the charges framed under Section 124A against individuals for raising slogans as *“Khalistan Zindabad”* following *Indira Gandhi's* assassination, was unsustainable as the slogans raised by the individuals neither had an intention to incite people to create disorder nor that the slogans in fact created any law and order problem.

As digital technology greeted society, the question arose whether Section 66-A of the Information Technology Act, 2000 curtailed the individual's speech and expression. It was in *Shreya Singhal v. Union of India*, AIR 2015 SC 1523, the Hon'ble

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Court held Section 66-A as unconstitutional and the Hon'ble Court detailed various standards to determine when the restrictions on speech and expression can be considered as reasonable or/be within the contours of Article 19(2) of the Constitution of India. The Hon'ble Court held that there shall be no law(s) that sends "chilling effect" on freedom of speech and expression.

### **Legal Challenges in interpretation of Section 124A of IPC**

The legal challenge that is being faced by the Hon'ble Courts while interpreting Section 124A of IPC is, Whether Section 124A of IPC create a reasonable restriction to citizens' freedom of speech and expression as guaranteed in Article 19(1)(a) of The Constitution of India? In a democratic country like India, the freedom of speech and expression is a fundamental right and the restrictions shall be not beyond the eight subjects covered in Article 19(2) of The Constitution of India.

As per the records available at the National Crime Records Bureau (NCRB) the total number of cases booked under Section 124A of IPC stood at 70 in 2018 and it gradually rose to 93 in 2019. The steady increase in the number of cases being booked under Section 124A of IPC would only show the causality on the part of the State/authorities to frame charge against the individuals under Section 124A for speech and expression protected under the Constitution.

### **Invocation of Section 124A of IPC by the States**

The State(s) for their best-known reasons have invoked Section 124A of IPC against the individuals and media houses who raised their voice against the Governments' actions/failure or used as a tool to silence the whistleblower(s). The blatant abuse of Section 124A

has grown against the individual(s) to stifle legitimate criticism of the working of the Government. The persistent pleadings raised by the individual(s) against the invocation of Section 124A of IPC is that their speech and expression are legitimate and needs to be protected under Article 19(a) of The Constitution of India. The Courts have also recognized this distinction, even in *Kedar Nath* (*supra*), the Hon'ble Supreme Court referred to the decision of *Romesb Thappar v. The State of Madras*, 1950 CriLJ 1514, wherein the Hon'ble Court declared the "Section 9(1-A) of the Madras Maintenance of Public Order Act (Mad. XXXIII of 1949), which had authorised imposition of restrictions on the fundamental right of freedom of speech, to be in excess of clause (2) of Art. 19 of the Constitution authorising such restrictions, and, therefore void and unconstitutional" and in *Brij Bhushan v. The State of Delhi*, 1950 CriLJ 1525 "...struck down Section 7(1)(c) of the East Punjab Public Safety Act, 1949, as extended to the Province of Delhi, authorising the imposition of restrictions on the freedom of speech and expression for preventing or combating any activity prejudicial to the public safety or the maintenance of public order". The Hon'ble Supreme Court in *Kedar Nath* (*supra*) upon reading of the Section 124A has held that "comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal".

While the Courts have clarified as to when Section 124A can be invoked, the government/authorities are still making a futile attempt, for the reasons best known to them, to charge the individuals under Section 124A of IPC. The Delhi High Court observed Sedition cannot be invoked to "quieten any disquiet under the pretence of *muzzling miscreants*" in a bail application filed by individuals booked during the farmers protest to repeal three farm laws enacted in 2020. Recently, in May 2021, a sitting Member of Parliament, *Kanumuri Raghu Rama Krishnum Raju*, was arrested and charged

under Section 124A along with other penal provisions. The MP on appeal to the Supreme Court (SLP 515 of 2021), pleaded that he cannot be charged for Sedition while his expression and speech are protected under Article 19(1)(a) of The Constitution of India. The State though aware of the settled law submitted to the Court that the MP's statements were widely circulated on social media and is having serious consequences as people were resorting to violence.

Misuse of Section 124A of IPC has always been in debate as there were more incidents of individuals charged and less conviction rate. The decisions pronounced by various Courts have time and again held that citizen has a right to comment freely about the working of the Government either by way of criticism or comment, so long the comments do not incite people to violence against the Government established by law or with an intention of creating public disorder. Section 124A of IPC a powerful tool in the hands of the Government/Authorities and it should not be invoked to silence the genuine expression against the forbidden actions of the State.

### **Constitutional validity challenged before Supreme Court after six decades**

The constitutional validity of Section 124A of IPC is now pending before the Hon'ble Supreme Court in *Kishore Chandra*

*Wangkhemcha and another v. UOI*, WP (Crl) 106/2021. Three Judges Bench of Hon'ble Supreme Court has issued notice to the Union Government. The petitioners have contended that the Section 124A of IPC infringes the individual freedom of speech and expression guaranteed under Article 19(1)(a) of The Constitution of India. It is also contended before the Hon'ble Court, that the social circumstance in 1962 was different to that of the present times where laws being, (i) Unlawful Activities (Prevention) Act, 1969, (ii) Jammu and Kashmir Public Safety Act, 1978, (iii) The National Security Act, 1978 concerning safety, security and public orders have already been passed making Section 124A redundant in present times. The matter to be heard by the Hon'ble Supreme Court on 12.07.2021 to consider whether Section 124A of IPC will continue in the Code ?

It is time to reiterate that Freedom of Speech and Expression is a fundamental right guaranteed under The Constitution of India. It is also necessary that to meet the international standards of the International Convention on Civil and Political Rights (ICCPR), Section 124A of IPC needs to be relooked. It is apt to state that Section 124A of IPC leaves a huge scope for interpretation at all instances thereby nailing an innocent citizen as a criminal for his genuine speech and expression - guaranteed in the Constitution of India.