
MEDIA AND SEDITION: REVISITING SOME INTERESTING TRIALS UNDER SECTION 124.

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Abstract: The arrest of editor R R Gopal, editor of Tamil Magazine Nakkeeran, on 9th October 2018, in Chennai under the charges of sedition, under section 124 of Indian Penal Code for publishing three articles - two on April and one in September - has once again brought into focus this contentious law under the IPC. There is always a conflicts when one exercises Article 19 (1)(a), more so with men in Media. Keeping this case as a reference, here is an attempt to revisit some classical trials under section 124 of our IPC.

Keywords: Article 19 (1)(a), Conflict, Indian Penal Code, Sedition.

Introduction: This case of Arrest of R R Gopal, founder-editor of Nakkeeran, Tamil political investigative magazine, interestingly is one more sensational addition to other classic cases of sedition. There is always a dilemma a journalist or a publisher faces when reporting such incidents or cases where lawmakers are involved.

Mr Sengottaiyan, Deputy Secretary to Banwarilal Purohit, Governor of Tamilnadu submitted a complaint to the commissioner of Police on October 6th of accusing Nakkeeran of publishing defamatory articles against his Excellency. He mentioned in his complaint that these articles were “clearly an expression of intention of inducing or compelling His Excellency the Governor of Tamil Nadu to refrain from exercising his lawful powers as Governor”

The articles published by Nakkeeran accused that the Governor and senior Raj Bhavan officials had links with Nirmala Devi, an assistant professor at Devanga Arts College in Aruppukottai who was arrested on charges of attempted trafficking of college girls. N. Ram, chairman of The Hindu Group’s publishing company who was present at the court where this case was heard by the XIIIth Metropolitan Magistrate, was invited to express his views. Mr Ram said invoking provisions of Section 124 IPC would set a bad precedent.

Section 124a and Sedition: Sedition does not necessarily mean treason. As defined under IPC Section 124 says, “ assaulting President/Governor with intent to compel or restrain the exercise of any lawful power” and “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.” Interestingly, When the first amendment was introduced, which also included detailed limitations on free speech, the then Prime Minister Jawaharlal Nehru was categorical in his belief that the offence of sedition was fundamentally unconstitutional. He had said "now so far as I am concerned [Section 124-A] 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."

Press Freedom and India: Our country has been ranked 136th among 180 countries this year with respect to Press freedom as per the findings of Reporters Without Borders. Reporters Without Borders (RWB), or Reporters Sans Frontières (RSF), is an international non-profit, non-governmental organization based in Paris, France, that conducts political advocacy on issues relating to freedom of

information and freedom of the press. Press Freedom Index is an annual ranking of countries compiled and published by Reporters Without Borders based upon the organisation's own assessment of the countries' press freedom records in the previous year. It intends to reflect the degree of freedom that journalists, news organisations, and netizens have in each country, and the efforts made by authorities to respect this freedom. Reporters Without Borders is careful to note that the index only deals with press freedom and does not measure the quality of journalism nor does it look at human rights violations in general World Press Freedom. This year we have a poor record when it comes to freedom of the press when compared to last year's report. We have been ranked three spots higher.

Freedom of the Press is a yearly report by US-based non-governmental organization Freedom House, measuring the level of freedom and editorial independence enjoyed by the press in nations and significant disputed territories around the world. This report ranks India at 19 and says we are "partly free", whereas Pakistan is at 30 and is "not free".

The Hoot, a non-profit media watchdog, on the occasion of World Press Freedom Day, reported that in the past 16 months, India has witnessed 54 reported attacks on journalists, at least three cases of television news channels being banned, 45 internet shutdowns, and 45 sedition cases against individuals and groups. takes note of attacks on journalists, internet shutdowns, rising sedition cases and more in the last 16 months.

History of Sedition: The earliest reference to sedition was in 1837 when Thomas Macaulay for the first time introduced sedition as an offence in the drafted version of IPC in its clause 113. however, in 1860, when the IPC was enacted, the section pertaining to sedition was omitted. this intrigued many British lawmakers as they saw this as a dangerous development because they believed that the press had to be kept in check and such a law would further some section of the press which was anti-colonial. In 1870, British suspicions about Wahabism and increasing Wahabi activities in the subcontinent reintroduced Section 113 of Macaulay's draft into the amended IPC and included sedition as Section 124-A.

Sedition and Gandhi: Gandhiji was one of the greatest opponent of the sedition act. In his historic his defence speech in March,1922, at the Trial Court where he was arrested for committing Sedition, Mahatma Gandhi "...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 Mr Banker and I are 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 systems. 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."

Some landmark Case Studies of Sedition in the pre and post-colonial era:

Queen Empress v. Jogendra Chunder Bose 1891 – Jogendra Chunder Bose was an editor of Bangobasi. He was charged with Sedition for voicing against Age of Consent Bill, 1891. The Age of Consent Act X of 1891, was a legislation enacted in British India on 19 March 1891 which raised the age of consent for sexual intercourse for all girls, married or unmarried, from ten to twelve years in all jurisdictions, its violation subject to criminal prosecution as rape.

Queen Empress v. Bal Gangadhar Tilak 1897 - Bal Gangadhar Tilak. His newspaper, Kesari, had carried an article in which the Hindu king Shivaji was said to have awoken in heaven and lamented the

existing state of affairs in India. “Alack! What is this?” the fictitious Shivaji was reported as having said in Kesari, “I now see with (my own) eyes the ruin of (my) country.... Foreigners are dragging out Lakshmi violently by the hand.”Tilak was charged with sedition before the Bombay High Court, in *Queen Empress vs Bal Gangadhar Tilak*. Justice Arthur Strachey delivered the charge to the jury in enormously broad terms. He said that sedition meant “the absence of affection”, that it meant “hatred, enmity, dislike, hostility, contempt, and every form of ill will to the government”. For Strachey, sedition also meant “every possible form of bad feeling to the government”, and the “amount or intensity of the disaffection” was “absolutely immaterial”. It was not necessary for the accused person to incite “mutiny or rebellion, or any sort of actual disturbance, great or small” in order to be convicted.

The Tilak case defined sedition law under Section 124A for the first time as follows: “The offence consists in exciting or attempting to excite in others certain bad 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 these articles is absolutely immaterial.” (Cited in Achary, 2015)

Queen Empress v. Mohandas Karamchand Gandhi, 1922: The father of our nation, Mohandas Karamchand Gandhi, was jailed under the charges of sedition. Mahatma Gandhi was arrested by the British police on March 10 in 1922 for writing articles published in the magazine Youth India. Mahatma Gandhi said that the section 124-A under which he was charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen. He further said that “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.”

Vaiko v. Government of Tamilnadu , October 21, 2008: The ‘Q’ branch of the Tamilnadu State Police filed a charge sheet against the MDMK leader Mr Vaiko for his speech at the Raja Annamalai Mandram on October 21, 2008.

The prosecution case was that on October 20, 2008, Vaiko allegedly spoke in a manner which infringed Indian sovereignty and in support of LTTE, that was fighting for an independent Tamil Eelam (homeland) in Sri Lanka during the onset of final stages of the civil war between the Tamil Tigers and the island nation's Army.

Addressing a public indoor meeting titled “Ilangaiyail Nadapathenna” (What is happening in Sri Lanka ?), he had allegedly spoken against the central government for aiding Sri Lanka in its efforts to decimate LTTE. The MDMK leader’s speech in CD form and its transcripts were submitted in the court as evidence. Since several witnesses turned hostile during the trial, the case was acquitted in 2016.

Similarly in 2010, a lecturer from Gandhi Memorial College, Noor Mohammad Bhat, a lecturer was arrested for setting an anti-India question paper. And in the same year Arundhati Roy, writer was arrested in New Delhi as a consequence of making an anti-indian speech.

Aseem Trivedi, v Bombay High Court, 2011: Award-winning political cartoonist and anti-corruption and Internet freedom crusader Aseem Trivedi (25) was arrested on charges of sedition, cybercrime, and insulting the national flag, Parliament and the Constitution through his work on the complaint by on the basis of a complaint by social activist and law student Amit Arvind Katarnaware on Dec 30, 2011.

Kanhaiya Kumar V Delhi Police, 2016: Jawaharlal Nehru University’s Former President. Kanhaiya Kumar was arrested on 12 February 2016, by Delhi police, for IPC Sections 124-A and 120-B (criminal conspiracy). The charges was he shouted slogans which was against the integrity of the country which he denied. The event was organised by some students at the Jawaharlal Nehru university at its campus against the hanging of Afzal Guru, the Parliament attack convict. Even though he dissociated himself from the slogans which were shouted in the event, he was arrested and interrogated. Kanhaiya’s arrest

ballooned into a major political storm drawing harsh reactions from political leaders of opposition parties, academicians, students and it was trending for days in social media. For the first time, Jawaharlal Nehru University came to a standstill because of this incident.

Conclusion: Our country is one of the few countries where we still have this ancient sedition law. We have to note that United Kingdom from where this law has its origin, abolished its sedition law in 2010. In the Menaka Gandhi case, the Supreme Court had held that freedom of speech and expression is not confined to geographical limitations and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad too. Also, in the Kedarnath Singh Case the Supreme Court warned against the misuse of sedition law by the authorities. And it clearly observed that its arbitrary use would give way to violation of Article 19 (1) (a) that is the freedom of speech and expression guaranteed by the Constitution. There is definitely a serious need to debate and deliberate and amend on the grey areas which will empower media professionals from unnecessary and unreasonable harassments. Thus, criticism against the government policies and decisions, lawmakers, within a reasonable limit which does not incite people to rebel which is in consistent with freedom of speech and expression guaranteed in the constitution should be facilitated.

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