

Striking a balance between Sedition Law and Right to Freedom of Speech & Expression

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ABSTRACT:

Freedom of Speech and freedom of Expression are indispensable conditions for the full development of the person. They constitute the foundation stone for every free and democratic society. The freedom of speech and expression is the first and foremost human right, the first condition of liberty, mother of all liberties, as it makes the life meaningful. However freedom of speech often poses difficult questions, like the extent to which State can regulate individual conduct. Since, individual's autonomy is the foundation of this freedom; any restriction on it is subject to great scrutiny. Although reasonable restrictions can always be imposed on this right in order to ensure its responsible exercise and to ensure that it is equally available to all citizens. The offence of sedition is provided under section 124A of the Indian Penal Code, 1860. The relevance of this section in an independent and democratic nation is the subject of continuous debate. There is an apprehension that this provision might be misused by the Government to suppress dissent and fair criticism. The paper deals with the history of sedition to its evolving during the pre and post constitutional era to what it is today. Also the paper suggests the questions that still need thorough discussions and debates taking into consideration the fact that India is the largest democracy in the world and freedom of speech and expression is the most celebrated fundamental right.

I. INTRODUCTION

Freedom of Speech and Expression is the bulwark of democratic government. In a democracy, freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters.¹ It has been variously described as basic human right, a natural right and the like.² Many International Organizations have declared freedom of speech as a basic fundamental right.³ The Constitution of India also guarantees freedom of speech and expression to all citizens.⁴ It includes right to express one's views and opinion at any issue through any medium like by words of mouth, writing printing etc. It thus includes the freedom of communication and the right to propagate or publish opinions.⁵ However the freedom of speech often poses difficult questions, like the extent to which State can regulate individual conduct. Since, individual's autonomy is the foundation of this freedom; any restriction on it is subject to great scrutiny.⁶ Reasonable restrictions can always be imposed on this

¹ *Associated Press v. U.S.*, 326 US ; see also *UOI v. Naveen Jindal*, (2004) SC 1559.

² *Dharam Dutt v. Union of India*, AIR 2004 SC 1295.

³ International Covenant on Civil and Political Rights, (ICCPR) 1966 art.19 (2), Universal Declaration of Human Rights (UDHR), 1948 art.19.; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) UNGA Res 2106 (XX) Art 5(d)(viii); Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) Article 10; ACHPR (adopted 27 June 1971, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M.58 (1982) Article 9; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 08/27/79 no 17955 (ACHR) Article 13.

⁴ *Chintaman Rao v. State of Madhya Pradesh*, AIR 1951 SC 118; *State of Madras v. VS Rao*, AIR 1952 SC 196.

⁵ *Radha Mohan Lal v. Rajasthan High Court*, AIR 2003 SC 1467.

⁶ *State of Madras v. VG Row*, AIR 1952 SC 196.

right in order to ensure its responsible exercise and to ensure that it is equally available to all citizens. The offence of sedition is provided under section 124A of the Indian Penal Code, 1860 (hereinafter IPC). There has been continuous debates and discussions about the relevance of this section in an independent and democratic India. Those opposing it see this provision as a relic of colonial legacy and thereby unsuited in a democracy. There is an apprehension that this provision might be misused by the Government to suppress dissent.

II. SEDITION LAWS IN INDIA: PRE CONSTITUTION ERA

(a) *History of Sedition Law in India*

Lord Macaulay's Draft Penal Code of 1837 consisted of Section 113 that corresponded to today's Section 124A of IPC. The punishment for Sedition proposed at that time was life imprisonment. Sir John Romilly, Chairman of Second Pre- Independence Law Commission commented upon the quantum of punishment proposed for sedition, on the ground that in UK, the maximum punishment had been three years and he suggested that in India it should not be more than five years. However, this section was not included in IPC when it was enacted in 1860. Consequently sedition was included as an offence under section 124A through Special Act XVII of 1870. This section was parallel with the Treason Felony Act of 1848 that penalized all the seditious expressions. The intention behind introducing this section was to punish an act of exciting feelings of disaffection towards the Government, but this disaffection was to be distinguished from disapprobation.⁷ Thus people were free to voice their feelings against the Government as long as they project a will to obey its lawful authority.

In 1898, the section was amended by the Indian Penal Code (Amendment) Act 1898 providing for punishment of transportation for life or any shorter term. The amended section made new changes in the existing definition and also made bringing or attempting to bring in hatred or contempt towards the Government established by law punishable. The provision was further amended in 1995 substituting the punishment as 'imprisonment for life and/or with fine or imprisonment for 3 years and/ or with fine. The British Parliament enacted the Prevention of Seditious Meetings Act in 1907, in order to prevent public meetings likely to lead the offense of sedition or to cause disturbance as meetings against the British rule were held in different parts of India, with the main objective of overthrowing the Government. In 1911, the Act was repealed by The Prevention of Seditious Meeting Act, 1911 which enabled the statutory authorities to prohibit a public meeting in case such meeting was likely to provide disaffection or to cause disturbance in public tranquility. The violation of the provisions of the Act was made punishable with imprisonment for a term which could extend to six months or fine or both. However the act now stood repealed vide Repealing and Amending (Second) Act.

(b) *Pre- Constitutional Rulings*

⁷ W.R. Donogh, A Treatise on the Law of Sedition and Cognate Offences in British India (Thacker, Spink and Co., Calcutta, 1911).

Section 124A was used extensively to curb the political dissent in India. One Mr. Jogendra Chandra Bose was charged with the offense of sedition merely for criticizing the Age of Consent Bill and the negative impact on Indian economy due to British Colonialism. While directing the jury on the case the Court observed that the offence stipulated under Section 124A IPC was milder as compared to what it is in England, as there any overt act in consequence of a seditious feeling was penalized, while in India only those acts that were done with *an intention to resist by force or an attempt to excite resistance by force fell under this section*⁸. In another famous case of *Queen Empress v. Bal Gangadhar Tilak*,⁹ the defendant was charged of sedition for publishing an article in newspaper invoking the example of the great Maratha warrior Shivaji to incite overthrow of British rule. In this case the word disaffection was interpreted widely by including *hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. Disloyalty is perhaps the best general term, comprehending every possibly form of bad feelings to the Government*. The interpretation that, only acts that suggested rebellion or forced resistance to the Government should be given to this section was rejected expressly by the Court leading to the amendment in the Section in 1989 wherein the explanation defining disaffection to include disloyalty and feelings of enmity were added.

Following the Tilak judgment two landmark judgments were *Queen Empress v. Ramchandra Narayana*¹⁰ and *Queen Empress v. Amba Prasad*.¹¹ In Ramchandra case, the Court tried to define the expression attempt to excite feelings of disaffection to the Government as equivalent to an attempt to produce hatred towards Government as established by law, to excite political discontent and alienate people from their allegiance. However Court also clarified that every such act did not amount to disaffection provided the accused is loyal at heart and willing to obey and support the Government. The same interpretation was reiterated in Amba Prasad Case. The Court interpreted the section liberally categorically held that it is not necessary that an actual rebellion or mutiny or forcible resistance to the Government or any sort of actual disturbance was caused by the act in question.

These cases brought into light the ambiguity being created by the explanation in interpreting the term disaffection. In order to remove any further misconception in interpretation of Section 124A, legislature introduced Explanation III to the section which excluded 'comments expressing disapprobation' of the action of the Government, but do not intend to lead to an offence under the section. The main intention of legislature behind incorporation of this explanation was to make law more precise. However it can be seen that the British Government was not keen on granting Freedom of Expression to Indians to the extent, enjoyed by the people in England. It can also be said that it was difficult for the British rule to limit the scope of sedition to direct

⁸ *Queen Emperor v. Jogendur Chandra Bose*, (1892) 19 ILR Cal 35.

⁹ *Queen Empress v. Bal Gangadhar Tilak*, ILR (1898) 22 Bom 112.

¹⁰ *Queen Empress v. Ramchandra Narayana*, ILR (1898) 22 Bom 152.

¹¹ *Queen Empress v. Amba Prasad*, ILR (1897) 20 All 55.

incitement to violence or to commit rebellion in view of the fact that the country was under foreign rule and inhabited by multiple races, ethnicity with diverse customs and conflicting creeds.

While the British Government was justifying the enlargement of the ambit of sedition laws, the Court refused to term a speech that condemned Government legislation declaring Communist party of India and various trade unions and labor organization who were voicing against the exploitation by the Government illegal, seditious. It was opined by the Court that imputing seditious intent to such kind of speech would completely suppress freedom of speech and expression in India.¹² This reflects the tendency of the then Government to use sedition to suppress all and any kind of criticism. Realizing the same, Court in *Niharendu Dutt Majumdar v. the King Emperor*¹³ digressed from the literal interpretation given to the section and held that the offence of sedition was linked to disruption of public order and prevention of anarchy and until and unless speech leads to public disorder or a reasonable anticipation or likelihood of it, it cannot be termed seditious. Later on, this was overruled in *King Emperor v. Sadasiv Narayan Bhalerao*,¹⁴ wherein the reading of 'public order' in Section 124A IPC was not accepted and the literal interpretation given in Tilak's case was upheld.

III. POST- CONSTITUTIONAL DEVELOPMENTS

Sedition was not acceptable to the framers of the Constitution as a restriction on the freedom of speech and expression, but it remained as it is in the penal statute post- independence. After independence, the section came up for consideration for the first time in the landmark case of *Romesh Thapar v. State of Madras*,¹⁵ the Apex Court held that unless the freedom of speech and expression threaten the 'security of or tend to overthrow the State', any law imposing restriction upon the same would not fall within the purview of Article 19(2) of the Indian Constitution. Following the ruling the Punjab High Court in *Tara Singh Gopi Chand v. The State*¹⁶, held the 124A unconstitutional as it directly contravene Article 19(1)(a) of the Constitution observing that "*law of sedition though necessary during the period of foreign rule has become inappropriate now by the very nature of the change which has come about*". In 1951 by 1st amendment in Constitution two additional restrictions, namely, 'friendly relations with Foreign State' and 'public order' were added to Article 19(2), for the reason that in *Romesh Thapar*, Court had held that freedom of speech and expression could be restricted on the grounds of threat to national security and for serious aggravated forms of public disorder that endanger national security and not relatively minor breaches of peace of a purely local significance. The amendment echoed the logic in dissenting opinion of Jt. Saiyad Fazl Ali in case of *Brij Bhushan*¹⁷, in his opinion serious and grave instances of

¹² *Kamal Krishna Sircar v. Emperor*, AIR 1935 Cal 636.

¹³ *Niharendu Dutt Majumdar v. the King Emperor*, AIR 1942 FC 22.

¹⁴ *King Emperor v. Sadasiv Narayan Bhalerao*, AIR 1947 PC 84.

¹⁵ *Romesh Thapar v. State of Madras*, AIR 1950 SC 124.

¹⁶ *Tara Singh Gopi Chand v. The State*, AIR 1951 Punj. 27

¹⁷ *Brij Bhushan v. State of Delhi*, AIR 1962 SC 955.

public disorder and disturbance of public tranquility might affect the security of public and State. However the constitutional validity of sec.124A came to be challenged again in *Kedar Nath Singh Case*¹⁸, the constitutional bench upheld the validity of sec. 124A and this time kept it at a different pedestal. The Court drew a line of difference between the terms, ‘the Government established by law’ and ‘the persons for the time being engaged in carrying on the administration’ and held that “Government established by law is a visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted and hence its continued existence is an essential requirement for the stability of the State. That is why ‘sedition’, as an offence has been characterized, come under Chapter VI relating to offences against the State. At the same time, Court also tried to struck a balance between the right to free *speech and expression and the power of the legislature to restrict such right observing thus that “the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such legislation has on other hand, fully to protect and guarantee the freedom of expression, which is the sine quo non of a democratic form of the Government that our Constitution has established. 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.”* Public disorder has been considered to be a necessary ingredient of sec. 124A after this judgment and it also became necessary to establish that the accused has actually done something, which would threaten the existence of the Government established by law or might cause disorder.¹⁹ In *Common Cause & Anr v. UOI*,²⁰ a prayer was made to issue directions for review of pending cases of sedition in various Courts, where a superior police officer may certify that the ‘seditious act’ either led to the incitement of violence or had the tendency or the intention to create public disorder. The Court granted the prayer and directed that while dealing with offences under 124A, authorities are to be guided by principles laid down in *Kedar Nath case*. In the famous *Kanhaiya Kumar Case*²¹, the Delhi HC observed that while exercising the right to freedom of speech and expression under Article 19 (1) (a) of the Constitution, one has to remember that Part IV, Article 51A of the Constitution provides Fundamental Duties of every citizen, which form the other side of the same coin. The aforesaid judicial pronouncements have been discussed to get an idea as to what amounts to seditious acts. In the light thereof, it could be stated that unless the words used or the actions in question do not threaten the security of the State or of the public, lead to any sort of public disorder which is grave in nature, the act would not fall within the ambit of sec. 124A of IPC.

¹⁸ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

¹⁹ *Bilal Ahmed Kaloo v. State of Andhra Pradesh*, AIR 1997 SC 3438.

²⁰ *Common Cause & Anr v. UOI*, (2016) 15 SCC 269

²¹ *Kanhaiya Kumar v. State (NCT of Delhi)*, (2016) 227 DLT 612.

IV. FREEDOM OF SPEECH AND SEDITION

Democracy is based essentially on free debate and open discussion, for that is the only corrective of Government action in a democratic set up.²² 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.²³

The Hon'ble Supreme Court, while crystallizing the relationship between a democratic society and freedom of speech opined that in a democratic set-up, it is the right of the people to be kept informed about current political, social, economic and cultural life as well as the burning topic and important issues of the day in order to enable them to consider and form a broad opinion about the same and the way in which they are being managed, tackled and administered by the Government.²⁴ In the case of *S. Khusboo v. Kanniamal & Anr.*,²⁵ observing that the morality and criminality do not co-exist, the Supreme Court opined that free flow of the idea in a society makes its citizen well informed which in turn results into good governance. For the same, it is necessary that people be not in constant fear to face the dire consequences for voicing out their ideas, not consisting with the current celebrated opinion. Emphasizing the importance of the freedom of speech Sec. 66A of the Information and Technology Act, 2000 was declared unconstitutional on the ground that it was in direct conflict with the fundamental right of freedom of speech and expression.²⁶ The Supreme Court held that under the Constitutional scheme, for the democracy to thrive, the liberty of speech and expression 'is a cardinal value and of paramount importance.'²⁷ The freedom of speech not only helps in the balance and stability of a democratic society but also gives a sense of self attainment.²⁸ In *Indian Express Newspaper (Bombay)(P) Ltd. v. Union of India*,²⁹ the following four purposes of free speech and expression were set out; (a) it helps an individual to attain self-fulfillment, (b) it assists in the discovery of truth, (c) it strengthens the capacity of an individual in participating in decision making and (d) provides mechanism by which it would be possible to establish a reasonable balance between stability and social change.

Having discussed the importance of freedom of speech and expression, one cannot deny the fact that right to freedom of speech and expression in isolation is not enough. It has to be understood that to speak or to express a thought it is necessary to be aware of all the aspects and fundamentals of the issue in discussion. Here comes

²² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

²³ *Whitney v. California*, 247 US 214.

²⁴ *Re Harijai Singh*, AIR 1997 SC 73.

²⁵ *S. Khusboo v. Kanniamal & Anr.*, AIR 2010 SC 3196.

²⁶ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

²⁷ *ibid*, para 8

²⁸ *Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal*, AIR 1995 SC 1236.

²⁹ *Indian Express Newspaper (Bombay) (P) Ltd. v. Union of India*, AIR 1986 SC 515.

another aspect of the free speech and that is the right to listen, followed by the free flow of the information available. It was held that the right to know is inherent in the right of freedom of speech and expression under art. 19(1)(a).³⁰ The Bombay HC in the case of *Cellular Operators Association of India v. Telecom Regulatory Authority of India*³¹ held that right to information rests upon the right to know, which ultimately was an inseparable part of freedom of speech guaranteed under art.19(1)(a).³²

The other important aspect to be kept in mind is reasonable restriction on the speech and expression which enables the State to impose certain restrictions on the right to free speech is the “harm principle” which means the until and unless a speech does not result into some sort of harm, the same cannot be suppressed. However the yardstick on which this harm is to measured has to be high. The harm is to be of such intensity that it threatens the very existence of the society; it disturbs the public order and results into the chaos in the society.³³ Thus, whenever there is a need to interfere, the Courts have laid down certain rules as touchstones. In case of *S. Rangarajan v. P. Jagjivan Ram*³⁴, it was held that unless there is a danger to the society and public order, the right to freedom of speech and expression cannot be restricted. The anticipated danger should be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a ‘spark in a powder keg’. The Courts opined the same in subsequent cases.³⁵

Also in number of cases, skepticism has been expressed about the potential misuse of sedition law. Justice AP Shah, in one of his writings, warns about the very basis for the logic of sedition law. He compared the idea of sedition to a parochial view of nationalism which often endangers the diversity of opinion rather than protecting them against rebellion. The use of religion in electoral campaigns was challenged under s. 123 of Representation of the People Act, 1951.³⁶ The contention put forward was that repeated use of open threats to India’s constitutional commitment to secularism could be construed as ‘disloyalty’ and the threat of public nuisance. However, the contention was rejected and it was held that candidate expressed at best a ‘hope’ for creation of a monolithic rashtra than, in fact, acting on elimination of minorities and thus threatening to eliminate other religions. Significantly, sec.123 of RPA, 1951 covers use of such speech in the campaigns and therefore there is no question of invoking the provisions of sec.124A IPC. Thus, expression of a particular image of the country does not alone amount to a threat to the security of the nation.

³⁰ *S. P Gupta v. Union of India*, AIR 1982 SC 149

³¹ *Cellular Operators Association of India v. Telecom Regulatory Authority of India & Ors.*, AIR 2016 SC 2336.

³² *PUCL v. Union of India*, AIR 2003 SC 2363.

³³ *Gompers v. Buck’s Stove & Range Co.*, 221 U.S 418(1911).

³⁴ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

³⁵ *Romesh v. Union of India*, AIR 1988 SC 775; see also *Nazir Khan & Ors. v. State of Delhi*, AIR 2003 SC 4427; see also *Union of India & Ors. v. The Motion Picture Association & Ors.*, etc. AIR 1999 SC 2334.

³⁶ A P Shah, Free Speech, Nationalism and Sedition, Economic & Political Weekly, Vol. 52, Issue No. 16, 22 Apr, 2017.

(a) *Expression not amounting to sedition*

The Courts have been categorical in expressing that every criticism does not amount to sedition and the real intent of the speech must be considered before imputing seditious intent to an act. In *Balwant Singh v. State of Punjab*³⁷, the Court refused to penalize casual raising of slogans few times against the State by two individuals like [Khalistan Zindabad, Raj Karega Khalsa etc.]. It was opined that raising of lonesome slogans, a couple of times by these two people, without any action, did not constitute any threat to the Government of India as by law established nor could the same give rise to feelings of enmity or hatred among different communities or religions or other groups. On the same ruling, it was emphasized that holding an opinion against the Prime Minister or his actions or criticism of the actions of Government or drawing inference from the speeches and actions of the leader of the Government that the leader was against a particular community and was in league with certain other political leaders, cannot be considered as sedition.³⁸ The need to look into the context of the speech was reiterated by Delhi HC in *Pankaj Butalia v. Central Board of Film Certification & Ors.*³⁹, held that while judging the cases of sedition, it is extremely important to take into consideration the intention. An offense under se.124A IPC has to be ascertained by judging the act 'holistically and fairly without giving undue weight to isolate passages.'⁴⁰ In case of *Sanskar Marathe v. State of Maharashtra*⁴¹, a cartoonist Assem Trivedi was booked under se.124A for defaming the Parliament, Constitution of India and National Emblem and attempting to spread hatred and disrespect against the Government through his cartoons. The Apex Court in the present case distinguished between strong criticism and disloyalty observing that disloyalty to Government established by law does not stand on the same footing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement of public disorder or the use of violence. In case of *Arun Jaitley v. State of U.P.*,⁴² Allahabad High Court opined that a critique by a writer of a judgment of the Supreme Court on National Judicial Appointment Commission does not amount to sedition, it is merely a constructive criticism.

Thus expression of strong condemnation towards the State or its institution can never amount to sedition for the simple reason that no institution or symbol alone embodies the whole country in entirety. In many cases the critique over a failed law expressed through for instance, the burning of national flag or expression of disappointment with the members of Parliament through a visually disparaging cartoon or an image of Parliament

³⁷ *Balwant Singh v. State of Punjab*, AIR 1995 SC 1785.

³⁸ *Javed Habib v. State of Delhi*, (2007) 96 DRJ 693.

³⁹ *Pankaj Butalia v. Central Board of Film Certification & Ors.*, (2015) 221 DLT 29.

⁴⁰ *Romesh Yashwant Prabhoo v. Prabhakar Kashinath Kunte & Ors.*, AIR 1996 SC 1113

⁴¹ *Sanskar Marathe v. State of Maharashtra*, (2015) Cri LJ 3561.

⁴² *Arun Jaitley v. State of U.P.*, 2016 (1) ADJ 76.

cannot amount to sedition because often the protests may be routed in an idea of India which has been frustrated by its elected representatives or a law that has been demeaned or disappointed citizens of India.

V. PRIVATE MEMBER'S BILL SUGGESTING AMENDMENT.

In year 2011, a private member bill titled the Indian Penal Code (Amendment) Bill, was introduced in Rajya Sabha by Mr. D. Raja. The Bill proposed that sec. 124A IPC should be removed as it is a colonial law used by the Britishers to oppress the speech and criticism against them. But it is still being used in independent and democratic India despite having specialized laws to deal with internal and external threat to destabilize the nation. Another Bill titled The Indian Penal Code (Amendment) Bill, 2015 was introduced in Lok Sabha by Mr. Shashi Tharoor to amend the original section and suggested that only those words/ actions that directly result in the use of violence or incitement of violence should be treated seditious. This proposed amendment revived debates on interpretation of this section. The Courts through various judgments have settled that not only words, either spoken or written, or signs or visible representation that are likely to incite violence should be considered seditious.

VI. SEDITION VIS-A- VIS OTHER STATUTES

Potentiality and impact of expression has always been looked into by Courts to determine the permissibility of its restriction. In order to qualify as sedition, the act must be intentional and must cause hatred. Disturbance of public order has been recognized as an important ingredient of sedition in India. The term 'public order' has been defined and distinguished from 'law and order' and security of State' in *Ram Manohar Lohiya case*⁴³ wherein the Court observed, that one has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest one represents security of State. This made it easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of State. Since sedition is an offence against the State, higher standards of proof must be applied to convict a person, which is necessary to protect fair and reasonable criticisms from unwarranted State oppression. Section 124A IPC must be read in consonance with Article 19(2) of the Constitution and the reasonableness of the restriction must be scrutinized carefully on the basis of facts and circumstances of each case.⁴⁴

The Indian Penal Code, 1860, within its ambit covers a wide range of actions threatening the peace of the society. For e.g.- Chapter IV includes offences against State like waging or attempting to wage a war,⁴⁵ collecting arms

⁴³ *Ram Manohar Lohiya v. State of Bihar*, AIR 1966 SC 740.

⁴⁴ *Om Kumar v. Union of India*, AIR 2000 3689.

⁴⁵ The Indian Penal Code, 1860, s.121.

etc. with intention of waging war against India,⁴⁶ concealing with intent designed to wage war⁴⁷ etc. Chapter VII covers provisions relating to abetting mutiny.⁴⁸ Further Chapter VIII covers actions which, if allowed, would disturb public peace. Section 141 IPC defines unlawful assembly and punishment is also provided for the same.⁴⁹ The Code also prohibits actions promoting enmity between different groups on grounds of race, religion, language, place of birth etc.⁵⁰ Hence these are certain provisions that take care of any activity which might be indulged into for the purpose of waging war against India or causing disruption of public order.

Secondly, the Unlawful Activities Prevention Act, 1967 was enacted to prevent terrorist activities and to freeze the assets and other economic resources belonging to terrorists. The main object has been to enable the State authorities to deal with “activities directed against the integrity and sovereignty of India”. In 2012, the Act was amended, removing the vagueness in the definition of ‘terrorist act’ to include offences which may threaten the economic security of the nation.

The Criminal Law Amendment Act, 1961 was also enacted with the purpose of curbing activities that are likely to jeopardize the security of the country and its frontiers point. The Act deals with cases where someone questions the territorial integrity, which is likely to prejudice safety and security of nation.⁵¹ It is also notable that Central Government may by notification declare ‘any area adjoining the frontiers of India, as notified area in which no person shall enter without the permission of designated authority.’⁵² Furthermore, the Act also empowers the State Government to forfeit any newspaper or book which in its opinion contains material which is contravention to sections 2 and 3(2) of this Act.⁵³

VII. THE WAY FORWARD

For the proper functioning of a democracy it is important that its citizen indulge in constructive criticism or debates, pointing out the loopholes in the policy of the Government. Expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means. Every irresponsible exercise of right to free speech and expression cannot be termed seditious. For merely expressing a thought that is not in consonance with the policy of the Government of the day, a person should not be charged under the section.

⁴⁶ The Indian Penal Code, 1860, s. 122.

⁴⁷ The Indian Penal Code, 1860, s.123 .

⁴⁸ The Indian Penal Code, 1860, s.131, 132.

⁴⁹ The Indian Penal Code, 1860, s.143.

⁵⁰ The Indian Penal Code, 1860, s. 153A.

⁵¹ The Criminal Law (Amendment) Act, 1961, s.2.

⁵² The Criminal Law (Amendment) Act, 1961 , s.3(1).

⁵³ The Criminal Law (Amendment) Act, 1961 , s.4(1).

Certain issues which need thorough consideration are;

- a) Given the fact that 124A was introduced by British to oppress the Indians, how far is it justified today and shouldn't it be redefined in a country like India that is the largest democracy of the world?
- b) What is the extent to which the citizens may enjoy the right to offence and at what point this right to offend would qualify as hate speech?
- c) What could be the possible safeguards to ensure that the section is not misused?
- d) How to strike a balance between s.124A IPC and right to freedom of Speech and Expression?