The Limits Of Freedom

The law of sedition in India has an interesting history. Part III of the Constitution guarantees certain fundamental rights to citizens and non-citizens. No fundamental right is absolute. Freedom of speech and expression guaranteed by Article 19(1)(a) can be reasonably restricted on the grounds specified in Article 19(2). In the Draft Constitution, one of the heads of the restrictions proposed on freedom of speech and expression was “sedition”.

K M Munshi opposed the inclusion of “sedition” in the Draft Constitution as a restriction on freedom of speech and expression. During the debates in the Constituent Assembly, in view of the bitter experience of the arbitrary application of the sedition law by the colonial regime against nationalist leaders, Jawaharlal Nehru amongst others, agreed with Munshi and deliberately omitted “sedition” as one of the permissible grounds of restriction under Article 19(2). However, sedition remained a criminal offence in the IPC Section 124-A and provides inter alia for the sentence of life imprisonment and fine upon conviction.

Sedition was construed by the Privy Council to include any statement that caused “disaffection”, namely, exciting in others certain bad feelings towards the government. On the other hand, the Federal Court of India presided over by the distinguished chief justice, Maurice Gwyer, ruled that sedition law is not to be invoked “. to minister to the wounded vanity of government. 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.”

Our Supreme Court had occasion to deal with the constitutionality of Section 124-A. In its landmark decision in 1962 in Kedernath vs. State of Bihar, the SC disapproved of the view of the Privy Council and adopted the view of the Federal Court. The Court ruled that mere criticism of the government or comments on the administration — however vigorous, pungent or ill-informed — was not sedition and that incitement to violence is the essential ingredient of that offence.

In 1995, certain persons were sought to be prosecuted for sedition for shouting slogans like Khalistan Zindabad and raj karega khalsa. The SC held that the casual raising of such slogans a couple of times by the individuals did not tantamount to sedition and therefore Section 124-A could not be invoked.

The issue of sedition arose again in 2003 in Nazir Khan vs. State of Delhi wherein the SC made the following significant observations: “It is the fundamental right of every citizen to have his own political theories and ideas and to propagate them and work for their establishment so long as he does not seek to do so by force and violence or contravene any provision of law. Thus, where the pledge of a Society amounted only to an undertaking to propagate the political faith that capitalism and private ownership are dangerous to the advancement of society and work to bring about the end of capitalism and private ownership and the establishment of a socialist State . that the mere use of the words ‘fight’ and ‘war’ in their pledge did not necessarily mean that the Society planned to achieve its object by force and violence”.

The legal position which emerges is that merely shouting slogans like Pakistan or Khalistan zindabad, however deplorable, per se would not attract Section 124-A which deals with sedition. Criticism of the SC judgment upholding the conviction of Afzal Guru also would not attract Section 124-A. However if a person has said “Hindustan murdabad”, or that the Indian state is tyrannical and it is necessary to overthrow it, that could possibly amount to sedition.

It is true that Section 124-A has often been misused by ill-informed and over enthusiastic prosecuting agencies who are allergic to any criticism of the government. It is reported that Union

minister Arun Jaitley was sought to be charged with sedition, a classic case of comedy of errors. In such cases, the illegal and arbitrary action in question deserves to be struck down. The remedy does not lie in repealing Section 124-A. Remember, that there is no statutory provision which cannot be misused thanks to human ingenuity or cunning with the aid of resourceful lawyers. Misuse of Section 124-A in some cases, however regrettable, is no ground for its deletion.

The provision properly interpreted and correctly applied protects and preserves the integrity of the Indian state and is also a deterrent for persons who are minded to commit acts of incitement to violence and acts which cause disturbance of public order.

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