PETITIONER:
KEDAR NATH SINGH

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT:
20/01/1962

BENCH:
SINHA, BHUVNESHWAR P.(CJ)
BENCH:
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
SARKAR, A.K.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1962 AIR 955 1962 SCR Supl. (2) 769
CITATOR INFO :
R 1963 SC 996 (5)
R 1964 SC1230 (9)
RF 1967 SC1877 (22)
D 1970 SC2015 (12)
RF 1973 SC1091 (6)
D 1980 SC 354 (5)
RF 1980 SC1042 (11)
E 1991 SC 101 (28,69,227,278)

ACT:
Sedition-Content of Statute panalising sedition and statements conducing to public mischief-Constitutionality of-Whether infringes freedom of speech-Indian Penal Code, 1860 (Act XLV of 1860), ss. 124A, 505-Constitution of India, Arts. (19)(1)(a), 19(2).

HEADNOTE:
Section 124A of the Indian Penal Code which makes sedition an offence is constitutionally valid. Though the section imposes restrictions on the fundamental freedom of
770
speech and expression, the restrictions are in the interest of public order and are within the ambit of permissible legislative interference with the fundamental right. There is a conflict on the question of the ambit of s. 124A between decision of the federal Court and of the Privy Council. The Federal Court has held that words, deeds or writings constituted an offence under s. 124A only when they had the intention or tendency to disturb public tranquility. to create public disturbance or to promote disorder, whilst the Privy Council has taken the view that it was not an essential ingredient of the offence of sedition under s. 124A that the words etc, should be intended to or be likely to incite public disorder. Either view can be taken and supported on good reasons. If the

view taken by the Federal Court was accepted s. 124A would be use constitutional but if the view of the Privy Council was accepted it would be unconstitutional. It is well settled that if certain provisions of law construed in one way would make them consistent with the constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. Keeping in mind the reasons for the introduction of s. 124A and the history of sedition the section must be so construed as to limit its application to acts involving intention or tendency to create disorder, or disturbance of law and order; or incitement to violence.

Niharendu Dutt Majumdar v. King Emperor, (1942) F.C.R. 38, followed.

King Emperor v. Sadashiv Narayan Bhalerao, (1947) L.R. 74 I.A. 89 and Wallace Johnson v. The King [1940] A. C. 231 not followed.

Romesh Thapar v. The State of Madras. (1050) S.C.R. 594. Brij Bhushan v. The State of Delhi. (1950) S.C. R. 605 and Ramji Lal Modi v. The State U.P. (1957) S. C. R. 860, referred to.

The Bengal Immunity Company Limited v. The State of Bihar, (1955) 2 S. C. R. 603 and R. M. D. Chamarbaugwala v. The Union of India, [1957] S. C. R. 930 applied.

Each one of the constituent elements of the offence of making, publishing or circulating statements conducing to public mischief, punishable under s. 505 of the Indian Penal Code, had reference to, and a direct effect on, the security of the State or public order. Hence the provisions of s. 505 were clearly saved by Art. 19(2).

^

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION:- Criminal Appeal No. 169 of 1957.

771

Appeal by special leave from the judgment and order dated the April 9, 1956, of the Patna High Court in Cr. A. No. 445 of 1955.

WITH

Criminal Appeals Nos. 124 to 126 of 1958.

Appeals from the judgment and order dated May 16, 1958, of the Allahabad High Court in Criminal Appeals Nos. 76 and 108 of 1955 and Cr. M. Writ No. 2371 of 1955.

Janardan Sharma for appellant in Criminal Appeal No. 169 of 1957:-The appellant has been convicted under ss. 124A and 505 Indian Penal Code. Both these sections are ultra vires as they contravene the provisions of Art. 19(1)(a) of the Constitution. A speech may disturb public order or it may not, but both are made punishable under Section 124A. The section hits speeches of both varieties permissible speeches and impermissible speeches. The explanation to section 124A do not affect the interpretation of the main section. In a democratic set up a citizen is entitled to

criticise the Government with a view to change it. Two questions arises in the cases, namely (i) does s. 124A enact a law which is in the interest of public order and (ii) does this section impose reasonable restrictions in the interest of public order. The decision in I. L. R. (1958) 2 All. 84 which has declared s.124A to be ultra vires takes the correct law.

R. C. Prasad, for respondent in Criminal Appeal No. 169 of 1957:-Referred to the decision in Ramji Lal Modi v. State of U. P. [1957] S.C.R.860. Stated that he would adopt the submissions to be made by Shri C. B. Agarwala.

C. B. Agarwala for the appellant in Criminal Appeals Nos. 124 to 126 of 1958:-The correct meaning of the provisions of s. 124A in the context

772

of the present set up and the Constitution is that given by the Federal Court in Niharendu Dutt's case, 1942 F. C. R. 38 and not the meaning given to them by the Privy Council in Bhalerao's case 74 I. A. 89. Intepretation by Courts of words of statutes to a particular set of facts has been changing with the change in the social and political structure of society and the opinion of its reasonable members. Section 124A is in a chapter which deals with offencss against the State. Therefore, it is not a case of libel against any offioer but of an offence against the State. Words in the English law relating to sedition are the same as in s. 124A vide Stephen's Commentary on the law of England, Vol. 4, page 141, Halsbury's Law of England 3rd Edition, Vol. 10, page 169 Jowitt's Dictionary of English law, page 1605, Stephen's History of Criminal Law, Vol. 2, page 298 and 301 Chapter 24. Under English Law a tendency to create tumult or disorder is an essential element of sedition. Russel on Crimes, Vol. 1, p. 229, R. v. Collins, 173 E. R. 910. R. v. Sullivan, 11 Cox. 44. Section 124A has been taken from the English Law (see 22 Bom. 152). Section 124A must, therefore, be interpreted in the same manner as sedition is interpreted in England and it must be held that a tendency to disturb public order is an essential element of the offence under s. 124A. Articles 133 and 133A of the Canadian Criminal Code which deal with sedition have been given the same interpretation, 1951, canadian S. C. R. 265. The view taken in Tilak's case 22 Bom. 1112, in Bhalerao's case 74 I.A. 89 and in Wallice Johnsons case[1940] A. C. 231 that incitement to violence or a tendency to disturb public order was not a necessary ingredient of s. 124A, is not the correct view. 1942 F. C. R.38 takes the correct view and lays down that the tendency to disturb public order is a necessary ingredient of the offence under s. 124A. Devi Saran's case 32 Pat. 1124 also takes the same view.

773

There are two interpretations of s. 124A before the Court, one taken by the Federal Court and the other taken by the Privy Council. This Court should accept the interpretation given by the

section Court, as that interpretation would make the section Constitutional. Even if the interpretation put by the Privy Council be accepted as correct one, section 124A will still be valid. The section certainly contemplates cases where the speech is likely to disturb public order and as such the section in the interest of public order as contemplated in Art. 19(2) and the mere fact that some cases in which the public order is not likely to be disturbed are also included therein, cannot invalidate the section. This court took a similar view in Ramjilal Modi's case [1957] S. C. R. 860 and in Virendra's case [1958] S. C. R. 308, the decision Lohia's case [1960] 2 S. C. R. 821 does not affect this case, as in that case it was found that that provisions curtailing freedom of speech were not in the interest of public order as the connection between the provisions and disturbance of public order as too remove. Even if the section be held according to the Privy Council view to include which threaten public order and those which the section can be held valid with respect s where public order is threatened as the two of case are severable. [1957] S. C. R. 930, [1941] F. C. 72 [1951] S. C. R. 682, [1953] 1059 and 65 L. Ed, 1139.

P. Verma for the Attorney-General of Article 374(2) of the Constitution perversion of the Federal Court shall have the rect as the decision of the Supreme Court. Decision of the Federal Court in 1942 F.C.R. 38 be deemed to be a decision of this Court and should be held binding. A tendency to disturb public order is inherent in s. 124A itself.

Gopal Behari for respondent in Criminal Appeal No. 124 of 1958:-The interpretataion of s. 124A by

774

the Privy Council has been accepted by the High Court. Even in English Law sedition does not necessarily include an intention to disturb public order, 79 C. L. R. 101. Explanations (2) and (3) would be redundant if section 124A is interpreted to incorporate the English view of sedition. The Allahabad High Court as well as other High Courts have given the same interpretation of s. 124A as the Privy Council has. See 1941 All. 156, 1930 Lah. 309, 56 Cal. 1085 and 10 Luck. 712. The decision in Lohia's case also [1960] 2 S.C.R. 821 governs the present case also section 124A punishes such speeches also as have no tendency to disturb public order and contravenes Art. 19(1)(a). It is not saved by Art. 19(2) as placing of restriction on such speeches is not in the interest of public order. It is not open to the Court to rewrite the section by removing from its purview such speeches as have no tendency to disturb public order and to confine it to such speeches as have a tendency to disturb public order. The whole section must fail; it cannot be dissected.

C. B. Agarwala in reply:-In English law is a necessary ingredient of seditious intention it must have a tendency to cause tumult or di R. v. Alred, 22 Cox. C. C. 1, R. v. Burdott, 101, 803;

R. v. O'Brien, 6 St. Tr. (N. S.) 571. The Council has only said that actual incite violence was not a necessary ingredient of It has not gone further and has not laid tendency to disturb public order was not a ingredient of s. 124A. Even though public is not an ingredient of the offeence under there is a tendency to disturb public speeches or writings which bring or atte bring into hatered or contempt or excite or at to excite dissatisfaction towards the Government established by law.

1962. January 20. The Judgment of the court was delivered by

775

SINHA, C. J.-In these appeals the main question in controversy is whether ss. 124A and 505 of the Indian Penal Code have become void in view of the provisions of Art. 19(1)(a) of the Constitution. The constitutionality of the provisions of s. 124A, which was mainly canvassed before us, is common to all the appeals, the facts of which may shortly be stated separately.

In Criminal Appeal 169 of 1957, the appellant is one Kedar nath Singh, who was prosecuted before a Magistrate, 1st Class, at Begusarai, in the district of Monghyr, in Bihar. He framed the following charges against the accused person, which are set out in extenso in order to bring out the gravamen of the charge against him.

"First.-That you on 26th day of May, 1953 at village Barauni, P. S. Taghra (Monghyr) by speaking the words, to wit, (a) To-day the dogs of the C. I. D are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country and elected these Congress goondas to the gaddi and seated them on it. To-day these Congress goondas are sitting on the gaddi due to mistake of the people. When we drove out the Britishers, we shall strike and turn out these Congress goondas as well. These official dogs will also be liquidated along with these Congress goondas. These Congress goondas are banking upon the American dollars and imposing various kinds of taxes on the people to-day. The blood of our brothers-mazdoors and Kishanas is being sucked. The capitalists and the zamindars of this country help these Congress goondas. These zamindars and capitalists will also have to be brought before the peoples court along with these Congress goondas.

776

(b) On the strength of the organisation and unity of Kisans and mazdoors the Forward Communists Party will expose the black deeds of the Congress goondas, who are just like the Britishers. Only the colour of the body has changed. They have to-day established a rule of lathis and bullets in the country. The Britishers had to go away from this land. They had aeroplanes, guns, bombs and other weapons with them.

(c) The Forward Communist Party does not believe in the doctrine of vote itself. The

party had always been believing in revolution and does so even at present. We believe in that revolution, which will come and in the flames of which the capitalists, zamindars and the Congress leaders of India, who have made it their profession to loot the country, will be reduced to ashes and on their ashes will be established a Government of the poor and the downtrodden people of India.

(d) It will be a mistake to expect anything from the Congress relers. They (Congress rulers) have set up V. Bhave in the midst of the people by causing him wear a langoti in order to divert the people's attention from their mistakes. To-day Vinova is playing a drama on the stage of Indian politics. Confusion is being created among the people. I want to tell Vinova and advice his agents, "you should understand it the people cannot be deceived by this illusion and fraud of Vinova". I shall vinova not to become a puppet in the of the Congress men. These persons, understand the Yojna-of Vinova, realise that Vinova is an agent to the Congress Government.

(e) I tell you that this Congress Government will do no good to you.

777

(f) I want to tell the last word even to the Congress Tyrants, "you play with the people and ruin them by entangling them in the mesh of bribery, black-marketing and corruption. To-day the children of the poor are hankering for food and you Congress men are assuming the attitude of Nawabs sitting on the chairs..."

Brought or attempted to bring into hatred or contempt or excited or attempted to excite disaffection towards the Government established by law in the Indian Union and thereby committed an offence punishable under section 124A of the Indian Penal Code and within my cognizance.

Secondly.-That you on the 26th day of May, 1953 at village Barauni, P. S. Tegra (Monghyr) made the statement, to wit, (a) To-day the dogs of the C. I. D. are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country, And elected these Congress Goondas to the gaddi and seated them on it. To-day these Congress Goondas are sitting on the gaddi due to the mistake of the people. When we have driven out the Britishers, we shall strike and turn out these Congress Goondas. These Congress Goondas are banking upon the American dollars and imposing various kinds of taxes on the people to-day. The blood of our brothers Mazdoors and Kisans is being sucked. The capitalists and the zamindars of this country help these Congress Goondas. These zamindars and capitalists will also have to be brought before the people's Court along with these Congress Goondas.

778

(b) On the strength of organisation and unity of kisans and mazdoors the Forward Communist Party will expose the black-deeds of the Congress Goondas, who are just like the Britishers. Only the colour of the body has changed. They have, to-day, established a rule of lathis and bullets in the country. The Britishers had to go away from this land. They had aeroplanes, guns, bombs, and other reasons with them.

(c) The Forward Communist party does not believe in the doctrine of votes itself. The party had always been believing in revolution and does so even at present. We believe in that revolution, which will come and in the flames of which the capitalists, zamindars and the Congress leaders of India, who have made it their profession to loot the country, will be reduced to ashes, and on their ashes will be established a Government of the poor and the downtrodden people of India.

(d) It will be a mistake to expect anything from the Congress rulers. They (Congress rulers) have set up V. Bhave in the midst of the people by causing him wear a langoti in order to divert the attention of the people from their mistakes. To-day Vinoba is playing a drama on the stage of Indian politics. Confusion is being created among the people. I want to tell Vinova and advise his agents, "You should understand it that the people cannot be deceived by this Yojna, illusion and fraud of Vinova. I shall advice Vinova not to become a puppet in the hands of the Congress men. Those persons who understand the Yojna of Vinova, realise that Vinova is an agent of Congress Government.

779

(e) I tell you that no good will be done to you by this Congress Government.

(f) I want to tell the last word even to Congress tyrants "you play with the people and ruin them by entangling them in the mesh of bribery, black-marketing and corruption. To-day the children of the poor are hankering for food and you (Congress men) are assuming the attitude of Nawabs sitting on the chairs".....

With intent to cause or which was likely to cause fear or alarm to the public whereby any persons might be induce to commit an offence against the State of Bihar and against the public tranquility, and thereby committed an offence punishable under section 505(b) of the Indian Penal Code and within my cognizance.

After recording a substantial volume of oral evidence, the learned Trial Magistrate convicted the accused person both under ss. 124A and 505(b) of the Indian Penal Code, and sentenced him to under go rigorous imprisonment for one year. No separate sentence was passed in respect of the conviction under the latter section.

The convicted persons preferred an appeal to

the High Court of Judicature at Patna, which was heard by the late Mr. Justice Naqui Imam, sitting singly. By this judgment and order dated April 9, 1956, he upheld the convictions and the sentence and dismissed the appeal. In the course of his judgment, the learned Judge observed that the Judge observed of the charge against the appellant was nothing but a vilification of the Government; that it was full of incitements to revolution and that the speech taken as a whole was certainly seditionus. It is not a speech critising any of is measures. He held that the offences both under ss. 124A 505(b) of the Indian Penal Code had been made out.

780

The convicted person moved this Court and obtained special leave to appeal. It will be noticed that the constitutionality of the provisions of the sections under which the appellant was convicted had not been convassed before the High Court. But in the petition for special leave, to this Court, the ground was taken that ss. 124A and 505 of the Indian Penal Code "are inconsistent with Art. 19(1) (a) of the Constitution". The appeal was heard in this Court, in the first instance, by a Division Bench on May 5, 1959. The Bench, finding that the learned counsel vco the appellant had raised the constitutional issue as to the validity of ss. 124A and 505 of the Indian Penal Code, directed that the appeal be placed for hearing by a Constitution Bench. The case was then placed before a Constitution Bench, on November 4, 1960, when that Bench directed notice to issue to the Attorney General of India under r. 1, O.41 of the Supreme Court Rules. The matter was once again placed before a constitution Bench on February 9, 1961, when it was adjourned for two months in order to enable the State Governments concerned with this appeal, as also with the connected Criminal Appeals Nos. 124-126 of 1958 (in which the Government of Uttar Pradesh is the appellant) to make up their minds in respect of the proseocuions, as also in view of the report that the Law Commission was considering the question of amending the law of sedition in view of the new set-up. As the States concerned have instructed their counsel to press the appeals, the matter has finally come before us.

In Criminal Appeals 124-126 of 1958 the State of Uttar Pradesh is the appellant, though the respondents are different. In Criminal appeal 124 of 1958, the accused person is one Mohd, Ishaq Ihahi. He was prosecuted for having delivered a speech at Aligarh as Chairman of the Reception Committee of the All India Muslim Convention on October 30,

781

1953. His speech on that occasion, was thought to be seditious. After the necessary sanction, the Magistrate held an enquiry, and finding a prima facie case made out against the accused, committed him to the Court of Session. The learned Sessions Judge, by his Judgment dated January 8, 1955, acquitted him of the charge under s. 153A, but

convicted him of the other charge under s. 124A, of the Indian Penal Code, and sentenced him to rigorous imprisonment for one year. The convicted person preferred an appeal to the High Court. In the High Court the constitutionality of s. 124A of the Indian Penal Code was challenged.

In Criminal Appeal No. 125 of 1958, the facts are that on May 29, 1954, a meeting of the Bolshovik Party was organised in village Hanumanganj, in the District of Basti, in Uttar Pradesh. On that occasion, the respondent Rama Nand was found to have delivered an objectionable speech in so far as he advocated the use of violence for overthrowing the Government established by law. After the sanction of the Government to the prosecution had been obtained, the learned Magistrate held an enquiry and ultimately committed him to take his trial before the Court of Sessions. In due course, the learned Sessions Judge convicted the accused person under s. 124A of the Indian Penal Code and sentenced him to rigorous imprisonment for three years. He held that the accused person had committed the offence by inciting the audience to an open violent rebellion against the Government established by law, by the use of arms. Against the aforesaid order of conviction and sentence, the accused person preferred an appeal to the High Court of Allahabad.

In Criminal Appeal 126 of 1958, the respondent is one Parasnath Tripathi. He is alleged to have delivered a speech in village Mansapur, P.S. Akbarpur, in the district of Faizabad, on September 26, 1955, in which he is said to have

782

exhorted the audience to organise a volunteer army and resist the Government and its servants by violent means. He is also said to have excited the audience with intent to create feelings of hatred and enmity against the Government. When he was placed on trial for an offence under s. 124A of the Indian Penal Code, the accused person applied for a writ of Habeas Corpus in the High Court of Judicature at. Allahabad on the ground that his detention was illegal inasmuch as the provisions s. 124A of the Indian Penal Code were void as being in contravention of his fundamental rights of free speech and expression under Art. 19(1)(a) of the Constitution. This matter, along with the appeals which have given rise to appeals Nos. 124 and 125, as aforesaid, were ultimately placed before a Full Bench, consisting of Desai, Gurtu and Beg, JJ. The learned judges, in separate but concurring judgments, took the view that s. 124A of the Indian Penal Code was ultra vires Art. 19(1)(a) of the Constitution. In that view of the matter, they acquitted the accussed persons, convicted at aforesaid in the two appeals Nos. 124 and 125, and granted the writ petition of the accused in criminal Appeal No. 126. In all these cases the High Court granted the necessary certificate that the case involved important questions of law relating to the interpretation of the Constitution. That is how these appeals are

before by on a certificate of fitness granted by the High Court.

Shri C. B. Agarwala, who appeared on behalf of the State of Uttar Pradesh in support of the appeals against the orders of acquittal passed by the High Court, contended that the judgment of the High Court (bow reported in Ram Nandan v. State (1) in which it was laid down by the Full Bench that s. 124A of the Indian Penal Code was ultra Art. 19(1)(a) of the Constitution and,

783

therefore, void for the reason that it was not in the interest of public order and that the restrictions imposed there by were not reasonable restrictions on the freedom of speech and expression, was erroneous. He further contended that the section impugned came within the saving cl. (2) of Art. 19, and that the reasons given by the High Court to the contrary were erroneous. He relied upon the observations of the Federal Court in Niharendu Dutt Majumdar v. The King Emperor (1). He also relied on Stephen's Commentaries on the Laws of England, Volume IV, 21st Edition, page 141, and the Statement of the Law in Halsbury's Laws of England, 3rd Edition, volume 10, page 569, and the cases referred to in those volumes. Mr. Gopal Behari, appearing on behalf of the respondents in the Allahabad cases has entirely relied upon the full Bench decision of the Allahabad High Court in his favour. Shri Sharma appearing on behalf of the appellant in the appeal from the Patna High Court has similarly relied upon the decision aforesaid of the Allahabad High Court.

Before dealing with the contentions raised on behalf of the parties, it is convenient to set out the history of the law, the amendments it has undergone and the interpretations placed upon the provisions of s. 124A by the Courts in India, and by their Lordships of the judicial Committee of the Privy Council. The section corresponding to s. 124A was originally s. 113 of Macaulay's Draft Penal Code of 1837-39, but the section was omitted from the Indian Penal Code as it was enacted in 1860. The reason for the omission from the Code is enacted is not clear, but perhaps the legislative body did not feel sure above its authority to enact such a provision in the Code. Be that as it may, s. 124A was not placed on the Statute Book until 1870, by Act XXVII of 1870. There

784

was a considerable amount of discussion at the time the amendment was introduced by Sir James, Stephen, but what he said while introducing the bill in the legislature may not be relevant for our present purposes. The section as then enacted ran as follows:

> "124A. Exciting Disaffection-
>
> 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-Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause."

The first case in Indian that arose under the section is what is known as the Bangobasi case (Queen-Empress v. Jagendra Chunder Bose (1)) which was tried by a Jury before Sir Comer Petheram, C J. while charging the jury, the learned Chief Justice explained the law to the jury in these terms:

785

"Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a men's sentiments or action and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr. Jackson cannot be sustained. 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 bearers 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. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."

The next case is the celebrated case of Queen-Empress v. Balqanqaddhar Tilak (1) which came before the Bobay High Court. The case was tried by a jury before Strachey, J. The learned judge, in the course of his charge to the jury, explain the law to them in these terms:

"The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are "feelings of disaffection" ? I agree with Sir Comer Petheram in the Bangobasi case that disaffection means simply the

786

absence of affection. It means hatred, enmity dislike, hostility, contempt and every from 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. You will observe 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. It is true that there is before you a charge against each prisoner that he has actually excited feelings of disaffection to the Government. If you are satisfied that he has done so, you will, of course, find him guilty. But if you should hold that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with attempting to excite such feelings. You will observe that 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 feeling in others, you must convict him even if there is nothing to show that he succeeded. Again, it is

787

important that you should fully realise another point. The offence consists in exciting or attempting to excite in others certain bad feeling 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 there articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any 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. I am aware that some distinguished persons have thought that there can be no offence against the section

unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope."

The long quotation has become necessary in view of what followed later, namely, that this statement of the law by the learned judge came in for a great deal of comment and judicial notice. We have omitted the charge to the jury relating

788

to the explanation to s. 124A because that explanation has now yielded place to three separate explanations in view of judicial opinions expressed later. The jury, by a majority of six to three, found Shri Balgangadhar Tilak guilty. Subsequently, he, on conviction, applied under cl. 41 of the Letters Patent for leave to appeal to the Privy Council. The application was heard by a Full Bench consisting of Farran, C. J., Candy and Strachey, JJ. It was contended before the High Court at the leave stage, inter alia, that the sanction given by the Government was not sufficient in law in that it had not set out the particulars of the offending articles, and, secondly, that the judge misdirected the jury as to the meaning of the word "disaffection" insofar as he said that it might be equivalent to "absence of affection". With regard to the second point, which is only relevant point before us; the Full Bench expressed itself to the following effect:

"The other ground upon which Mr. Russell has asked as to certify that this is a fit case to be sent to Her Majesty in Council, is that there has been a misdirection, and he based his argument on one major and two minor grounds. The major ground was that the section cannot be said to have been contravened unless there is a direct incitement to stir up disorder or rebellion. That appears to us to be going much beyond the words of the section, and we need not say more upon that ground. The first of the minor points is that Mr. Justice Strachey in summing up the case to the jury stated that disaffection meant the absence of affection". But although if that phrase had stood alone it might have misled the jury, yet taken in connection with the context we think it is impossible that the jury could have been misled by it. That expression was used in connection with the

789

law as led down by Sir Comer Petheram, in Calcutta in the Bangobashi case. There the

Chief Justice instead of using the words "absence of affection" used the words "contrary to affection". If the words "contrary to affection" had been used instead of "absence of affection" in this case there can be no doubt that the summing up would have been absolutely correct in this particular. But taken in connection with the context it is clear that by the words "absence of affection" the learned Judge did not mean the negation of affection but some active sentiment on the other side. Therefore on that point we consider that we cannot certify that this is a fit case for appeal."

In this connection it must be remembered that it is not alleged that there has been a miscarriage of Justice."

After making those observations, the Full Bench refused the application for leave. the case was then taken to Her Majesty in council, by way of application for special leave to appeal to the Judicial Committee. Before their Lordships of the Privy Council, Asquith, Q. C., assisted by counsel of great experience and eminence like Mayne, W. C. Bonnerjee and others, contended that there was a misdirection as to the meaning of section 124A of the Penal Code in that the offence had been defined in terms to wide to the effect that "disaffection" meant simply "absence of affection" and that it comprehended every possible form of bad feeling to the Government. In this connection reference was made to the observations of Petheram, C.J. in Queen-Empress v. Jogender Bose(1). It was also contended that the appellant's comments

790

had not exceeded what in England would be considered within the functions of a Public journalist, and that the misdirection complained of was of the greatest importance not merely to the affected person but to the whole of the Indian Press and also to all her Majesty's subjects; and that it injuriously affected the liberty of the press and the right to free speech in public meetings. But in spite of the strong appeal made on behalf of the petitioner for special leave, the Lord Chancellor, delivering the opinion of the Judicial Committee, while dismissing the application, observed that taking a view of the whole of the summing up they did not see any reason to dissent from it, and that keeping in view the rules which Their Lordships observed in the matter of granting leave to appeal in criminal cases, they did not think that the case raised questions which deserve further consideration by the Privy Council. (vide Gangadhar Tilak v. Queen Empress) (1).

Before noticing the further changes in the Statute, it is necessary to refer to the Full Bench decision of the Allahabad High Court in Queen Empress v. Amba Prasad (2). In that case, Edge, C.J., who delivered the judgment of the Court, made copious quotations from the judgments of the Calcutta and the Bombay High Courts in the cases above referred to. While generally adopting

the reasons for the decisions in the aforesaid two cases, the learned Chief Justice observed that a man may be guilty of the offence defined in s. 124A of attempting to excite feelings of disaffection against the Government established by law in British India, although in a particular article or speech he may insist upon the desirability or expediency of obeying and supporting the Government. He also made reference to the decision of the Bombay High Court in the Satara (3) case. In that case a Full Bench, consisting of Farran, C.J., and Parsons and Ranade, JJ,

791

had laid it down that the word "disaffection" in the section is used in a special sense as meaning political alienation or discontent or disloyalty to the Government or existing authority. They also held that the meaning of word "disaffection" in the main portion of the section was not varied by the explanation. Persons, J., held that the word "disaffection" could not be construed as meaning 'absence of or contrary of affection or love'. Ranade J., interpreted the word "disaffection" not as meaning mere absence or negation of love or good will but a positive feeling of aversion, which is akin to ill will, a definite insubordination of authority or seeking to alienate the people and weaken the bond of allegiance, a feeling which tends to bring the Government into hatred and discontent, by imputing base and corrupt motives to it. The learned Chief Justice of the Allahabad High Court observed that if those remarks were meant to be in any sense different from the construction placed upon the section by Strachey, J., which was approved, as aforesaid, by the Judicial Committee of the Privy Council, the later observations of the Bombay High Court could not be treated as authoritative. As the accused in the Allahabad case had pleaded guilty and the appeal was more or less on the question of sentence, it was not necessary for their Lordships to examine in detail the implications of the section, though they expressed their general agreement with the view of the Calcutta and the Bombay High Courts in the first two cases, referred to above.

The section was amended by the Indian Penal Code Amendment Act (IV of 1898). As a result of the amendment, the single explanation to the section was replaced by three separate explanations as they stand now. The section, as it now stands in its present form, is the result of the several A.O.S. of 1937, 1948 and 1950, as a result of the constitutional changes, by the Government of India Act, 1935, by the Independence Act of 1947 and by the Indian

792

Constitution of 1950. Section 124A, as it has emerged after successive amendments by way of adaptations as aforesaid, reads as follows:

> "Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred to contempt, or

excites or attempts to excite disaffection towards the Government established by law in India shall be punished with transportation for life or any 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.

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 exiting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.

Explanation 3. Comments expressing disapprobation of the administrative of other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

This offence, which is generally known as the offence of Sedition, occurs in chapter IV of the Indian Penal Code, headed 'Of offences against the State'. This species of offence against the State was not an invention of the British. Government in India, but has been known in England for centuries. Every State, whatever its form of Government, has to be armed with the power to punish those who, by
793
their conduct, jeopardise the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder. In England, the crime has thus been described by Stephen in his Commentaries on the Laws of England, 21st Edition, volume IV, at pages 141-142, in these words.

"Section IX. Sedition and Inciting to Disaffection-We are now concerned with conduct which, on the one hand, fall short of treason, and on the other does not involve the use of force or violence. The law has here to reconcile the right of private criticism with the necessity of securing the safety and stability of the State. Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society.

The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused. This may be either

1. to excite disaffection against the King, Government, or Constitution, or against Parliament or the administration of justice;

2. to promote, by unlawful means, any alteration in Church or State;

3. to incite a disturbance of the peace;

4. to raise discontent among the King's

subjects;

5. to excite class hatred.

It must be observed that criticism on political matters is not of itself seditious. The test is the manner in which it is made. Candid and honest discussion is permitted. The law

794

only interferes when the discussion passes the bounds of fair criticism. More especially will this be the case when the natural consequence of the prisoner's conduct is to promote public disorder."

This statement of the law is derived mainly from the address to the Jury by Fitzerald, J., in the case of Reg v. Alexander Martin Sullivan (1). In the course of his address to the Jury the learned Judge observed as follows:

"Sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by short interval. 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 tranquility 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 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. Sedition has been described, as disloyalty in action and the law considers as sedition all those practices which have for their 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."

That the law has not changed during the course of the centuries is also apparent from the following statement of the law by Coleridge, J., in the course of his summing up to the Jury in the case of Rex. v. Aldred (2):

795

"Nothing is clearer than the law on this head-namely, that whoever by language, either written or spoken incites or encourages other to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel. The word "sedition" in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form...."

In that case, the learned Judge was charging the Jury in respect of the indictment which contained the charge of seditious libel by a publication by the defendant.

While dealing with a case arising under Rule

34(6) (e) of the Defence of India Rules under the Defence of India Act (XXXV of 1939) Sir Maurice Gwyer, C.J., speaking for the Federal Court, made the following observations in the case of Niharendu Dutt Majumdar v. The King Emperor (1); and has pointed out that the language of s. 124A of the Indian Penal Code, which was in pari materia with that of the Rule in question, had been adopted from the English Law, and referred with approval to the observations of Fitzerald, J., in the case quoted above; and made the following observations which are quite apposite:

> "...generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements.
>
> The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilisation and the advance of human happiness. This duty has no doubt been sometimes performed in such

796

> 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 government that in our opinion the offence of sedition stands related. It is the answer of the State to those who, for the purpose of attacking or subverting it, seek (to borrow from the passage cited above) to disturb its tranquillity, 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 Government, but because where Government and the law cease to be 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."

This statement of the law was not approved by their Lordships of the Judicial Committee of the Privy Council in the case of King-Emperor v. Sadashiv Narayan Bhalerao (1). The Privy Council, after quoting the observations of the learned chief Justice in Niharendu's case (2), while disapproving of the decision of the Federal Court, observed that there was no statutory definition of "Sedition" in England, and the meaning and content of the crime had to be gathered from any decisions.

797

But those were not relevant considerations when

one had to construe the statutory definition of 'Sedition' as in the Code. The Privy Council held that the language of s. 124A, or of the Rule aforesaid, under the Government of India Act, did not justify the statement of the law as made by the learned Chief Justice in Niharendu's case(1) they also held that the expression "excite disaffection" did not include "excite disorder", and that, therefore, the decision of the Federal Court in Niharendu's case(1) proceeded on a wrong construction of s. 124A of the Penal Code, and of sub-para (e), sub-rule (6) of Rule 34 of the Defence of India Rules; Their Lordships approved of the dicta in the case of Bal Gangadhar Tilak (2), and in the case of Annie Basant v. Advocate General of Madras (3), which was a case under s. 4 of the Indian Press Act. (I of 1910), which was closely similar in language to s. 124A of the Penal Code.

The Privy Council also referred to their previous decision in Wallace Johnson v. The Kinq(4) which was a case under sub s. 8 of s. 326 of the Criminal Code of the Gold Coast, which defined "seditious intention" in terms similar to the words of s.124A of the Penal Code. In that case, their Lordships had laid down that incitement to violence was not necessary ingredient of the Crime of sedition as defined in that law.

Thus, there is a direct conflict between the decision of the Federal Court in Niharendu's case (1) and of the Privy Counsil in a number of cases from Indian and the Gold Coast, referred to above. It is also clear that either view can be taken and can be supported on good reasons. The Federal Court decision takes into consideration, as indicated above, the pre-exiting Common Law of England in respect of sedition. It does not appear from the report of
798
the Federal Court decision that the rulings aforesaid of the Privy Council had been brought to the notice of their Lordships of the Federal Court.

So far as this Court is concerned, the question directly arising for determination in this batch of cases has not formed the subject matter of decision previously. But certain observations made by this Court in some cases, to be presently noticed, with reference to the interrelation between freedom of speech and seditious writing or speaking have been made in the very first year of the coming into force of the Constitution. Two cases involving consideration of the fundamental right of freedom of speech and expression and certain laws enacted by some of the States imposing restrictions on that right came up for consideration before this Court. Those cases, reported in Romesh Thappar v. The State of Madras(1) and Brij Bhushan v. The State of Delhi(2) were heard by Kania C.J., Pazl Ali, Patanjali Shastri, Mehr Chand Mahajan, Mukherjea and Das, JJ, and judgments were delivered on the same day (May 26, 1950). In Romesh Thappar's case (1), the majority of the

Court declared s. 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 cl. (2) of Art. 19 of the Constitution authorising such restrictions, and, therefore, void and unconstitutional. In Brij Bhushan's case (2), the same majority struck down s. 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
799
the maintenance of public order. The Court held those provisions to be in excess of the powers conferred on the Legislature by cl. (2) of Art. 19 of the Constitution. Mr. Justice Patanjali Sastri, speaking for the majority of the Court in Romesh Thappar's case (1) made the following observations with reference to the decisions of the Federal Court and the Judicial Committee of the Privy Council as to what the law of Sedition in India was:

> "It is also worthy of note that the word "sedition" which occurred in article 13(2) of the Draft Constitution prepared by the Drafting Committee was deleted before the article was finally passed as article 19(2). In this connection it may be recalled that the Federal Court had, in defining sedition in Niharendu Dutt Majumdar v. The King Emperor (2) held 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", but the Privy Council overruled that decision and emphatically reaffirmed the view expressed in Tilak's case to the effect that "the offence consisted in exciting or attempting to excite in others certain bad feelings towards the Government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small" -King Emperor v. Sadashiv Narayan Bhalerao. Deletion of the word "sedition" from the draft article 13(2), therefore, shows that criticism of Government exciting disaffection or bad feelings toward it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the State. It is also significant that the corresponding
800
> Irish formula of "undermining the public order or the authority of the State" (article 40(6)(i) of the Constitution of Fire, 1937) did not apparently find favour with the framers of the Indian Constitution. Thus, very narrow and stringent limits have been set to permissible legislative abridgement of the right of free speech and expression, and this was doubtless due to the realisation

that freedom of speech and of the press lay at the foundation of all domocratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible, freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected, with Madison who was "the leading spirit in the preparation of the First Amendment of the Federal Constitution" that "it is better to leave a few of its naxious branches to their luxuriant growth, than, by prunning, them away to injure the vigour of those yielding the proper fruits" : (quoted in Near v. Minnesotta).

Those observations were made to bring out the difference between the "security of the State" and "public order". As the latter expression did not find a place in Art. 19(2) of the Constitution, as it stood originally, the section was struck down as unconstitutional. Fazl Ali, J., dissented from the views thus expressed by the majority and reiterated his observations in Brij Bhushan's case (1) In the course of his dissenting judgment, he observed as follows:

"It appears to me that in the ultimate analysis the real question to be decided in this case is whether "disorders involving menace to the

801

peace and tranquillity of the Province" and affecting "Public safety" will be a matter which undermines the security of the State or not. I have borrowed the words quoted within inverted commas from the preamble of the Act which shows its scope and necessity and the question raised before us attacking the validity of the Act must be formulated in the manner I have suggested. If the answer to the question is in the affirmative, as I think it must be, then the impugned law which prohibits entry into the State of Madras of "any document or class of documents" for securing public safety and maintenance of public order should satisfy the requirements laid down in article 19(2) of the Constitution. From the trend of the arguments addressed to us, it would appear that if a document is seditious, its entry could be validly prohibited, because sedition is a matter which undermines the Security of the State; but if on the other hand, the document is calculated to disturb public tranquillity and affect public safety, its entry cannot be prohibited, because public disorder and disturbance of public tranquillity are not matters which undermine the security of the State. Speaking for myself, I cannot understand this argument. In Brij Bhushan v. The State. I have quoted good authority to show that sedition owes its gravity to its tendency to create disorders and authority on Criminal Law like Sir James Stephen has classed sedition as an offence against public

tranquillity."

In Brij Bhushan case (1), Fazl Ali, J., who was again the dissenting judge, gave his reasons to greater detail. He referred to the judgment of the Federal Court in Niharendu Dutt Majumdar's case (2)

802

and to the judgment of the Privy Council to the contrary in King Emperor v. Sada Shiv Narayan (1). After having pointed out the divergency of opinion between the Federal Court of India and the Judicial Committee of the Privy Council, the learned Judge made the following observations in order to explaim why the term "sedition" was not specifically mentioned in Art. 19(2) of the Constitution:

> "The framers of the Constitution must have therefore found themselves face to face with the dilemma as to whether the word "sedition" should be used in article 19(2) and if it was to be used in what sense it was to be used. On the one hand, they must have had before their mind the very widely accepted view supported by numerous authorities that sedition was essentially an offence against public tranquillity and was connected in some way or other with public disorder; and, on the other hand, there was the pronouncement of the Judicial Committee that sedition as defined in the Indian Penal Code did not necessarily imply any intention or tendency to incite disorder. In these circumstances, it is not surprising that they decided not to use the word "sedition" in clause (2) but used the more general words which cover sedition and everything else which makes sedition such a serious offence. That sedition does undermine the security of the State is a matter which cannot admit of much doubt. That it undermines the security of the state usually through the medium of public disorder is also a matter on which eminent Judges and jurists are agreed. Therefore, it is difficult to hold that public disorder or disturbance of public tranquillity are not matters which undermine the security of the State."

803

As a result of their differences in the interpretation of Art.19(2) of the Constitution, the Parliament amended cl.(2) of Art. 19, in the form in which it stands at present, by the Constitution (First Amendment) Act, 1951, by s. 3 of the Act, which substituted the original cl. (2) by the new cl. (2). This amendment was made with retrospective effect, thus indicating that it accepted the statement of the law as contained in the dissenting judgment of Fazl Ali, J., in so far as he had pointed out that the concept of "security of the state" was very much allied to the concept of "public order" and that restrictions on freedom of speech and expression could validly be imposed in the interest of public order.

Again the question of the limits of

legislative powers with reference to the provisions of Arts. 19 (1)(a) and 19(2) of the Constitution came up for decision by a Constitution Bench of this Court in Ramji Lal Modi v. The State of U.P. (1). In that case, the validity of s. 295A of the Indian Penal Code was challenged on the ground that it imposed restrictions on the fundamental right of freedom of speech and expression beyond the limits prescribed by cl.(2) of Art. 19 of the Constitution. In this connection, the Court observed as follows:

> "the question for our consideration is whether the impugned section can be properly said to be a law imposing reasonable restrictions on the exercise of the fundamental rights to freedom of speech and expression in the interests of public order. It will be noticed that language employed in the amended clause is "in the interests of" and not "for the maintenance of". As one of us pointed out in Debi Saron v. The State of Bihar, the expression "in the interests of" makes the ambit of the protection very wide. A law may not have
>
> 804
>
> been designed to directly maintain public order and yet it may have been enacted in the interests of public order."

Though the observations quoted above do not directly bear upon the present controversy, they throw a good deal of light upon the ambit of the power of the legislature to impose reasonable restrictions on the exercise of the fundamental right of freedom of speech and expression.

In this case, we are directly concerned with the question how for the offence, as defined in s. 124A of the Indian Penal Code, is consistent with the fundamental right guaranteed by Art. 19 (1) (a) of the Constitution, which is in these terms:

> "19. (1) All citizens shall have the right.
>
> (a) to freedom of speech and expression..."

This guaranteed right is subject to the right of the legislature to impose reasonable restrictions, the ambit of which is indicated by cl. (2), which, in its amended form, reads as follows:

> "(2) 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 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."

It has not been questioned before us that the fundamental right guaranteed by Art. 19(1)(a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable restrictions as would come within the purview of cl. (2), which comprises (a) security of the State, (b) friendly

relations with foreign States, (c) public order, (d) decency or morality, etc. With reference to the constitutionality
805
of s. 124A or s. 505 of the Indian Penal Code, as to how far they are consistent with the requirements of cl. (2) of Art. 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoken or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law" has to be distinguished from the person's for the time being engaged in carrying on the administration. "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 s. 124A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments,
806
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. In other words, disloyalty to Government established by law is not the same thing 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 to public disorder or the use of violence.

It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of 'sedition'. What has been contended is that a

person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But, in our opinion, such words written or spoken would be outside the scope of the section. In this connection, it is pertinent to observe that 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 a 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 speech and expression with which we are concerned in this case. But the freedom has to be guarded again

807

becoming a licence 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 ambit 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. We have, therefore, to determine how far the ss. 124A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. If it is held, in consonance with the views expressed by the Federal Court in the case of Niharendu Dutt majumdar v. The King Emperor(1) that the gist of the offence of 'sedition' is incitement to violence or the tendency or the intention to create public disorder by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when they introduced s. 124A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in cl. (2) of Art. 19 of the Constitution, if on the other hand we give a literal meaning to the words of the section, divorced from all the antecedent background in which the law of sedition has grown, as laid down in the several decisions of the Judicial Committee

of the Privy Council, it will be true to
808
say that the section is not only within but also very much beyond the limits laid down in cl. (2) aforesaid.

In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of ss. 124A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. There can be no doubt that apart from the provisions of (2) of Art. 19, ss. 124A and 505 are clearly violative of Art. 19(1)(a) of the Constitution. But then we have to see how far the saving clause, namely, cl.(2) of Art. 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended cl. (2), quoted above, the expression "in the interest of...public order" are words of great amplitude and are much more comprehensive than the expression "for the maintenance of", as observed by this Court in the case of Virendra v. The State of Punjab (1). Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Art. 19(1)(a) read with cl. (2). It is well settled that if certain provisions of law construed in one way would make
809
them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment 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. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the

section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress (vide (1)). The Bengal Immunity Company Limited v. The State of Bihar (1) and (2) R.M.D. Chamarbaugwalla v. The Union of India (2). Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.

We may also consider the legal position, as it should emerge, assuming that the main s. 124A is

810

capable of being construed in the literal sense in which the Judicial Committee of the Privy Council has construed it in the cases referred to above. On that assumption, it is not open to this Court to construe the section is such a way as to avoid the alleged unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it ? In our opinion, there are decisions of this Court which amply justify our taking that view of the legal position. This Court, in the case of R.M.D. Chamarbaugwalla v. The Union of India (1) has examined in detail the several decisions of this Court, as also of the Courts in America and Australia. After examining those decisions, this Court came to the conclusion that if the impugned provisions of a law come within the constitutional powers of the legislature by adopting one view of the words of the impugned section or Act, the Court will take that view of the matter and limit its application accordingly, in preference to the view which would make it unconstitutional on another view of the interpretation of the words in question. In that case, the Court had to choose between a definition of the expression 'Prize Competitions" as limited to those competitions which were of a gambling character and those which were not. The Court chose the former interpretation which made the rest of the provisions of the Act, Prize Competitions Act (XLII of 1955), with particular reference to ss. 4 and 5 of the Act and Rules 11 and 12 framed thereunder, valid. The Court held that the penalty attached only to those competitions which involved the element of gambling and those competitions in which success depended to a substantial degree on skill were held to be out of the purview of the Act. The ratio decidendi in that case, in our opinion, applied to the case in hand in so far as we propose to limit its operation only to such activities as come within the ambit of

811

the observations of the Federal Court, that is to say, activities involving incitement to violence

or intention or tendency to create public disorder or cause disturbance of public peace.

We do not think it necessary to discuss or to refer in detail to the authorities cited and discussed in the reported case R.M.D. Chamarbaugwalla v. The Union of India (1) at pages 940 to 952. We may add that the provisions of the impugned sections, impose restrictions on the fundamental freedom of speech and expression, but those restrictions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that fundamental right.

It is only necessary to add a few observations with respect to the constitutionality of s. 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquillity; or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under s. 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear,

812

therefore, that cl. (2) of Art. 19 clearly save the section from the vice of unconstitutionality.

It has not been contended before us on behalf of the appellant in C.A. 169 of 1957 or on behalf of the respondents in the other appeals (No. 124-126 of 1958) that the words used by them did not come within the purview of the definition of sedition as interpreted by us. No arguments were advanced before us to show that even on the interpretation given by us their cases did not come within the mischief of the one or the other section, as the case may be. It follows, therefore, that the Criminal Appeal 169 of 1957 has to be dismissed. Criminal Appeals 124-126 of 1958 will be remanded to the High Court to pass such order as it thinks fit and proper in the light of the interpretation given by us.

Appeal No. 169 of 1957 dismissed.

Appeals Nos. 124 to 126 of 1958 allowed.