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IN THE HIGH COURT OF ALLAHABAD

FULL BENCH

Criminal Appeal No. 1081 of 1955 connected with Govt. Appeal No. 498 of 1955, Crl.

Appeal No. 76 of 1955, Govt. Revn. No. 564 of 1955 and Crl. Misc. No. 2371 of 1956

Decided On: 16.05.1958

Appellants: Ram Nandan

Vs.

Respondent: State

Hon'ble Judges/Coram: M.C. Desai, Ram Narain Gurtu and Mirza Nasir Ullah Beg, JJ

M.C. Desai, J.

1. This is an appeal from a judgment of the Sessions Judge, Basti, convicting the appellant under Section 124-A I. P. C., and sentencing him to imprisonment for three years. On 29-5-1954, he delivered a speech to an audience of about 200 persons, mostly villagers. The gist of his speech was this : Mothers and sisters were obliged to sell their honour in order to support themselves. Labourers were obliged to beg. Thousands of cultivators and labourers were famishing for want of food. School fees and railway fares were increased two-times and four-times so that cultivators may not remain happy, In the Congress regime thousands of Sitas were being abducted and women were turning into prostitutes for the sake of food and clothing. Taxes were being imposed on deaths and births. Cultivators' and labourer's blood was being sucked through foreign capitalists. Labourers of U. P. had now organized themselves. Now they will not beg for pity but will take up cudgels and surround the ministry and warn it that if it did not concede their demands it would be overthrown.

If it was thought desirable that cultivators and labourers should rule the country, every young person must learn the use of swords, guns, pistols, batons and spirit bottles, because without a fight the present Government would not surrender. Governments have not been overthrown without the use of batons. Cultivators and labourers should form associations and raise an army.

If they wanted a Government like the Chinese Government, they should raise an army of volunteers and train them in the use of guns and pistols. Taimurlung, Aurangzeb, Sher Shah and other tyrants did not divide the country but Jawaharlal Nehru turned out to be such a big traitor that he divided the country into two parts.

2. The appellant admitted having made the speech but denied some of the words. He also challenged the constitutionality of Section 124-A I. P. C., pleading that its provisions have become void under Article 13 of the Constitution. The learned Sessions Judge found that the speech was made by the appellant and that Section 124-A imposes reasonable restrictions on the freedom of speech in the interests of public order and security of the State. Accordingly he convicted the appellant,

3. The connected Government Appeal. No. 498 of 1955 is by the State from an order of an Additional Sessions Judge acquitting the respondent, Ishaq Ilmi, of the offence of Section 153(A) I. P. C.; the questions that arise in it are whether the speech, made by the respondent comes within the purview of Section 153(A) and whether Section 153(A) has become void under Article 13. The connected Appeal No. 76 of 1955 is by Ishaq Ilmi from the same judgment of the Additional Sessions Judge convicting him for the offence of Section 124-A; one of his contentions is that Section 124-A has become void under Article 13.

The connected revision No. 564 of 1955 is by the State for enhancement of the sentence imposed upon Ishaq Ilmi for the offence of Section 124-A. The connected Criminal Misc. No. 2371 of 1956 is an application by Paras Nath Tripathi, who has been arrested for the offence of Section 124-A for a writ of habeas corpus and a writ of certiorari to quash the proceedings against him on the ground that Section 124-A has become void.

4. The effect of the provisions of Articles 13 and 19(1)(a) and (2) is that all the laws in force on 25-1-1950, which were inconsistent with the freedom of speech and expression are void, except those which imposed reasonable restrictions on the exercise of the freedom in the interests of the security of the State, public order etc. Section 124-A I. P. C., punishes any person who by words, spoken or written, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law.

Disaffection includes disloyalty and all feelings of enmity, vide Explanation 1, Explanation 2 lays down that comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under the Section. Similarly Explanation 3 lays down that comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred etc., do not constitute an offence.

5. The learned Advocate-General contended that Article 19(2) provides that the operation of existing laws was not affected by the provisions of Article 19(1) and that the words "in so far as such law imposes reasonable restrictions etc.," govern not the "existing law" but the law to be made in future. Article 19(2) as originally enacted, laid down that the provisions of Article 19(1)(a) shall not "affect the operation of any existing law in so far as it relates to or prevent the State from making any law relating to, ... or any matter ..... which undermines the security of, or tends to overthrow, the State."

The existing law and the future law both had to relate to certain matters in order that their operation might not be affected by Article 19(1)(a). But in the amended provision there are no words like "in so far as such law imposes reasonable restrictions etc.," along with the words "any existing law."

In Sub-articles (3), (4), (5) and (6) also the words "any existing law" are followed immediately by the words "in so far as it imposes." The language of the original Sub-article (2) was similar to that of Sub-articles (3) (4), (5) and (6); it was altered when Sub-article (2) was amended. Sub-article (2) differs not only from that of the original sub-article but also from that of the other sub-articles.

I am satisfied that this alteration in the language does not mean that the words "any existing law" are not to be governed by the words "in so far as such law imposes." According to the construction of the sentence and the punctuations the words "in so far as such law imposes" govern not only the immediately preceding words "prevent the State from making any law" but also the earlier words "any existing law,"

When Sub-article (2) was amended, its language also was improved and the sentence was so recast as to make the words "in so far as such law imposes" applicable to both the existing law and the law to be made in future. There is nothing whatsoever to indicate that the Legislature

ever intended to save all existing laws regardless of whether they impose reasonable restrictions in the interests of certain objects or not.

The object behind the amendment was to enlarge the field of reasonable restrictions and not to differentiate between existing law and future law. Further there was no reason for the Legislature's distinguishing between certain existing law infringing the right mentioned in Article 19(1)(a) and other existing law infringing the other rights mentioned in Article 19(1) and saving the existing law infringing the right of Article 19(1)(a) regardless of its object and not similarly saving other existing law infringing other rights.

There is nothing to support the learned Advocate-General's contention that the Legislature might have apprehended greater mischief from the existing law being declared void under Article 13 than from declaring future law void on the ground that it did not impose reasonable restrictions in the interests of certain objects. There is no authority whatsoever in support of the contention and I am not aware of any case in which this contention might have been advanced. The very fact that it has not been advanced so far suggests that it has no merits.

I have no doubt that existing law in order to be valid must impose reasonable restrictions referred to in Sub-article (2).

6. The learned Advocate-General vehemently contended that Section 124-A which is an existing law within the meaning of Sub-article (2), imposes reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of public order. It is not in dispute that Section 124-A by imposing a punishment or uttering or writing certain words imposes restrictions on the exercise of the right to freedom of speech and expression.

The right guaranteed by Sub-article (1) is an absolute right, as pointed out by me in Dr. Ram-Manohar Lohia v. Supdt Central Prison, Fatehgarh MANU/UP/0068/1955 : AIR1955All193 . The first question that arises is whether the restrictions are in the interests of public order and if it is answered in the affirmative, the next question that would arise is whether they are

reasonable. The phrase "public order" has not been declined in the Constitution, but it is of wide import. In Romesh Thappar v. State of Madras MANU/SC/0006/1950 : 1950CriLJ1514 , Patanjali Sastri, J. said at p. 598 (of SCR) : (at p. 327 of AIR) .

"Now 'public order' is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of the internal regulations enforced by the Government which they have established. The meaning given to the phrase in the Murray's Dictionary, and which I adopt, is "absence of insurrection, riot, turbulence, unruliness or crimes of violence."

7. Any reasonable restriction can be imposed on the right to freedom of speech and expression in the interests of public order i.e., for the purpose of maintaining public order, or in order that public order may be maintained, or in order to prevent disorder or an apprehension of disorder.

In the case of Ram Manohar Lohia (A), I said that the words "in the interests of public order" mean "for maintenance of public order." Das C. J. drew a distinction between "in the interests of" and "for maintenance of in Ramjilal Modi v. State of U. P. MANU/SC/0101/1957 : 1957CriLJ1006 and observed that the words "in the Interests of" make the ambit of the protection very wide and that a law though not designed to maintain public order directly might have been enacted in the interests of public order; (see page 775) (of All LJ) : (at page 622 of AIR). Proceeding further he observed that the expression "in the interests of public order" is much wider than "for maintenance of public order" and that a law penalising activities having a tendency to cause public disorder imposes a restriction in the interests of public order although in some cases the activities may not actually lead to a breach of public order. The interests of public order He only in its being maintained.

Any restriction that helps to maintain public order or prevents an apprehension of public disorder is in the interests of public order. A restriction that has nothing to do with the maintenance of public order, i. e one that does not help the maintenance of public order or does not avert E, threat to public order cannot be said to be in the interests of public order.

The words "in the interests of are wider than "for maintenance of only in this sense that they include anything that even indirectly helps the maintenance of public order. If by "for maintenance of one understands anything that helps directly or indirectly or remotely the maintenance of public order, as I did in the case of Ram Manohar Lohia (A), there is hardly any distinction between "in the interests of public order" and "for maintenance of public order."

If a speech has a tendency to cause public disorder, a restriction on it by removing the threat of public disorder can be said to be a restriction for maintenance of public order. It is not correct to say that the exercise of the right to freedom of speech which can be restricted under Sub-article (2) is only that which must lead to public disorder if not restricted. Nobody can be so sure before the right is exercised. At the moment when one is considering whether the exercise of the right should be restricted, one can only go by the tendency or probability.

If it is likely to result in public disorder, it can be restricted; but this would 'be the result even if the words were "for maintenance of", and not "in the interest of", public order. It was contended on behalf of the appellant that a restriction imposed, not with the object of maintaining public order but, with some other object cannot be said to be in the interests of public order merely because incidentally it helps in maintenance of public order; I do not think that such a widely expressed proposition can be accepted.

If a restriction helps to maintain public order, it is in the interests of public order even though the Legislature had another object in view. There is no justification for prefixing the word "exclusively" or "solely" to the words "in the interests of.

A restriction otherwise in the interests of public order does not cease to be so merely because it serves other interests also. A good act does not become bad because of some other good effect produced by it. The argument about the maintenance of public order being the sole object probably draws its inspiration from the following words of Patanjali Sastry J., in the case of Romesh Thappar (B), at page 602 (of SCR): (at p. 129 of AIR):

"Unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under Clause (2) of Article 19 although the restrictions which it seeks to impose may have been conceived generally in the interests of public order."

When the learned Judge used the word "solely", he did not at all mean to lay down that the restriction should not serve any purpose in addition to that of preventing the undermining of the security of the State or its overthrow.

What he meant to lay down is that it must have been enacted with the object of preventing the undermining of the security of the State and not merry with the object of maintaining public order. (In order to avoid confusion I should make it clear that according to the law in force at the time of decision of Romesh Thapar's case (B), a restriction imposed for maintenance of public order was not recognized as valid at all.) Another argument advanced by Sri Gopal Bihari that there must be a proximate connection between the restriction and the maintenance of public order also is devoid of force.

It is not necessary that maintenance of public order is the direct consequence or result of the restriction; it is enough if the restriction indirectly helps to maintain public order. So long as the interests of public order are served, it is immaterial whether they are served directly or indirectly and any reasonable restriction would be valid.

A restriction on the right to freedom of speech in the interests of public order does not mean a restriction on the right to only a speech advocating public disorder or disturbance of public peace; a restriction on the right to any other speech, which does not advocate public disorder or disturbance of public peace but may impel or induce a hearer to commit public disorder, would also be a restriction in the interests of public order.

If a speech contains a tendency to incite a hearer to disturb public order, a reasonable restriction imposed upon the right to make it is certainly in the interests of public order; this was made clear in the case of Ramjilal Modi (C).

8. Under Section 124-A the mere exciting, of attempting to excite, a feeling of hatred, contempt or disaffection towards the Government is made punishable. In the case of an attempt to excite such a feeling, there cannot arise the question of the consequence of such feeling being excited, but even when such a feeling is actually excited, the offence is complete even though the person in whom the feeling is excited does no act under its influence.

No act to be done by the hearer, in whom the feeling is excited, is an ingredient of the offence. The offence is completed as soon as the feeling is excited; the hearer has not to disturb public order or do any other act before the offence can be said to be completed. This is the plain interpretation of the language used in the Section and is supported by the highest authorities. In Queen Empress v. Bal Gangadhar Tilak ILR 22 Bom 112; Strachey J. observed at p. 135:

"The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance, or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124-A." Under the Defence of India Act, doing a prejudicial act was made punishable and an act intended or likely "to bring into hatred or contempt, or to excite disaffection towards His Majesty or the Government established by law in British India" was defined to be a prejudicial act. The language of Section 124-A was exactly reproduced in the definition of the "prejudicial act."

It came in for interpretation before the Federal Court in Niharendu v. Emperor AIR 1942 FC 22. It was pointed out by Gwyer, C. J., that it was adopted from English law. He referred to the statements of Fitzgerald, T. in R. v. Sullivan (1868) 11 CCC 44 to the effect that

"the very tendency of sedition is to incite the people to insurrection and rebellion "and that" the law considers as sedition all those practices which have for their object to excite discontent or disaffection, to create public disturbance, or to lead to civil war, to bring into hatred or contempt the sovereign or Government, the laws or the constitution of the realm and generally all endeavours to promote public disorder"

and said with reference to the offence of sedition as follows :

"This is nor made an offence in order to minister to the wounded vanity of Governments, but because where Government and the law ceased 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 that is their intention or tendency." (p.26)

This interpretation was overruled by the Judicial Committee of the Privy Council in Emperor v. Sadashiv Narayan MANU/PR/0031/1947Lord Thankerton explained the provisions of Section 124-A in the following words at p. 84 :

"The word 'sedition' does not occur -- either in Section 124-A or in the Rule; it is only found as a marginal note to Section 124-A and is not an operative part of the Section, but merely provides the name by which the crime defined in the Section will be known. There can be no justification for restricting the contents of the Section by the marginal note ....

"Their Lordships are unable to find anything in the language of either Section 124-A or the Rule which could suggest 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.' Explanation 1 to Section 124-A provides, "The expression 'disaffection' includes disloyalty and all feelings of enmity." This is quite inconsistent with any suggestion that 'excites or attempts to excite disaffection' involves not only excitation of feelings of disaffection, but also exciting disorder."

His Lordship approved of the above-quoted observation of Strachey, J. in Tilak's case (D). The interpretation was referred to by the Supreme Court in the case of Romesh Thappar (B) and was accepted as correct.

It was criticised by Das, J. in Debi Soren v. The State MANU/BH/0091/1954 as 'unduly literal and verbal" and as not giving full effect to the Section and to the three explanations appended to Section 124-A in the context of freedom of speech and expression now guaranteed under the Constitution, I respectfully dissent from Das, J.

The Constitution was not in force in 1947 and there was no question of the Judicial Committee's interpreting the Section in the context of the freedom of speech guaranteed under Article 19. Their Lordships did consider the effect of the addition of explanations 2 and 3 and expressly said that it did not affect or alter the interpretation placed by Strachey J., in Tilak's case (D). The freedom of speech and expression guaranteed under the Constitution does not justify importing words in Section 124-A and the construction that an incitement to public disorder is a necessary ingredient of the offence made punishable by it. Section 124-A was added in the Penal Code in 1870 and was amended in 1898. The reason given by Stephen for the addition was ;

"The law relating to riots and unlawful assemblies is very full and elaborate, but it is remarkable that the Penal Code contained no provision at all as to seditious offences not involving an absolute breach of the peace. It says nothing of seditious words, seditious libels, seditious conspiracies or secret societies. The additions made in 1870 provide to a certain extent for the punishment of such offences." Comparative Criminal Jurisprudence. Vol. I, p. 52, by Phillips."

9. Explanations 2 and 3 are not easy to understand. If a speech does not excite or attempt to excite a feeling of hatred, contempt or disaffection, it is not made punishable under Section 124-A at all. Therefore, even without the explanations, comments expressing disapprobation of the measures of the Government or of the administrative or other action of the Government, without exciting or attempting to excite hatred etc., would not be punishable.

The language of the explanations has been borrowed from the English law, but torn from its context. The Privy Council had some difficulty in finding the meaning of the explanations, vide the case of Annie Besant v. Advocate General, Madras AIR 1919 PC 31 : ILR Mad 146. They, if at all, make it clear that the mere exciting of a feeling of hatred etc. is enough and that no particular intention behind the act is required.

10. In the English law there is no offence of sedition but there are offences of seditious libel, seditious words and seditious conspiracy. Seditious libel consists of speaking words with a seditious intention.

"A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of, His Majesty, his heirs or successors, or the Government and Constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite His Majesty's subjects to attempt otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects"; see Stephen's Digest of the Criminal Law, Ninth Edition, page 92. Inciting any person to commit any crime in disturbance of the peace being separately included in the definition of "seditious intention"., it follows that an intention to excite a feeling of hatred, contempt or disaffection towards the Government does not necessarily involve an intention to incite any person to disturb the public peace.

It is stated by Stephen in his History of the Criminal Law of England, Page 298, that the offences of seditious words, seditious libels and seditious conspiracy are not necessarily accompanied by, or lead to, open violence and that they consist in the display of dissatisfaction with the existing Government. Russell writes in his Treatise on Crime, Tenth Edition, Volume I, that although one has a right to discuss any grievances he has to complain of, he must not do so in a way to excite tumult and that if his utterance goes beyond containing no more than a calm and quiet discussion, allowing something for a little feeling in his mind, it is p seditious libel.

On page 145 he refers to certain decisions according to which it is seditious to publish any matter tending to possess the people with an ill opinion of the Government, and criticises the decision in R. v. Tucbin (1704) 14 STC 1095 SC as inconsistent with liberty of public political opinion, if taken literally. Dicey says in his Law of the Constitution, Ninth Edition, at page 244:--

"Any one will see at once that the legal definition of a seditious libel might easily be so used as to check a great deal of what is ordinarily considered allowable discussion, and would if rigidly enforced be inconsistent with prevailing forms of political agitation."

The framers of the Penal Code have adopted the language of Stephen in Section 124-A with the result that it is as wide as in England. But a prosecution for seditious libel, through exciting or attempting to excite a feeling of hatred, contempt or disaffection, is somewhat of a rarity in England and no prosecution is undertaken unless the seditious libel is uttered with an intention to incite to violence.

Incitement to violence, though not an ingredient of the offence of seditious libel consisting of exciting, or attempting to excite, a feeling of hatred, contempt or disaffection towards the Government, is a requirement for the successful prosecution. A prosecution for seditious libel "is a weapon that is not often taken down from the armoury in which it: hangs, but it is a necessary accompaniment to every civilised Government"; see King v. Aldred (1909) 22 CCC 1. It is said by Order in his Libel and Slander, Fifth Edition, page 518, that prosecution is undertaken if there is a criminal intention to subvert the laws and constitution and to excite rebellion or disorder and that such an intention may be presumed from the natural and probable consequences; he writes at page 522 that tendency of a speech to disturb the tranquillity of the state supplies proof of the requisite criminal intention.

"Briefly, the position is that in the United Kingdom, sedition is committed by bringing into hatred and contempt, or exciting disaffection against the Government only if there is an intention to excite violence"; see the article "Freedom of the Press in the Commonwealth" by Holland in 10 Current Legal Problems, 1956. In Canada also the intention to incite people to violence against the constituted authority or to create a public disturbance or disorder is an

essential ingredient of the offence of seditious libel; vide Boucher v. The King 1951 SCR 265 at pages 283-296. Section 133 of the Criminal Code of Canada defines "a seditious libel" to be a libel expressive of the seditious intention and a person is presumed to have a seditious intention if he publishes or circulates any writing in which it is advocated the use, without the authority of law, of force as a means of accomplishing any governmental change within Canada.

Section 133-A lays down that nobody shall be deemed to have a seditious intention only because he intends in good faith to point out, in order to their removal, matters which are producing or have a tendency to produce, feelings of hatred and ill-will between different classes of His Majesty's subjects, or to show that His Majesty has been misled in his measures, or to point out errors and defects in the Government or Constitution of Canada, or to excite His Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the State.

It is obvious from these provisions that an intention to advocate the use, without the authority of law, of force is not implied in an intention to produce feelings of hatred and ill-will between different classes of His Majesty's subjects, or in an intention to excite a feeling of disaffection towards the Government.

11. There are authorities laying down that the English Law regarding sedition is not in force in colonies. The colonies are governed by the Statutory laws in force in their territories and an intention to incite to violence is not an ingredient of the offence of sedition, unless it is made so by statute.

In Wallace-Johnson v. The King 1940 ACJ 231 the Judicial Committee had to construe Section 326 of the Criminal Code of the Gold Coast providing that seditious words are words expressive of seditious intention, viz. an intention "to bring into hatred or contempt or to excite disaffection against..... ....the Government of the Gold Coast as by law established". Their Lordships held that incitement to violence was not a necessary ingredient of the offence of sedition. Viscount Caldccote L. C. referred to Russell on Crime, Ninth Edition, Volume I, pp. 89-96, and observed at p. 239 :

"The present case, however, arose in the Gold Coast Colony, and the law applicable is contained in the Criminal Code of the Colony,"

At page 241 his Lordship emphasised that

"it is in the Criminal Code of the Gold Coast Colony, and not in English or Scottish cases, that the law of sedition for the Colony is to be found It must therefore be construed in its application to the facts of this case free from any glosses or interpolations derived from any expositions, however authoritative, of the law of England or of Scotland.

"..... It is quite another thing to add words which are not in the Code and are not necessary to give a plain meaning to the Section. Nowhere in the Section is there anything to support the view that incitement to violence is a necessary ingredient of the crime of sedition. Violence may well be, and no doubt often is, the result, of wild and ill-considered words, but the Code does not require proof from the words themselves of any intention to produce such a result, and their Lordships are unable to import words into Section 330 which would be necessary to support the appellant's argument." Holland in his article 'Equality before the law," in 9 Current Legal Problems, 1955, says at p. 85 that no intention to excite violence is required in colonies, as it is required in England (though no mention of it appears in the definition of "sedition" in Stephen's Digest), unless the Criminal Code of the Colony expressly so stipulates, that no Colonial Criminal Code does in fact expressly do so, and that this makes a vital difference to freedom to criticise the Government. The learned author writes at p. 87 :

"One may comment that the privilege of pointing out errors and defects must often be illusory if the intention to excite violence need not be proved, since the dispassionate pointing out of errors may well excite hatred and contempt against those responsible for them. And the more grievous the error or defect, the more likely it is that hatred and contempt will be excited."

This observation supports the view that every exciting of a feeling of hatred, contempt or disaffection towards the Government does not carry a threat to public violence or disorder.

12. In Brij Bhushan v. State of Delhi MANU/SC/0007/1950 : 1950CriLJ1525 Fazl Ali, J. observed at p. 616 (of SCR) : (at p. 132 of AIR) that sedition undermines the security of the State usually through the medium of public disorder, with which it is always connected, and that it is essentially an offence against the public tranquillity inasmuch as though not accompanied by violence it tends to cause it.

This view of the offence of sedition was not accepted by the majority. Moreover, Fazl Ali, J. did not criticise, or differ from the interpretation placed by the Judicial Committee in the case of Sadashiva (G).

13. I conclude that the offence made punishable under Section 124-A does not require an intention to incite to violence or public disorder. Not only this but it also does not require any outbreak of violence or an apprehension of it as a consequence of the speech. The contention advanced on behalf of the State that every speech made punishable under Section 124-A involves a threat to public order must be rejected as unwarranted.

There would have been no necessity for insisting upon an intention to incite to violence, as in English law, if such a speech had an inherent tendency to incite to violence, because everybody is presumed to intend the natural and probable consequences of his act.

14. No publicity is required and even an intimate conversation, or a conversation with a person who is not at all likely to disturb public order, is punishable. A speech to the wife, or to a minor, or to paralytic person, or to a life convict, or to an alien, or to a Government servant, is punishable even though there can be no apprehension of any public disorder from the wife, the minor, the paralytic person, the life convict, the alien of the Government servant.

A person hearing a speech may begin to hate the Government, or feel disloyal towards it, or may hold it in contempt, but is not bound to disturb the public order and may refrain from doing any overt act. Whether a speech will cause disorder or not depends not only upon its nature but also upon the nature of the hearer, his opportunities and the state of the country at the time. In

AIR 1919 PC 31 Lord Phillimore pointed out at p. 38 that in considering the natural result o£ the words used regard must be had, among other things, "to the character and description of that part of the public who are to be expected to read the articles."

In the case of King v. Aldred (K) Coleridge, J. stated that one is entitled to look at all the circumstances surrounding the publication with a view to seeing that the language used is calculated to produce the results imputed, that is to say one is entitled to look at the audience addressed, and to take into account the state of public feeling. In R. v. Sullivan (F) it was said that the Court should take into consideration the state of the country and of the public mind at the date of the publication. The statutory offence of sedition, however, does not take any of these facts into consideration.

15. Harbouring a feeling of hatred, contempt or disaffection towards the Government does neither necessarily nor inevitably have an effect upon public order; a hearer may have this feeling in his mind but the public would not be affected if he does not do some act which disturbs the public or the peace or tranquillity in the public.

Public order may be maintained even if one harbours such a feeling; when public order is disturbed, it is disturbed not by the mere existence of such a feeling but by an act done under its pressure. In Burns v. Ransley 1949 CLR 101 Dixon J. dealing with Section 24B of the Crimes Act 1914-1946 of Australia, which defines "seditious intention" to mean intention to excite disaffection against the Government or Constitution of the United Kingdom or of Australia or against the Sovereign, stated at page 115:

"Disaffection is a traditional expression but it is not very precise. It means an estrangement upon the part of the subject in his allegiance which has not necessarily gone as far as an overt act of a reasonable nature or an overt breach of duty".

What is true of disaffection is also true of hatred and contempt. In Ahmad Ali v. State, MANU/UP/0356/1950 : AIR1951All459 V. Bhargava J., observed.

Spread of disaffection against a party Government cannot be said to be aground for inferring that the public order would not be maintained. It is the right of every citizen in a democratic Government to spread disaffection against a particular party Government. This right is, of course, subject to the condition that the disaffection should not be so spread as to result in violence and there should be really no incitement to use violence or to resort to other illegitimate course".

It is true that exciting disaffection towards the Council of Advisors of the Union or a State does not necessarily involve a threat to public order, but with great respect I find it difficult to accept the statement that it is the "right" of every individual to spread disaffection towards the Government run by a political party. The statement is directly against the law laid down by Ellenborongh C. J. in R. v. Cobbett (1804) 29 STC 1 quoted by Russcl on Crime, Tenth Edition, at p. 145, where he observed:

"It is no now doctrine that if a publication be calculated to 'alienate the affections of the people, by bringing the government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law. It is a crime; it has ever been considered as a crime, whether wrap in one form or another."

The right to exhibit "the folly or imbecility of the members of the government" should not be treated as a right to excite disaffection towards a Government. A person may not be liable for spreading disaffection against a particular party Government, but it is quite a different thing to say that he has got a right to do so, because non-liability for doing an act does not necessarily amount to a right to do it.

One cannot think of a right unless it is conferred expressly by some provision of law. The right to spread disaffection against the Government or any other person is included in the right to freedom of speech and expression guaranteed by the Constitution; if Article 19(1)(a) did not exist, one could not say that an Indian has a right to spread disaffection against the Government.

The whole inquiry before us is whether a restriction on the right to spread disaffection against the Government is valid or not. If it is invalid, then only a person has a right to excite disaffection against the Government and the provisions of Section 124-A punishing him for it would be unconstitutional. If the restriction is valid, it means that he has no right. In the judgment of our learned brother there is no discussion of the provisions of Section 124-A and Article 19 of the Constitution, nor has any authority been cited in support of the observations made.

The observations were simply referred to in Mohd. Ishaq v. U. P. State MANU/UP/0217/1957 : AIR1957All782 and Sarju Pande v. State, MANU/UP/0196/1956 : AIR1956All589 ; they were not approved of. I do not think they are of any assistance to the appellant in the present case.

16. There are some speeches which will not cause public disorder; there are some speeches which will, there are some which are likely to, but might not, there are some which are not likely to hut might and there are some which may or may not. A restriction on a speech that will result in public disorder is undoubtedly in the interests of public order; on the other hand a restriction on a speech that will not is undoubtedly not one in the interests of public order.

A restriction on a speech that is likely to result in public disorder, or on a speech that may or not result in public disorder, must be held to be in the interests of public order. There should not only be no public disorder but also there should be no threat to public order.

If a speech contains a threat to public order, it is the duty of the State to impose a restriction upon at in order to avert the threat. It cannot be expected to accept the risk of its resulting in public disorder & to remain inactive in the hope that it will not result in public disorder. Therefore, any reasonable restriction on such a speech will be in the interests of public order. One may not be quite confident about a speech that is not likely to disturb public order, though it might, but it seems that a reasonable restriction on even such a speech cannot easily be ruled out as not in the interests of public order.

17. In Cantwell v. State of Connecticut (1940) 310 US 296: 84 LEd 1213 Roberts J. said at p. 308:

"The offence known as breach of the peace embraces a great variety of conduct destroying or menacing public order & tranquillity. It includes not only violent acts but acts and words likely to produce violence in others ..... -When clear and present clanger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to Public safety, peace, or order, appears, the power of the state to prevent or punish is obvious". Similar language was used by Jackson L. in Terminiello v. City of Chicago(1949) 337 US 1: 93 Law Ed 1131 at p. 25(U). He said "rioting is a substantive evil, which I take it no one will deny that the State and the City have the right and the duty to prevent and punish" and then referred to the rule of clear and present danger.

The question of present danger does not arise in India where one does not consider the particular speech sought to be penalized but the Act under which it is penalised. The danger of public disorder must, however, be real and not fanciful and reasonable restriction imposed upon a speech giving rise to a real danger of public disorder is constitutional. A speech that is made punishable under Section 124-A includes all sorts of speeches mentioned above. Even a speech that does not give rise to any apprehension of public disorder is made punishable.

As pointed out above danger to public order is not an ingredient of the offence. Consequently the restriction imposed upon the right to freedom of speech by the Section cannot be said to be in the interests of public order. A restriction imposed on certain speeches would be in the interests of public order but not that imposed on other speeches, such as those which do not contain a threat to public order. There is nothing whatsoever in the Section to distinguish between the two classes of speeches.

18. The provisions of Section 124-A are severable but only to a limited extent. The provision imposing a penalty on exciting a feeling of hatred is severable (from the provision imposing a penalty on exciting a feeling of contempt, or from the provision imposing a penalty on exciting

a feeling of disaffection. The provision imposing a penalty on attempting to excite a feeling of hatred is severable from that imposing a penalty on exciting a feeling of hatred. Any of these provisions can stand or fall without affecting the validity of the others.

19. The provision imposing a penalty on exciting a feeling of hatred may be constitutional though that on exciting a feeling of disaffection, or that on attempting to excite a feeling of hatred, not be. The provision of attempting to excite a feeling of disaffection towards the Government may be held to be unconstitutional though the other provisions are held to be constitutional. Only to this extent the provisions are severable.

The severability does not go any further and the provision inflicting punishment upon a speech containing a danger to public order cannot be severed from the provision inflicting punishment upon a speech containing no threat to public order. As a matter of fact there are not two provisions but one indivisible provision indicting punishment upon all speeches exciting hatred regardless of whether they contain any incitement to, or threat of, public disorder.

The language used in the Section does not permit any separation of speeches exciting hatred and containing a threat to public order from other speeches exciting hatred but not containing such a threat. Consequently, imposing restrictions upon a speech exciting a feeling of hatred may or may not be said to be in the interests of public order; if it may or may not be in the interests of public order, it is not covered by the saving clause of Sub-article (2) Article 19 which requires that it "must" be.

20. When the case of Romesh Thapper (B) was decided restrictions could be imposed on a matter undermining the security of, or tending to overthrow, the State, but restrictions were imposed for the purpose of securing the public safety and the maintenance of public order.

It was held that the restrictions were imposed for a wider purpose and were, outside the scope of permitted restrictions under Sub-article (2) and therefore, void. If the language employed in restricting statute is wide enough to cover restrictions both within and without the limits of

constitutionally permissible legislative action affecting the right and consequently there is the possibility of the statute being applied for purposes not sanctioned by the Constitution, it must be held to be wholly void; see the observation of Mahajan J., in Chintaman Rao v. State of Madhya Pradesh MANU/SC/0008/1950 : [1950]1SCR759 . In the case of Terminiello (U) Douglas J. had to deal with an Act which contained parts that were unconstitutional and the conviction of Terminiello for its infringement was set aside. In Cantwell's case (T) Roberts J., observed at page 311 : --

"In the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication considered in the light of the constitutional guaranties, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offence in question."

If the right to freedom of speech is abused by using a speech to incite to violence and crime, the people through their Legislatures may protect themselves against the abuse; "but the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed". See C. J. Hughes in De Jones v. Oregon (1936) 299 US 353. I need not say anything more besides referring to what I said in MANU/UP/0068/1955 : AIR1955All193 .

21. The speech made by the appellant certainly contains an incitement to violence and public disorder; in any case, it contains a threat to public disorder. But the question is not whether the restriction on particular speech made by the appellant is in the interests of public order or not but whether the restriction imposed on any speech exciting a feeling of hatred etc. is in the interests of public order.

In the language of Douglas J. "the pinch of the statute is in its application" (Terminiello v. Chicago (U)). The law in America is different; the conduct of the accused, and not the statute, is measured against the constitution. The American Constitution contains no provision like our Article 13 making a law. infringing a constitutional guarantee automatically void.

22. As pointed out earlier Section 124-A contains several provisions that are severable from one another. What I have said above applies to each of them. Neither exciting a feeling of hatred, nor exciting a feeling of contempt, nor exciting a feeling of disaffection towards the Government, necessarily involves a threat to public order and, therefore, neither a restriction on a speech exciting a feeling of hatred, nor one on a speech exciting a feeling of contempt, nor one on a speech exciting a feeling of disaffection towards the Government, can be said to be in the interests of public order.

23. The learned Advocate-General disclaimed all intention of relying upon the restrictions imposed by Section 124-A being in the interests of the security of the State, but since the learned Deputy Government Advocate had in his earlier argument relied upon them, I may deal with the matter.

Article 12 provides that unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. The word "Government" is not defined anywhere; what is stated in Section 3(23) of the General Clauses Act is simply this that "Government" includes both the Central Government and the State Government. Articles 52 to 77 deal with the President and Vice-President, the Council of Ministers and the Attorney-General for India. Article 77 is the first article under the heading "Conduct of Government Business" and lays down that all executive action of the Government of India shall be expressed to be taken in the name of the President.

Similarly Articles 153 to 165 deal with the Governor, the Council of Ministers and the Advocate-General for a State; Article 166 is the first article under the heading "Conduct of Government Business" and provides that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. It is obvious that the word "Government" in Articles 77 and 165 means the executive machinery set up with the aid of Articles 53 to 76

and 153 to 165. The word "Government" is also used in other articles, such as 53(3) 58(2) 66(4) 73(1) 76(2) 102(1) 110(1) 112(1) etc.

In all these articles "Government" means the executive machinery of the Union and of the States. It means the President acting with the advice of the Council of Ministers and the Governors acting with the advice of their Councils of Ministers It is the system of Government or the institution consisting of the President and the Governors acting with the advice of their Councils of Ministers and not the actual persons holding the offices of the President and Governors and the Ministers advising them.

Security of the State must, therefore, mean the security of the system of Government in the Union and the States and not of the persons holding the offices of the President, the Governors and the Ministers. The system of President continues though the person holding the office may change again and again.

Similarly the system of Governor continues even though different persons hold the office one after another. The system of Council of Ministers continues even though different persons become Ministers at different times. In the case of Bal Gangadhar Tilak (D), "Government" was defined by Strachey J. as "British rule and its representatives as such -- the existing political system as distinguished from any set of administrations." In Mrs. Annie Besant v. Govt. of Madras ILR 39 Mad 1085: AIR 1918 Mad 1210 Abdur Rahim C. T. observed at page 1119 (of ILR Mad) : (at p. 1235 of AIR) : --

"Government denotes an established authority entitled and able to administer the public affairs of the country. On the other hand Govt. is not identical with any particular individuals who may be administering the Government."

He relied upon the following observations of Batty J. in Emperor v. Bhaskar, ILR 30 Bom 421 at p. 438 (Y); --

"What is contemplated under the Section is the collective body of men of the Government, defined under the Penal Code ..... It means the persons or persons collectively, in succession, who are authorised to administer the Government for the time being. One particular set of persons may be open to objection, and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government because they are only individuals, and not representatives of that, abstract conception which is called Government.... .....The individual is transitory and may be separately criticised, but that which is essentially and inseparably connected with the idea of Government established by law cannot be attacked without coming within this Section."

Seshagiri Ayyar, J. at page ILR Mad 1156 : AIR ALL 1252 stated that it is the system of Government that is contemplated and not the persons who for the time being carry on the details of the administration. In the matter of an appln. of Sunder Lal ILR All 233 : MANU/UP/0058/1919 A Full Bench of this Court understood the phrase "Government established by law in British India" to mean "the established authority which governs the country and administers its public affairs and includes the representatives to whom the task of Government is entrusted,"

This meaning was given to the phrase in connection with an article exciting disaffection towards the rulers as a corporation and not against any particular individuals. In 1949 CLR 101 at page 115 Dixon J. explained the word "Government" occurring in Section 24-B of the Crimes Act 1914-1946 of Australia as follows : --

"I take the word "Government" to signify the established system of political rules, the governing powers of' the country consisting of the executive and the legislature considered as an organized entity and independently of the persons of whom it consists from time to time. Any interpretation which would make the word cover the persons who happen to fill political or public offices for the time being, whether considered collectively or individually, would give the provision an application inconsistent with parliamentary and democratic institutions and with the principles of the common law, as understood in times, governing the freedom of criticism and of expression."

24. A change in the person holding the office of the President or a Governor or a Minister does not mean a change in the Government established by the law. Exciting a feeling of hatred, contempt, or disaffection towards a person holding the office of the President or a Governor or a Minister is, therefore, not exciting such a feeling towards the Government and is not punishable under Section 124-A.

In Sabir Raza v. The State, Cri App No. 1434 of 1955, D/- 11-2-1958 (All) (Zl) a speech by a person severely castigating the Chief Minister of Uttar Pradesh was held by Raghubar Dayal, J. not to amount to causing disaffection towards the Government. Our learned brother observed that disaffection towards the Government may be advocated. Exciting such a feeling towards the polity or organized form of Government established by the Constitution is punishable under the Section, but as in the case of public order, it is a far cry to say that security of the State requires a restriction on exciting such a feeling.

The security of the State would be threatened only if there is a threat to the system of Government established by the Constitution; it is threatened neither by a threat to change the persons holding the offices of the President, the Governor and the Minister, nor by a mere exciting of a feeling of hatred, contempt or disaffection towards the system of Government. The Constitution itself contemplates and provides for a charge in the persons holding those offices; it has granted no perpetuity to the individuals composing the Government.

The system of Government established by the Constitution cannot be changed so long as the Constitution remains unaltered, but the Constitution can be altered and provides for its alteration. Once the Constitution is altered, the system of Government also can be changed. A threat of changing the Government after previously altering the Constitution in such a manner as to permit the new system of Government cannot amount to a threat to the security of the State.

The security of the State cannot be threatened by anything done in exercise of the powers conferred by the Constitution itself. A speech advocating a change in the system of Government

cannot be said to involve a threat to the security of the State so long as the change advocated is not unconstitutional. A mere act of exciting a feeling of hatred etc., towards the Government does not necessarily involve a threat to change the Government, and in any case cannot be said to involve a threat to change the Government unconstitutionally by use of force. A restriction on a speech exciting such a feeling would be justified in the interest of the security of the State only if the speech advocates a change of the Government by violence or contains a threat of such a change,

25. Security of the State is threatened by an invasion or by a rebellion or insurrection but not by mere public disorder. So long as the object behind the public disorder is not to flout the Constitution by changing the Government in a manner not contemplated by it, the security of the State cannot be said to be threatened.

Article 352 suggests that the security of the State may be threatened not only by an external aggression but also by an internal disturbance, but what is meant by "internal disturbance' is a rebellion or insurrection and not an ordinary breach of the public peace. The distinction between ordinary public disorder and a rebellion or insurrection calculated to endanger the security of the State was pointed out by Patanjali Sastry, J., in the case of MANU/SC/0006/1950 : 1950CriLJ1514 . Speeches of expressions inciting to or encouraging the commission of violent crimes, such as murder, are matters which would undermine the security or the State : see State of Bihar v. Shaila Bala Devi MANU/SC/0015/1952.

26. Kamal Krishna Sircar v. Emperor MANU/WB/0058/1935 : AIR1935Cal636 Arjun Arora v. Emperor MANU/UP/0001/1937 : AIR1937All295 and Mainiben Liladhar v. Emperor MANU/MH/0112/1932 : AIR 1933 Bom 65 to which we were referred, are of no assistance in answering the question whether a restriction on a speech exciting disaffection towards the Government is in the interests of security of the State; all that was decided in those cases is that advocating a change in the form of Government does not amount to exciting a feeling of hatred, contempt or disaffection towards the existing Government.

27. I consider that exciting hatred, contempt or disaffection towards the Government may in some cases affect the security of the State as for example when a violent overthrow of the existing system of Government is advocated in the teeth of the Constitution, but not in every case and a restriction on every speech exciting such a feeling towards the Government cannot be said to be in the interests of security of the State.

Even if it be said that it is in the interests of public order or the security of the State to impose a restriction on a speech exciting a feeling of hatred etc., towards the Government, it is certainly not reasonable to impose a restriction on every such speech just because some of it may involve a threat to public order or to the security of the State.

In order to be reasonable, the restriction should have been only on a speech likely to, or having, a tendency to, disturb the public order or undermine the security of the State. I may make it clear here that the tendency to disturb the public order or undermine the security of the State may exist in a speech notwithstanding a final exhortation not to disturb the public order or to do any act against the security of the State.

If a speech contains the germs of incitement to violence, they may not be completely destroyed by a final exhortation to eschew violence. If a speech has a tendency to incite to violence and also contains an exhortation not to resort to violence, it is nothing but a speech containing two contradictory tendencies, either of which may materialise and a restriction on such a speech does not become unconstitutional merely because of the exhortation.

28. The result is that the provisions of section 124-A became void on the enforcement of the Constitution. I am supported in this view by Sabir Raza v. The State (Zl) and Tara Singh Gopi Chand v. The State MANU/PH/0005/1950. There is nothing contradictory to it in Ramji Lal v. State (CJ, A speech insulting the religion or the religious beliefs of any class of citizens of India with the deliberate and malicious intention of outraging; the religious feelings differs from a speech exciting or attempting to excite a feeling of hatred etc., towards the Government in its

effect and consequence; the former may always lead to disturbance of the public order or contain an apprehension of public disorder, but the same cannot be said of the latter.

The restriction imposed by Section 295-A of the Penal Code may be in the interests of public order or the security of the State but not that imposed by Section 124-A. In Debi Soran's case (H) it was held that Section 124-A is constitutional, but with great respect to the learned Judges, I am unable to agree that public order can be affected even when there is no incitement to, or apprehension of, violence, that it is always affected whenever a feeling or hatred, or contempt, or disaffection towards the Government is excited and that the provisions of the Section should be interpreted not as in the case of Sadashiva (G) but in a narrower or restricted sense.

29. Finally I may point out that the Indian Press Commission has recommended a repeal of Section 124-A on the ground that it is unconstitutional; see the article "Freedom of the Press in the Commonwealth" by Holland in 10 Current Legal Problems, 1956, p. 204.

30. The appellant's conviction must be set aside and he should be acquitted.

Ram Narain Gurtu, J.

31. I have read the judgment of my brother Desai and generally agree with it but would like to add my own.

32. The question which has been raised in these appeals is whether Section 124-A of the Indian penal Code is ultra vires the Constitution of India. Article 19(1)(a) of the said Constitution runs as follows:

"All citizens ' shall have the right .....

(a) to freedom of speech and expression". Article 19(2) of the Constitution runs as under:

"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".

Section 124-A of the Indian Penal Code is 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 or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with transportation for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

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

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

33. As will appear from the provisions of the Constitution of India quoted above, it guarantees "freedom of speech" subject to the rights of the State to reasonably restrict such freedom in the interest of the security of the State or of public order.

34. It is also apparent from Section 124-A Indian P. C. that that Section restricts freedom of speech,

35. The question, therefore which has to be decided in order to determine the constitutionality of Section 124-A of the said Code is whether, by that Section, the State can be said to have imposed a reasonable restriction in the interest of public security or public order?

36. The first thing necessary to determine is as to what interpretation is to be given to Section 124-A of the Indian Penal Code.

37. It was not seriously disputed before us that the interpretation given by their Lordships of the Privy Council, in MANU/PR/0031/1947 is the correct interpretation of Section 124-A Indian Penal Code.

In that case, their Lordships of the Privy Council rejected the interpretation given by their Lordships of the Federal Court in AIR 1942 FC 22 Their Lordships of the Privy Council in Sadasiv Narayan Bhalerao's case (G) expressed themselves as follows:

"The learned Chief Justice (meaning thereby the learned Chief Justice at the Federal Court) then proceeds to consider the meaning of sedition fin English Law, as "defined and explained by decision of the Courts, and "states the principle to be derived therefrom as follows:

'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 that is their intention or tendency.'

The learned Chief Justice then applied that test to the appellants' speech, and found that it contained no incitement, or intention or tendency to incite, to public disorder, and the conviction was set aside. "Their Lordships are unable to accept the test laid down "by the learned Chief Justice, as applicable in India."

Then their Lordships of the Privy Council observed as follows:

"The word "sedition" does not occur either in Section 124-A or in the Rule; it is only found as a marginal note to Section 124-A, and is not an operative part of the Section but merely provides the name by which the crime defined in the Section will be known. There can be no justification for restricting the contents of the Section by the marginal note. In England there is no statutory definition of sedition; its meaning and content have been laid down in many decisions some of which are referred to by the Chief Justice, but these decisions are not relevant, when you have a statutory definition of that which is termed sedition, as we have in the present case.

Their Lordships are unable to find anything in the language of either Section 124A or the Rule which could suggest 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. "Explanation 1 to Section 124-A provides, the expression 'disaffection' includes disloyalty and all feelings of enmity". This is quite inconsistent with any suggestion that "excites or attempts to excite 'disaffection" involves not only excitation of feelings of disaffection, but also exciting disorder. Their Lordships are therefore of opinion that the decision of the Federal Court in AIR 1942 FC 22 proceeded on a wrong construction of Section 124-A Penal Code, and of sub-para (e) of Rule 34(6), Defence of India Rules".

Thereafter their Lordships of the Privy Council have observed as follows:

"In ILR 22 Bom 112 and Bal Gangadhar Tilak v. Queen Empress ILR 22 Bom 528 the charge was under Section 124-A as it then stood, confined to disaffection, without any reference to hatred or contempt. Strachey J. in an admirable charge to the jury, which was subsequently approved by this Board, said (at p. 135):

"The offence consists' in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance, or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124-A 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 of 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".

In refusing leave to appeal, inter alia, on the ground of misdirection as to the proper construction of Section 124-A the Board expressly approved of the charge. It is sufficient for their Lordships to adopt the language of Strachey, J., as exactly expressing their view in the present case."

Then their Lordships observed as follows :

"To conclusion, their Lordships will only add that the amendment of Section 124-A in 1898, the year after Tilak's case (D), by the inclusion of hatred or contempt and the addition of explanations 2 and 3 did not affect or alter the construction of the Section laid down in Tilak's case (D) and, in their opinion, if the Federal Court, in AIR 1942 FC 22 had given their attention to Tilak's case (D), they should have recognised it as an authority on 'the construction of Section 124-A by which they were bound."

It will thus be seen that their Lordships of the Privy Council did not consider that incitement to disorder or the existence of an intention or tendency to disorder is the gist of the offence and they are of the view that Section 124-A of the Indian Penal Code would be attracted even if there was no incitement or intention or tendency to incite public disorder or a reasonable anticipation or likelihood of public disorder. Their Lordships have clearly approved the analysis of the Section by Strachey, J., in ILR 22 Bom 112.

38. The view of their Lordships of the Privy Council in regard to Section 124-A, Indian Penal Code stands accepted by their Lordships of the Supreme Court in MANU/SC/0006/1950 : 1950CriLJ1514 their Lordships of the Supreme Court have observed as follows :

"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 v. King Emperor (E) 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 (D) 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."

39. The next question is what is the meaning of the word 'disaffection'. Section 124-A, Indian Penal Code has been fully analysed by John D. Mayne in his Criminal Law of India (III edition), p. 516. After quoting the Section, Mayne refers with obvious approval to the definition of 'disaffection' given by Petheram C. J. in the Bangobasi Newspaper; Queen Empress v. Jogendra ILR 19 GAU 35 as meaning :

"A feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him." If a person uses either spoken or written words, calculated to create in the minds of the persons 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 hearers 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 purpose 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."

Strachey, J. in Tilak's case (D) defined 'Disaffection' as meaning :

"Hatired, enmity, dislike, hostility, contempt, and every form of ill-will to the Government."

Strachey, J., further said that :

" 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government"

The views of Strachey, J. expressed in his summing up, I might add, were accepted by the Allahabad 'High Court in Queen Empress v. Amba Prasad ILR 20 All 55.

40. The position thus seems to be that if any form of bad feeling to the Government is expressed then Section 124-A Indian Penal Code would be attracted irrespective of the fact whether the expression of that bad feeling incites to disorder or whether reasonable men can be satisfied that the expression of that feeling has the intention or tendency to disorder or whether there is a likelihood in public disorder or a reasonable anticipation thereof. It is enough that there is excitation of a feeling; of disaffection and there need not be any exciting to disorder.

It would therefore, appear from a consideration of the above authorities and particularly from a reading of the Privy Council case MANU/PR/0031/1947 that a tendency to disorder cannot be said to be inherent in "disaffection," that there may be 'disaffection' which has a tendency to disorder and there may, at the same time, be 'disaffection' within the meaning of Section 124-A of the Indian, Penal Code which has not that tendency. Therefore, it is apparent that Section 124-A also penalises; the making of speeches which are not against the interest of public order. Therefore, Section 124-A could not be said to be a reasonable restriction in the interest of public order.

As according to the view of the authorities mentioned above, disaffection does not necessarily have an inherent tendency to disorder, therefore, in making all disaffection punishable, there has undoubtedly been placed by Section 124-A a restriction on freedom of speech which is not in the interest of public order alone. The same holds for the words 'hatred' and 'contempt' which are covered according to the authority cited by the word 'disaffection'.

41. In MANU/SC/0101/1957 : 1957CriLJ1006 their Lordships of the Supreme Court were considering the constitutionality of S. 295A of the Indian Penal Code and were considering whether, by that Section, a reasonable restriction in the interest of public order had been placed by the Legislature on freedom of speech guaranteed by the Constitution by Sub-clause (a) of Clause (1) of Article 19. They observed as follows :

"In the first place Clause (2) of Article 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interest of public order", which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction in "the interest of public order" although in some cases those activities may not actually lead to a breach of public order." The above test was applied by their Lordships to Section 295A and they upheld its constitutionality. But it is to be noted that they did so because, in their view, the activities which Section 295A was intended to control had "a tendency to cause public disorder".

If therefore, such a tendency is not inherent in a particular activity then obviously no restriction could be placed by the application of CI. (2) of Article 19. There has to be a tendency to cause public disorder it the activity which has been restrained before it could be said that the restriction was in the interest of public order. Their Lordships further emphasised that Section 295A of the Indian" Penal Code punished an aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Their Lordships further observed that:

"The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the Section, which penalises such activities, is well within the protection of Clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(A)" it will be thus seen that Section 295A was upheld because there was in the activity which it sought to prevent "a calculated tendency to disrupt public order."

42. Therefore, in order to justify a restriction on freedom of speech imposed under the purported authority of Article 19(2) of the Constitution, there must be in the activity a tendency to cause public disorder, if not a calculated tendency.

43. In view of the fact that it is not considered that a tendency to disorder, much less a calculated tendency, inheres in all utterances creating a disaffection against the Government and in view of the fact that even the mildest form of disaffection could be caught by Section 124-A of the

Indian Penal Code, it would appear that the restrictions which that Section imposes are far too wide and cannot be justified as being solely "in the interest of public order".

Disorder or a tendency to disorder is not to be proved in order to secure a conviction under Section 124-A. Therefore, these are not the ingredients of the offence, nor does Section 124-A deal mainly with an aggravated form of disaffection, for even the mildest variety of hatred, contempt or disaffection would be caught by that Section. In view of the analysis of the Section by high authority it cannot be said that in all disaffection there is a tendency to disorder.

44. Even though Article 19(2) of the Constitution does not use the words "for maintenance of the p ublic order" and uses the words "in the interest of e public order", the restriction must have some nexus with public, disorder. Unless it could be stated that the mildest expression of disloyalty had within it the tendency to bring about either immediately or in the near future disorder, Section 124-A must be held to go far beyond the limits of restraint permitted by the Constitution.

45. In MANU/PH/0005/1950 the constitutionality of Section 24 (a) of the East Punjab Public Safety Act (V of 1949) was considered by a Bencli consisting of Weston C. J. and Khosla J. That Section makes punishable the making of any speech if such speech (i) causes or is likely to cause fear or alarm to the public or to any Section of the public and (ii) furthers or is likely to further any activity prejudicial to the public safety or maintenance of public order.

In view of the language of Article 19(2) of the Constitution which then only permitted imposition of reasonable restrictions to prevent the undermining of the security of the State or prevent its being overthrown, Section 24 (a) of the East Punjab Public Safety Act was held to be unconstitutional and void. In the course of their judgment, their Lordships referred to Sections 124-A of the Indian Penal Code and held it to be void for they said that in some instances at least the unsuccessful attempt will not undermine or tend to overthrow the State.

They said that it was enough if one instance appears of the possible application of the Section to curtailment of the freedom of speech and expression in a manner not permitted by the Constitution. In the same way, it could be said that there would be many acts of disaffection which would not tend to cause public disorder or would not have a calculated tendency to cause public disorder, and yet be caught by Section 124-A of the Indian Penal Code. Inasmuch as Section 124-A could cover both kinds of disaffection it is clear that the Section imposes restrictions which are not justified by Article 19(2) of the Constitution.

46. So long as one accepts the interpretation put upon Section 124-A of the Indian Penal Code by their Lordships of the Privy Council and by the authorities referred to above, there is, in my view, no escape from the position that there may be excitement of disaffection without there being a tendency in such disaffection to bring about disorder:

47. In the Division Bench case of MANU/BH/0091/1954 Das, J. seemed inclined to throw overboard the interpretation given to Section 124-A by the Privy Council. He observed as follows :

"I do not wish to pursue this question any further as my view is that even on the interpretation given by the Privy Council, the provisions of Sections 124-A and 153-A Penal Code, impose reasonable restrictions in the interests of public order giving that expression a fair and reasonably wide meaning. Speaking personally and with great respect, it appears to me that the interpretation put by the Privy Council on the provisions of Section 124-A is unduly literal and verbal; it was given in the context of a state of affairs existing prior to the Constitution of India and, in my humble opinion, does not give full effect to the second and third explanations appended to the Section in the context of freedom of speech and expression now g uaranteed under the Constitution", Section 124-A was upheld as being constitutional by the Bench. It was pointed out that the words "in the interest of public order" is wider than the words "maintenance of public order".

48. It cannot be said as to what extent the view of Das, J. to the effect that the Privy Council had put a far too literal interpretation on Section 124-A affected his view that the restrictions imposed by that Section were within the permissible limits of Article 19(2) of the Constitution.

49. Even though the words 'in the interest of public order are wider them the words "maintenance of public order", it is to be considered as to how wide an interpretation should be given to those former words. Some limited meaning must necessarily be given to the words "in the interest of public order" and, in my view, a restriction to prevent an imaginary chance of disturbance of public order or a chance of disturbance of public order in the remote future or an infinitesimal present chance of disturbance of public order in the immediate future-could not be justified as a restriction in the "interest of public order."

A restriction cannot be put under Article 19(2) of the Constitution on an activity which does not have the jsced of "public disorder" or in which there is no "reasonable anticipation or likelihood of public disorder" or in which there is "no incitement or tendency to incite to public disorder". The authorities state that even such an activity (i.e. a speech which does not have the aforesaid effect) can be caught by Section 124-A.

50. No doubt the words now are "interest of public order", and it may be taken that the amendment made in Article 19(2) of the Constitution intended' to give ample powers and this is also evident by the fact that the words "maintenance of public order" are not used but even so what is in the interest of public order necessarily tends to the maintenance of it and, in my view, although the words "maintenance of public order" are not there, there must still be some real likelihood of public disorder taking place either immediately or in the remote future.

If there is no such possibility surely the interest of public order cannot be said to be affected. In my view, it must be borne in mind that first a fundamental right of freedom of speech has been granted by the Constitution and then has been granted the right to the Legislature to put a reasonable restriction in the interest of public order.

The restriction must not be given more prominence than the fundamental liberty assured. In my view, the words "interest of public order" should not be so amplified us to enable the fundamental right guaranteed by Article 19(l)(a) to be swallowed up by the application of

Article 19(2). One has to bear in mind that the Constitution of India is democratic, that it is based on the principle of election and that the Constitution itself provides a machinery for the Constitution being altered. Freedom of speech is essential to the proper working of the Constitution.

The exercise of these rights which are guaranteed by the Constitution is only possible if freedom of speech is granted and the general concepts prevailing at the time when the Constitution was framed prompted the founding fathers to guarantee freedom of speech and to place only very limited restrictions on such freedom of speech.

No doubt, the original idealistic impulse seems to have nearly worked itself out by the time that the present amended Clause (2) of Article 19 of the Constitution came to be framed, yet it must not be too lightly assumed, for that would be against the spirit of the Constitution, that the amendment effected endowed the Legislature with such ample powers that the very fundamental right guaranteed could be completely nullified.

51. It is to be noted that Section 124-A of Indian Penal Code, by its exceptions, permits no criticism of the Government as such, although it permits criticism of the measures or actions of Government. It has been recognised that even disapprobation of Government measures and action could be carried too far. In ILR Bom 112 it has been pointed out that :

If a man published comments upon Government measures which were not merely severe, unreasonable or unfair, but so violent or bitter, or accompanied by such appeals to political or religious fanaticism, or addressed to ignorant people at a time of great public excitement, that persons reading those comments carry their feelings of hostility beyond the Government measures to their author, the Government, and would become indisposed to obey and support the Government, and if it could fairly be gathered from the writing as a whole that the writer or publisher intended these results to follow, then he would be guilty under the Section, and would not be protected by the explanation."

This statement of law was with reference to Section 124-A as it stood then, but it has been recognised that the Section, as it exists at the present moment, marks no real departure from the Section, as it was before its amendment. In view of the limited protection afforded by the explanations of the Section it is clearly necessary, having regard to the fact that it is not always easy to separate the acts of Government from the Government itself, that the constitutionality of a Section, so widely framed, should be examined with agreat care and caution.

52. No doubt 'Government' does not mean the same thing as a political party or the individual Ministers, but a criticism of either the political party or the individual Ministers has, in it, a tendency to become a criticism of the Government and, in a democratic system of Government, a criticism of the political ideals of a party, which is in power, and of the person belonging to that party, who may be functioning at any given time as Minister, may tend to become a criticism of the Government itself.

Care has,. therefore, to be taken that Legitimate political discussion and criticism may not be affected by Section 124-A. That prosecutions under Section 124-A may be rarely launched is immaterial. It must not moreover be forgotten that Section 124-A was framed at a time when the Structure of the Government in India was different.

53. Moreover, the word "Government" is a word of some amplitude as will appear from my brother Desai's judgment. "Government' has been defined in Section 3(23) of the General Clauses Act as including both the Central Government and the State Government and in Section 17 or the Penal Code as either the Central Government or the Government of a State. That definition does not take us very far. In Halsbury's Laws of England (III Edition) Volume 7, page 187 (Part I), the word "Government" has been defined as follows :

"From the legal point of view, government may be described as the exercise of certain powers and the performance of certain duties by public authorities or officers together with certain private persons or corporations exercising public functions'". The Constitution does not define "Government," though it undoubtedly vests the executive powers either in the President of

India or in the Governors of the States but even though the executive powers are so vested, the Government is, in effect,, carried on by the Ministers and by the officials of the Government. Ministers whether at the centre or in the states are appointed under the Constitution and function thereunder, though, in law, they merely advise, in fact they govern and they are the executive governments.

As a result of the conventions as has been remarked of Parliamentary Government, there is a concentration of control of both legislative and executive functions in the small body of men called the Ministers and these are the men who decide important questions of policy.

The most important check on their powers is necessarily the existence of a powerfully organised Parliamentary opposition. But at the top of this there is also the fear that the Government may be subject to popular disapproval not merely expressed in the legislative chambers but in the market place also which, after all, is the forum where individual citizens ventilate their points of views.

If there is a possibility in the working of our democratic system -- as I think there is -- of criticism of the policy of Ministers and of the execution of their policy, by persons untrained in public speech becoming criticism of the Government as such & if such criticism without having any tendency in it to bring about public disorder, can be caught within the mischief of Section 124-A of the Indian Penal Code, then that Section must be invalidated because it restricts freedom of speech in disregard of whether the interest of public order or the security of the State is involved, and is capable of striking at the very root of the Constitution which is free speech (subject of limited control under Article 19(2)).

I might add that throughout the argument, Section 124-A of the Indian Penal Code was sought to be justified by the learned Advocate General on the ground that it was in the interest of public order and not so much in the interest of the security of the State. The latter angle has been dealt with by my brother Desai.

54. Certain cases were cited before us to show that many speeches varying in their language were held not to fall within Section 124-A of the Indian Penal Code. We are not concerned here with individual speeches. All that we are concerned with here is whether it is possible for a public speech, which excites the mildest form of disaffection or hatred or contempt even though such speech has not the tendency to bring about disorder to be caught by Section 124-A.

Inasmuch as the highest judicial interpretation is that such a speech could be so caught, in my view, it must be held that Section 124-A of the Indian Penal Code is ultra vires the Constitution. Section 124-A is obviously hit by the doctrine that :

"Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void."

55. On a consideration of the entire position, I am of the view that Section 124-A of the Indian Penal Code is unconstitutional and I would, therefore, declare it to be void, N. U. BEG J.

56. The common question that has arisen in all these cases is whether Section 124-A, I. P. C., which incorporates the law of sedition in India is ultra vires of Article 19(1) of the Constitution of India Article 19(1)(a) of the Constitution lays down that all citizens shall have the right to freedom of speech and expression. The extent to which this right can be restricted by the Legislature is prescribed in Article 19(2) of the Constitution.

57. Article 19(2) as it originally stood 'provided as follows :

"Nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow the State."

Article 19(2) was amended by the Constitution (First Amendment) Act 1951. The new sub-clause reads as follows :

"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 interest 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."

58. Section 124-A I. P. C., lays down that whenever any person by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, he shall be liable to punishment as provided therein. Section 124-A I. P. C., was a law in force prior to the Constitution of India.

According to Article 13(1) of the Constitution, all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part III, shall, to the extent of such inconsistency, be void. Article 19 is contained in part III of the Constitution. Section 124-A I. P. C., is admittedly a law which restricts the fundamental right to freedom of speech and expression conferred by Article 19(1) of the Constitution, and is, therefore, inconsistent with it.

It would accordingly be void under Article 13(1) of the Constitution, unless saved by the reservations contained in Article 19(2). In order that a law should be protected by Article 19(2) of the Constitution as amended in 1951, the impugned law itself should fulfil two conditions. Firstly, it should be in the interests of one of the items referred to in Article 19(2); secondly, the restrictions that the said law imposes should be reasonable.

59. On behalf of the State, in the present case reliance is placed on the item relating to "public order," and it is argued that the impugned law is in the interests of public order; and further, that it imposes reasonable restrictions on the right to freedom of speech and expression. The two questions, therefore, that arise before us for decision are as follows :

1. Does Section 124-A enact a law that is in the interests of the public order?

2. Is it a law which imposes reasonable restrictions on the right to freedom of speech and expression?

In order to answer the two questions formulated above, it will be necessary at the very outset to determine the exact meaning and scope of the of fence of sedition as defined in Section 124-A I. P. C. (60) On behalf of the State it is argued that the law in question is in the interests of public order, as every act that constitutes an offence under Section 124-A I, P. C., has a calculated or inherent tendency to create public disorder or to create a reasonable anticipation or likelihood of public disorder. No doubt the contention on behalf of the State finds strong support from the observations of the Federal Court made in the case of AIR 1942 FC 22 (E). While discussing the meaning and scope of the offence under Section 124-A I. P. C., Gwyer, C. J. in his judgment laid down the law in the said case as follows :

"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 that is their intention or tendency." (p. 26)

The above formulation of law was, however, emphatically disapproved and held to be clearly wrong y the Privy Council in the case reported in MANU/PR/0031/1947. In this case the Privy Council approved of their previous decisions in three cases viz. ILR Bom 528 : LR 25 IndAp 1 (Z7) : ILR Mad 146 : AIR 1919 PC 31 : 1940 ACJ 231 . In the said case when dealing with the above enunciation of law by the Federal Court, their Lordships of the Privy Council observed as follows :

"Their Lordships are unable to find anything is the language of either Section 124-A or the Rule which could suggest 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. Explanation 1 to Section 124-A provides, that the expression 'disaffection' includes disloyalty and all feelings of enmity.

This is quite inconsistent with any suggestion that 'excites or attempts to excite disaffection' involves not only excitation of feelings of disaffection, but also exciting disorder. Their Lordships are therefore of opinion that the decision of the Federal Court in AIR 1942 SC 22 proceeded on a wrong construction of Section 124-A Penal Code, and of sub-para (a) of Rule 34 (6) Defence of India Rules." (p. 34)

Further, in this case their Lordships quoted a passage from the charge addressed by Strachey, J. to the jury in Tilak's case reported in ILR Bom 112 as admirably defining the scope and meaning of Section 124-A I. P. C. The passage in question runs as follows :

"The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124-A, 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 to 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 scope."

Their Lordships of the Privy Council approved of the above passage as giving a correct exposition of the law, and as exactly expressing their own view on the point and further remarked as follows :

"In conclusion, their Lordships will only add that the amendments of Section 124-A in 1898, the year after Tilak's case (D) by the inclusion of hatred or contempt and the addition of Explanations 2 and 3 did not affect or alter the construction of the Section laid down in Tilak's case (Z7) and, in their opinion, if the Federal Court, in AIR 1942 PC 22 had given their attention to Tilak's case (Z7), they should have recognised it as an authority on the construction of Section 124-A by which they were bound." (p. 85)

61. It is argued that the view expressed by their Lordships of the Privy Council appears to have received the tacit approval of their Lordships of the Supreme Court in its judgment in the case of MANU/SC/0006/1950 : 1950CriLJ1514 . The relevant passage in the said judgment is as follows :

"In this connection it may be recalled that the Federal Court had, in defining sedition in 1942 SCR 38: AIR 1942 SC 22: 43 CriLJ 504 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 ILR 22 Bom 112 (D) 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 : MANU/PR/0031/1947." The interpretation placed on

Section 124-A I. P. C. by the Privy Council appears to be supported by the plain words of the Section itself. In this situation, it was conceded before us on behalf of the State that the above enunciation of the meaning of Section 124-A as made by the Privy Council must be accepted as correct.

Thus the gist of the offence of sedition consists merely in exciting or in attempting to excite certain bad feelings viz., feelings of hatred, contempt or disaffection towards the existing government. The three feelings of hatred, contempt and disaffection may, for the sake of brevity, be herein after described as 'bad feelings', a compendious expression used by Strachery, J. to describe the same in his charge quoted above.

62. On behalf of the State it is argued that every act that excites or tends to excite bad feelings towards the government has a calculated or inherent tendency to cause public disorder or a likelihood of public disorder. On the other hand, on behalf of the private parties, whose case was ably put before us by their learned counsel Sri Gopal Bihari, it is argued that an act that excites or constituted an attempt to excite bad feelings towards the e-xisting government' has no such calculated or inherent tendency in the changed political set up of the country ushered in by the promulgation of the Constitution of India. This position deserves to be rather closely examined, as the answer to the first question raised before us viz. whether Section 124-A I, P. C. enacts a law which is in the interests of public order must depend primarily on the view taken in this regard. Having given my anxious consideration to this aspect of the matter, 1 find it difficult. to agree with the, contention advanced on behalf of the State.

63. As to the definition of the term 'Government' it may be mentioned that under Section 17 of the Indian Penal Code as it stood previously, the term was confined to the person or persons authorised by law to administer executive Government. This definition was, however, altered by the Adaptation of Laws Order 1950 and Act III of 1951 and the new Section 17 I. P. C., provided as follows :

"Section 17 The word "Government' denotes the Central Government or the Government of a State."

64. In view of the above change, it was argued on behalf of the State that the definition of the Government has now been considerably widened, and it now embraces not only the executive branch but also the legislative and the judicial branches. In Salmond's Jurisprudence (6th Edn.) at p, 110 the meaning of the term 'Government' has been expounded as follows :

"political or civil powers is the power vested in any person or body of persons of exercising any function of the state. It is the capacity of evoking and directing the activities of the body politic. It is the ability to make one's will effective in any department of governmental action. The aggregate of all the persons or groups of persons who possess any share of this civil power constitutes the Government of the State. They are the agents through whom the States, as a corporate unity, acts and moves and fulfils its end."

Further, as to the various divisions of Governmental activity, it is stated as follows :

"In respect of its subject-matter, civil power is of three kinds, distinguished as legislative, judicial, and executive; and the government is similarly divisible into three great departments, namely, the legislature, the judicature, and the executive. The functions which pertain to the first and second of these departments have been already sufficiently explained. The executive is simply the residue of the government, after deducting the legislature and the judicature." (p. III)

According to the counsel for the State, therefore, the term 'government' would now include not only the executive but also the legislative and judicial departments. On the legislative side, it would include not only the Central Legislatures but also the various State Legislatures.

Putting this wide interpretation on the term 'government' it was argued on behalf of the State that even a vilification of the members of the Legislature or of Ministers as such if done on a wide scale, might result in the excitation of bad feelings towards the government of which, they are a part. Similarly, a strong criticism of executive officers if made on such a wide scale as to bring the executive administration into contempt might constitute such an offence.

Thus, it is said that even a strong criticism of a body of executive officers of a district with a view to secure their transfer en bloc might result in the commission of the offence, if such act creates, or even has the tendency to create, directly or indirectly, bad feelings against the government. It is also said that even a criticism of a system in which the executive and judicial functions are combined might, f if so strong as to excite bad feelings against the government, he enough to bring a person under the clutches of law, and make him guilty under this Section.

In short, any act which could constitute a contempt of any of the three branches of the Government -- executive, legislative or judicial -- would be enough to bring it under the ban imposed under this Section, provided only that it results in the excitation of bad feeling? towards the government or has any such tendency, however innocent, well-meaning find bona fide the act itself might be. In view of the wide and sweeping range in apparently innocent acts which this offence is now claimed to cover, the position deserves close examination.

65. At the very outset it may be mentioned that the answer to the first question formulated above has to be given bearing in mind the far-reaching changes brought in the conception of Government as a result of the coming into force of the Constitution of India, This Constitution, as its preamble states, is a creation of the will of "The people of India" who have, as the preamble enunciates, "solemnly resolved to constitute India into- a Sovereign Democratic Republic." The idea of sovereignty involves freedom from all foreign control or domination. The idea of democracy involves freedom from all internal control or domination. Both the ideas combined together reassert the sovereignty and paramountcy of the people's will over everything.

The idea of republic indicates the representative character of the sovereign democracy that is sought to be installed. It means that the absolute power vested in the people of India under the Constitution is to be exercised by them through their duly elected representatives in the various Union and State Legislatures. Articles 325 and 326 of the Constitution indicate that in determining the eligibility to vote in the matter of election of such representatives, all restrictions of religion or race, caste or creed, sex or the like have been abolished at one stroke,

and all qualifications either of literacy, property, taxation or the like have been removed in one bold sweep. The entire scheme is based on the adoption of universal adult suffrage.

The elected representatives of the people in the various Legislatures which constitute the centres of power are thus nothing but the vehicles through which the aggregate will of the people of India is manifested, asserted and executed. The entire Constitution following the preamble is nothing but a prescription of the practical mode of the realisation of the grand and noble ideal set forth in such inspiring terms in the closing part of the preamble as the attainment of "Justice", "Liberty", "Equality" and "Fraternity" for all and each of the citizens of this vast and far-flung country.

These four shining lights constitute as it were the pole-stars of all political ambition, the ultimate goal or the summum bonum of all political endeavour and the end-all and be-all of all political activity set into motion by the Constitution. The emphasis in this part of the preamble is obviously on the fact that not only the power vests in the aggregate will of the people of India, but that it is also to be exercised by their accredited representatives for the welfare and good of the people who elected them.

In other words, the various legislatures and the governments through which the power is exercised are but the trustees of the people who are both the authors of trust as well as its beneficiaries. The trust existing is, however, a revocable one, revocable at the will of the people, its creators. The various governments thus exist during the pleasure of the people and during their good behaviour towards the people. Thus the people of India are both the means of the exercise of all political power as well as the end of all exercise of such power.

In other words, the government thus created is as is often said, a 'Government of the people, by the people and for the people'. The Government is nothing but a creation of the people's breath For the people who have made it can also unmake if at their own sweet will. The people have the power to mend the existing Government at their will. They have also the power to end it at their own will.

The people possess the power not only to change the existing Government, but also possess the power to do much more, namely, to change the existing Constitution itself. They can thus determine not only the life of the Government, but also the form of constitutional structure or political framework in which it can function. Thus the Government governs the country, the Constitution governs the Government, but the people govern the Constitution itself.

66. It is also to be noted that the process of election prescribed by the Constitution which leads to the installation, removal or replacement of the existing governments, and the process of voting in the various Legislatures which leads to the alteration, amendment or changes in the Constitution of India are both absolutely peaceful, bloodless and non-violent proceedings.

The various stages of this process are laid down in the Constitution itself. No element of public or even private disorder is involved or contemplated at any stage of the process which brings about the end of one government and the installation of a fresh one. On the other hand, the facility, readiness and ease with which the existing government can be changed and replaced by another through an appeal to the will of the people in an absolutely peaceful fashion is itself the greatest guarantee of peace in and security of the State. It is because it is realised that the peaceful remedy of appeal to the tribunal of the mass of people is open to elements opposed to the government that no resort to disorder or force is considered necessary.

Peace is thus subserved and preserved by the very fact that opposition to the Government has a peaceful remedy open before it. The situation may be illustrated by comprising a primitive state of society in which there are no law courts with a civilised state of society in which there are law courts. In the former society, their being no law courts, the parties have no peaceful means to seek a redress of their grievances. Every person, therefore, is a law upto himself.

He has to resort to his own strong arm to enforce his rights. This leads to disorder and anarchy. When on the other hand, law courts are established, a peaceful mode of settlement of disputes between parties is provided. This leads to the disappearance of disorder and anarchy and

prevalence of law and order. The position of India under the British regime is comparable to the former State.

The government in such a regime rested not on the will of the people, but was the result of a complete subjection of the same.

The domination was both external and internal. The Government rested on military occupation of the country, by force. Under such a political system, the Government was envisaged as something immutable, unchangeable and permanent. The appeal to the tribunal of the people, which is an absolutely peaceful remedy provided after the Constitution for settling all disputes and bringing about all political and constitutional changes, however sweeping and radical, did not exist under such a regime.

Creation of bad feelings against the Government under such a regime had, therefore, the inherent tendency to produce disorder, insecurity of the State or even anarchy. After the Constitution, however, the situation has altered. The Constitution has provided a tribunal for changing the government as well as the constitutional and political structure of the country by appealing to the electorate of the country. The position has now been reversed and the people, instead of being the servants of the government, have now become its masters.

A peaceful method for the settlement of political disputes having thus been provided, the very act that at one time contained the germs of anarchy and disorder has now become a germicide that has & tendency to kill such germs and to promote order and security. The above analogy between the political and judicial forum is capable of being pursued further.

It may now be said that the act of a politician in making a speech tending to excite bad feelings against the Government while appealing to the electorate, which is the tribunal constituted to decide political disputes between parties, has no more a tendency to create disorder than the act of a counsel in making an address tending to excite bad feelings against the opposite party

in a court of law or jury, which is a tribunal appointed to decide judicial disputes between parties.

67. For the above reasons, on behalf of private parties it is argued that the government is not to be treated as a cloistered virtue. Its conduct should be open to public scrutiny. It should not fight shy of it. In fact, its strength lies in inviting public criticism and justifying its position before public eyes.

It is further argued in this connection by Shri Gopal Bihari the learned, counsel for private parties that the right of freedom of speech against the government acts as a kind of safety valve through which the forces of opposition exhaust themselves in a peaceful manner. A ban on public manifestation or expression of such a right might have the effect of driving these forces underground.

It might result in the formation of secret societies and commission of acts leading to violence, public disorder and insecurity of State. From this point of view, it is argued that the suppression in this fashion of the right, which is called the right to preach disaffection against the government, and which is really a part of the fundamental right of freedom of speech and expression far from being in the interests of public order is, on the other hand, against the interests of public order.

68. It is argued that public peace from this point of view depends on the fact that the existing government is and continues to be a reflection of the people's will or a mirror of the people's mind. Public disorder is the result of the existence of disharmony between the will of the people and the will of the government.

It is said that the act made penal in Section, 124-A I. P. C., has, on the other hand, an inherent tendency to promote public peace, because such an act is directed towards bringing about and maintaining harmony between the will of the people and the will of the government Far from tending to create disorder it tends to prevent it.

Its inherent tendency, therefore is to act not as a disruptive force, but, on the other hand, to operate as a harmonising and stabilising force. In order, therefore that public peace should be maintained, this right has to be scrupulously guarded and jealously maintained.

69. In the exercise of this right an appeal to reason and even an appeal to emotion might be made. The cases of the parties are sometimes put before the tribunal in an extreme or exaggerated form. The people however are able to form a correct opinion and arrive at truth by being able to strike a balance between the two extremes. That itself is a part of political education of the people so necessary in ,a democratic system of government.

70. The powerful role that this right plays in a democratic State has been graphically described in a number of American cases. The following remarks made in (1949) 93 L.Ed. 1131 are significant in this connection :

"The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote in (1936) 299 U. Section 353 (365): 81 L.Ed. 278 : 57 S.Ct. 255 it is only through free debate and free exchange of ideas that Government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.

Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates disaffection with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.

That is why freedom of speech, though not absolute, Chaplinsky v. New Hamshire (1942) 315 US 568: 36 L.Ed. 1031 : 62 SCR 766 is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. See Bridges v. California (1940) 314 US 252 : 86 LEd 192 : 62 SCT 190 : 159 ALR 1346;Craig v. Barney (1947) 331 US 367 : 91 LEd 1546 : 67 SCR 1249 . There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political community or groups." While dealing with the question of curtailment of right of freedom of speech, in (1936) 81 LEd 278 it was observed as follows :

"The rights themselves must not be curtailed, the greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that Government may be responsive to the will of the people and that changes if desired, may be obtained by peaceful means Therein lies the security of the Republic, the very foundation of constitutional government." (p. 284).

71. The following observations in (1940) 84 LEd 1213 are also relevant in this regard :

"In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbour. To persuade others to his own point of view, the pleader, as we know at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state; and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

The essential characteristic of these liberties is that under their shield many types of life, character, opinion, and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds." (p, 1231).

72. John J. Parker's book on "Democracy in Government" contains some interesting observations on this aspect of the matter. Four passages from it are cited below :

(1) "While all of these rights are of the first order of importance, I would speak particularly of freedom of speech, because it is always in danger. Truth is apprehended in the mind of the individual. Its progress is slow and fraught with difficulties; and only through free expression can it hope to gain acceptance by the majority in the community. The history of human thought is one continuous process of the triumph of ideas which upon their first expression were condemned as error by the learned and the powerful.

Progress is dependent upon the advance of truth; and this in turn is dependent upon the right of men to give free expression to any views they may entertain. To the objection that free speech may lead to the propagation of error, the answer is that truth is able to take care of itself in a contest, and that, in an atmosphere of freedom, error will be detected and exposed and the truth will eventually prevail. No wiser opinion was ever delivered than that of Gamaliel, who, when the teachers of Christianity were brought before him, said, "Refrain from these men and let them alone; for if this counsel or this work be of men, it will come to naught. But if it be of God, ye cannot overthrow it." And as John Stuart Mill has pointed out in his Essay on Liberty, even where truth is accepted, it is benefited by free expression of opposing views. In contest with error, it becomes vital, a living force in the minds of those who accept it, rather than dead dogma imposed by authority." (p. 12).

(2) "Those who won our independence believed that the final end of the State was to make men free to develop their faculties and that in its Government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of

noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American Government.

They recognized the risks to which all. human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; mat repression breeds hate; that hate menaces stable Government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed, remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law--the argument of force in its worst form.

Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed;" (p. 13 being a citation from the judgment of Mr. justice Brandis in Whitney v. California (1926) 274 US 357.

(3) "It has been said by wise men so many times over in the world's history that I would apologise for saying it, were it not for the fact that there is such great temptation to forget it whenever an unpopular minority says something that strikes at the foundation of what we ourselves believe in. It is easy enough to believe in freedom of religion for Episcopalians or Baptists or Presbyterians. The test is whether we believe in that freedom for Normons or Mohammedans or Atheists. It is easy enough to believe in free speech for Republicans and Democrats.

The rub comes when it is applied to communists and fascists and others whose teachings would subvert our institutions. We must never forget that unless speech is free for everybody it is free for nobody; that unless it is free for error it is not free from truth; and that the only limitations which may safely be placed upon it are those which forbid slander, obscenity and incitement to a crime." (p. 14).

(4) "The truth is that the greater the complexity of the life of people the greater the danger or error in the policies of the state, and the greater the need of the corrective influence of free expression of opinion. Likewise, as there is greater opportunity for autocratic exercise of power where life is complex there is greater need of maintaining a party of opposition to exercise a curb upon the Government and to supplant it in power if necessary." (p. 15).

73. Willoughby in his book on "The Constitutional Law of the United States (second edition - -1929), Vol, 2 at p. 1189 cites the following passage from Stephen's History of the Criminal Law of England :

"Two different views may be taken of the relation between rulers and their subjects. If ,the ruler is regarded as the superior of the subject, as being by the nature of his position presumably wise and good, the rightful ruler and the guide of the whole population, it must necessarily follow that it is wrong to censure him openly; that even if he is mistaken, his mistakes should be pointed out with the utmost respect, and that whether mistaken or not, no censure should be cast upon him likely or designed to diminish his authority.

If on the other hand the ruler is regarded as the agent and servant, and the subject as the wise arid good master who is obliged to delegate his power to the so-called ruler because being a multitude he cannot use it himself, it is obvious that this sentiment must be reversed. Every member of the public who censures the ruler for the time being exercises in his own person the right which belongs to the whole of which he forms a part. He is finding fault with his servant.

If others think differently they can take the other side of the dispute, and the utmost that can happen is that the servant will be dismissed and another put in his place, or perhaps that the arrangement of the household will be modified. To those who hold this view fully and carry it out to all its consequences, there can be no such offence as sedition.

There may indeed be breaches of the peace which may destroy or endanger life, limb, or property, and there may be incitements to such offences, but no imaginable censure of the

Government short of a censure which has an immediate tendency to produce such a breach of the peace, ought to be regarded as criminal."

He then remarks that trials based on criticisms of the Governments or the character of persons in public office were reprobated in the American colonies after the people had committed themselves to 'the proposition that those in political authority are but agents of the Government governed from whom their authority is deemed to be derived.

The first view may be a correct picture of the relation between the ruler and the subject under the British regime. The position after the Constitution has, as already observed, been reversed, and the people, instead of being the servants of the Government, have now become its masters. Section 124-A. I.P.C. being a relic of pre-constitution era of Indian history has, therefore, survived its purpose and should be revised to bring it into line with the changed context.

74. There are, of course, limits to the exercise of the right to freedom of speech and expression. The right itself is not absolute. Liberty cannot be allowed to degenerate into licence, A balance has to be struck between the individual right and social control.

It is, however, too much to say that the danger level is reached the moment certain bad feelings are created or attempted to be created towards the Government. The limit is, of course, crossed when the act has the effect of creating public disorder. In such cases, however, it is to be noted that the disorder that is caused is not the result of the creation of bad feelings per se, but it is really the result of an appeal to the forces of violence and disorder that is made along with the creation of bad feelings. The mere creation of a bad feeling has no inherent tendency to create disorder.

It may assume this tendency by the addition of a further factor, namely an appeal to resort to disorder. Even the creation of good feelings might sometimes result in disorder. Thus a person might in trying to create love, affection and adoration for the existing Government, appeal to forces of violence and disorder. He may succeed in stirring up these feelings in the supporters

of the Government to such a degree and in such a manner as to incite them to attack the members of the opposite party and create disorder.

On the other hand, creation of bad feelings might be clone in such a way as only to have a pacifying effect. A person may while addressing an audience succeed in creating bad feelings towards the Government, and yet make a fervent appeal to the audience not to break law and order, as the remedy lay in our hands and a peaceful course was open to them under a Constitution of their own making to remedy all grievances against the existing Government.

The effect of such a speech might be a completely pacifying one. Thus bad feelings towards the Government are no more capable of producing disorder than good feelings towards the Government. What in fact creates disorder in either case is not the creation of bad or good feelings per se, but the additional factor viz. incitement to disorder.

Confusion is created between them because the two are sometimes mixed up so inextricably as to make it difficult for one to distinguish and sift the one from the other. The two aspects, however, are separate and distinct; and the line of demarcation between the two though thin is a clear one.

75. What has made the present Section vulnerable is the fact that it makes a mere creation of bad feelings towards the Government an offence. It is quite easy to bring this Section into lino with the requirements of the Constitution. It could be done by adding a qualification to the effect that the acts prescribed in Section 124-A I.P.C. would be punishable only when they excite public disorder or create a reasonable anticipation or likelihood of exciting such dis-order, or have a tendency in that direction.

The addition of some such words would easily cure the defect. The Section itself, however, does not contain any such qualification or words. It is not possible for the Court to add the words containing that qualification into this Section for the purpose of validating this Section. This Section has to stand the test prescribed by the Constitution as it stands. The Court can

only interpret law. In interpreting law the Court can even take note of a change in circumstances.

The function of the Court, however, stops there, It cannot make law and arrogate to itself the function of the Legislature. It is not the function of the Court to add words and remodel law, it the law itself lacks words which might go to validate it.

Nor is it possible for the Court to construe law in a manner not warranted by the clear terms of the (section. An examination of the provisions of the Indian Penal Code would indicate that where the Legislature did want to import qualifications of this nature in acts constituting an offence, it did so in express words. Thus in denning the objects of unlawful assembly in Section 141 I.P.C., it has laid down that one of the objects of such assembly might be "to resist the execution of any law, or of any legal process."

Another object of a similar character is stated as compelling any person by means of criminal force or show of criminal force to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. The other objects mentioned therein relate to overawing by criminal force or show of criminal force various authorities or persons. Such provisions indicate that where the Legislature wanted that the feature of unlawfulness in the act or its tendency to create disorder, should be an ingredient of an offence; the Legislature had explicitly done so in express words in defining the offence itself. The fact that no such qualification is contained in Section 124-A I.P.C., itself shows that the intention of the Legislature was to punish such acts regardless of any such tendency.

76. As a result of the coming into force of the Constitution we have a system in which there is rule of law. Public order in such a system is created and preserved by maintaining in the eyes of public a respect or the rule of law. Disregard for the rule of law by the public is the cause of public disorder. It is contended that the argument on behalf of the State seems to make a confusion between the respect for the rule of law and the respect for the Government, A person may have hatred for the Government, yet he may have a love for the rule of law. On the other

hand, it is also possible that there may be a person who may have love for the Government and no respect for the rule of law. It is argued that there may be cases where the Government itself might be said to have committed breaches of the rule of law or even offences. In stances in this regard are quoted. It is said that the instance of Jallianwala Bagh might be cited. There might also be cases attributing forcible and unlawful dispossession of property or of unlawful arrest by the Government. It is said that an order under the Maintenance of Public Order Act might be passed for the oblique purpose of preventing a person from participating in elections. The rule of. law is above the Government and the Government is under it. The two conceptions have, after the Constitution, ceased to be synonymous or identical.

77. Further, it is argued that what Article 19(2) of the Constitution protects is the interests of public order, and not the interests of the Government. A ban on the criticism of the Government in such a manner as to prevent excitation of bad feelings against it might be in the interests of Government, but might not be in the interests of public order.

On this point, again the argument on behalf of the counsel for the State makes a confusion between the interests of the Government and the interests of public order. The two interests might not be identical. Section 124-A I. P. C., might have been framed in the interests of the Government when it was enacted. In fact, it might have been found necessary for the very existence of the government at that time. It has ceased to be so now.

78. At this stage a historical retrospect of the relevant law might be helpful and instructive. Originally Section 124-A did not find a place in the Indian Penal Code. It existed in the embryo in Section 113 of the Macauley's draft of the Indian Penal Code published in the year 1837. It was, however, omitted from the body of the, Indian Penal Code when it was passed as Act XLV of 1860.

Its need was, however, felt in the year 1870 after the Mutiny, repercussions of which had rocked the foundations of the foreign government. The necessity of introducing it was felt as the Government was a foreign one, and the position then was that the slightest reflection on its

credit might have the result not only of creating public disorder, out also of endangering the security of the State. Its need was naturally felt because the foundation of force on which the Government rested was a frail one. After the Constitution when India has emerged as a sovereign and independent state, its foundation rests on the free and voluntary will of its people and cannot certainly be said to be frail.

79. This Section was introduced by Special Act No. XXVII of 1870. The law of sedition as inaugurated on 25-11-1870, continued in force unmodified till 18-2-1898. During this interval three notable trials had taken place. The first was the trial of Bal Gangadhar Tilak. This case is reported in ILR 22 Bom 112.

This is the case which was tried by Strachey, J. and in which we find his celebrated charge to the jury which was ultimately approved of and endorsed by the Privy Council. The second case is reported in Queen Empress v. Ramchandra Narayan ILR 22 Bom 152. The last of the three trials took place at Allahabad in the year 1897. This is reported in ILR All 55.

As a result of these trials, it was felt that the law relating to sedition required further clarification. The attempt on the part of the Government to introduce further amendment in the law was, however, opposed. The Bill came on the anvil during the year 1897. The Hon'ble Mr. Chalmers. The member in charge of the bill had to shield it against heavy criticism. Certain passages from his speech are instructive. In defending the Bill, he stated as follows :

"Language may be tolerated in England which it is unsafe to tolerate in India, because in India it is apt to be transformed into action instead of passing off as harmless gas." (Vide Donogh p. 64),

80. In the same connection some of the observations of Sir Alexander Mackenzie Lieutenant Governor of Bengal are also significant. The following quotation from his writing is instructive.

"Much of the outcry rests upon its supposed divergence from the law of England on seditious libel, and on the assertion that the law as settled in 1870 was sufficient and ought to be final. Now, J. venture to assert these two propositions.

First, that the law of England built up by judicial rulings to meet the circumstances of a homogenous people directly interested in and sharing in its own government, is not necessarily a norm to which the law of India ought strictly to conform; and second, that the conditions of the country have themselves so altered since 1870 that what was adequate then is not necessarily adequate now." (Vide Donogh p. 65)

He further went on to state as follows :

"It is clear that a sedition law which is adequate for a people ruled by a government of its own nationality and faith may be inadequate, or in some respects unsuited, for a country under foreign rule and inhabited by many races, with diverse customs and conflicting creeds." (Vide Donogh p. 65)

In supporting the said amendment, His Excellency Lord Elgin, the President, identified himself with the government and made a strong and weighty appeal to the following effect ;

"All that we, the Government, can say is that we desire the powers necessary to put down sedition. We ask for nothing more, but we can be satisfied with nothing less." (Vide Donogh p. 70) The Bill amending Section 124-A, Indian Penal Code was then passed as Act IV of 1898. Amongst other changes, the new amendment added the words 'hatred or contempt' to the word 'disaffection* as constituting bad feelings.

81. It is significant to note that Clause 8 of the Interim Report on Fundamental Rights contained an independent head of public order 'for framing legislation in regard to the fundamental right of freedom of speech (Vide Constituent Assembly Debates of Wednesday 30-4-1947, Vol. III, No. 3 at p. 445 where Clause 8 referred to above is reproduced). Further, in the Draft Constitution of India Article 13 included an independent head of 'sedition' for framing

legislation with regard to the fundamental right of freedom of speech and expression (Vide Clause 13 given at p. 7 of the Draft Constitution of India prepared by the Drafting Committee).

In the Constitution of India, however, as finally passed, both the independent heads of 'public order' as well as of 'sedition' were eliminated from the relevant article. The law appeared in the present Constitution under Article 19. Article 19(2) enumerated seven heads in respect of which legislation relating to this fundamental right could be enacted. They were as follows;

1. Libel

2. Slander

3. Defamation

4. Contempt of Court

5. Decency

6. Morality

7. Security of the State

The word 'sedition' is a term used in the marginal heading of Section 124-A I. P. C., to describe the special offence committed thereunder. It seems to have attained the status of a term of art. Its absence from the above list of items is, therefore, significant.

82. Thereafter came two cases of the Supreme Court in which the validity of Madras Maintenance of Public Order, Act, 1949 (Act No. 23 of 1949) and East Punjab Public Safety Act 1949 (Act 5 of 1949) was challenged. These cases are reported in MANU/SC/0006/1950 : 1950CriLJ1514 and MANU/SC/0007/1950 : 1950CriLJ1525 . As a result of the decisions given by the Supreme Court in these two cases it was found necessary in 1931 to introduce "public order" as a distinct and additional head under Article 19(2). It may further be noted that the situation which was sought to be remedied by the Amending Act of 1951 related to the maintenance of public order.

The words "in the interests of public order" were added to cover within its ambit laws relating to the maintenance of public order which were obviously framed in the interests of public order. No doubt, the words "in the interests of public order" are wider than the words "for the maintenance of public order." Yet even the amended clause did not go far enough to cover acts which fall under Section 124-A I. P. C. because, as already observed, such acts have no inherent or calculated tendency to cause public disorder.

The introduction of the words 'public order' therefore, while validating Acts like Maintenance of Public Order Act which have a direct bearing on the interests of public order would not have the effect of validating laws which have no such bearing on public order whether direct or indirect. The field, therefore, that was occupied by Section 124-A I, P. Code was still left unprotected and open to attack on the score of invalidity.

83. Another point to be noted in this connection is that in spite of the fact that the head of "public order' was added to the new amendment, the head of 'sedition' was not added at all. It will be recollected that sedition was considered as a head independent of and distinct from public order in the original draft of the Constitution and in the report on fundamental right mentioned above.

In spite of it, this head was not added in the amendment. The Debates in Parliament, and particularly the speech of the Prime Minister of India, show that the offence of sedition as

defined in Section 124-A of the I. P. Code was pointedly brought to the knowledge of the members.

While addressing the Parliament on the Bill relating to the First Constitution of India Amendment 1951, Pandit Jawahar Lal Nehru, Prime Minister of India, referred to the offence of sedition as contemplated by Section 124-A I. P. C. and stated as follows:

"Take again Section 124-A of the Indian Penal Code. Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it.

I do not think myself that these changes that we bring about validate the thing to any large extent. I do not think so, because the whole thing has to be interpreted by a court of law in the fuller context, not only of this thing but other things as well.

Suppose you pass an amendment of the Constitution to a particular article, surely that particular article does not put an end to the rest of the Constitution, the spirit, the languages the objective and the rest. It only clarifies an issue in regard to that particular article. (Vide Parliamentary Debates of India, Vol XII, Part II (1951) p. 9621.)

A reference to the debates in the Constituent Assembly and the Report of the Drafting Committee might not be permissible to interpret a Section when it is clear. In Gopalan v. State of Madras MANU/SC/0012/1950 : 1950CriLJ1383 however, it was observed by Kania C. J. that it would be permissible to refer to the Debates in the Constituent Assembly for the purpose of indicating that the attention of the members was drawn to a particular word or phrase -- the phrase in question in the case related to the due process clause in the American Constitution.

In the present case, the word in question is 'sedition'. In MANU/SC/0006/1950 : 1950CriLJ1514 the existence of the word 'sedition' in Article 13(2) of the Draft Constitution and its final deletion was, noted by Patanjali Sastri J. In Henrietta Muir Edwards v. Attorney General for Canada MANU/PR/0116/1929on the question whether the word 'person' includes 'females', Lord Sankey referred to the debates reported in Hansord, 3rd series Vol. 37, Col. 817, and to John Stuart Mill's amendment proposing person, instead of 'man'. The debates and proceedings, therefore, have value as a matter of historical interest.

83a. In connection with the amendment of 1951, it is to be noted that although on the one hand quantitatively, the amendment of 1951 widened the area of the contents of the legislation relating to the fundamental right of freedom of speech and expression, on the other hand it narrowed down the quality of the contents in respect of which such legislation could be framed. These limitations are indicated by a number of changes made in the amendment itself.

84. Firstly, the amendment substituted the general power to legislate by a particular power. Article 19(2) as it stood in its unamended form, permitted the Legislature to frame any law "relating to" any of the heads mentioned therein,

In the amended Article 19(2) the expression "relating to" was substituted by the expression "in the interests of." The phrase "in the interests of" according to the Webster's New World Dictionary (1956) Edn.) means "for the sake of; in order to promote." Thus the amended clause prescribed that the law should not only relate to a particular head, but should also have a further quality viz., that it should serve a certain particular purpose or advance a certain specific object.

The general and undefined power conferred under the original clause was thus replaced by a particular and a defined power. Secondly, this particular power was further limited by the mode of its exercise being confined to one mode only viz., the mode of imposition of restrictions. Thirdly, even this one mode of exercise of power was further limited by laying down that the restrictions imposed could only be valid if they possessed the quality of reasonableness.

The whole matter was thereby withdrawn from the discretionary realm of the Legislature and put into the rational realm of judiciary. The reasonability of the restrictions thus became a justiciable matter to be determined by courts of law. Fourthly, the words used in the amendment are 'in the interests of public order' as distinguished from the words 'in the interests of general public.' The former expression is much narrower than the latter.

Considerations of public interest might include matters not only relating to public safety and order, but also matters relating to public health, public welfare and a multitude of other matters. The fact that the Legislature wanted to distinguish between the two expressions is evident from a perusal of Article 19 clauses (5) and (6) in which the expression used for defining the purpose of legislation is the wider one viz.. the phrase 'in the interests of general public.'

In making this distinction the Constitution makers probably had in their mind the difference between acts resulting in "public disorder" and acts resulting in "public mischief." The area covered by the former is much narrower than that covered by the latter.

Their purpose seems to be to clarify this position and confine the field to the narrower areas. A strong warning against the danger of a confusion between the two is registered by Lord Denning in his book on "Freedom under the law" in the following passage ;

"But we have always to keep on the alert to see that our freedom of speech is not indirectly attacked; for a principle of law had recently been enunciated which is capable of being used to infringe it and has, in fact, on one occasion been so. used, I refer to the doctrine that acts done to the public mischief are punishable by law. This is a doctrine quite unknown to France and the other freedom-loving countries of Western Europe where the law is contained in a written code. They take their stand on the principle that no one shall be punished for anything that is not expressly forbidden by law. Nullum Crimon, nulla poana, sine lege. They regard that principle as their great charter of liberty." (pp. 40-41)

85. The above considerations would indicate that the Legislature while widening the area of categories in respect of which legislation relating to this right can be framed was particularly jealous of the manner of its imposition and was keen to rigorously restrict the quality of legislation in regard to this particular fundamental right with a view to narrow it down within the strictest possible limits.

86. To sum up, the above discussion leads to the following conclusions.:

1. The act which results in the creation of bad feelings against the Government and which is made an offence under Section 124-A I. P. C., is not an act which has an inherent tendency to excite public disorder or to create a reasonable anticipation or likelihood of public disorder.

2. On the other hand, in view of the present democratic set up of the country ushered in by the Constitution, such an act far from, being against the interests of public order might be in the interests of public order.

3. In any case the act which results in the creation of bad feelings towards the Government does not per se possess the inherent tendency of creating disorder or reasonable likelihood of disorder. It may come to possess this tendency by the addition of certain other factors.

At the most, what can be said is that there might be some cases in which an act which is an offence under Section 124-A I. P. C., might possess such, a tendency. On the other hand, there might be other cases in which such an act might not possess any such tendency. The question whether it does or does not possess such a tendency would depend upon the circumstances of each particular case.

4. The impugned Section, however, catches both kinds of acts viz., acts which have, as well as acts, which do not have a tendency to excite disorder.

5. Public order in the State depends upon the respect and regard in general for the rule of law, and such respect and regard need not, under a democratic system of government, necessarily be identical with respect and regard for a particular government or even a particular form of Government.

6. Further, the expression used in Article 19(2) is in the interests of public order' and not 'in the interests of the government. The two need not necessarily be always identical. They might be different. There might even be instances of a conflict between the two, A history of the origin and development of the law of sedition shows that the impugned law might have been in the interests of public order at one time, when the country was under foreign rule.

It has, however, ceased to be so after the emergence of the country as our Independent Sovereign Nation.

7. A history of the proceedings relating to the framing of original Article 19 of the Constitution, and a comparison of the same with the original draft and the bill based thereon, as well as the history of the events leading to and proceedings relating to the amendment of Article 19(2) by the Amendment Act of 1951 also fortify the conclusion that sedition was not meant to be a heading which was sought to be covered by the Amending Act.

8. A perusal of the Amending Act indicates that while, on the one hand, the intention of the Legislature was to enlarge the area of legislation, on the other hand, it was also its intention to restrict the manner and quality of legislation relating to the particular items, which were sought to be introduced or which already existed in the clause in, question within the strictest possible limits.

87. Keeping in view the above observations, it may now be useful to refer to some of the cases cited before us. On behalf of the private parties reliance was placed on a Bench decision of this Court reported in MANU/UP/0217/1957 : AIR1957All782 in which it was held that creating

disaffection against the government by anyone cannot per se be regarded as objectionable so long as he does not incite the use of violence either overtly or impliedly.

In laying down the above proposition of law the Bench relied on a previous Bench decision of this Court reported in MANU/UP/0196/1956 : AIR1956All589 , and also a single Judge decision of this Court reported in MANU/UP/0356/1950 : AIR1951All459 .

88. Another case of the Supreme Court on which reliance was placed before us is reported in AIR 1956 SC 124 . In this case Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949 (Act No. XXIII of 1949) was held by the Supreme Court to be ultra vires of Article 19(1) of the Constitution.

It may be mentioned that at the time when this case was decided, Article 19(2) had not been amended and the words 'public order' did not exist in Article 19(2) of the Constitution. The item relied on, on behalf of the State in the said case related to the security of the State. In examining this argument, their Lordships made the following observations ;

"Deletion of the word 'sedition' from the draft of Article 13(2) therefore, shows that criticism of government exciting disaffection or bad feelings towards 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 or tend to overthrow the State.

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 democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible." (p, 128)

In view of the above observations it is rightly conceded before us on behalf of the State, that Section 124-A would not have been saved by Article 19(2) of the Constitution as it stood in its unamended form. It is, however, argued, that the introduction of the phrase "in the interests of public order" has the effect of validating Section 124-A of the Indian Penal Code, because every act which constitutes an offence under Section 124-A I. P. G., has an inherent tendency to disturb public order.

As, however, for the reasons given above, I am of opinion that every such act cannot be said to possess an inherent tendency to disturb public order, it necessarily follows that the introduction of the item 'public order' in Article 19(2) of the Constitution by the Amending Act of 1951 would not make any difference in the situation.

The above observations of the Supreme Court would, therefore, continue to apply to the present case and would have the effect of invalidating Section 124-A I. P. C. In this case it was further held that ;

"Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right it is not possible to uphold it even so fur as it may be applied within the constitutional limits, as it is not severable.

So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. In other words Clause (2) of Article 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to public security is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent." (p. 129)

In the present case, as already shown above, Section 124-A is capable of being applied not only to cases where danger to public order could arise, but also to cases where danger to public order could not arise.

These observations, therefore, would also apply with full force to the present case, and would again have the effect of invalidating Section 124-A I. P. C. To the same effect is the law laid down in the other case of the Supreme Court reported in MANU/SC/0007/1950 : 1950CriLJ1525 .

89. Relying on these two cases of the Supreme Court, a Bench of the Punjab High Court has, in a case reported in MANU/PH/0005/1950 held that Section 124-A Penal Code has become void as controverting the right of freedom of speech and expression guaranteed by Article 19(1) and that it is not saved by Article 19(2) as the limitations placed by Article 19(2) upon interference with freedom of speech are real and substantial. It may, however, be mentioned that this case was also decided before Article 19(2) of the Constitution was amended. This as already shown, has not made any difference.

90. As to the position of law after the amendment, there is a single judge decision of this Court given by our learned brother Raghubar Dayal, J. The decision was given in Criminal Appeal No. 1434 of 1955 (All) (Zl), and is dated 11-2-1958.

In that case the learned Judge, placing reliance on Thappar's case (B), decided by the Supreme Court, held that Section 124-A I. P. C. is ultra vires of the Constitution and is not saved by the reservations relating to 'public order' even after the introduction of the item 'public order' by the Constitution First Amendment Act of 1951.

91. On behalf of the State, strong reliance is placed on a case of the Supreme Court reported in MANU/SC/0101/1957 : 1957CriLJ1006 . That was a case in which the validity of Section 295-A Penal Code came up for decision before the Supreme Court and it was held that this Section is intra vires of the Constitution. Section 295-A runs as follows:

"295-A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of (citizens of India), by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

It is obvious that considerations relating to the above Section would not apply to Section 124-A I. P. C; The ingredient of "deliberate and malicious intention of outraging the religious feelings" prescribed therein connotes a most aggravated form of mala fides, and excludes all possibility of an innocent or bona fide intention. On the other hand, the intention which is the ingredient of the offence under Section 124-A I. P. C. may be, and in most cases is, an innocent and bona fide one.

The contrast between the two in this regard is a marked one. That this aggravating feature of Section 295-A I. P. C. as its distinguishing and special characteristic was present before the mind of their Lordships of the Supreme Court is evident from the following passage of their judgment:

"In the next place Section 295-A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizen, but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.

Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the Section, it only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class", (p. 623)

An act born out of such bad intention can only have bad effects. A deed stamped on the face of it with such evil design can and must only lead to evil results. Such an act can, therefore, be well said to possess a calculated or an inherent tendency to disrupt public order. On the other hand Section 124-A I. P. C., as already observed, possessed no such inherent tendency. That this distinguishing and special feature of Section 295-A I. P. C. was also present before the mind of their Lordships of the Supreme Court is borne out by the following passage in their judgment:

The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the Section, which penalises such activities, is well within the protection of Clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(l)(a)." (p. 623) Further, in the said case, for the above reasons, it was observed that;

"Having regard to the ingredients of the offence created by the impugned Section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the Section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(l)(a)....." (623)

In a case under Section 124-A I. P. G., however, as already shown there is a clear possibility of the law being applied, to cover restrictions both within and without the limits of constitutionally permissible legislative action.

In fact Section 124-A might not only cover acts which fall outside the limits prescribed by Article 19(2) but may also cover even act which a person might, while exercising his civic rights to vote as a voter and to participate in elections as a candidate -- rights conferred on him by the Constitution -- consider himself duty bound to perform.

Such a right is the very foundation of that scheme of universal adult suffrage on which the entire structure of democratic system of government built up by the Constitution is founded.

The act made penal under Section 124-A is inseparably bound up with these rights. Thus the ban under Section 124-A might have the result of interfering not only with the right of an individual granted to him by the Constitution but also with the working of the entire scheme promulgated by the Constitution. No such considerations can ever apply to an act under Section 295A of the I. P. Code. The above Supreme Court case which deals with Section 295-A is, therefore, clearly distinguishable, and can have no application to the present case.

92. Lastly, on behalf of the State, reliance is placed on a Bench decision of the Patna High Court reported in MANU/BH/0091/1954. In this case Section 124-A I. P. C. was held intra vires of the Constitution 'after the amendment of Article 19(2) of the Constitution. It may be noted that this case related to a speech which was delivered prior to the coming into force of the Constitution of India. Reference in this case was made to the observations of Fazl Ali, J. in Brij Bhushan's case (N) to the following effect:

"That sedition does undermine the security of the State is a matter which cannot admit of such doubt. That it undermined the security of the State usually through the medium of public disorder is also a matter on which eminent Judges and jurists are agreed." (259)

It may be noted that the above observations formed part of a judgment which was a dissentient one and opposed to the conclusions arrived at by the majority of the Judges. Further, emphasis in the above Patna case was placed on the wide concept of the expression "in the interests of public order" used in the Amending Act of 1951 and its relation to the act which is termed as "sedition" in Section 124-A of the I. P. Code.

Whatever the position might have been before the Constitution, the position after the Constitution has become different. This aspect of the matter was not adverted to. It is also significant to note in this connection that the act which came up for consideration before them was itself done before the Constitution. Moreover, as already observed above, there are indications in the amended Article 19(2) to show that, although the legislature wanted to widen the area of legislation, it has, as a result of the amendment, considerably narrowed down the concept of the nature and quality of such legislation.

This, as already pointed out above, is borne out by the fact that the general power to legislate has, as a result of the amendment, been substituted by a particular and special power winch is further limited by a qualification to the effect that only conditions of a reasonable character can be imposed, thereby making the matter justiciable by 'courts of law. This aspect of the matter does not appear to have been gone into in the said case.

It might be that it was not raised in the case or that it was not considered necessary to go into it, because, on merits, the Court was of opinion that the act did not constitute the offence at all. This aspect, however, appears to be also an important one and deserves serious consideration. A consideration of this aspect involves a discussion of the second question formulated in the beginning of the judgment viz. how far can the restrictions imposed by Section 124-A I. P. C. on the fundamental right to freedom of speech and expression be considered to be reasonable.

93. At this stage therefore, the second question may be taken up with a view to determine how far the conditions imposed by Section 124-A of the I. P. Code are reasonable. Having given my anxious and prolonged consideration to this aspect of the matter, cannot help feeling that the restrictions imposed by the impugned law are unreasonable. I shall now proceed to enumerate below my reasons for the same. (1) At the very outset what strikes one is that the Section not only makes the mere excitation of certain bad feelings penal, but also makes even any attempt to excite those feelings penal. This would mean that even though bad feelings are not really excited if a person merely did an act which could be construed to be an attempt in that direction, he would come within the grips of law. This appears on the face of it, to be an extreme position. A law which punishes an act which results in the mere adoption of certain emotional or mental attitude towards a particular government would under a democratic Constitution itself appear to err on the side of extremity.

When, however, the law goes further and punishes even an attempt to do that, it seems that the law has gone much too far. At this point it can be said that the law has failed to strike a proper balance between the fundamental right of the individual and its social control. Any invasion on the fundamental right of the individual which cannot be justified by the necessities of the case

or the exigencies of the occasion must be deemed to be unwarranted and arbitrary. In the present case the restriction imposed seems to have trespassed the bounds of reason and cannot, therefore, be upheld.

(2) As already, observed the conditions imposed are so stringent as to cover not only acts which fall within the constitutional limits but also acts which fall outside it. Further, if given effect to, as already observed, they may sometimes prove an obstruction in the way of the free and full exercise of certain civic rights conferred on the individual by the Constitution. Further, they may even tend to interfere with a proper and efficient working of the constitutional scheme promulgated by the Constitution itself.

(3) It may also be noticed in this connection that the test of intention which Section 124-A Indian Penal Code, prescribes is not subjective but objective. Whenever a person does any of the acts prescribed therein, he is thereby presumed to invariably intend the consequences of the same, whatever his real intention might be. This aspect of the matter is a further pointer to the rigour of the impugned law the stringency of which is assailed as having overleaped the bounds of reason.

(4) The only restrictions which are permissible under the amended Article 19(2) are the restrictions which promote public order or, in other words, which prevent public disorder. What is, therefore, necessary is not the prevention of all kinds of disorder but only disorder of a particular type. It is significant in this connection to note that the disorder which is sought to be prevented is not private disorder but public disorder.

This means that it is only that kind of act, which might lead to a disorder which is likely to assume such wide proportions as to transform itself into a public disorder that would attract the imposition or restrictions. Under Section 124-A however, even a friendly chat between two persons which has the effect of excitation of bad feelings towards the Government or which has that tendency, or which could even be construed to be an attempt in that direction is made penal. Even a certain talk between husband and wife which might have this feature might attract

the provisions of this Section, although such an act might have no relation whatsoever to public disorder. At this point, again, the law seems to err on the side of severity.

(5) Section 124-A I. P. C. does not take into account the truth or the falsity of the charges levelled against the government. The excitation of such bad feelings might not be the result of any deliberate intention on the part of a person it might be the indirect result of a reasoned and truthful narration of facts. Sometimes pure, unvarnished and unadulterated truth is itself capable of exciting, strongest emotions. It is understandable to make the flinging of venomed darts steeped in the poison of falsity and untruth punishable.

A punishment, however, for speeches containing even true and correct charges seems however, to be obviously unfair and unreasonable. The charges themselves might have been quite true. The intention of the person might be innocent.

It may even be laudable. The act itself might be a peaceful one. It will, however, be punishable all the same so long as its effect or tendency is to create bad feelings against the existing government. Here, again, the law seems to be quite unreasonable.

(6) Further, in public mind reason and emotion are inseparably mixed up, and reason often, if not invariably, finds an echo in emotion. To punish a person just because his speech has a tendency to create the slightest stir or ripple of such emotion, however faint or weak it might be, is tantamount to saying that no attack should be made on the Government at all, however reasonable and truthful the point of attack might be. Here again the law appears to go too far, and, in the garb of imposing restrictions it seems to have arbitrarily tried to indiscriminately strangle all opposition regardless of all considerations of reason, truth or fairness.

(7) The law of sedition is a branch of the law of defamation. Defamation of an individual is made punishable under Section 500 I. P. C. Defamation of the Government is made punishable under Section 124-A I. P. C. In a case of defamation of an individual which is defined in Section 499 I. P. C. the law has rightly engrafted certain exceptions. There is, for example, the first

exception which exempts from punishment an act which constitutes an imputation of truth which public good requires to be made or published.

There is no such exception provided in Section 124-A I. P. C. There is the second exception which protects criticism in good faith of the conduct of public servants while acting as such. There is again the third exception which exempts from punishment the conduct of a person acting in good faith in respect of a matter touching public question. Under the seventh exception, censure passed in good faith by person having lawful authority over another would net be penal. Under the eighth exception accusation preferred in good faith to lawful authority is protected. In a case under Section 124-A Indian Penal Code, censure passed or accusation levelled by the people on the conduct of the government over whom the people might be said to possess lawful authority is left unprotected.

Under the ninth exception to Section 499 Indian Penal Code, imputation made in good faith by a person for protection of his or other's interests will constitute a sufficient answer to a charge of defamation. No such defence, however, is open to a person, charged with the offence of sedition under Section 124-A Indian Penal Code.

Under the tenth exception, caution intended for goods of a person to whom it is conveyed or for public good would be a sufficient defence against a charge of defamation of an individual. On the other hand, it would not be a sufficient defence when a person is charged for defaming the government under Section 124-A I. P. C,

Three explanations appended to Section 124-A Indian. Penal Code, are, it is to be noted, mere explanations and not exceptions. A close examination of these explanations as made in the succeeding para i.e., ground No. 8 shows that they have hardly any value as serving to extend the area of protection. The absence of corresponding exceptions in Section 124-A Indian Penal Code, appears to be highly unreasonable in view of the fact that it is specially in speeches against the government that exceptions of this nature would be most necessary.

The existence of these exceptions would be necessary not only for private good, but would also be necessary, as shown in the earlier portion of the judgment, in the interests of public good, and even in the wider interests of public order and security of State.

It would further be necessary even for the good of the government itself, for it is then only that it would be able to mend itself so as to be able to truly reflect the people's will, thereby gaining the people's confidence and adding to its own strength and security. The fact that these exceptions are conspicuous by their absence in the very Section in which they are most needed, would itself constitute a sufficient condemnation of the Section and would bring it within the ban of unreasonable restrictions. Under the circumstances, it might well' be argued that the law in this regard is discriminatory, and the discrimination made in favour of the government appear to be arbitrary and unwarranted. (8) The three explanations appended to Section 124-A I. P. C. do not improve the situation. The first explanation shows that the term "disaffection" used in the Section has a wide import and embraces not only disloyalty but all feelings of enmity. Explanation 2 only permits comments expressing disapprobation of the measures of the government with a view to obtain their alteration by lawful means.

It does not, therefore protect a criticism of the government itself. Further this explanation lays down that disapprobation of the measures of the government can only be done without exciting bad feelings towards the Government thereby importing into the subsidiary explanation the same stringency which is a constituent of the main part of the Section itself. What the law, therefore, appears to give with one hand, it has by imposing this restriction taken away with the other. Explanation 3 only permits comments expressing disapprobation of the administrative or other action of the Government.

This explanation also, therefore, does not permit a frontal attack making a direct criticism of the Government or of the form of Government or the constitutional structure under which the Government functions. Further this explanation like explanation 2 imports the same stringent condition banning creation of any bad feelings against the Government which is contained in the basic portion of the Section thereby nullifying the effect of the apparent concession that it

might appear to have made in favour of the citizen. The ostensible extension provided by these explanations is, therefore, illusory and not real:

(9) The law in America in this regard has developed round the "due process" clause. In applying this clause the courts have considered various standards of reasonableness with regard to the restrictions imposed on the fundamental right to freedom of speech in America. It might, therefore, be instructive to refer briefly to it. There appears to be no cause in America in which the mere excitation of bad feelings against the Government has been held to be penal. Bishop in his "Commentaries on the Criminal Law", Vol. I (Sixth Edition) while comparing the law of sedition in U. S. A. with that of England states as follows:

"Sedition -- In England, there are various misdemeanours which, not amounting to treason are of like nature with it known under the general name of sedition; such as libels upon the Government, oral slanders of it, riots to its disturbance, and the like. Offences of this sort against the United States could be punished only under a statute, and there has been little occasion for pursuing like offences against the States. Moreover with us, popular sentiment tolerates great latitude in the discussion of Governmental affairs, we, have therefore, no cases informing us to what extent sedition is an offence at common law in our States" (pp. 258-259). At page 498 of Willis on "Constitutional Law" 1936, Edn. the author has made the following comments:

"Discussion and criticism of the form of Government and of the conduct of those in authority tend to make the social order better instead or worse. Without them there would be no possibility of progress in Government and no means of getting rid of corrupt and inefficient officials. When do words give rise to unlawful acts? Three possible answers may be given to this question; (1) When they directly urge or cause such acts, (2) when they might have an indirect or remote tendency to cause such acts, and (3) when, there is a clear and present danger that they will cause such acts." After discussing the case-law on the point, the author states his conclusion as follows :

"..... .It now looks as though the Supreme Court is going to uphold the test of clear and present danger in the case of sedition." (page 499). Whichever test is accepted, it is clear that in order that the act should become penal it should at least have a tendency to result in an unlawful act. According to the third test, the tendency should be more imperative. This is involved in the test laid down by the principle of clear and present danger. So important and vital is this fundamental right considered in America that even the general rule that an interpretation validating a statute should be preferred is overridden when a question imperiling this right of the individual arises. The following passage from (H. J. Thomas v. H. W. Collins) (1944) 89 LEd 430 indicates the firm stand taken in this regard in the said case "The case confronts us again with the duty our system places on this Court to say where, the individual's freedom end, and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. Of Schneider v. Irvington (1939) 308 US 147: 84 LEd 155: 60 SCR 146 : (1940) 310 U.S. 296: 84 LEd 1213: 60 SCR 900: 128 ALR 1352; Prince v. Massachusetts (1943) 321 US 158: 88 LEd 645: 64 SCR 438. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what Standard governs the choice. Compare United States v. Carotene Products Co. (1938) 30 US 144 : 82 LEd 1234: 58 SCR 778

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear land present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interest, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly." (p. 440).

Judged, therefore, from the standard of reasonableness set up in the American law, the impugned law would fail. It is, however, not necessary to go further into this aspect of the matter as the law in India in this regard is statutory.

It may, however, be observed that in India it might be possible to hold that the mere fact that a speech has tendency to result in an unlawful act may not be enough, unless the unlawful act possesses a further characteristic also, viz, the capacity or potentiality to disturb public order or an inherent tendency in that direction. Section 124-A Indian Penal Code, however, makes an act penal irrespective of any such capacity, potentiality or tendency. The restriction imposed thereby does not, therefore, appear to be a reasonable one.

(10) The position in this regard in England and Australia may also be briefly referred to. So jealous are the English people of the preservation of this cherished right of theirs and so precious they consider it to be for themselves that in England they have not left it even in the hands of Judges. They have reserved the final pronouncement of a verdict of guilt in this regard in the hands of Jury -- i.e., a body that directly represents the common people themselves. The following observations by Lord penning on "The Value of Jury" in his book on "Freedom under the Law" contains a statement of the reasons in support of the English system;

"Our own experience of the Star Chamber, therefore, coupled with the present happenings in Russia afford convincing proof that there is no freedom of speech when judges are instruments of the party in power. But even when the judges are independent, they may not always see clearly on a question of freedom of speech because of their own predilections on the matter in hand. This is where the value of jury is most clearly seen." (pp. 38 and 39).

As an instance of this salutary system, the author goes On to cite the celebrated case against John Miller, the printer of the London Evening Post who was charged with seditious libel in the year 1770. In spite of the strongest possible indications in the charge by Lord Mansfield to the Jury that the latter should find the accused guilty, the Jury stood firmly against the weight of his remarks and returned a verdict of "Not Guilty." After the said case, the learned author puts the position to be as follows:

"It is now clear that the jury were entitled to do what they did. A jury may always give a general verdict of guilty or not guilty; and no judge can take away that right from them. Parliament has so declared it. .....Since that time we have found no difficulty in criticising the Government." (p. 4)0

The following passage from the report of Lord Porter's Committee is cited at p. 44 of the same book:

"Much as we deplore all provocation to hatred or contempt for bodies or groups of persons, with its attendant incitement to violence, we cannot fail to be impressed by the danger of curtailing free and frank --- albeit hot and hasty --- political discussion land criticism".

In Australia today as in England nothing short of a threat to subvert the State by a resort to brute force may be considered enough. The position is put clearly by Lord Denning in his treatise on "Freedom under the Law" in the following passage:

"But there comes a point at which this country, and every other country, must draw the line; and that is when there is a threat to overturn the state by force. When an Australian communist said recently that 'in a war with the Soviet' the Australian communists will fight with the Soviet' it was held that the words were seditious. That case was very much on the border line, as was shown by the fact that the High Court of Australia was evenly divided on the point", (pp. 44-45)

The amplitude of the right as well as the limit of Restrictions that should be imposed thereon are thus put by Lord Denning;

"Every one in the land should be free to think his own thoughts --to have his own opinion, and to give voice to them, in public or in private, so long as he does not speak ill of his neighbour; and free also to criticise the Government or any party or group of people, so long as he does not incite anyone to violence." (p. 35)

Judged again from the above standards, it is apparent that the law of sedition in India would fail to stand the test and appear to be unreasonable.

(11) In India, the phrase "reasonable restriction" has been defined by the Supreme Court in MANU/SC/0048/1950 : [1950]1SCR840 . In that case, the meaning of the phrase 'reasonable restriction' was expounded as follows:

"The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19 it must be held to be wanting in that quality." (p. 119).

Judging the matter again and finally in the light of the standard laid down by their Lordships of the Supreme Court above, I am of opinion that the restrictions imposed by the impugned law are unreasonable and Section 124-A I. P, C., should, therefore, fall on this ground also.

94. For the above reasons, I am of opinion that Section 124-A, Indian Penal Code, is ultra vires of Article 19(1) of the Constitution, both because it is not in the interests of public order as well as because the restrictions imposed thereby are not reasonable restrictions. This Section is, therefore, not saved by the reservations contained in Article 19(2) of the Constitution, and should be declared to be void.

95. THE COURT: For the reasons stated in our respective judgments in Criminal Appeal No. 1081 of 1955, we hold, that the provisions of Section 124-A I. P. C. have become void with the enforcement of the Constitution. The applicant has therefore committed no offence and his detention is illegal. We allow the application and set him at liberty. He will get his costs of the petition from the opposite party. (Note--The connected Cr, App. No. 76 of 1955 was also allowed, the accused was acquitted and his bail bonds were discharged).

Ram Nandan vs. State (16.05.1958 - ALLHC)