Equivalent Citations
1963 ANWR 1 40 . 1962 BLJR 10 636 . 1963 MLJ SC 1 40 . 1962 SUPP SCR 2 769 . 1962 CRI LJ 2 103 . 1962 SCR SUPL 2 769 . 1962 AIR SC 955 . 1962 AIR SC 995 . 1962 SCC 0 955 . 1962 CRLJ 103 . 1962 AIR SCC 955 . 1962 SCR 2 769 . 1962 SC 0 955 . 1962 SUPSCR 2 769 . 1962 SUPPSCR 2 769 . 1962 AIR 955 . 1962 SCR SUPP 2 769 .

Kedar Nath Singh v. State Of Bihar .

Supreme Court Of India (Jan 24, 1962)

CASE NO.

Criminal Appeal No. 169 of 1957, Appeal by Special Leave from the Judgment and Order dated 9th April, 1956, of the Patna High Court in Cr.A No. 445 of 1955., Criminal Appeals Nos. 124 to 126 of 1958, Appeals from the Judgment and Order dated 16-5-1958, of the Allahabad High Court in Criminal Appeals Nos. 76 and 1081 of 1955 and Cr. Misc. Writ No. 2371 of 1955., The Attorney-General for India (On notice by the Court)(In all the four Appeals), The 24th day of January, 1962

DISPOSITION

dismissed

ADVOCATES

Janardan Sharma, Advocate.

C.B Agarwala, Senior Advocate (G.C Mathur and C.P Lal, Advocates, with him)

R.C Prasad, Advocate.

S.P Sinha, Senior Advocate (Gopal Behari and S. Shaukat Hussain, Advocates, with him)

For the Attorney- General (In all the four Appeals): C.K Daphtary, Solicitor- General of India (S.P Varma and T.M Sen, Advocates, with him)

JUDGES

The Hon'ble The Chief Justice Bhuvaneshwar Prasad Sinha

The Hon'ble Justice S.K Das

The Hon'ble Justice A.K Sarkar

The Hon'ble Justice N. Rajagopala Ayyangar

The Hon'ble Justice J.R Mudholkar

SUMMARY

Factual and Procedural Background

These consolidated appeals arise out of prosecutions under Sections 124-A (sedition) and 505 of the Indian Penal Code (IPC).

- ***Kedar Nath Singh*** **(Cr.A. 169/1957)** was convicted by a Magistrate in Begusarai, *Bihar* , for a fiery public speech that branded Congress leaders as "goondas," called officials "dogs," and advocated revolutionary overthrow of the Government. The conviction (one year's rigorous imprisonment) was affirmed by the Patna High Court. Special leave brought the matter to the Supreme Court, where the appellant for the first time challenged the constitutionality of Sections 124-A and 505.

- **Uttar Pradesh Appeals (Cr.A. 124-126/1958)** : Three separate speakers — Mohd. Ishaq Ilmi, Rama Nand, and Parasnath Tripathi — were prosecuted for allegedly seditious speeches. A Full Bench of the Allahabad High Court (Ram Nandan v. *State*) held Section 124-A unconstitutional and acquitted/ released the accused. The *State* , armed with a certificate of fitness, appealed to the Supreme Court.

Because all matters turned on the validity of Sections 124-A and 505 vis-à-vis Article 19(1)(a) of the Constitution, a Constitution Bench heard the appeals.

Legal Issues Presented

1. Whether Sections 124-A and 505 IPC are void for being inconsistent with the fundamental right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution.

2. If not void, what is the permissible scope of these sections after the First Amendment to Article 19(2)—particularly the phrase "in the interests of public order."

3. On the facts of each appeal, do the impugned speeches fall within the narrowed constitutional ambit of the sections?

Arguments of the Parties

State of Uttar Pradesh (Appellant in Cr.A. 124-126/1958)

- Ram Nandan v. *State* was erroneous; Section 124-A fits squarely within Article 19(2) because sedition laws protect "public order" and "security of the *State* ."

- Relied on the Federal Court's view in *Niharendu Dutt Majumdar* and common-law authorities (Stephen's Commentaries, Halsbury) to show sedition targets incitement to disorder.

Respondents/Accused & *Kedar Nath Singh*

- Adopted the Allahabad Full Bench decision holding Section 124-A ultra vires Article 19(1)(a).
- Argued that mere "vilification" of Government, absent direct incitement, is protected speech under the Constitution.

Table of Precedents Cited

Precedent	Rule or Principle Cited For	Application by the Court
Ram Nandan v. *State* (1958 ILR 2 All 84)	Held Section 124-A unconstitutional as not "in the interests of public order."	Overruled; Supreme Court held the High Court misread Article 19(2).
Niharendu Dutt Majumdar v. King-Emperor (1942 FCR 38)	Sedition requires intention/ tendency to create public disorder or incite violence.	Adopted as the correct construction to preserve constitutionality of Section 124-A.
King-Emperor v. Sadashiv Narayan Bhalerao (PC)	Privy Council view: sedition does *not* require incitement to disorder.	Not followed; cited as conflicting authority.
Queen-Empress v. Bal Gangadhar Tilak (1898 ILR 22 Bom 112)	Wide definition of "disaffection" ("absence of affection").	Reviewed as historical background; ultimately narrowed by Court.
Queen-Empress v. Jogendra Chunder Bose (1892 ILR 19 Cal 35)	Early Indian exposition of "disaffection."	Cited in historical survey of sedition law.
Queen-Empress v. Amba Prasad (1898 All 55)	Confirmed broad reading of "disaffection."	Discussed but not adopted.
Wallace-Johnson v. King (1940 AC 231)	Privy Council: incitement to violence not essential to sedition.	Highlighted as part of the Privy Council line rejected by Court.
Annie Besant v. Advocate-General of Madras	Press Act provision similar to Section 124-A approved by Privy Council.	Cited to show breadth of prior Privy Council approach.

Romesh Thappar v. *State* of Madras (1950 SCR 594)	Struck down prior- restraint law; distinguished between "security of the *State* " and "public order."	Referenced to trace evolution of Article 19(2).
Brij Bhushan v. *State* of Delhi (1950 SCR 605)	Similar to *Romesh Thappar* ; majority invalidated press censorship.	Discussed; Fazl Ali, J.'s dissent noted for linking sedition to public order.
Ramji Lal Modi v. *State* of U.P. (1957 SCR 860)	"In the interests of public order" confers wide legislative power.	Used to justify saving Section 124- A under Article 19(2).
Debi Saran v. *State* of *Bihar*	Phrase "in the interests of" is broader than "for the maintenance of."	Quoted approvingly.
Virendra v. *State* of Punjab (1958 SCR 308)	Laws enacted "in the interests of public order" are generally valid.	Affirmed Court's power to uphold reasonable restrictions.
Bengal Immunity Co. v. *State* of *Bihar* (1955 2 SCR 603)	Statutes should be interpreted with reference to purpose and mischief.	Relied on for adopting purposive, saving construction.
R.M.D. Chamarbaugwala v. Union of India (1957 SCR 930)	Court may read down legislation to preserve constitutionality.	Basis for limiting Section 124- A to cases involving incitement/ tendency to disorder.

Court's Reasoning and Analysis

The Bench undertook a detailed historical survey of sedition law from 19th-century Indian cases through Privy Council and Federal Court rulings. Recognising conflicting authority, the Court applied the following analytical steps:

1. **Constitutional Framework.** Article 19(1)(a) guarantees free speech, but Article 19(2) (as amended in 1951) permits "reasonable restrictions … in the interests of … public order" and "security of the *State* ."

2. **Purpose of Sedition Law.** Section 124- A appears in the IPC chapter on offences against the *State* . Its legitimate object is to safeguard the stability of the Government established by law, since subversion of that Government imperils the *State* itself.

3. **Reconciling Free Speech and *State* Security.** The Court accepted the Federal Court's view in *Niharendu Dutt* that the "gist" of sedition is *incitement to violence or a*

tendency to create public disorder . Mere "strong words" expressing disapprobation of Government measures, absent such tendency, are protected.

4. **Reading Down the Statute.** Even though the bare text of Section 124-A, read literally (as by the Privy Council), could penalise every expression "bringing … into hatred or contempt," the Court invoked the doctrine of *Chamarbaugwala* to construe the section narrowly so that only speech with *intention or tendency to cause public disorder or violence* is punishable. The accompanying Explanations (2 & 3) reinforce this limited scope.

5. **Section 505.** Each clause of Section 505 expressly targets statements likely to produce mutiny, offences against public tranquillity, or inter-community violence; therefore it comfortably fits within Article 19(2).

6. **Application to the Appeals.** No party disputed that, on the narrowed test, *Kedar Nath* Singh's speech — and the speeches in the U.P. cases — contained calls for violent revolution and thus fell within Section 124-A/505.

Holding and Implications

Holding: Sections 124-A and 505 IPC are *constitutional* when confined to acts involving *incitement to violence or tendency to create public disorder* . Accordingly, Criminal Appeal 169/1957 by *Kedar Nath Singh* is **DISMISSED** , and Criminal Appeals 124-126/1958 are **REMANDED** to the Allahabad High Court for orders consistent with this interpretation.

Implications: The decision preserves India's sedition law but significantly narrows its reach, ensuring that vigorous political criticism remains protected while speech inciting violence does not. The ruling establishes a binding constitutional gloss limiting prosecution to cases with a demonstrable nexus to public disorder, thereby guiding future courts and law-enforcement agencies.

JUDGMENT

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

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

"First.—That you on the 26th day of May, 1953 at Village Barauni, P.S Teghra (Monghyr)

by speaking the words, to wit,

(a) Today the dogs of the CID are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country and elected these Congress goondas to the gaddi and seated them on it. Today these Congress goondas are sitting on the gaddi due to mistake of the people. When we drove out the Britishers, we shall strike and turn out these Congress goondas as well. These official dogs will also be liquidated along with these Congress goondas. These Congress goondas are banking upon the American dollars and imposing various kinds of taxes on the people today. The blood of our brothers — mazdoors and Kisans — is being sucked. The capitalists and the zamindars of this country help these Congress goondas. These zamindars and capitalists will also have to be brought before the people's court along with these Congress goondas.

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

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

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

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

(f) I want to tell the last word even to the Congress Tyrants, ‘You play with the people and ruin them by entangling them in the mesh of bribery, black marketing and corruption.

Today the children of the poor are hankering for food and you Congressmen are assuming the attitude of Nawabs sitting on the chairs'….

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

Secondly.—That you on 26th day of May, 1953 at Village Barauni, P.S Tegra (Monghyr) made the statement, to wit,

(a) Today the dogs of the CID are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country, and elected these Congress Goondas to the gaddi and seated them on it. Today these Congress Goondas are sitting on the gaddi due to the mistake of the people. When we have driven out the Britishers, we shall strike and turn out these Congress Goondas as well. These official dogs will also be liquidated along with these Congress Goondas. These Congress Goondas are banking upon the American dollars and imposing various kinds of taxes on the people today. The blood of our brothers Mazdoors and Kisans is being sucked. The capitalists and the zamindars of this country help these Congress Goondas. These zamindars and capitalists will also have to be brought before the people's court along with these Congress Goondas.

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

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

(d) It will be a mistake to expect anything from the Congress rulers. They (Congress rulers) have set up V. Bhave in the midst of the people by causing him to wear a langoti in order to divert the attention of the people from their mistakes. Today Vinoba is playing a drama on the stage of Indian politics. Confusion is being created among the people. I want

to tell Vinova and advise his agents, “You should understand it that the people cannot be deceived by this Yajna, illusion and fraud of Vinova. I shall advise Vinova not to become a puppet in the hands of the Congressmen. Those persons who understand the Yajna of Vinova, realise that Vinova is an agent of the Congress Government.

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

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

with intent to cause or which was likely to cause fear or alarm to the public whereby any person might be induced to commit an offence against the *State* of *Bihar* and against the public tranquillity, and thereby committed an offence punishable under Section 505(b) of the Indian Penal Code and within my cognizance.”

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

4. The convicted person preferred an appeal to the High Court of Judicature at Patna, which was heard by the late Mr Justice Naqui Imam, sitting singly. By his judgment and order dated 9-4-1956, he upheld the convictions and the sentence and dismissed the appeal. In the course of his judgment, the learned Judge observed that the subject-matter of the charge against the appellant was nothing but a vilification of the Government; that it was full of incitements to revolution and that the speech taken as a whole was certainly seditious. It is not a speech criticising any particular policy of the Government or criticising any of its measures. He held that the offences both under Sections 124-A and 505(b) of the Indian Penal Code had been made out.

5. The convicted person moved this Court and obtained special leave to appeal. It will be noticed that the constitutionality of the provisions of the sections under which the appellant was convicted had not been canvassed before the High Court. But in the petition for special leave, to this Court, the ground was taken that Sections 124-A and 505 of the Indian Penal Code “are inconsistent with Article 19(1)(a) of the Constitution”. The appeal was heard in this Court, in the first instance, by a Division Bench on 5-5-1959. The Bench, finding that the learned counsel for the appellant had raised the constitutional issue as to the validity of Sections 124-A and 505 of the Indian Penal Code, directed that the appeal be placed for hearing by a Constitution Bench. The case was then placed before a Constitution Bench on 4-11-1960, when that Bench directed notice to issue to the Attorney-General of India under Rule 1 Order 41 of the Supreme Court Rules. The matter was once again placed before a Constitution Bench on 9-2-1961, when it was adjourned

for two months in order to enable the *State* Governments concerned with this appeal, as also with the connected Criminal Appeals Nos. 124-26 of 1958 (in which the Government of Uttar Pradesh is the appellant) to make up their minds in respect of the prosecutions, as also in view of the report that the Law Commission was considering the question of amending the law of sedition in view of the new set-up. As the States concerned have instructed their counsel to press the appeals, the matter has finally come before us.

6. In Criminal Appeals 124-26 of 1958, the *State* of Uttar Pradesh is the appellant, though the respondents are different. In Criminal Appeal 124 of 1958, the accused person is one Mohd. Ishaq Ilmi. He was prosecuted for having delivered a speech at Aligarh as Chairman of the Reception Committee of the All India Muslim Convention on 30-10-1953. His speech on that occasion was thought to be seditious. After the necessary sanction, the Magistrate held an enquiry, and finding a prima facie case made out against the accused, committed him to the Court of Session. The learned Sessions Judge, by his judgment dated 8-1-1955, acquitted him of the charge under Section 153-A, but convicted him of the other charge under Section 124-A of the Indian Penal Code, and sentenced him to rigorous imprisonment for one year. The convicted person preferred an appeal to the High Court. In the High Court the constitutionality of Section 124-A of the Indian Penal Code was challenged.

7. In Criminal Appeal No. 125 of 1958, the facts are that on 29-5-1954, a meeting of the Bolshevik Party was organised in Village Hanumanganj, in the district of Basti, in Uttar Pradesh. On that occasion, the respondent Rama Nand was found to have delivered an objectionable speech insofar as he advocated the use of violence for overthrowing the Government established by law. After the sanction of the Government to the prosecution had been obtained, the learned Magistrate held an enquiry and ultimately committed him to take his trial before the Court of Sessions. In due course, the learned Sessions Judge convicted the accused person under Section 124-A of the Indian Penal Code and sentenced him to rigorous imprisonment for three years. He held that the accused person had committed the offence by inciting the audience to an open violent rebellion against the Government established by law, by the use of arms. Against the aforesaid order of conviction and sentence, the accused person preferred an appeal to the High Court of Allahabad.

8. In Criminal Appeal No. 126 of 1958, the respondent is one Parasnath Tripathi. He is alleged to have delivered a speech in Village Mansapur, P.S Akbarpur, in the district of Faizabad, on 26-9-1955, in which he is said to have exhorted the audience to organise a volunteer army and resist the Government and its servants by violent means. He is also said to have excited the audience with intent to create feelings of hatred and enmity against the Government. When he was placed on trial for an offence under Section 124-A of the Indian Penal Code, the accused person applied for a writ of Habeas Corpus in the High Court of Judicature at Allahabad on the ground that his detention was illegal inasmuch as the provisions of Section 124-A of the Indian Penal Code were void as being in contravention of his fundamental rights of free speech and expression under Article 19(1)(a) of the Constitution. This matter, along with the appeals which have given rise to

Appeals Nos. 124 and 125, as aforesaid, were ultimately placed before a Full Bench, consisting of Desai, Gurtu and Beg, JJ. The learned Judges, in separate but concurring judgments, took the view that Section 124-A of the Indian Penal Code was ultra vires Article 19(1)(a) of the Constitution. In that view of the matter, they acquitted the accused persons, convicted as aforesaid in the two Appeals Nos. 124 and 125, and granted the writ petition of the accused in Criminal Appeal No. 126. In all these cases the High Court granted the necessary certificate that the case involved important questions of law relating to the interpretation of the Constitution. That is how these appeals are before us on a certificate of fitness granted by the High Court.

9. Shri C.B Agarwala, who appeared on behalf of the *State* of Uttar Pradesh in support of the appeals against the orders of acquittal passed by the High Court, contended that the judgment of the High Court (now reported in Ram Nandan v. State (**1958) ILR 2 ALL 84** in which it was laid down by the Full Bench that Section 124-A of the Indian Penal Code was ultra vires Article 19(1)(a) of the Constitution and, therefore, void for the reason that it was not in the interest of public order and that the restrictions imposed thereby were not reasonable restrictions on the freedom of speech and expression, was erroneous. He further contended that the section impugned came within the saving clause (2) of Article 19, and that the reasons given by the High Court to the contrary were erroneous. He relied upon the observations of the Federal Court in **Niharendu Dutt Majumdar v. King Emperor** (**1942) FCR 38**. He also relied on Stephen's Commentaries on the Laws of England, Vol. IV, 21st Edn., p. 141, and the Statement of the Law in Halsbury's Laws of England, 3rd Edn., Vol. 10, p. 569, and the cases referred to in those volumes. Mr Gopal Behari, appearing on behalf of the respondents in the Allahabad cases has entirely relied upon the Full Bench decision of the Allahabad High Court in his favour. Shri Sharma appearing on behalf of the appellant in the appeal from the Patna High Court has similarly relied upon the decision aforesaid of the Allahabad High Court.

10. Before dealing with the contentions raised on behalf of the parties, it is convenient to set out the history of the law, the amendments it has undergone and the interpretations placed upon the provisions of Section 124-A by the Courts in India, and by Their Lordships of the Judicial Committee of the Privy Council. The section corresponding to Section 124-A was originally Section 113 of Macaulay's Draft Penal Code of 1837-39, but the section was omitted from the Indian Penal Code as it was enacted in 1860. The reason for the omission from the Code as enacted is not clear, but perhaps the legislative body did not feel sure about its authority to enact such a provision in the Code. Be that as it may, Section 124-A was not placed on the Statute Book until 1870, by Act 27 of 1870. There was a considerable amount of discussion at the time the amendment was introduced by Sir James Stephen, but what he said while introducing the bill in the legislature may not be relevant for our present purposes. The section as then enacted ran as follows:

“124-A. Exciting Disaffection.— Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be

punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

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

11. The first case in India that arose under the section is what is known as the Bangobasi case (Queen-Empress v. Jogendra Chunder Bose (**1892) ILR 19 Cal 35**) which was tried by a Jury before Sir Comer Petheram, C.J While charging the jury, the learned Chief Justice explained the law to the jury in these terms:

"Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr Jackson cannot be sustained. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his 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 purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."

12. The next case is the celebrated case of **Queen-Empress v. Balgangadhar Tilak** (**1898) ILR 22 Bombay 112** which came before the Bombay High Court. The case was tried by a jury before Strachey, J. The learned Judge, in the course of his charge to the jury, explained the law to them in these terms:

"The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are 'feelings of disaffection'? I agree with Sir Comer Petheram in the Bangobasi case that disaffection means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt and every form of ill- will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible

form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment: if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. It is true that there is before you a charge against each prisoner that he has actually excited feelings of disaffection to the Government. If you are satisfied that he has done so, you will, of course, find him guilty. But if you should hold that that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with attempting to excite such feelings. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them, so that, if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded. Again, it is important that you should fully realise another point. 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 or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope."

The long quotation has become necessary in view of what followed later, namely, that this

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

“The other ground upon which Mr Russell has asked us to certify that this is a fit case to be sent to Her Majesty in Council, is that there has been a misdirection, and he based his argument on one major and two minor grounds. The major ground was that the section cannot be said to have been contravened unless there is a direct incitement to stir up disorder or rebellion. That appears to us to be going much beyond the words of the section, and we need not say more upon that ground. The first of the minor points is that Mr Justice Strachey in summing up the case to the jury stated that disaffection meant the ‘absence of affection'. But although if that phrase had stood alone it might have misled the jury, yet taken in connection with the context we think it is impossible that the jury could have been misled by it. That expression was used in connection with the law as laid down by Sir Comer Petheram in Calcutta in the Bangaboshi case. There the Chief Justice instead of using the words absence of affection used the words ‘contrary to affection'. If the words ‘contrary to affection' had been used instead of ‘absence of affection' in this case there can be no doubt that the summing up would have been absolutely correct in this particular. But taken in connection with the context it is clear that by the words ‘absence of affection' the learned Judge did not mean the negation of affection, but some active sentiment on the other side. Therefore on that point we consider that we cannot certify that this is a fit case for appeal.

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

After making those observations, the Full Bench refused the application for leave. The case was then taken to Her Majesty in Council, by way of application for special leave to

appeal to the Judicial Committee. Before Their Lordships of the Privy Council, Asquith, Q.C, assisted by counsel of great experience and eminence like Mayne, W.C Bannerjee and others, contended that there was a misdirection as to the meaning of Section 124-A of the Penal Code in that the offence had been defined in terms too wide to the effect that "disaffection" meant simply "absence of affection", and that it comprehended every possible form of bad feeling to the Government. In this connection reference was made to the observations of Petheram, C.J in **Queen-Empress v. Jogendra Chander Bose** (**1892) ILR 19 Cal 35**. It was also contended that the appellant's comments had not exceeded what in England would be considered within the functions of a public journalist, and that the misdirection complained of was of the greatest importance not merely to the affected person but to the whole of the Indian press and also to all Her Majesty's subjects; and that it injuriously affected the liberty of the press and the right to free speech in public meetings. But in spite of the strong appeal made on behalf of the petitioner for special leave, the Lord Chancellor, delivering the opinion of the Judicial Committee, while dismissing the application, observed that taking a view of the whole of the summing up they did not see any reason to dissent from it, and that keeping in view the Rules which Their Lordships observed in the matter of granting leave to appeal in criminal cases, they did not think that the case raised questions which deserve further consideration by the Privy Council, (vide Gangadhar Tilak v. Queen-Empress).

13. Before noticing the further changes in the Statute, it is necessary to refer to the Full Bench decision of the Allahabad High Court in Queen- Empress v. Amba Prasad ILR (1898) All 55. In that case, Edge, C.J, who delivered the judgment of the Court, made copious quotations from the judgments of the Calcutta and the Bombay High Courts in the cases above referred to. While generally adopting the reasons for the decisions in the aforesaid two cases, the learned Chief Justice observed that a man may be guilty of the offence defined in Section 124-A of attempting to excite feelings of disaffection against the Government established by law in British India, although in a particular article or speech he may insist upon the desirability or expediency of obeying and supporting the Government. He also made reference to the decision of the Bombay High Court in the Satara case (**1898) ILR 22 Bombay 152**. In that case a Full Bench, consisting of Farran, C.J, and Parsons and Ranade, JJ., had laid it down that the word "disaffection" in the section is used in a special sense as meaning political alienation or discontent or disloyalty to the Government or existing authority. They also held that the meaning of the word "disaffection" in the main portion of the section was not varied by the explanation. Parsons, J., held that the word "disaffection" could not be construed as meaning "absence of or contrary of affection or love". Ranade, J., interpreted the word "disaffection" not as meaning mere absence or negation of love or goodwill but a positive feeling of aversion, which is akin to illwill, a definite insubordination of authority or seeking to alienate the people and weaken the bond of allegiance, a feeling which tends to bring the Government

into hatred and discontent, by imputing base and corrupt motives to it. The learned Chief Justice of the Allahabad High Court observed that if these remarks were meant to be in any sense different from the construction placed upon the section by Strachey, J., which was approved, as aforesaid, by the Judicial Committee of the Privy Council, the later observations of the Bombay High Court could not be treated as authoritative. As the accused in the Allahabad case had pleaded guilty and the appeal was more or less on the question of sentence, it was not necessary for Their Lordships to examine in detail the implications of the section, though they expressed their general agreement with the view of the Calcutta and the Bombay High Courts in the first two cases, referred to above.

14. The section was amended by the Indian Penal Code Amendment Act (4 of 1898). As a result of the amendment, the single explanation to the section was replaced by three separate explanations as they stand now. The section, as it now stands in its present form, is the result of the several AOs of 1937, 1948 and 1950, as a result of the constitutional changes, by the Government of India Act, 1935, by the Independence Act of 1947 and by the Indian Constitution of 1950. Section 124- A, as it has emerged after successive amendments by way of adaptations as aforesaid, reads as follows:

"Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with transportation for life or any shorter term to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1. — The expression 'disaffection' includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without 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."

15. This offence, which is generally known as the offence of Sedition, occurs in Chapter VI of the Indian Penal Code, headed "Of Offences against the *State* ". This species of offence against the *State* was not an invention of the British Government in India, but has been known in England for centuries. Every *State* , whatever its form of Government, has to be armed with the power to punish those who, by their conduct, jeopardise the safety and stability of the *State* , or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the *State* or to public disorder. In England, the crime has thus been described by Stephen in his Commentaries on the Laws of England, 21st Edn., Vol. IV, at pp. 141-42, in these words:

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

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

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

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

3. to incite a disturbance of the peace;

4. to raise discontent among the King's subjects;

5. to excite class hatred.

It must be observed that criticism on political matters is not of itself seditious. The test is the manner in which it is made. Candid and honest discussion is permitted. The law only interferes when the discussion passes the bounds of fair criticism. More especially will this be the case when the natural consequence of the prisoner's conduct is to promote public disorder.”

16. This statement of the law is derived mainly from the address to the Jury by Fitzerald, J., in the case of **Reg v. Alexander Martin Sullivan** (1867-71) 11 Cox's Criminal Law Cases. In the course of his address to the Jury, the learned Judge observed as follows:

“Sedition is a crime against society, nearly allied to that of treason and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the *State* , and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the

realm, and generally all endeavours to promote public disorder."

17. That the law has not changed during the course of the centuries is also apparent from the following statement of the law by Coleridge, J., in the course of his summing up to the Jury in the case of **Rex v. Aldred** (1911-13) 22 Cox's Criminal Law Cases:

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

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

18. While dealing with a case arising under Rule 34(6)(e) of the Defence of India Rules under the Defence of India Act (35 of 1939), Sir Maurice Gwyer, C.J, speaking for the Federal Court, made the following observations in the case of **Niharendu Dutt Majumdar v. King-Emperor** (**1942) FCR 38** and has pointed out that the language of Section 124-A of the Indian Penal Code, which was in pari materia with that of the Rule in question, had been adopted from the English Law, and referred with approval to the observations of Fitzerald, J., in the case quoted above; and made the following observations which are quite apposite;

" … generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements.

The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilisation and the advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of Government that in our opinion the offence of sedition stands related. It is the answer of the *State* to those who, for the purpose of attacking or subverting it, seek (to borrow from the passage cited above) to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Government, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained

of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."

This statement of the law was not approved by Their Lordships of the Judicial Committee of the Privy Council in the case of **King-Emperor v. Sadashiv Narayan Bhalero**. The Privy Council, after quoting the observations of the learned Chief Justice in Niharendu case (**1942) FCR 38** while disapproving of the decision of the Federal Court, observed that there was no statutory definition of "sedition" in England, and the meaning and content of the crime had to be gathered from many decisions. But those were not relevant considerations when one had to construe the statutory definition of "sedition" as in the Code. The Privy Council held that the language of Section 124-A, or of the Rule aforesaid, under the Government of India Act, did not justify the statement of the law as made by the learned Chief Justice in Niharendu case (**1942) FCR 38**. They also held that the expression "excite disaffection" did not include "excite disorder", and that, therefore, the decision of the Federal Court in Niharendu case (**1942) FCR 38** proceeded on a wrong construction of Section 124-A of the Penal Code, and of sub-para (e), sub-rule (6) of Rule 34 of the Defence of India Rules. Their Lordships approved of the dicta in the case of Bal Gangadhar Tilak (**1898) ILR 22 Bombay 112** and in the case of **Annie Beasant v. Advocate-General of Madras** which was a case under Section 4 of the Indian Press Act (1 of 1910), which was closely similar in language to Section 124-A of the Penal Code.

19. The Privy Council also referred to their previous decision in **Wallace-John-son v. King** (**1940) AC 231** which was a case under sub-section 8 of Section 326 of the Criminal Code of the Gold Coast, which defined "seditious intention" in terms similar to the words of Section 124-A of the Penal Code. In that case, Their Lordships had laid down that incitement to violence was not a necessary ingredient of the crime of sedition as defined in that law.

20. Thus, there is a direct conflict between the decision of the Federal Court in Niharendu case (**1942) FCR 38** and of the Privy Council in a number of cases from India and the Gold Coast, referred to above. It is also clear that either view can be taken and can be supported on good reasons. The Federal Court decision takes into consideration, as indicated above, the pre-existing Common Law of England in respect of sedition. It does not appear from the report of the Federal Court decision that the rulings aforesaid of the Privy Council had been brought to the notice of Their Lordships of the Federal Court.

21. So far as this Court is concerned, the question directly arising for determination in this batch of cases has not formed the subject-matter of decision previously. But certain observations made by this Court in some cases, to be presently noticed, with reference to the interrelation between freedom of speech and seditious writing or speaking have been made in the very first year of the coming into force of the Constitution. Two cases involving consideration of the fundamental right of freedom of speech and expression and

certain laws enacted by some of the States imposing restrictions on that right came up for consideration before this Court. Those cases, reported in Romesh Thappar v. State Of Madras (1950) SCR 594 and Brij Bhushan v. State of Delhi (1950) SCR 605 were heard by Kania, C.J, Fazl Ali, Patanjali Shastri, Mehr Chand Mahajan, Mukherjea and Das, JJ. and judgments were delivered on the same day (26-5-1950). In Romesh Thappar case (1950) SCR 594 the majority of the Court declared Section 9(1-A) of the Madras Maintenance of Public Order Act (Madras Act 33 of 1949), which had authorised imposition of restrictions on the fundamental right of freedom of speech, to be in excess of clause (2) of Article 19 of the Constitution authorising such restrictions, and, therefore, void and unconstitutional. In Brij Bhushan case (1950) SCR 605 the same majority struck down Section 7(1)(c) of the East Punjab Public Safety Act 1949, as extended to the Province of Delhi, authorising the imposition of restrictions on the freedom of speech and expression for preventing or combating any activity prejudicial to the public safety or the maintenance of public order. The Court held those provisions to be in excess of the powers conferred on the legislature by clause (2) of Article 19 of the Constitution. Mr Justice Patanjali Sastri, speaking for the majority of the Court in Romesh Thappar case (1950) SCR 594 made the following observations with reference to the decisions of the Federal Court and the Judicial Committee of the Privy Council as to what the law of Sedition in India was:

"It is also worthy of note that the word 'sedition' which occurred in Article 13(2) of the Draft Constitution prepared by the Drafting Committee was deleted before the article was finally passed as Article 19(2). In this connection it may be recalled that the Federal Court had, in defining sedition in **Niharendu Dutt Majumdar v. King-Emperor (1942) FCR 38** 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 case to the effect that 'the offence consisted in exciting or attempting to excite in others certain bad feelings towards the Government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small' — King-Emperor v. Sadashiv Narayan Bhalerao. Deletion of the word 'sedition' from the draft Article 13(2), therefore, shows that criticism of Government exciting disaffection or bad feelings 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 of or tend to overthrow the *State* . It is also significant that the corresponding Irish formula of 'undermining the public order or the authority of the *State* ' [Article 40(6)(i) of the Constitution of Eire, 1937] did not apparently find favour with the framers of the Indian Constitution. Thus, very narrow and stringent limits have been set to permissible legislative abridgement of the right of free speech and expression, and this was doubtless due to the realisation that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the

processes of popular Government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected, with Madison who was ‘the leading spirit in the preparation of the First Amendment of the Federal Constitution' that ‘it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits: “ (quoted in Near v. Minnesotta).

These observations were made to bring out the difference between the “security of the *State* ” and “public order”. As the latter expression did not find a place in Article 19(2) of the Constitution, as it stood originally, the section was struck down as unconstitutional. Fazl Ali, J., dissented from the views thus expressed by the majority and reiterated his observations in Brij Bhushan case (1950) SCR 605 . In the course of his dissenting judgment, he observed as follows:

“It appears to me that in the ultimate analysis the real question to be decided in this case is whether ‘disorders involving menace to the peace and tranquillity of the Province' and affecting ‘public safety'will be a matter which undermines the security of the *State* or not. I have borrowed the words quoted within inverted commas from the preamble of the Act which allows its scope and necessity and the question raised before us attacking the validity of the Act must be formulated in the manner I have suggested. If the answer to the question is in the affirmative, as I think it must be, then the impugned law which prohibits entry into the *State* of Madras of ‘any document or class of documents' for securing public safety and maintenance of public order should satisfy the requirements laid down in Article 19(2) of the Constitution. From the trend of the arguments addressed to us, it would appear that if a document is seditious, its entry could be validly prohibited, because sedition is a matter which undermines the security of the *State* ; but if, on the other hand, the document is calculated to disturb public tranquillity and affect public safety, its entry connot be prohibited, because public disorder and disturbance of public tranquillity are not matters which undermine the security of the *State* . Speaking for myself, I cannot understand this argument. In Brij Bhushan v. *State* (1950) SCR 605 I have quoted good authority to show that sedition owes its gravity to its tendency to create disorders and an authority on Criminal Law like Sir James Stephen has classed sedition as an offence against public tranquillity.”

In Brij Bhushan case (1950) SCR 605 Fazl Ali, J., who was again the dissenting judge, gave his reasons in greater detail. He referred to the judgment of the Federal Court in Niharendu Datt Majumdar case (**1942) FCR 38** and to the judgment of the Privy Council to the contrary in **King-Emperor v. Sada Shiv Narayan**. After having pointed out the

divergence of opinion between the Federal Court of India and the Judicial Committee of the Privy Council, the learned Judge made the following observations in order to explain why the term “sedition” was not specifically mentioned in Article 19(2) of the Constitution:

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

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

23. Again the question of the limits of legislative powers with reference to the provisions of Articles 19(1)(a) and 19(2) of the Constitution came up for decision by a Constitution Bench of this Court in Ramji Lal Modi v. State Of U.P . (1957) SCR 860 In that case, the validity of Section 295-A of the Indian Penal Code was challenged on the ground that it imposed restrictions on the fundamental right of freedom of speech and expression beyond the limits prescribed by clause (2) of Article 19 of the Constitution. In this connection, the Court observed as follows:

“The question for our consideration is whether the impugned section can be properly said to be a law imposing reasonable restrictions on the exercise of the fundamental rights to

freedom of speech and expression in the interests of public order. It will be noticed that the language employed in the amended clause is ‘in the interests of' and not ‘for the maintenance of'. As one of us pointed out in **Debi Saran v. *State* of *Bihar*** , the expression ‘in the interests of' makes the ambit of the protection very wide. A law may not have been designed to directly maintain public order and yet it may have been enacted in the interests of public order.”

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

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

“19. (1) All citizens shall have the right —

(a) to freedom of speech and expression….”

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

“(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the *State* from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the *State* , friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”

It has not been questioned before us that the fundamental right guaranteed by Article 19(1) (a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable restrictions as would come within the purview of clause (2), which comprises (a) security of the *State* , (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc. etc. With reference to the constitutionality of Section 124-A or Section 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Article 19 with particular reference to security of the *State* and public order, the section, it must be noted, penalises any spoken or written words or signs or visible representations, etc. which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression “the

Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the *State* . The very existence of the *State* will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the *State* . That is why "sedition", as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the *State* . Hence, any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc. which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term "revolution", have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

25. It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of "sedition". What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But in our opinion, such words written or spoken would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the *State* , which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with a view to punishing offences against the *State* , is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine qua non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking

down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Article 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the *State* and public order. We have, therefore, to determine how far the Sections 124-A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. If it is held, in consonance with the views expressed by the Federal Court in the case of **Niharendu Dutt Majumdar v. King-Emperor** (**1942) FCR 38** that the gist of the offence of "sedition" is incitement to violence or the tendency or the intention to create public disorder by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the *State* , in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when they introduced Section 124-A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in clause (2) of Article 19 of the Constitution. If on the other hand we give a literal meaning to the words of the section, divorced from all the antecedent background in which the law of sedition has grown, as laid down in the several decisions of the Judicial Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in clause (2) aforesaid.

26. In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of Sections 124-A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. There can be no doubt that apart from the provisions of clause (2) of Article 19, Sections 124-A and 505 are clearly violative of Article 19(1)(a) of the Constitution. But then we have to see how far the saving clause, namely, clause (2) of Article 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended clause (2), quoted above, the expression "in the interest of … public order" are words of great amplitude and are much more comprehensive then the expression "for the maintenance of", as observed by this Court in the case of Virendra v. State Of Punjab (**1958) SCR 308 at p. 317**. Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of

words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Article 19(1)(a) read with clause (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (1) Bengal Immunity Company Limited v. State of Bihar (1955) 2 SCR 603 and (2) **R.M.D Chamarbaugwala v. Union of India** (1957) SCR 930]. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.

27. We may also consider the legal position, as it should emerge, assuming that the main Section 124-A is capable of being construed in the literal sense in which the Judicial Committee of the Privy Council has construed it in the cases referred to above. On that assumption, is it not open to this Court to construe the section in such a way as to avoid the alleged unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it? In our opinion, there are decisions of this Court which amply justify our taking that view of the legal position. This Court, in the case of R.M.D Chamarbaugwalla v. Union of India (1957) SCR 930 has examined in detail the several decisions of this Court, as also of the courts in America and Australia. After examining those decisions, this Court came to the conclusion that if the impugned provisions of a law come within the constitutional powers of the legislature by adopting one view of the words of the impugned section or Act, the Court will take that view of the matter and limit its application accordingly, in preference to the view which would make it unconstitutional on another view of the interpretation of the words in question. In that case, the Court had to choose between a definition of the expression “Prize Competitions” as limited to those competitions which were of a gambling character and those which were not. The Court chose the former interpretation which made the rest of the provisions of the Act, Prize Competitions Act (42 of 1955), with particular reference to Sections 4 and 5 of the Act and Rules 11 and 12 framed thereunder, valid. The Court held that the penalty

attached only to those competitions which involved the element of gambling and those competitions in which success depended to a substantial degree on skill were held to be out of the purview of the Act. The ratio decidendi in that case, in our opinion, applied to the case in hand insofar as we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace.

28. We do not think it necessary to discuss or to refer in detail to the authorities cited and discussed in the reported case (R.M.D Chamarbaugwalla v. Union of India (1957) SCR 930 at pp. 940-52. We may add that the provisions of the impugned sections, impose restrictions on the fundamental freedom of speech and expression, but those restrictions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that fundamental right.

29. It is only necessary to add a few observations with respect to the constitutionality of Section 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the *State* or against public tranquillity; or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under Section 505 has reference to, and a direct effect on, the security of the *State* or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that clause (2) of Article 19 clearly saves the section from the vice of unconstitutionality.

30. It has not been contended before us on behalf of the appellant in Cr.A No. 169 of 1957 or on behalf of the respondents in the other Appeals (Nos. 124-26 of 1958) that the words used by them did not come within the purview of the definition of sedition as interpreted by us. No arguments were advanced before us to show that even on the interpretation given by us their cases did not come within the mischief of the one or the other section, as the case may be. It follows, therefore, that the Criminal Appeal No. 169 of 1957 has to be dismissed. Criminal Appeals Nos. 124-26 of 1958 will be remanded to the High Court to pass such order as it thinks fit and proper in the light of the interpretation given by us.