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DETAILED ANALYSIS ON OFFENCES AGAINST THE STATE

Abstract:

In General, the code penalizes the offences which challenge the public order and administering power of the government, in order to preserve the internal integrity and sovereignty of the nation. This offence includes all the activities of a person exhibiting disloyalty and disaffection towards the government existing by law. Since every state has the right to self guard and protects itself, the violence against the state was declared to be a crime. Hence, this piece of writing deals with Chapter VI of the code, which defines and penalizes the commission of offences against the government and elucidates the same with relevant case laws.

Introduction:

Chapter VI of the code comprises about 12 Sections, which defines the offences against the state and punishments of the same. The inclusion of such a Chapter in IPC is to fortify the state from insurrection and treason. It has its origin from the oral law *lese-majesty*, which defines treason, a crime committed against the sovereign power and the dignity of high authority. In layman's terms, showing disloyalty and treachery towards their own country is the component of treason, withal incites insurrection to overthrow the government.

It is the bedrock on which this Chapter VI of the code was framed with adjoining the *preservation of state* principle provided in the common law. Thus, such offences against the state have broadly classified into four,

- The offence of war-waging
- Assaulting higher officials
- Escape of prisoner (the jail-breaker)

- The sedition law

War waging:

In general, the term war waging refers to an attempt to achieve something through the means of violence and indulging in a series of strikes or any other forceful or intensive activities directly against the sovereign state. The war waging is primarily a deed of initiating or participating in an insurrection against the government. Like rioting, there is no mentioned specific number of persons are necessary to constitute an offence of war-waging. Withal, no matter whether they are armed or equipped with weapons, the prime element required for this crime of war-waging is whether or not the accused has *quo animo (intent)* to get involved in such activities against the sovereign. Each person involves in the act of war-waging incurs the same guilt, there is no dilution in the punishment for subordinate or accessory offenders since everyone was part and parcel of such unlawful act.

Section 121 of the code: this section penalizes the act of war-waging, attempt, and its abetment. It prescribes grievous punishment, which includes capital punishment, or imprisonment for life with a fine depends on the nature of the offence.

The aforesaid Section will not include the hoi polloi desires to propagate against the private owners or capitalism, which they presumed to be a hindrance to the progress of the society. Since the power of the government was conferred by the people, if they desire to change the existing empowered government, they can perform it in any peaceful means of agitation, but not via force and violence. Indeed the same was held in the case of *Vasu Nair v. Travancore Cochin State*,¹ that the members of the society can achieve their desire of establishing a socialistic society or change the existing government. It is legitimate to bring about the change by ceaseless peaceful fighting. And the mere usage of words like *fight* and *war* in pledge need not solely mean the actual violence and force.

There are several essentials, which are required to be proved in the case of convicting the offender under this Section. Hence, the accused person should involve in any of the following acts against the government of India.

- Waged war, or

¹ AIR 1955 Trav-Co 33.

- Attempted to wage war, or
- Abetted the waging of war.

The foreigners are also liable on the grounds of the legal maxim *ignorantia Juris non excusat*. The mistake of law has no defense since it has presumed that every man should know the law of the land except minor, lunatic, or insane and, hence he is responsible for the ramification of his wrongful deeds. And also on the principle of *de jure Gentium*, which presumes that a person enters the alien state only upon the condition to rely on the respective states law and legislation.

Conspiracy to wage war: by inserting the Section 121A, not only waging war but even the conspiracy to do the same has penalized by the Indian Penal Code (Amendment) Act 27 of 1870. This Section includes two conspiracies namely,

- Conspiracy to wage war
- Conspiracy to overawe by exhibiting criminal force to the central or state government.

Collection of arms: Section 122 of IPC penalizes the collection of ammunition with the intent to wage war with either life imprisonment or detention for a term of ten years with a fine. As per this Section, for convicting an alleged person, either possession of ammunition or plan to possess the same for the purpose of waging war against the sovereign should be proved in addition to his *quo animo* (intention) be evinced.

Concealment of war wage design: Section 39 defined in Cr. P.C indicates the duty of every man to aware and disclose the known design of the offences related to illegal gratification, against public tranquility and sovereignty of the state. The same has its root in Section 123 of IPC, which penalizes the concealment of design to wage war with a term of ten years imprisonment and a fine. In order to prove the offence under this section, the following conditions have to be established.

- Existence of war wage design against the government
- Alleged person should aware of such design
- Concealed the same
- By doing so, he must have the intend to facilitate the waging of such war

Notable cases:

The Mohammad Ajmal Amir Kasab v. state of Maharashtra ²(Mumbai Terrorist Attack case) (2012): Wherein the accused Kasab was a Pakistan citizen, who illegally entered India with his comrades to perform a terrific series of onslaughts. He had alleged multiple crimes, which includes war waging, murder conspiracy to commit murder, terrorist attack, and abetment of murder, and so on. The Bombay High court issued a death sentence. With the confirmation from the Apex Court, the accused Kasab was convicted for treason and executed on November 21st, 2012.

The reason behind the issued capital punishment: the punishments of the criminal conspiracy given in Section 120 B of the code along with the sanction of Murder (Section 302 of the code), Section 121, the punishment of terrorist activities resulted in death will amount to the death penalty or imprisonment for life has given in Section 16 of The Unlawful Activities (Prevention) Act, 1967.

In the case of *Shaukat Hussain Guru v. State (NCT) Delhi & Anr*³, wherein, The appellant Shaukat was held liable for the offence of intentional concealment of parliament terrorist attack design, by the illegal omission of informing the known terrorist plan to the police or magistrate. Thereby he facilitated the conspirators' plan to damage the sovereignty of India. For this act, the appellant Shaukat was held liable for lesser punishment under Section 123 of the code.

The offence of assaulting a higher official:

The key reason for the enactment of this provision is that the true spirit of democracy can never be achieved with the higher official restrained from discharging his duties out of the fear of personal harm. As being an extension of Section 121A of the code, Section 124 deals with the definition and the penalty of the offender, who intentionally assault or restrain the higher officials from performing his legal duties. The provided sanctions for the said offence is a deterrent punishment of imprisonment for not exceeding the term of 7 years with a fine.

Essentials of this Section,

- The accused must have assaulted the president or the governor of any state, or
- Wrongful restrains or
- Attempted to commit the same or,

² (2012) 9 SCC 4.

³ AIR 2008 SC 2419.

- Attempted to influence the officials by showing criminal force or overawe for the purpose of compel or restrain them from exercising their powers.

The most controversial Section of the code:

The controversy arises only on the grounds of whether or not Section 124-A of the code is consistent with one of the fundamental rights granted by the Indian constitution under Article 19(1) (a). However, the right to free speech and expression is not absolute as similar to other granted rights since it is subjected to reasonable restrictions stated in the subsequent clause (2) of Article 19. The Section per se enacted with the good faith of empowering the respective government to punish whoever involves in inciting a rebellion to subvert the government established by law whether by word, write-ups, or deeds.

Thus, sedition is a crime against the whole society since it disturbs the public order and tranquility and promotes public disorder. The very tendency of the sedition is to punish the person who provokes people against the government through inducing insurrection, propagating hatred, and contempt either the sovereign or the law and legislation of the land. The 124-A was the replacement of the erstwhile provision entitled Exciting disaffection by the IPC (Amendment) Act of 1898.

This Section prescribes the punishment to the offender who satisfies the following ingredients of sedition. The offender must be involved in the act of,

- Propagating or attempting to propagate hatred; or
- Showing or tries to show disaffection towards the government of India.
- Such acts shall be done by any visible representations, signs, or by words either written or oral.
- Just like every crime, the main element of sedition is the offender must have the intention to commit the offense.

Prescribed Punishments:

- Either imprisonment for life and a fine, or
- Imprisonment up to 3 years with fine.

Notable case:

The *Kedar Nath Singh v. State of Bihar*,⁴ where the constitutional validity of the Sedition law was upheld by the Apex court *vide* its judgment. It has held in this case that sedition is not a contravention of 19(1) (a) of the constitution. Since the sedition connotes the public interest and order as the same expression is in Article 19(2), the Apex court held the Section 124-A of the code is *intra vires* of the constitution. Withal the judgment stated that the law which is enacted on the grounds of public order may sustain and saved from held unconstitutional. Furthermore, it has held every citizen has the right to free speech and expression unless and until he intentionally tries to provokes people to insurrection and to create public disorder.

The jail breaker:

The definitions of state prisoner and prisoner of war are the prerequisite to acknowledge this provision.

State prisoner- confinement of a person is required to preserve national security.

Prisoner of war- one involved in war with arms (war captives).

Sections 128 and 129 of the code concentrate on the escape of either prisoner of war or state prisoner from the custody of the concerned public servant. But the minor distinction between the said Sections is that Section 128 states the guilt of the public servant who allowed the escape of state prisoner or prisoner of war. On the other hand, Section 129 describes the negligence of the public servant in discharging his duty to keep in the custody of the prisoner. Both are punishable with imprisonment with a fine. But, voluntary infringement in the performance of vested responsibility results in the sanction of life imprisonment or detention for a term of 10 years with fine whereas, mere negligence amounts to simple imprisonment may extend for three years with fine.

Sections 128 and 129 shares the same essentials, per contra differs with the intention (voluntary or negligently) viz.

- The accused must be a public servant.
- Having the custody of prisoner of war or state prisoner
- The confined should be escaped from the custody of the alleged public servant.

⁴ 1962 AIR 955, 1962 SCR Supl. (2) 769.

The subsequent Section 130 deals with an offence of a person, whoever knowingly aids or assists in the escape of state prisoner or prisoner of war from lawful custody, or rescue or harbours or conceals such escaped prisoner from legal custody.

Essentials,

- Anyone who helped the prisoner of war or state prisoner to escape
- The confined person must be on a lawful custody
- Intention of the alleged person

If the accused satisfies the aforementioned essentials, he will be punished with either imprisonment for life or imprisonment for 10 years with fine.

Related case:

In the case of *Rajendra Singh and State Of Bihar vs. Kapildeo Singh and Ors*⁵, the Patna High Court held that, if an allegation or a complaint is made before the criminal code invoking the alleged police officer has acted an offence under Section 127 and 128 of the code. The court will not entertain such complaints unless and until it has been evinced that there was a prior sanction of the prosecution awarded by the state government.

Conclusion:

The mentioned offenses are major crimes one can commit against the state, and also its ramification is prescribed in the code. These Sections under chapter VI of IPC is to empower the government to Endeavour its obligation of shielding the state from any external or internal disorder. Among the 12 sections comprised under this chapter, Section 124A is considered the most controversial and misused provision. For substantiating the same critics invokes the several detentions and apprehends of the journalists. Out of which the well-known incident was in 2018. The editor of *Bhumkal Samachar* newspaper, Kamal Shukla, got booked under sedition for circulating a cartoon on social media that questioned the mysterious death of Justice Loya. However, this trite law of sedition was enacted and implemented for penalizing the acts of people who incite hoi polloi to rebellion against the government.

⁵ 1978 (26) BLJR 12.

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