

## Misuse of Section 124

### Why in news?

\n\n

A Tamil magazine editor was recently arrested under Section 124 of the IPC.

\n\n

### What was the controversy?

\n\n

\n

- The arrest was based on a published report about Governor and his Secretary holding several meetings with an arrested assistant professor few months ago.

\n

- The magazine based its report on this issue, not on a sting operation, but on police evidence.

\n

- However, the Tamil Nadu Governor's office had complained to the police, seeking to book the editor under Section 124 of IPC.

\n

- They cited that the offending articles express an "intention of inducing or compelling the Governor to refrain from exercising his lawful powers".

\n

- **Section 124** applies to assaulting high constitutional functionaries such as the President and the Governor with "an intent to compel or restrain the use of any lawful power".

\n

- It was intended to cover cases where these functionaries are prevented from exercising their power through criminal force, attempts to overawe, or wrongful restraint.

\n

- The offence shall be punished with 7 years imprisonment and shall also be liable to fine.

\n

- It is a Non-Bailable, Cognizable offence and not compoundable.

\n

\n\n

## What was the wrongdoing?

\n\n

- \n
  - The Governor had also invoked Section 124 previously when a state party staged black flag demonstrations at sites where he held meetings with district-level officials.
- \n
  - It is unlikely that a black flag demonstration can attempt to “overawe” the Governor in a manner that restrains his office from exercising power.
- \n
  - Overawe would suggest the commission of an offence that poses a real danger to the exercise of authority.
- \n
  - Hence, to extend the meaning of “overawe” to a mere protest or a work of journalism amounts to misuse of the intended provisions.
- \n
  - In the recent case, the Metropolitan Magistrate in Chennai realising the absurdity of the prosecution’s case, declined to jail the accused editor.

\n\n

## What are the precedences in this regard?

\n\n

- \n
  - A well-defined law has been laid down by the Supreme Court’s 1994 judgement in **R Rajagopal vs State of Tamil Nadu**, popularly known as the Auto Shankar case.
- \n
  - According to that, public figures have to satisfy a very high threshold to claim privacy and the right to reputation for demanding prior restraint of a publication.
- \n
  - Therefore, it would be very difficult for the governor in this case to demand prior restraint of the news article.
- \n
  - Also, prior restraint has a chilling effect on press freedom, violating **Articles 19(1) & 361A**.
- \n
  - In contrast, in the **Subramanian Swamy case**, the apex court stated that a person’s right to reputation takes precedence over the media’s right to

report.

\n

- Countries like US have recognised that the complainant of prior restraint must prove the presence of actual malice in order to proceed with a defamation suit against a media house.

\n

- But Indian courts are yet to adopt this standard.

\n

\n\n

## **What should have been done?**

\n\n

\n

- In a period of five years between 2011 and 2016, over 200 criminal defamation suits against a vast swathe of journalists and media houses for their criticism of governmental actions and policies.

\n

- The governor could have used other forms of legal redress available to him rather than going for this provision.

\n

- By citing them to seek registration of a Section 124 case against the magazine's Editor, journalists and employees, the Governor's office has only turned the spotlight on itself unnecessarily.

\n

- Hence, the governor could do himself a favour by withdrawing the complaint, since it is unlikely the TN police will take such a decision on its own.

\n

\n\n

\n\n

## **Source: The Hindu**

\n\n

## **Quick Facts**

\n\n

## **Categories of Offences**

\n\n

\n

- If an offence is cognizable, police has the authority to arrest the accused without a warrant and to start an investigation with or without the permission of a court.  
\n
- Otherwise police does not have the authority to arrest the accused without a warrant and an investigation cannot be initiated without a court order.  
\n
- If an offence is bailable, police has the authority to release the accused on bail on getting the defined surety amount along with a duly filled bail bond at the concerned police station.  
\n
- Otherwise arrested person has to apply for bail before a magistrate or court  
\n
- If an offence is compoundable, a compromise can be done between the accused and the victim, and a trial can be avoided.  
\n
- Otherwise, no compromise is allowed between the accused and the victim except under certain situations, where the High Court or the Supreme Court have the authority for quashing a matter.  
\n

\n

