



A legal analysis of section 124A IPC in modern democratic India

Soumya Kanti Sur¹, Dr. Narendra Kumar Singh²

¹ Research Scholar, Department of Law, Kalinga University, Naya Raipur, Chhattisgarh, India

² Associate Professor, Department of Law, Kalinga University, Naya Raipur, Chhattisgarh, India

Abstract

Section 124A of the Indian Penal Code, dealing with the offence of sedition, has been one of the most contentious provisions in Indian criminal law. Introduced during colonial rule in 1870 to suppress nationalist uprisings, the section continues to exist in post-independence India despite significant shifts in the country's constitutional and democratic framework. This paper undertakes a comprehensive legal analysis of Section 124A, tracing its colonial origins, judicial interpretations, and its compatibility with the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. Through a doctrinal methodology, the study reviews landmark judgments such as *Kedar Nath Singh v. State of Bihar* and *Balwant Singh v. State of Punjab*, which attempted to balance national security with individual liberties. It also highlights contemporary misuse of the provision against journalists, students, and civil society members, supported by empirical data from NCRB and recent case studies. Comparative constitutional perspectives from jurisdictions like the United States and United Kingdom—where sedition has been repealed or narrowly defined—offer valuable insights. The paper concludes that in the absence of clear legislative reform, Section 124A poses a serious threat to democratic dissent and public discourse. It recommends either a complete repeal or radical narrowing of the provision to align with modern constitutional values and international human rights standards.

Keywords: Section 124A IPC, sedition, freedom of speech, article 19(1)(a), Constitution of India

Introduction

The law of sedition, enshrined under Section 124A of the Indian Penal Code (IPC), 1860, has its roots in colonial-era legislation designed to suppress dissent against the British Crown. Introduced in 1870 by an amendment to the IPC, sedition was intended to curb the activities of Indian nationalists and revolutionaries during the freedom struggle^[1]. The colonial regime used it as a tool to silence voices of resistance, notably charging leaders such as Bal Gangadhar Tilak and Mahatma Gandhi under its provisions^[2].

In independent India, Section 124A continues to remain on the statute books despite its colonial origins. It defines sedition as any act or speech that "brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India"^[3]. Over time, this provision has sparked intense debate regarding its relevance, interpretation, and constitutionality in a modern democratic republic that guarantees freedom of speech and expression under Article 19(1)(a) of the Constitution.

This research paper seeks to analyze the constitutional validity, judicial interpretation, and contemporary application of Section 124A IPC. It examines the tension between national security and individual freedoms, scrutinizes landmark court rulings, and evaluates the scope for legal reform. The study is doctrinal in nature and employs a qualitative methodology, relying on statutory analysis, constitutional provisions, case law, and academic commentaries to provide a comprehensive legal evaluation of sedition law in present-day India.

Historical Evolution of Section 124A

Section 124A of the Indian Penal Code (IPC) was not part of the original IPC enacted in 1860. It was introduced in

1870 by an amendment spearheaded by James Fitzjames Stephen, aimed at suppressing the rising voices of dissent and nationalist movements in colonial India^[4]. The British administration viewed this provision as essential to maintaining imperial control, especially amidst growing anti-colonial sentiments.

The application of Section 124A during British rule witnessed several high-profile prosecutions. One of the earliest and most significant was that of Bal Gangadhar Tilak, who was convicted for seditious writings in *Kesari* in 1897 and again in 1908^[5]. In his 1908 trial, the British court infamously expanded the interpretation of "disaffection" to include political criticism, setting a broad precedent for future use of the law^[6]. Another historic case was that of Mahatma Gandhi in 1922, who was tried for sedition for his articles published in *Young India*. During the trial, Gandhi famously stated: "Section 124A, under which I am happily charged, is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen"^[7]. The relevance of Section 124A came under scrutiny during the Constituent Assembly Debates in 1948. Eminent members like K.M. Munshi, Jawaharlal Nehru, and others argued that such a draconian provision had no place in a free and democratic India. Munshi noted that sedition was "a weapon forged by the British to suppress India's voice" and had become "obnoxious in any democratic framework"^[8]. As a result of these deliberations, the framers excluded the term "sedition" from Article 19(2), reflecting a conscious departure from colonial repression.

However, this stance was partially reversed when the First Amendment to the Constitution (1951) inserted the term "public order" as a permissible ground for reasonable restrictions on free speech, thereby allowing for a more restrained survival of Section 124A within constitutional limits^[9].

Legal Interpretation and Judicial Trends

Following independence, the Indian judiciary was confronted with the task of reconciling colonial-era laws with the democratic and constitutional ethos of the Republic. Section 124A, being one of the most controversial provisions, underwent significant judicial scrutiny, especially concerning its compatibility with Article 19(1)(a) of the Constitution, which guarantees the right to freedom of speech and expression.

The seminal ruling in *Kedar Nath Singh v. State of Bihar* (1962) marked the first authoritative interpretation of Section 124A by the Supreme Court of India. The Court upheld the constitutional validity of the section but significantly narrowed its scope. It ruled that only those expressions that incite violence or have the tendency to create public disorder can be deemed seditious. Mere criticism of the government, however strongly worded, was held to be outside the purview of sedition unless it had an incitement element^[10]. This judgment created a crucial distinction between “advocacy” and “incitement”, providing a constitutional safeguard for free speech.

Later, in *Balwant Singh v. State of Punjab* (1995), the Supreme Court reinforced the principles laid down in *Kedar Nath Singh*. In this case, the accused had allegedly raised slogans such as “Khalistan Zindabad” shortly after the assassination of Prime Minister Indira Gandhi. The Court acquitted the accused, stating that casual slogans, unaccompanied by any incitement to violence or intention to create public disorder, could not be termed seditious^[11]. This judgment emphasized the need to evaluate the context, intent, and consequence of speech before invoking Section 124A.

Despite these judicial safeguards, lower courts and police authorities have often failed to apply the principle of proportionality, leading to misuse of the law. Recent trends show an increase in sedition charges even for peaceful protests, dissent on social media, or journalistic expression^[12]. The Supreme Court itself acknowledged this concern in *SG Vombatkere v. Union of India* (2022), where it put the operation of Section 124A on temporary hold and urged the Union Government to re-examine the provision in light of contemporary democratic values^[13].

These developments underline the judiciary’s dual role: while affirming the necessity of protecting the sovereignty and security of the State, courts have also stressed the need to shield democratic dissent and uphold constitutional freedoms.

Section 124A vis-à-vis Fundamental Rights

The continued existence of Section 124A IPC in post-independence India has led to a persistent tension between State authority and the individual’s right to free expression, guaranteed under Article 19(1)(a) of the Indian Constitution. This fundamental right is considered a cornerstone of democracy, enabling citizens to freely criticize government policies, engage in political discourse, and participate in nation-building^[14].

However, Article 19(1)(a) is not absolute. It is subject to reasonable restrictions outlined in Article 19(2), which permits the State to limit free speech in the interest of sovereignty and integrity of India, the security of the State, public order, decency or morality, contempt of court, defamation, or incitement to an offence. After the landmark ruling in *Kedar Nath Singh v. State of Bihar*, Section 124A

was read down by the Supreme Court to align it with these constitutional parameters. The Court clarified that only speech that incites violence or public disorder can be punished under sedition, ensuring that peaceful criticism of the government remains protected^[15].

Despite this judicial reading, Section 124A is often invoked even in cases where the alleged speech or expression lacks any element of incitement. This has led to arguments that the overbreadth and vagueness of the provision create a chilling effect on free speech, potentially deterring lawful expression through fear of prosecution^[16].

Comparative constitutional jurisprudence supports the view that sedition laws are largely incompatible with democratic values. In the United Kingdom, sedition as a criminal offence was abolished in 2009 through the Coroners and Justice Act, acknowledging its redundancy and incompatibility with modern free speech standards^[17]. Similarly, in the United States, sedition laws like the Sedition Act of 1798 have long fallen into disuse, and the Supreme Court has set a high bar for limiting speech, as seen in *Brandenburg v. Ohio* (1969), where it held that only speech “directed to inciting or producing imminent lawless action” and likely to produce such action can be lawfully restricted^[18].

These global developments underscore the need for India to revisit Section 124A, especially as other mature democracies have either repealed such laws or imposed strict safeguards. In the context of a pluralistic, democratic society, freedom of expression must be nurtured—not curtailed—by the State, unless there exists a clear and present danger to public peace or national integrity.

Contemporary Relevance and Misuse

In modern democratic India, Section 124A IPC continues to generate widespread debate, particularly due to its alleged misuse against journalists, students, activists, and political dissenters. Though intended to safeguard the sovereignty and integrity of the nation, sedition charges are increasingly perceived as a tool to suppress dissent and intimidate voices critical of the government^[19].

Several high-profile cases in recent years underscore the controversial application of sedition law. In 2016, student leader Kanhaiya Kumar and others from Jawaharlal Nehru University (JNU) were booked under Section 124A for allegedly raising “anti-national slogans” during a student protest, despite no clear incitement to violence being proven^[20]. Similarly, in 2021, journalist Siddique Kappan was arrested en route to report on the Hathras gangrape case in Uttar Pradesh and was charged with sedition and other offences under the Unlawful Activities (Prevention) Act (UAPA), raising serious concerns regarding press freedom^[21].

Empirical data further reveal a worrying trend. According to the National Crime Records Bureau (NCRB), 93 sedition cases were registered in 2019, a significant increase from 35 in 2016, while the conviction rate remained below 3%, indicating potential overreach by law enforcement^[22]. The disparity between arrests and convictions suggests that the mere invocation of the sedition law may be used to harass or silence individuals, irrespective of judicial outcome.

Civil society organizations, legal scholars, and international human rights bodies have consistently criticized the continued use of sedition in India. The Law Commission of India, in its 2018 Consultation Paper, questioned the

necessity of retaining Section 124A in a democracy and recommended that its misuse be curbed through stringent safeguards or reconsideration of its existence ^[23]. Internationally, organizations like Amnesty International and Human Rights Watch have also condemned the law's application, labeling it incompatible with international standards on freedom of expression ^[24].

In response to mounting pressure, the Supreme Court of India in *SG Vombatkere v. Union of India* (2022) took a historic step by putting the operation of Section 124A on hold and directed the Centre and States to refrain from registering any new FIRs under the provision while it is under reconsideration ^[25]. This marks a pivotal moment in the law's trajectory, reflecting the judiciary's recognition of its increasingly problematic role in democratic discourse.

Conclusion

The legal and constitutional journey of Section 124A IPC reflects the deep tension between state sovereignty and democratic freedoms. Originally introduced in colonial India to quell nationalist sentiment, sedition law has outlived the imperial regime and continues to exist in independent India, albeit under modified judicial interpretation. The Supreme Court's decision in *Kedar Nath Singh* provided a constitutional lifeline to Section 124A by limiting its application to cases involving incitement to violence or public disorder ^[26].

However, the contemporary application of the law raises serious concerns. The increasing trend of using sedition charges against journalists, students, activists, and dissenting voices, often without credible evidence of incitement, reflects its potential misuse. This is especially alarming given that the conviction rate under sedition remains abysmally low, indicating that the provision is more often used as a tool of intimidation rather than conviction ^[27].

From a democratic and legal standpoint, the continued existence of Section 124A contradicts the spirit of Article 19(1)(a) and the constitutional vision of an open and participatory polity. While public order and national security are legitimate concerns, they must be addressed using less draconian and more narrowly tailored laws. The Supreme Court's 2022 interim order in *SG Vombatkere v. Union of India* reflects an evolving judicial understanding that democratic India must re-evaluate inherited colonial laws in light of contemporary realities ^[28].

In conclusion, Section 124A, in its current form, appears increasingly anachronistic and inconsistent with modern constitutional values. Unless it is substantially redefined, rigorously narrowed, or repealed altogether, it will continue to pose a threat to free expression and democratic engagement in India. A 21st-century democracy must protect dissent—not penalize it.

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