



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

SEDITION – AN IMPERIAL LEGACY OR A DEMOCRATIC PERIL

AUTHORED BY - DHANYA KRISHNAMANI & AARATHI PADINHATTEERI

ABSTRACT

In this article, we discuss in length regarding the Law of Sedition, enumerated in Section 124A of the Indian Penal Code, which criminalises any expression of dissent or discontent towards the government. We walk through the colonial period, seeing the effects created by the law since its inception, and arrive into the post - colonial period. It delves into the constitutional validity of this act, by bringing in Article 19(1)(a) and inferences have been drawn from various judicial decisions. An analysis on sedition laws and its affects on the Indian media prior to and post 1947 has been enumerated. A clear picture has been painted with regards to the inclusion of seditious matters in other laws. Finally, this law has been subsequent consequences have been dealt with expeditiously.

Keywords: Sedition, Constitutionality of Section 124A IPC, Freedom of Speech and Expression, Control of media.

INTRODUCTION

Under Article 19 (1) (a) of the Indian Constitution, every person has the right to speak their mind and express their opinions. However, this liberty has its own set of restrictions and under Article 19(2), certain legitimate limitations on freedom of speech and expression have been established. However, if an individual commits an act that is considered to be disrespectful of the Indian government by his actions, he can be punished under the law for committing the act of Sedition. Sedition is a crime that punishes speech that is considered rebellious or dangerous to the state.

Thomas Macaulay drafted the law in 1837, but it was deleted from the IPC in 1860. It is believed that this was unintentional. When the need for a law to deal with the rebellious nature of people was felt, Section 124- A was introduced by way of an amendment in 1870. It was one among the innumerable laws implemented by the colonial powers to suppress the voices

of the people.

India became a sovereign entity after independence, and the Indian people retained their sovereignty, as the Preamble of the Constitution was written by them. In contrast to the British Parliament, the Indian Parliament does not have unrestricted authority. The freedom of people to criticise the government now appears to be superior than the government's right to protect itself against sedition. The crime of sedition also falls outside the reach of international laws that restrict freedom of expression. The law of sedition was created during the monarchy, and it now contradicts the entire aim of a democratic government.

MEANING OF SEDITION UNDER 124A IPC

Sedition is defined as an act by a person which instigates violence against the government through the use of words, whether spoken, written, signs, or visible representations. Anyone who tries to encourage people to violence by sowing seeds of discontent regarding the government can be charged with sedition under Section 124A of the Indian Penal Code. Whoever commits the crime of sedition is charged with imprisonment that may either be life imprisonment or for three years based upon the severity of the said crime. The charge is non-bailable as well as cognisable.

The goal of the Explanations¹ to Section 124A is to preserve legitimate criticism of government institutional arrangements with the goal of improving them and resolving complaints and abuses. The extent of disaffection is defined in Explanation I of section 124A, while what is not regarded seditious under English law is defined in Explanations II and III. Both of these explanations are narrowly defined and have a limited scope. They don't apply unless the article in question criticises "government policies" or "administrative or some other governmental regulation" without inciting or seeking to promote hate, disgust, or disharmony. The IPC's sedition legislation was altered in 1898 to also include the phrases 'hatred' and 'contempt' to the word 'disaffection.' "Disloyalty and all feelings of enmity" were added to the original definition of disaffection. Sections 153 and 505 of the IPC have also been amended to reflect these changes.

¹ 1898 Amendment of IPC, a single Explanation was replaced by three. INDIAN LEGISLATION, <http://www.indianlegislation.in/BA/BaActToc.aspx?actid=15399>, (Last visited 08 June 2022)

HISTORY OF SEDITION LAW

The origins of sedition law can be traced back to the British rule In India. The criminal clause was Introduced to suppress nationalist movements and calls for liberty. Bal Gangadhar Tilak, Mahatma Gandhi, Bhagat Singh, and Jawaharlal Nehru are among India's national icons who have been charged with sedition. The legislation was developed by Thomas Macaulay in 1837, but when the Indian Penal Code was implemented in 1860, it was eliminated. Sir James Stephen later recognised the necessity for a distinct provision to deal with this infraction, hence Section 124A was added in 1870 as a result of an amendment. The provision was again altered in 1898 Amendment².

Following deliberations in the Constituent Assembly, the term "sedition" was removed from the Constitution in 1948. KM Munshi proposed a change to the draught Constitution that would eliminate the word "sedition" as a basis for restricting constitutional freedom of speech and expression. When the Constitution was established on November 26, 1949, the term "sedition" was removed from the document, and Article 19(1)(a) guaranteed unrestricted freedom of speech and expression Section 124A remained in the IPC³.

Post independence, Indian officials understood the threats that this rule posed to Article 19(1)(a) of the Constitution, which guarantees freedom of speech and expression. In 1951, Prime Minister Jawaharlal Nehru expressed his displeasure with Section 124A, stating, "particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons."⁴ In 1951, Jawaharlal Nehru introduced the first amendment to the Constitution, which limited freedom under Article 19(1)(a) and empowered the state to impose "reasonable limits" upon the right to free expression⁵. For the first time in India's history, the Indira Gandhi cabinet declared Section 124A a criminal offence. Sedition became designated a cognizable offence under the new Code of Criminal Procedure, 1973, which came into effect in 1974 and replaced the colonial-era 1898 Code of Criminal Procedure, allowing the police to conduct arrests without the need for a warrant⁶

² Section 124A of IPC, 1860 <https://indiankanoon.org/doc/1641007/> (Last visited 10 June 2022)

³ Joydip Ghoshal, "An Analysis of Law of Sedition and its Impact on Freedom of Expression", Journal of Legal Analysis and Research Volume 1, Issue 1, March 2014s

⁴ Samriddhi Thakar, "What is Sedition Law?", Law Insider, 2021

⁵ Utkarsh Anand, "The sedition story: Complicated history of sec 124A", Hindustan Times, June 07 2022

⁶ *Id*

CONSTITUTIONALITY OF 124A

The constitutionality of Section 124-A can be questioned on various grounds.

One ground is with respect to the Freedom of Speech and Expression enumerated in Section 19(1)(a) of the constitution. As per the Sedition Law, no person can incite hate, violence or disaffection against the Government by means of a speech or other activities. It has been argued constantly that this law is violative of Article 19(1)(a) and hence should be struck down. But its validity has always upheld by stating that it is a reasonable restriction and hence, is not violative.

It was the Nehru Government which added the term "reasonable" before the word "restrictions", as a safeguard against any sort of misuse by the Government. Nehru strongly opposed the Sedition law, but never took any steps to amend them till, in 1949, two court decisions stung him. One was the Romesh Thapar Case ⁷.

The first challenge to the constitutionality of Sedition laws during Nehru's period as Prime Minister came in Ram Nandan v. State ⁸, before the Allahabad High Court.

The *Niharendu Dutt Majumdar Case* ⁹ brought about a different turn to the situation regarding sedition within the country. In this case, the court observed that mere words were not enough and that there should have been some other form of inciting violence.

In the *Kedar Nath Case* ¹⁰, it was observed by the constitutional bench of the Supreme Court that the meaning of the term Sedition had to be curtailed and its application had to be limited to acts which involved the intention or tendency to create disorder, or disturbance of law and order or incitement to violence.

India is a democracy, and, in a democratic country, every citizen should certainly have the freedom to speak their mind and express their opinions openly. It is the right of a citizen to

⁷ Siddharth Narrain, "Disaffection and the law; Chilling Effects of Sedition Laws in India", Economic and Political Weekly Vol. 46, No. 8, FEBRUARY 19-25, 2011 <https://www.jstor.org/stable/41151791?seq=2>

⁸ *Id*

⁹ Lokendar Bhardwaj, "An Analysis of Sedition in India Defined U/S Section 124A of Indian Penal Code, 1870", Law Brigade Publishers, December 2021, <https://thelawbrigade.com/wp-content/uploads/2021/12/Lokender-Bhardwaj-IPLR.pdf>

¹⁰ Akshay Anurag and Dibya Prakash Behera "Section 124A IPC-Where to Draw the Line", SCC Online Blog, October 03 2017 <https://www.sconline.com/blog/post/2017/10/03/section-124-a-ipc-where-to-draw-the-line/>

express his or her feelings regarding the policies adopted by the democratically elected Government, one who came to power because of the citizens. This however, does not mean that the citizens can incite violence to put across their points. The Government and the citizens can and should come to an amicable settlement without the involvement of violence. Both should not cross their boundaries. Also, another thing to be noted is the fact that the British, who introduced this law in India, have themselves repealed it in their country.

As recently as 2010, Arundathy Roy was charged with sedition for expressing her views on the Kashmir issue. She later had to come out and clarify that what she said was with feelings of love and pride for her nation.

MEDIA AND SEDITION

Media has played an important role in shaping public opinion and bringing people together since times immemorial. We now live in a society where life without some form of Media or the other, whether social media or print media or media in any of its numerous other form, is unimaginable. But, let us take the case of Print Media. Have we, while consuming this Vast Ocean of Information, ever wondered about the precautions that need to be taken while printing the news stories? Probably not. But, the media houses or printing presses have a lot of formality to complete before printing a story. This is all thanks to the law regarding Sedition, with which the media can be convicted for publishing articles against the Government.

The Indian media, whether in pre or post - colonial times, has been accused of committing the act of Sedition numerous times. A major cue to this can be taken from the Vernacular Press Act, passed by Lord Lytton in the year 1878, to curtail the freedom of all non- English (Indian) Press. The intention behind this act was to create a road-block for the Vernacular Press from criticizing the policies of the British. One major advantage of having the vernacular press in those days was that it was able to bring about a sense of political awakening in the minds of the Indians. There were agitations all over the country over this act, and, finally, in 1882, the then Viceroy Lord Ripon had to repeal the act. The very fact that The Colonizers had to come up with such a law to curb the acts of the press in itself shows their weakness. They brought out their fear in the form of this law, but made it seem like it was a tremendous achievement on their part. Similarly, there were acts like The Newspapers Act, the Indian Press Act etc. which were used by the Colonial Powers to repress the voice of the masses. In a very broad

sense, media played a huge role bringing about a sense of national consciousness among the citizens.

Cut to recent times. Media plays an even more influential role in society today than it did hundred or even two-hundred years ago. Now, people depend on media for minute- to-minute information. But, this draconian law, started by the imperial powers as a means to repress the public, has attained something akin to normalcy under the rule of the democratically elected powers in the country. There are so many cases these days where each move of the media is scrutinized.

A few years ago, a case was filed by a politician against a senior journalist Vinod Dua, accusing him of being critical of the Prime Minister through his YouTube Channel. Last year, the Supreme Court quashed this FIR.

In 2021, a very famous Judgment was put forth by Justice DY Chandrachud, wherein it was observed that it was time to define the limits of sedition. The court, in this case, accepted the contention that the media was well within its rights to air critical programmes of the prevailing Government without attracting sedition.

SEDITION MATTERS AND OTHER LAWS

Section 153A of Indian Penal Code, 1860 punishes for “Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.”¹¹ Section 153B of the IPC ensures the protection of "classes of persons" and, beyond all else, "national integration" by making imputations and representations that are detrimental to national integration punishable¹². Section 186 of IPC states, “Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both”.¹³ Also, it is a non-compoundable offence. The IPC's Section 295A is a type of blasphemy legislation. It provides for the punishment of any intentional and malicious conduct meant to

¹¹ Section 153A of IPC, <https://indiankanoon.org/doc/345634/> (Last visited 10 June 2022)

¹² Section 153B of IPC, <https://indiankanoon.org/doc/771276/> (Last visited 10 June 2022)

¹³ Section 186 of IPC, <https://indiankanoon.org/search/?formInput=section%20186%20i%20p%20c> (Last visited 10 June 2022)

degrade a territory or the religious beliefs of a certain group of individuals. Section 295A is a cognizable offence that is non-bailable and non-compoundable. A person accused under Section 295A with a warrant may be arrested by the police. The purpose of Section 505 of the IPC is to prevent and punish the dissemination of false and deceptive information with the intent to disturb public order. The offence is punished by up to three years in jail, a fine, or a combination of the two.

The proceedings against those who disseminate seditious material are covered in Chapter VIII of the Criminal Procedure Code. Persons who induce a reasonable fear of action likely to result in a breach of the peace or a disturbance of public quiet are subject to Section 107. Section 108 guarantees protection from seditious disseminators in exchange for good behaviour. Section 109 concerns security in exchange for good behaviour from suspects. Section 110 ensures that repeat criminals are protected in exchange for good behaviour. Chapter X of the Criminal Procedure Code deals with the protection of public order and peace, and allows the police, magistrates, and armed forces to use force to disperse an unlawful public assembly and restore public order. These preventative measures can help to prevent acts that could be considered seditious¹⁴.

Infringing information generically characterised as "blasphemous," "harassing," "disparaging," or "hateful" shall be removed, according to the Information Technology (Intermediaries Guidelines) Rules, 2011 of the Information Technology Act, 2000. This might be construed as a violation of Article 19 of the Constitution, which guarantees freedom of expression. Reasonable constraints on freedom of speech and expression do not specifically reference hatred, but they do prohibit anything that might jeopardise public order or incite to a crime.

MISUSE OF SEDITION LAW

The existence of this law helps administrative officials take unwanted action against the public. Mere expression of dissent in a conversation without the intention to cause any kind of violence or disaffection in another person's mind is also considered as sedition and officials take undue advantage of this law to harass the general public. The officials do not file charge sheets in most cases and only a handful ended in the conviction of the accused.

¹⁴ S. N. Mishra, The Code of Criminal Procedure 97 (Central Law Publications, Allahabad, 13th edition, 2006)

The whole situation that arose during the Farmers Agitation in 2021 can be mentioned here. Disha Ravi, a Bangalore based climate activist, was arrested by the Delhi police on grounds of Sedition, Promotion of enmity and Criminal Conspiracy, with regards to a toolkit. A Delhi Court granted her bail within a week, after observing that “The offence of sedition cannot be invoked to minister to the wounded vanity of governments”.¹⁵

The Supreme Court, on account of innumerable cases of misuse of this law, gave an order to the government to freeze the law for the time being. This law has been very much in favour of the argument regarding free speech. This decision comes about at a time when the central government itself had decided to reconsider the provision as part of the Prime Minister’s efforts to scrap outdated laws in the country.

CONCLUSION

Section 124A may be a colonial remnant, left behind by the British, that has no place during a democracy like India. It restricts the legitimate exercise of constitutionally protected freedoms of speech and expression. In an exceedingly healthy democracy, dissent and criticism of the govt. are necessary ingredients for an active public discourse. They ought not to be designed to incite dissent. The correct to question, criticise, and replace authorities is central to the democratic concept. Country, who first used sedition to persecute Indians, have now repealed the statute in their own country. There's no reason why India should keep this portion. The terminology employed under Section 124A, like "disaffection," are ambiguous and hospitable multiple interpretations counting on the investigating officers' whims and fancies.

The provisions of the IPC and also the Unlawful Activities Prevention Act make it illegal to "disrupt public order" or "overthrow the govt using violence and criminal methods." These are sufficient to safeguard national security. Section 124A isn't required. The legislation against sedition is being utilised to punish political opposition. It's a broad and focused executive discretion in-built, with blatant misuse. In 1979, India adopted the International Covenant on Civil and Political Rights (ICCPR), which provides universally acknowledged criteria for the protection of freedom of expression. Misuse of the term "sedition" and arbitrary charges are, nevertheless, incompatible with India's international obligations.

¹⁵ Jignasa Sinha, “Disha Ravi toolkit case: With probe making no headway, closure report may be an option”, The Indian Express, October 27 2021, <https://indianexpress.com/article/cities/delhi/disha-ravi-toolkit-case-with-probe-making-no-headway-closure-report-may-be-an-option-7590653/>