

The Law of Sedition in India: Historical Origins, Judicial Interpretation, and Democratic Implications

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Abstract

This paper examines the constitutional validity and present-day relevance of Section 124A of the Indian Penal Code, the sedition law introduced by the British colonial government in 1870 to silence political dissent. The provision, historically used against leaders like Bal Gangadhar Tilak (1897, 1908) and Mahatma Gandhi (1922), was upheld in *Kedar Nath Singh v. State of Bihar* (1962) but limited to acts that incite violence or aim to overthrow the State by force. However, recent prosecutions, such as those of activist Disha Ravi (2021), journalist Kishorchandra Wangkhem (2018), and cartoonist Aseem Trivedi (2012), show that the law continues to be invoked in cases involving peaceful criticism or dissent. Despite the Union Government's 2022 affidavit to the Supreme Court indicating a review of the provision and the subsequent judicial suspension of pending sedition trials, Section 124A remains on the statute books. NCRB data between 2014 and 2020 shows a 160% increase in sedition cases, while conviction rates hover below 3%, suggesting its primary effect lies in the process of prosecution rather than securing convictions. By drawing on Law Commission reports, Constituent Assembly debates, comparative studies of sedition laws in countries like the UK and Australia, and Indian judicial precedents, this paper argues that Section 124A has moved away from its stated aim of protecting national security and functions instead as a political tool to deter lawful dissent, in direct tension with Article 19(1)(a) of the Constitution.

Introduction

India's criminal law still carries many colonial-era provisions, but none has provoked as much legal and political debate as Section 124A of the Indian Penal Code, which defines the offence of sedition. Enacted in 1870 under the British Raj, it was designed to curb the nationalist movement. The provision became a weapon against leaders such as Bal Gangadhar Tilak, who was charged in 1897 for speeches allegedly inciting violence, and again in 1908 for writings in *Kesari* that criticised British rule. After independence, Section 124A was retained despite demands during the Constituent Assembly debates for its removal, with some members warning it could be misused against political opposition in a democracy. In *Kedar Nath Singh v. State of Bihar* (1962), the Supreme Court upheld the section's constitutionality but read it, applying it only to speech or actions that involve incitement to violence or public disorder. This interpretation brought it closer to international free speech standards, yet its application in practice has often gone beyond this limit. For example, cartoonist Aseem Trivedi was arrested in 2012 for satirical depictions of national symbols, journalist Vinod Dua faced sedition charges in 2020 for criticising the government's pandemic response and climate activist Disha Ravi was arrested in 2021 over a protest "toolkit" linked to the farmers'

movement. In most such cases, courts eventually quashed the charges, but the arrests themselves generated public controversy and had an effect on free expression.

The Union Government's 2022 affidavit to the Supreme Court acknowledged concerns over misuse and stated its intention to re-examine the provision. The Court responded by staying all pending sedition trials and investigations, a rare intervention in criminal procedure. Yet, Section 124A has not been repealed. This paper examines why this gap between law and practice persists. It explores the constitutional debates, the role of the judiciary in shaping its interpretation, data on its enforcement, and comparative legal experiences from other democracies. The aim is to assess whether Section 124A can be reconciled with the constitutional guarantee of free speech or whether its colonial legacy renders it incompatible with modern democratic governance.

II. Historical and Legal Background of Section 124A

Section 124A of the Indian Penal Code, which defines the offence of sedition, did not exist in the original IPC of 1860. It was inserted in 1870 by an amendment drafted by Sir James Stephen, then Law Member of the Viceroy's Council, with the stated purpose of punishing attempts to "excite disaffection" towards the British Crown. The colonial government feared the spread of Wahhabi uprisings and nationalist publications, and the provision became a ready legal instrument to silence critics. The earliest recorded sedition trial was *Queen Empress v. Jogendra Chunder Bose* (1891), in which the editor of *Bangobasi* was prosecuted for criticising the Age of Consent Act. The court interpreted "disaffection" broadly to include any political criticism, even if it did not advocate violence. Bal Gangadhar Tilak's prosecutions in 1897 and 1908 marked key moments in this expansive reading. In 1897, Tilak's speeches on Shivaji were held to have incited violence against British officials; in 1908, articles in his paper *Kesari* were deemed seditious for attacking colonial governance. These cases show that from its inception, sedition was used not to prevent armed rebellion but to criminalise expressions of political opposition.

When India became independent in 1947, many assumed such colonial laws would be repealed. During the Constituent Assembly debates, members like K.M. Munshi argued that sedition was incompatible with Article 19(1)(a)'s guarantee of free speech, and should be deleted from the book. However, the First Constitutional Amendment in 1951 expanded Article 19(2) to include "public order" and "incitement to an offence" as grounds for restricting speech, creating constitutional space for Section 124A to survive. In the early post-independence years, High Courts in Punjab, Allahabad, and Kerala struck down the provision as unconstitutional, while others upheld it, leading to legal uncertainty.

This uncertainty ended with the Supreme Court's decision in *Kedar Nath Singh v. State of Bihar* (1962). The Court upheld Section 124A's constitutionality but restricted its application to speech or acts that incite violence or create public disorder. Mere criticism of the government, however strong, was held to be protected. The Court drew a distinction between "disloyalty to the government" and incitement to overthrow it by force. This interpretation aligned more closely with democratic free speech principles but left considerable room for subjective application by police and lower courts.

In the decades that followed, sedition continued to be invoked in politically charged contexts. Manipur journalist Kishorchandra Wangkhem was jailed in 2018 for a Facebook post critical of the Prime Minister and the state's Chief Minister. In 2020, veteran journalist Vinod Dua was booked for sedition over a YouTube video criticising the government's handling of COVID-19; the Supreme Court eventually quashed the case, reaffirming *Kedar Nath*. In 2021, climate activist Disha Ravi was arrested for editing an

online “toolkit” related to the farmers’ protests, accused of conspiring to incite violence; she was later granted bail, with the court noting the absence of any link to violent acts. In each case, the charges collapsed in court, but the initial arrests raised concerns about the chilling effect on dissent. The Law Commission’s 42nd Report (1971) recommended retaining sedition but narrowing its definition. In a 2018 consultation paper, the Commission openly questioned the need for sedition in a democracy, noting its potential for misuse and suggesting repeal or strict procedural safeguards. In May 2022, the Union Government filed an affidavit in the Supreme Court stating its intention to review the provision. The Court responded by staying all pending sedition trials and investigations. Statistical trends reinforce the misuse argument. According to NCRB data, sedition cases rose by over 160% between 2014 and 2020, with conviction rates below 3%. Many cases coincided with periods of political unrest, including the anti-Citizenship Amendment Act protests and the farmers’ agitation. International experience shows a clear move away from such laws. The United Kingdom repealed sedition in 2009, calling it “arcane” and incompatible with modern free speech. Australia reformed its sedition laws in 2005, replacing them with narrower offences targeting incitement to violence. In the United States, the Supreme Court in *Brandenburg v. Ohio* (1969) protected even extremist political speech unless it was intended and likely to incite “imminent lawless action.”

Constitutional Analysis

The constitutional tension between Section 124A and Article 19(1)(a) of the Constitution is both historical and structural. Article 19(1)(a) guarantees freedom of speech and expression as a foundational democratic right, a protection the Supreme Court in *Romesh Thappar v. State of Madras* (1950) described as “the very foundation of democratic governance.” Yet, the presence of a sedition provision, drafted in 1870 to suppress political opposition under colonial rule, introduces a direct conflict.

This conflict is mediated by Article 19(2), which permits reasonable restrictions on speech in the interests of sovereignty and integrity, security of the State, public order, and other specified grounds. It is within this framework that the Supreme Court, in *Kedar Nath Singh v. State of Bihar* (1962), upheld the constitutionality of Section 124A. The Court read down its scope, holding that the offence could only apply to acts involving incitement to violence or a tendency to create public disorder. Strong criticism of the government, even if “unpalatable or unpleasant,” was declared to be within constitutional protection. While this interpretative narrowing appeared to reconcile Section 124A with Article 19(2), enforcement practice has often ignored the *Kedar Nath* standard. Arrests have been made for satire, peaceful protest, and critical commentary, activities far removed from any incitement to violence. NCRB statistics between 2014 and 2020 record a rise of over 160% in sedition cases, yet conviction rates remained below 3%. This disparity suggests that sedition prosecutions are often initiated for their deterrent effect rather than their legal merit, transforming the process into a form of punishment in itself.

The proportionality doctrine articulated by the Supreme Court in *Justice K.S. Puttaswamy v. Union of India* (2017) provides a useful lens for assessment. Any restriction on a fundamental right must (i) pursue a legitimate aim, (ii) be rationally connected to that aim, (iii) be the least restrictive measure available, and (iv) maintain a balance between the restriction’s benefit and its harm to the right. Protecting national sovereignty and public order is undoubtedly a legitimate aim. However, criminalising peaceful political dissent fails the necessity test, given that other provisions in the IPC, such as Sections 153A, 295A, and 505, already address threats to public order. Moreover, the chilling effect on democratic discourse weighs heavily against the marginal security benefits of retaining such a broadly worded offence.

International jurisprudence underscores this incompatibility. The United Kingdom repealed sedition in 2009, acknowledging its inconsistency with modern free expression. Australia revised its sedition provisions in 2005, limiting them to the explicit urging of violence. The United States, through *Brandenburg v. Ohio* (1969), established that political advocacy is protected unless intended and likely to produce “imminent lawless action.” In contrast, India’s continued retention of Section 124A positions it outside the prevailing democratic trend.

In May 2022, in *SG Vombatkere v. Union of India*, the Supreme Court stayed all pending sedition trials and investigations, acknowledging the need for a comprehensive re-examination of the provision. This interim measure does not resolve the underlying constitutional incompatibility. Unless legislative repeal follows, Section 124A will continue to exist as a legal instrument whose mere presence exerts a suppressive effect on the exercise of free speech.

Case Studies of Misuse

The history of Section 124A demonstrates a consistent pattern: it has frequently been deployed not as a narrow safeguard against violent insurrection, but as a broad instrument to suppress dissenting political opinion. The following case studies illustrate this divergence between the judicially prescribed standard in *Kedar Nath Singh* and the reality of enforcement.

1. Bal Gangadhar Tilak (1897 and 1908)

Tilak’s first sedition trial in 1897 arose from speeches on Shivaji which the colonial authorities claimed had incited the assassination of two British officials. Convicted and sentenced to eighteen months’ rigorous imprisonment, Tilak’s case set the precedent for sedition as a tool against nationalist leaders. In 1908, he was again prosecuted for articles in *Kesari* criticising British rule and sentenced to six years in Mandalay. Neither prosecution involved direct incitement to violence by Tilak himself.

2. Mahatma Gandhi (1922)

In 1922, Gandhi was tried for three articles in *Young India* that criticised British policies and encouraged non-cooperation. He called sedition “the prince among the political sections of the IPC, designed to suppress the liberty of the citizen.” Convicted and sentenced to six years’ imprisonment, Gandhi’s case epitomised the colonial approach.

3. Aseem Trivedi (2012)

Cartoonist Aseem Trivedi was arrested in 2012 for satirical drawings on corruption, some depicting national symbols in altered forms. While his work was clearly political commentary, charges were brought under Section 124A alongside provisions on insult to national symbols. The Bombay High Court later intervened, observing that sedition could not be applied to criticism unless it incited violence.

4. Kishorchandra Wangkhem (2018)

In 2018, journalist Kishorchandra Wangkhem was arrested in Manipur for a Facebook post criticising the Prime Minister and the Chief Minister of Manipur. Although the charges were eventually dropped, Wangkhem spent time in detention under the National Security Act.

5. Vinod Dua (2020)

Veteran journalist Vinod Dua faced sedition charges in 2020 for comments on the government’s handling of the COVID-19 pandemic. The Supreme Court quashed the FIR, reiterating that *Kedar Nath* required a link to incitement of violence or public disorder.

Disha Ravi (2021)

In 2021, climate activist Disha Ravi was arrested in connection with an online protest “toolkit” related to the farmers’ agitation. She was accused of conspiring to incite violence during the Republic Day protests. The Delhi court granted her bail, noting the absence of any evidence linking her to the violence.

These cases demonstrate that enforcement has not been limited to violent insurrectionary speech. Its invocation has frequently targeted political criticism, satire, and protest, activities central to democratic engagement. Even where courts have upheld constitutional protections, the time, resources, and personal liberty lost during the legal process reflect sedition’s enduring capacity to function as a tool of intimidation.

Empirical Trends and Comparative Perspective

NCRB data shows the number of sedition cases registered increased from 47 in 2014 to 93 in 2019, an overall rise of more than 95% in five years. Between 2014 and 2020, the increase was approximately 160%, while conviction rates consistently remained below 3%. Spikes in prosecutions often coincide with periods of political unrest. In 2016, following protests in Jammu and Kashmir and the JNU controversy, sedition FIRs rose sharply. During the anti-Citizenship Amendment Act protests (2019–2020) and the farmers’ agitation (2020–2021), multiple cases were filed against activists, journalists, and ordinary citizens for statements or actions critical of government policy.

The Law Commission’s 2018 Consultation Paper questioned whether the provision was necessary in a democracy, warning against conflating dissent with disloyalty. It proposed either repeal or the introduction of safeguards such as prior sanction from a higher authority before registering sedition FIRs. Comparative legal developments in other democracies underscore India’s exceptionalism in retaining Section 124A in its current form. The United Kingdom abolished sedition in 2009, noting it was “arcane” and “no longer necessary in the modern context.” Australia amended its sedition laws in 2005 to narrow their scope to the explicit urging of violence. In the United States, sedition laws exist but are interpreted through the First Amendment standard in *Brandenburg v. Ohio* (1969), which protects even inflammatory political speech unless it is intended and likely to incite imminent lawless action. India’s retention of Section 124A, despite its colonial origins, low conviction rates, and demonstrable potential for misuse, places it at odds with this global trend.

Discussion and Recommendations

The historical trajectory, constitutional scrutiny, case law analysis, and empirical data presented converge on a clear conclusion: Section 124A, in its current form, seems incompatible with the principles of a modern constitutional democracy. While *Kedar Nath Singh v. State of Bihar* (1962) sought to harmonise the provision with Article 19(1)(a) by limiting its application to incitement of violence or public disorder; enforcement practice has shown this safeguard is insufficient to prevent misuse.

From a policy perspective, there are three principal pathways for reform:

1. Repeal of Section 124A

Complete repeal would align India with the global democratic trend. Repeal would not leave the State without protection; existing provisions such as Sections 121, 153A, and 505 already address conduct that endangers public order or national security.

2. Retention with Substantive Redrafting

If repeal is politically unviable, Section 124A could be retained but limited strictly to speech or conduct meeting a high evidentiary threshold: intent to incite imminent violence and likelihood of such violence occurring.

3. Procedural Safeguards Against Misuse

Mandatory prior sanction from a senior judicial or prosecutorial authority before registering a sedition FIR, statutory time limits for investigation, and periodic review by an independent oversight body.

The Supreme Court's interim order in *SG Vombatkere v. Union of India* (2022) presents an opportunity for legislative action. Parliament can use this pause to repeal Section 124A or craft a narrowly tailored provision consistent with the proportionality test in *Puttaswamy*.

Conclusion

The persistence of Section 124A more than seventy-five years after independence reflects a deeper reluctance to shed colonial-era legal frameworks incompatible with the ideals of a constitutional democracy. Originally enacted in 1870 to shield an imperial government, the provision was preserved despite clear warnings in the Constituent Assembly about its potential misuse.

The empirical evidence is unequivocal: prosecutions have risen sharply even as conviction rates remain negligible. High-profile cases illustrate a consistent pattern of the provision being used less to address violent threats than to impose the burdens of criminal process on dissenters.

A democracy's resilience lies not in silencing criticism but in absorbing and responding to it. Whether through repeal or substantive reform with robust safeguards, the imperative is clear: India must align its legal framework with its constitutional commitments and international obligations under the ICCPR. Doing so would strengthen the legitimacy of its democratic institutions by ensuring that the freedom to question authority remains protected in both principle and practice.

References

Constitutional Provisions

1. INDIA CONST. art. 19(1)(a).
2. INDIA CONST. art. 19(2).
3. INDIA CONST. art. 21.
4. Indian Penal Code, No. 45 of 1860, § 124A (India).
5. Indian Penal Code, No. 45 of 1860, § 121 (India).
6. Indian Penal Code, No. 45 of 1860, § 153A (India).
7. Indian Penal Code, No. 45 of 1860, § 295A (India).
8. Indian Penal Code, No. 45 of 1860, § 505 (India).
9. Code of Criminal Procedure, No. 2 of 1974, § 196 (India) (requiring prior sanction for prosecution in certain offences).
10. *Romesh Thappar v. State of Madras*, 1950 SCR 594 (India).
11. *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955 (India).
12. *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (U.S.).
13. *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).
14. *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
15. *Arnab Manoranjan Goswami v. State of Maharashtra*, (2020) 14 SCC 12 (India).

16. Vinod Dua v. Union of India, Writ Petition (Crl.) No. 154 of 2020, Supreme Court of India (June 3, 2021).
17. SG Vombatkere v. Union of India, Writ Petition (Crl.) No. 682 of 2021, Supreme Court of India (May 11, 2022).
18. Queen Empress v. Jogendra Chunder Bose, ILR 19 Cal 35 (1891) (India).
19. Law Commission of India, Forty-Second Report on the Indian Penal Code (1971).
20. Law Commission of India, Consultation Paper on Sedition (2018).
21. Ministry of Home Affairs, Government of India, Crime in India 2019: Statistics (National Crime Records Bureau, 2020), available at <https://ncrb.gov.in>.
22. Ministry of Home Affairs, Government of India, Crime in India 2020: Statistics (National Crime Records Bureau, 2021), available at <https://ncrb.gov.in>.
23. Constituent Assembly Debates, Vol. VII, 1 December 1948, Statement of K.M. Munshi (India).
24. Constituent Assembly Debates, Vol. VII, 30 November 1948, Statement of Somnath Lahiri (India).
25. The Constitution (First Amendment) Act, No. 1 of 1951, Statement of Objects and Reasons (India).
26. James Fitzjames Stephen, Liberty, Equality, Fraternity (1873) (discussing legislative intent of sedition laws in colonies).
27. Ratanlal & Dhirajlal, The Indian Penal Code (36th ed., LexisNexis 2020) (commentary on § 124A).
28. Bipan Chandra, India's Struggle for Independence (Penguin Books, 1989) (detailing sedition trials of Tilak and Gandhi).
29. Coroners and Justice Act 2009, c. 25, § 73 (U.K.) (abolishing sedition and seditious libel).
30. Anti-Terrorism Act 2005 (Cth) (Austl.) (amending sedition offences to "urging violence" provisions).
31. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 19.
32. United Nations Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).
33. "Disha Ravi Arrested in Toolkit Case," The Hindu, Feb. 14, 2021, available at <https://www.thehindu.com>.
34. "Aseem Trivedi Arrested on Sedition Charges," The Indian Express, Sept. 10, 2012, available at <https://indianexpress.com>.
35. "Kishorchandra Wangkhem Detained Under NSA," The Wire, Nov. 27, 2018, available at <https://thewire.in>.
36. Shoaib Daniyal, "Why Sedition Charges in India Rarely End in Conviction," Scroll.in, Sept. 16, 2020, available at <https://scroll.in>.
37. Gautam Bhatia, "The Offence of Sedition and the Freedom of Speech and Expression," 3 Indian Law Review 81 (2019).
38. Aparna Chandra & Mrinal Satish, "Of Speech and Swords: An Empirical Analysis of Sedition Prosecutions in India, 2010–2020," National Law School Journal (2021).