

40. *Ramanand v State*, (1950) 30 Pat 152.

41. *Aravindan*, [1983 Cr LJ 1259](#) (Ker).

THE INDIAN PENAL CODE

CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).

II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).

III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

[s 122] Collecting arms, etc., with intention of waging war against the Government of India.

Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the ^{42.} [Government of India], shall be punished with ^{43.} [imprisonment for life] or imprisonment of either description for a term not exceeding ten years, ^{44.} [and shall also be liable to fine].

COMMENT—

This section is intended to put down with a heavy hand any preparation to wage war against the Government of India. The act made punishable by this section cannot be considered attempts; they are in truth preparations made for committing the offence of waging war. Preparation consists of devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under section 122 (waging war against the Government of India) and section 399 (preparation and an attempt is sometimes thin and has to be decided on the facts of each case). There is a greater degree of determination in attempt as compared with preparation.^{45.}

^{42.} Subs. by the A.O. 1950, for "Queen".

43. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

44. Ins. by Act 16 of 1921, section 3.

45. *Koppula Venkat Rao v State of AP*, [AIR 2004 SC 1874](#) [[LNIND 2004 SC 301](#)] : (2004) 3 SCC 602 [[LNIND 2004 SC 301](#)] .

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- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

[s 123] Concealing with intent to facilitate design to wage war.

Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the ⁴⁶[Government of India], intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section reiterates the principle enunciated in section 118, the only difference being that the penalty under it is more severe. [Section 39 of Code of Criminal Procedure \(Cr PC\), 1973](#) read with [section 176 of the IPC, 1860](#) makes it an offence for any person who is aware of the commission of, or of the intention of any person to commit, an offence under sections 121–126, both inclusive (that is, offences against the State specified in Chapter VI of the Code), to omit giving any notice or furnishing any information to any public servant. Moreover, [section 123 of IPC, 1860](#) makes it an offence to conceal, whether by act or omission, the existence of a design to "wage war" against the Government of India, when intending by such concealment to facilitate, or knowing it to be likely that such concealing will facilitate, the waging of such war.⁴⁷

[s 123.1] Section 121 and Section 123.—

To prove an offence under [section 121, IPC, 1860](#), the prosecution is required to prove that the accused is guilty of waging war against the Government of India or attempts to wage such war, or abets the waging of such war, whereas for proving the offence under [section 123, IPC, 1860](#) against the accused, the prosecution is required to prove that there was a concealment by an act or by illegal omission of existence of a design to wage war against the Government of India and he intended by such concealment to facilitate, or he knew that such concealment will facilitate, the waging of war. In the present case, the accused was charged under [section 121, IPC, 1860](#), for waging war against the Government of India or attempting to wage such war or abetting the

waging of such war. The concealment of such fact by an act or illegal omission with an intention to facilitate, or knowing that such concealment will facilitate, waging of war, even in the absence of proof of his involvement in waging of war against the Government of India, will constitute an offence and an accused can always be convicted for the concealment of such fact under [section 123, IPC, 1860](#). The prosecution having been successful in proving the necessary ingredients of [section 123, IPC, 1860](#), it would constitute a minor offence of a major offence and, therefore, the petitioner was convicted under [section 123, IPC, 1860](#) which is a minor offence of the offences he faced trial.^{48.}

^{46.} Subs. by the A.O. 1950, for "Queen".

^{47.} *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : [AIR 2012 SC 3565](#) [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .

^{48.} *Shaukat Hussain Guru v State (NCT) Delhi*, [AIR 2008 SC 2419](#) : (2008) 6 SCC 776 : 2008 Cr LJ 3016 : 2008 (8) SCR 391 : (2008) 3 SCC (Cr) 137.

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III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

[s 124] Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.

Whoever, with the intention of inducing or compelling the ^{49.}[President] of India, or the ^{50.}[Governor ^{51.}***] of any ^{52.}[State], ^{53.}*** ^{54.}*** ^{55.}*** to exercise or refrain from exercising in any manner any of the lawful powers of such ^{56.}[President] or ^{57.}[Governor ^{58.}***],

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such ^{59.}[President or ^{60.}[Governor ^{61.}***]],

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

This section is an amplification of the third clause of section 121A. It punishes severely assaults, etc., made on high officers of Government.

^{49.} Subs. by the A.O. 1950, for "Governor General".

^{50.} Subs. by Act 3 of 1951, section 3 and Sch., for "Governor" (w.e.f. 1 April 1951).

^{51.} The words "or Rajpramukh" omitted by the A.O. (No. 2) 1956.

^{52.} Subs. by the A.O. 1950, for "Province". Earlier the word "Province" was subs. by the A.O. 1937, for the word "Presidency".

- 53. The words "or a Lieutenant-Governor" omitted by the A.O. 1937.
- 54. The words "or a Member of the Council of the Governor General of India" omitted by the A.O. 1948.
- 55. The words "or of the Council of any Presidency" omitted by the A.O. 1937.
- 56. The words "Governor General, Governor, Lieutenant-Governor or Member of Council" have successfully been amended by the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.
- 57. Subs. by Act 3 of 1951, section 3 and Sch., for "Governor" (w.e.f. 1 April 1951).
- 58. The words "or Rajpramukh" omitted by the A.O. (No. 2) 1956.
- 59. The words "Governor General, Governor, Lieutenant-Governor or Member of Council" have successfully been amended by the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.
- 60. Subs. by Act 3 of 1951, section 3 and Sch., for "Governor" (w.e.f. 1 April 1951).
- 61. The words "or Rajpramukh" omitted by the A.O. (No. 2) 1956.

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62. [[s 124A] Sedition.

Whoever, by words, either spoken or written, or by

signs, or by visible representation, or otherwise, brings or attempts

to bring into hatred or contempt, or excites or attempts to excite disaffection towards, 63.[*] the Government established by law in 64.[India], 65.[***] shall be punished with 66.[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.**

***Explanation 1.*—The expression "disaffection" includes disloyalty and all feelings of enmity.**

***Explanation 2.*—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.**

***Explanation 3.*—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]**

COMMENT—

The offence under section 124A captioned as 'Sedition' is closely allied to treason – an offence against the State. Many personalities including the Father of the Nation and several freedom fighters have been tried and punished during the imperial rule under the above section. How far in a democratic set-up publishing or preaching of protest even questioning the foundation of the form of Government could be imputed as causing disaffection towards the Government and thus, committing of any offence

under Chapter VI of the [IPC, 1860](#) has to be examined within the letter and spirit of the [Constitution](#) and not as previously done under the imperial rule.⁶⁷

Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion.

Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.⁶⁸

[s 124A.1] Constitutional Validity.—

The Supreme Court, in *Kedar Nath Singh v State of Bihar*,⁶⁹ held that this section is not unconstitutional and opined that only when it is construed that the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order the law steps in to prevent such activities in the interest of public order, then only the section strikes the correct balance between individual fundamental rights and the interest of public order. The Court also held that a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

The Supreme Court in a later Order in *Common Cause v UOI*⁷⁰ ordered that the authorities while dealing with the offences under [section 124A of the IPC, 1860](#) shall be guided by the principles laid down by the [Constitution](#) Bench in *Kedar Nath Singh*.

Section 124A]

[s 124A.2] Ingredients.—

This section requires two essentials:—

1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.
2. Such act or attempt may be done (i) by words, either spoken or written; or (ii) by signs; or (iii) by visible representation.

1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.—A plain reading of the section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations, etc.⁷¹ Necessary ingredient to attract punishment under [section 124A, IPC, 1860](#), appears to be the effort of bringing or attempting to bring into hatred or contempt to excite or attempt to excite disaffection towards the Government established by law in India by words, either spoken or written or by signs or by visible representation or otherwise.⁷² The offence does not consist in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or

small. Whether any disturbance or outbreak was caused by the publication of seditious articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within this section, and would probably fall within other sections of the [IPC, 1860](#). If he tried to excite feelings of hatred or contempt towards the Government, that is sufficient to make him guilty under this section.⁷³ The Federal Court of India had, however, held that the gist of the offence of sedition is incitement to violence; mere abusive words are not enough.⁷⁴ The view of the Federal Court was subsequently overruled by the Privy Council,⁷⁵ as being opposed to the view expressed in several cases.⁷⁶

In appreciating whether the act done by the accused by words "either spoken or written or by signs or by misrepresentation or otherwise" one cannot shut one's eyes to changes in political consumptions which have taken place over the course of time after the aforesaid penal provision section 124A was included in the [IPC, 1860](#) and the declared objective of the Government of the day. Very often, the demarcating line between political criticism of the Government and those causing disaffection against the Government is thin and waving.⁷⁷

It is not an essential ingredient of sedition that the act done should be an act which is intended or likely to incite to public disorder.⁷⁸ But this view of the law does no longer seem to be correct, in view of the decision of the Supreme Court in *Kedar Nath's* case,⁷⁹ wherein *Sinha*, CJ observed:

comments, however strongly worded expressing, disapprobation of actions of Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity or disloyalty which imply excitement to public disorder or the use of violence.

In this very case it was further held that viewed in the context of antecedent history of the legislation, its purpose and the mischief it seeks to suppress the provisions of [section 124A](#) and [section 505](#) of the [IPC, 1860](#) should be limited in their application to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. Where the propaganda secretary of a Gurdwara addressed a gathering of Sikhs, some of whom were wearing black clothes and turbans, and in course of his speech though he did not give direct incitement to violence but he nevertheless gave exaggerated figures of casualties following Army action in Punjab, it was held that it would be quite proper to infer from the text and tenor of the speech made by the accused that the same was intended to bring the Government into contempt with the likelihood of eruption of violence and public disorder contemplated in *Kedarnath's* case. In the circumstances, his petition for quashing the criminal proceedings against him under [section 482, Cr PC, 1973](#) was rejected.⁸⁰ The decisive ingredient for establishing the offence of Sedition under [section 124A, IPC, 1860](#) is the doing of certain acts which would bring the Government established by law in India into hatred or contempt, etc. In this case, there is not even a suggestion that appellant did anything as against the Government of India or any other Government of the State. The charge framed against the accused contains no averment that accused did anything as against the Government.⁸¹ The prosecution evidence shows that the slogans were raised a couple of times only by the accused and that neither the slogans evoked a response from any other person of the Sikh community nor reaction from people of other communities. Supreme Court found it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever, the charge of sedition can be founded.