

The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. [Section 124A IPC, 1860](#) would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.<sup>82</sup> The prosecution case is that the accused has delivered a speech creating ill will and promoting enmity among different racial and linguistic groups of Indian people and thereby committed the offences punishable under [sections 124\(A\)](#) and [153\(A\)](#) of the [IPC, 1860](#). A perusal of the First Information Report and the charge sheet laid by the respondent police would make it abundantly clear that the allegations mentioned therein, if proved, would naturally attract the provisions of [sections 124\(A\)](#) and [153\(A\)](#) of [IPC, 1860](#).<sup>83</sup> State of Punjab and Union Territory, Chandigarh, had been declared Disturbed Area and the extremists activities were going on a large scale in September 1984. The law and order situation had so deteriorated that the Army had to spread out. In this background, it will be proper to infer from the text and tenor of the speech made by the accused that the same was intended and it did tend to bring the Government into contempt with the likelihood of eruption of violence and public disorder.<sup>84</sup>

**2. Such act, attempt, etc., may be done by words, either spoken or written or by signs or by visible representation.**—Not only the writer of seditious articles but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to the Government is liable under the section, whether he is the actual author or not.<sup>85</sup>

#### **[s 124A.3] 'Written'.—**

In *Raghubir Singh*,<sup>86</sup> it has been held that for establishing the charge of sedition, it is not necessary that the accused must be the author of the seditious material and that distribution or circulation of seditious material may also be sufficient on the facts and circumstances of the case and even the act of courier is sometimes enough in a case of conspiracy and further that it is also not necessary that a person should be the participant in the conspiracy from start to finish. Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of exciting disaffection. Seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of some kind is necessary.<sup>87</sup> Sending of seditious matter by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication if it is opened by anybody.<sup>88</sup>

#### **[s 124A.4] Advise to kill members of police force.—**

The Government established by law acts through human agency and admittedly, the police service or force is itself a principal agency for the administration and maintenance of the law and order in the State. When a person makes a statement or gives an advice to resort to violence by killing four to five police officers, he could be said to have criticised the police force or the service *en bloc*. In such circumstances a *prima facie* case of waging war against the Government could be said to have been made out.<sup>89</sup>

#### **[s 124A.5] 'Visible representation'.—**

Sedition does not necessarily consist of written matter: it may be evidenced by a wood-cut or engraving of any kind.<sup>90.</sup>

#### **[s 124A.6] Explanations 2 and 3.—**

Both these Explanations have a strictly defined and limited scope. They have no application unless the article in question criticises "the measures of Government" or "administrative or other action of the Government" without exciting or attempting to excite hatred, contempt or disaffection.

#### **[s 124A.7] Membership in a banned organization.—**

Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence.<sup>91.</sup>

#### **[s 124A.8] 'Disapprobation'.—**

This means simply disapproval. It is quite possible to disapprove of a man's sentiments or actions and yet to like him.<sup>92.</sup>

#### **[s 124A.9] Liability for extracts from other papers.—**

The law does not excuse the publication in newspapers of writings which are in themselves seditious libels, merely because they are copied from foreign newspapers as items of news.<sup>93.</sup>

#### **[s 124A.10] Liability for letters of correspondents.—**

The editor of a newspaper is liable for unsigned seditious letters appearing in his paper.<sup>94.</sup>

#### **[s 124A.11] Publication of seditious exhibits.—**

Republication of a seditious article used as an exhibit in a case of sedition is not justifiable.<sup>95.</sup>

#### **[s 124A.12] Listening to cassettes.—**

Certain accused persons were convicted for listening to some cassettes containing speeches of seditious nature. There was no other evidence to show that they either committed or conspired or attempted to commit or advocated or advised or knowingly

facilitated commission of disruptive activities under Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987. Their conviction was set aside.<sup>96.</sup>

### **[s 124A.13] Previous Sanction.—**

No sanction has been obtained to prosecute the petitioner/ accused for the offence under [section 124A of the IPC, 1860](#) which is a mandatory requirement for the Court to take cognizance of such offence. When that be so, whether the contents of the poster and its publication by the accused, even if it is at his instance, to determine whether any offence of sedition is made out thereof is not called for. [Section 196 of the Cr PC, 1973](#) mandates that a complaint for such offence should be expressly authorised by the Government, and if not, the Court cannot take cognizance of such offence against the accused person. Committal proceedings taken over the final report laid before the Court without production of order of sanction satisfying the statutory mandate is clearly unsustainable.<sup>97.</sup>

62. Subs. by Act 4 of 1898, section 4, for section 124A. Earlier section 124A was inserted by Act 27 of 1870, section 5.

63. The words "Her Majesty or" omitted by the A.O. 1950. The words "or the Crown Representative" ins. after the word "Majesty" by the A.O. 1937 were omitted by the A.O. 1948.

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

67. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 .

68. *Nazir Khan v State of Delhi*, AIR 2003 SC 4427 [LNIND 2003 SC 696] : (2003) 8 SCC 461 [LNIND 2003 SC 696] : JT 2003 (1) SC 200 : 2003 Cr LJ 5021 .

69. *Kedar Nath Singh v State of Bihar*, AIR 1962 SC 955 [LNIND 1962 SC 21] : [1962] Supp 2 SCR 76.

70. *Common Cause v UOI*, Writ Petitions Civil No. 683/2016.

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72. *Asit Kumar Sen Gupta v State of Chhattisgarh*, 2012 (NOC) Cr LJ 384 (Chh).

73. *Bal Gangadhar Tilak*, (1897) 22 Bom 112, 528, (PC); *BG Tilak*, (1908) 10 Bom LR 848 [LNIND 1908 BOM 85] ; *Amba Prasad*, (1897) 20 All 55 , 69, FB; *Luxman*, (1899) 2 Bom LR 286 ; *Shankar*, (1910) 12 Bom LR 675 [LNIND 1910 BOM 66] .

74. *Niharendu Dutt Majumdar*, (1942) FCR 38 .

75. *Sadashi v Narayan v State*, (1947) 49 Bom LR 526 , (1947) Bom 110, 74 IA 89.

76. *Bal Gangadhar Tilak*, (1897) 22 Bom 528, PC; *Besant v Advocate-General of Madras*, (1919) 43 Mad 146 : 21 Bom LR 867 PC; *Wallace-Johnson*, (1940) AC 231 .

77. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 .
78. *Pratap "Urdu Daily of New Delhi"*, (1949) 2 Punj 348.
79. *Kedar Nath*, AIR 1962 SC 955 [LNIND 1962 SC 21] : 1962 (2) Cr LJ 103 .
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83. *P Nedumaran v State*, 2003 Cr LJ 4388 (Mad).
84. *Naurang Singh v Union Territory, Chandigarh*, 1986 Cr LJ 846 (PH).
85. *Bal Gangadhar Tilak*, (1897) 22 Bom 112, 129; *Jogendra Chunder Bose*, (1891) 19 Cal 35 , 41.
86. *Raghubir Singh*, 1987 Cr LJ 157 : AIR 1987 SC 149 [LNIND 1986 SC 336] : (1986) 4 SCC 481 [LNIND 1986 SC 336] .
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89. *Hardik Bharatbhai Patel v State of Gujarat*, 2016 Cr LJ 225 (Guj) : 2016 (1) RCR (Criminal) 542.
90. *Alexander M Sullivan*, (1868) 11 Cox 44, 51.
91. *Indra Das v State of Assam*, (2011) 3 SCC 380 [LNIND 2011 SC 164] : 2011 Cr LJ 1646 : (2011) 1 SCC (Cr) 1150 : (2011) 4 SCR 289 [LNIND 2011 SC 164] ; *State v Raneef*, (2011) 1 SCC 784 [LNIND 2011 SC 3] : AIR 2011 SC 340 [LNIND 2011 SC 3] : 2011 Cr LJ 982 .
92. *Jogendra Chunder Bose*, (1891) 19 Cal 35 , 44; *Bal Gangadhar Tilak*, (1897) 22 Bom 112, 137.
93. *Alexander M Sullivan*, (1886) 11 Cox 44.
94. *Apurba Krishna Bose*, (1907) 35 Cal 141 .
95. *Ibid*.
96. *Balbir Singh v State of UP*, AIR 2000 SC 464 : 2000 Cr LJ 590 .
97. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 .

# 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).

### **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.<sup>67</sup>

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.<sup>68</sup>

#### [s 124A.1] **Constitutional Validity.—**

The Supreme Court, in *Kedar Nath Singh v State of Bihar*,<sup>69</sup> 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*<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup> The view of the Federal Court was subsequently overruled by the Privy Council,<sup>75</sup> as being opposed to the view expressed in several cases.<sup>76</sup>

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.<sup>77</sup>

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.<sup>78</sup> 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,<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> 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.

The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. [Section 124A IPC, 1860](#) would in the facts and circumstances of the case have no application whatsoever and would not be

attracted to the facts and circumstances of the case.<sup>82</sup> The prosecution case is that the accused has delivered a speech creating ill will and promoting enmity among different racial and linguistic groups of Indian people and thereby committed the offences punishable under [sections 124\(A\)](#) and [153\(A\)](#) of the [IPC, 1860](#). A perusal of the First Information Report and the charge sheet laid by the respondent police would make it abundantly clear that the allegations mentioned therein, if proved, would naturally attract the provisions of [sections 124\(A\)](#) and [153\(A\)](#) of [IPC, 1860](#).<sup>83</sup> State of Punjab and Union Territory, Chandigarh, had been declared Disturbed Area and the extremists activities were going on a large scale in September 1984. The law and order situation had so deteriorated that the Army had to spread out. In this background, it will be proper to infer from the text and tenor of the speech made by the accused that the same was intended and it did tend to bring the Government into contempt with the likelihood of eruption of violence and public disorder.<sup>84</sup>

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[s 124A.3] **'Written'.—**

In *Raghubir Singh*,<sup>86</sup> it has been held that for establishing the charge of sedition, it is not necessary that the accused must be the author of the seditious material and that distribution or circulation of seditious material may also be sufficient on the facts and circumstances of the case and even the act of courier is sometimes enough in a case of conspiracy and further that it is also not necessary that a person should be the participant in the conspiracy from start to finish. Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of exciting disaffection. Seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of some kind is necessary.<sup>87</sup> Sending of seditious matter by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication if it is opened by anybody.<sup>88</sup>

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Both these Explanations have a strictly defined and limited scope. They have no application unless the article in question criticises "the measures of Government" or "administrative or other action of the Government" without exciting or attempting to excite hatred, contempt or disaffection.

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Republication of a seditious article used as an exhibit in a case of sedition is not justifiable.<sup>95.</sup>

**[s 124A.12] Listening to cassettes.—**

Certain accused persons were convicted for listening to some cassettes containing speeches of seditious nature. There was no other evidence to show that they either committed or conspired or attempted to commit or advocated or advised or knowingly facilitated commission of disruptive activities under Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987. Their conviction was set aside.<sup>96.</sup>

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