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# AN ANALYSIS OF SEDITION LAW

Atri Deo Tripathi  
Department of Law  
Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

**ABSTRACT:** *This research paper talks about the case of Shreya Singhal Vs Union of India in detail and the sedition laws corresponding to it. It is a very famous case in recent times, where the Mumbai police had arrested two women, Shaheen Dhada and Rinu Srinivasan in 2012, for posting allegedly offensive and objectionable comments on facebook about the propriety of shutting down the city of Mumbai after the death of a political leader, Bal Thackeray. The offence against the state. With the Commencement of Indian Constitution in 1950, Article 19(1) (a) provides to every citizen a fundamental right to freedom of speech and expression. With this development Sedition Law contained in Section 124-A comes with direct conflict with fundamental right under Article 19 (1)(a). The decision in Shreya Singhal is immensely important in the history of Supreme Court has adopted the extreme step of declaring a censorship law passed by Parliament as altogether illegitimate. Also, the paper compares the Indian Sedition laws with the sedition laws of several countries along with their current scenario. In this study, a survey has been conducted among the students, professors, advocates and judges to know their opinion about the existing Sedition laws in India and also their view on the judgment of this case. Therefore, this paper critically analyzes the sedition laws implacable in the case of Shreya Singhal vs. Union of India.*

**KEYWORDS:** *Advocacy, Article 19(1)(a), Sedition Law, Censorship law, International Scenario.*

## INTRODUCTION

In a country like India, the government and its citizens are continually divided. Life today poses several problems. The government is introducing different types of programs, schemes, plans, etc. under people's welfare cover. The dispute, then, is unavoidable. The government uses numerous methods to manage the voices of discontent, and an essential instrument is among those laws, and the law of sedition is one of those laws. The offence known as sedition under section 124-A is closely related to treason- an offence against the state. During imperial rule, numerous individuals were tried and imprisoned under the above clause, including the father of the nation and several freedom fighters. But since independence, things have undergone big changes. With constitutional provisions, the IPC clause is read to see whether the right to freedom of expression is exercised within reasonable limits and whether or not the state's conduct against any individual is just. In relation to sedition law in India, this article covers various topics.

As set out in Section 124A of the Indian Penal Code, the law of sedition has definitely had an outstanding track record. This highly contentious clause did not form part of the Indian Penal Code when adopted in 1860, although it was suggested to be included in the draft prepared in 1837 by the Indian Law Commissioners.<sup>1</sup> Section 124A was originally enumerated under section 113 of

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<sup>1</sup> 4 (Stronk 2017; Carroll 1920)

the draft Macaulay Penal Code of 1837-39, but it was only in 1870 that the provision for sedition was introduced by the IPC (Amendment) Act. This provision was subsequently replaced by the new Section 124A by the amending Act of 1898.

Article 19(1)(a) provides for the fundamental right of every citizen to freedom of speech and expression at the beginning of the Indian Constitution in 1950. With any of this development, the sedition Law contained in Section 124-A clearly conflicts with fundamental rights under Article 19(1)(a) as a result of the Privy Council Decision.

## DISCUSSION

### *Statement of The Facts*

The Mumbai police arrested two women, Shaheen Dhaba and Rinu Srinivasan, for posting allegedly offensive and objectionable comments on Facebook about the properties of the shutdown of Mumbai following the death of Bal Thackeray, a political leader. Under Section 66A of the Information Technology Act of 2000 (ITA), police arrested the two children, punishing anyone sends information that is highly offensive via a computer resource or communication device, or with the knowledge of its falsity, for the purpose of causing annoyance, inconvenience, threat, insult, harm, hate or ill will. While the police later released the women a dropped their prosecution, the incident received widespread scrutiny and criticism from the media. These women have lodged a petition challenging the constitutional validity of Section 66A on the ground that it violated their right to freedom of speech.

In *Singhal V. Union of India*, (2013) S.C.C 73, an interim measure banning any arrest under Section 66A was initially released by the Apex Court of India, unless the arrest is accepted by senior police officers.

### *Relevant Provisions*

There were different clauses that were questioned under the information Technology Act, 2000 and the Constitution of India, in addition to section 124-A of the Indian Penal Code, 1860. Sections 66A, 67A and 69A of the Information technology Act, 2000 and Article 14 and 18(2) of the Constitution of India were the main provisions questioned.

### *Judgment*

The Apex Court struck down Section 66-A of the Information Technology Act in a lengthy judgement, which widely debated Indian English and US jurisprudence on free expression, (ITA), read Section 79 of the Act respecting information technology. Speaking to the court, as defined for in Article 19(2) of the Constitution of India, Justice Nariman mentioned the various conditions that are applicable to adjudicating when speech deficiencies can be deemed necessary. The Court held that Sec 66A was vague and wide-ranging and therefore disregarded Article 19(1)(a) on the

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ground that the law was not specifically adapted to individual situations of debate which it sought to curb.<sup>2</sup>

In fact, the court also considered the ‘chilling impact’ on expression of an undefined and over-broad legislative language as a justification for striking down the provision. The court also held that, according to Article 19(2) of the Constitution, the prohibition of ‘public order’ does not apply to cases of advocacy, but rather to incitement.<sup>3</sup>

On the basis of the grounds referred to in Article 14 of the Constitution of India, the court held that “we are unable to agree with counsel for the petitioners that there is no intelligible differentia between the medium of print, broadcast and real live speech as opposed to speech on the internet. The intelligible differentia is clear- the internet gives any individual a platform which requires very little or no payment through which to air his views.”

Furthermore, the Supreme Court read, in compliance with the Act, Sections 79 and Rule 3(4) of the Intermediaries Guidelines on the liability of intermediaries, primarily those who host content and provide online services. Although the section itself uses the word “receiving actual knowledge” of illegal) material as the concept by which the receiver is responsible for removing the content, the court clarified that it must be taken as meaning knowledge acquired that a court order requiring the removal of the infringing material has been released.

Finally, the court also upheld the hidden blocking procedure pursuant to Section 69A of the Act, which allows the government to decide to exclude content from the Internet, to establish that it has not suffered from the infirmities referred to in Section 66A or Section 79, and to include sufficient protections in a narrowly drawn-up clause. The court therefore held that the law infringes the right of a person to freedom of speech and of expression on the internet. The clause in question is, as such, legally void and, as such, fully annulled.

#### *Legal Framework of Sedition Law in India*

Sedition is clarified in broad and magnanimous terms by Section 124-A of the Indian Penal Code, called ‘Sedition’. It reads that anyone who, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring hate or contempt, or excites or seeks to stimulate disaffection against the government founded by Indian law, shall be punished with life imprisonment.<sup>4</sup>

The definition given by the Indian Penal Code are that disloyalty and all feelings of hatred are part of the term disaffection. It also states that, under this section, comments expressing firm disapproval of the government’s measures, with the view that their desired changes should be obtained by legal means, without exciting or trying to excite or trying to excite hate, contempt or

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<sup>2</sup> <http://www.legalservicesindia.com/article/article/shreya-singhal-v-u-o-i-2473-1.html>

<sup>3</sup> <http://www.wipo.int/edocs/lexdocs/laws/en/in/in099en.pdf>

<sup>4</sup> <https://indiankanoon.org/doc/1142233/>

disappointment, do not constitute an offence. Posts expressing clear disapproval, in compliance with section 124-A, of the administrative or other operation of the government without exciting or attempting to arouse hate, contempt or disaffection do not constitute an offence as per this section. Initially, Thomas Macaulay began constructing the law.

It was not part of the Penal code in the 1860's, and was also dropped from the legislation. In 1870, the IPC was first introduced. Many Indian freedom fighters have been convicted of sedition during the struggle for freedom, including Mahatama Gandhi and Bal Gangadhar Tilak. In his belief that the crime of sedition was inherently unconstitutional when the first amendment was introduced, which also had broad limitations on free expression, the Prime Minister, Jawaharal Nehru, was categorical. He said, "[Section 124-A] is highly objectionable and obnoxious now as far as I am concerned, and for practical and historical reasons it should have no place." The quicker we get rid of it, the easier it will be.

In the survey conducted, it was found that the majority of the target audience believed that in a democratic country like India, the presence of such laws for sedition is not required.

### *Judicial Interpretation*

With the judgment of the Calcutta High Court, the Judicial dispute over the jurisdiction of Section 124-A begins that it is appropriate for the intent of the section that the words used are used to excite feelings of ill will against the government and maintain itself against the hate and contempt of the people, and that they were used to establish these feelings. The argument that there can be no offence under the section unless incitement to insurrection or armed resistance is instigated or attempted has been vigorously denied. The cat or words that have been complained about must either trigger confusion, or be such that their purpose or tendency is to please fair men. This interpretation, provided by the Federal Court, was later expressly overruled by the Privy Council.

A strained relationship is Section 124-A's relation to the IPC and Art 19 of the Indian Constitution. The Indian Constitution guarantees freedom of speech and expression by word of mouth, writing, printing, pictures or any other means, which implies the right to express one's own convictions and opinions without restriction. The fundamental rights found in Article 19(1) are those wonderful and fundamental rights recognized as the inherent natural rights of any person. The fundamental requirement of the validity of the law referred to in Article 19 is that it should not be arbitrary and that the restrictions or limitations imposed on the rights referred to in Article 19(1)(a) must comply with the reasonable restrictions referred to in Article 19(2). Legislation may be regarded as unlawful and unconstitutional only if the test of arbitrariness and prejudice violates Article 1. Sedition is a serious crime against the state-a threat to stability and challenge to the authority of the state, not just opposition, though strong, or opposition to the policy of the government. It is true that it is difficult to determine where to draw a line, but it is also right.

In a 2015 ruling in *Shreya Singhal v. Union of India*, the Supreme Court claimed that one had to differentiate between advocacy and incitement, and that only incitement was punishable. The

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judgement of Justice Rohinton Nariman in Paragraph 87 exposes the red flag to the hazards of restrictive terms limiting freedom of expression and thinking. Vague terms that bring a very large amount of safe and innocent speech into the net are data that may be grossly offensive or that causes annoyance or discomfort. Any person who, by means of writing, discussing, or even endorsing, disseminates knowledge which may constitute a point of view or a point of view on political, literary, scientific or other matters which may be unpalatable to some parts of society, will be caught in his net by any serious opinion that conflicts with the morality of that day. Such is the scope of the section and if it is to withstand the test of constitutionality, the chilling impact on freedom of expression will be complete. Therefore, only in situations where they are used to incite gangs or crowds to aggressive action can words and phrases be criminalised and implemented. The Supreme Court's decision is based on the notorious section 66A of the Information Technology (IT) Act 2000 and now appreciates the manner in which the Apex Court secured the right to freedom of speech and expression. Although appreciating the conclusion reached by the court on the constitutionality of section 66A, there is sufficient support from the offices of legal practitioners and scholars for the reasoning of the court.

### CONCLUSION

On the face of it, Section 124A is straightforward in that it aims to penalize any actions that contribute to disloyalty toward the government or feelings of disdain or enmity. A very good exposition of the distinction between advocacy and threats of violence is provided by the Shreya Singhal judgment, as the latter is necessary to prove an offence under Section 124A while the former is not a criminal activity. It was also clear in this case that two girls arrested for sharing their opinions on social media did not constitute the crime of sedition. This article also sheds light on the instances that constitute the offence of sedition. The Shreya Singhal case is therefore given utmost importance in recent times, as it clearly states what conduct can come under Sedition and the judgment is given to safeguard citizenship rights.