**A win for free speech**

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Thanks to judicial activism, freedom of speech and press have been declared the core values in our free constitutional democracy where political speech now can neither be abridged nor be limited. In a landmark judgement announced on WP No. 59599 of 2022 16, Justice Shahid Karim of the Lahore High Court struck down the Section 124-A of the Pakistan Penal Code (PPC) as being “void as a whole” and also being inconsistent with and in derogation of fundamental rights enshrined in the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution). Titled “Sedition‟, the provision constitutes the offence of seditious writings and seditious libel. This offence has historical origins and was always an offence at common law punishable with imprisonment or a fine on the direction of the court. As defined in Section 124-A of PPC, sedition is an agreement, communication, or other preliminary activity aimed at inciting treason or some lesser commotion against public authority. It is advocacy aimed at inciting or producing and likely to incite or produce imminent lawless action. This definition is a traditional view of what constitutes the crime of sedition. It is diametrically opposed in breadth to the criminal offence of sedition. Section 124-A of PPC was quintessentially a colonial law and had its genesis in colonial rule. It was enacted to perpetrate and entrench ‘British Rule’ in the sub-continent. It has to be distinguished from other crimes which are commonly found to afflict a human society. Sedition belongs to the species of offences which had no other purpose but suppression of people’s voices by the rulers’ masters.

[PDM united over holding simultaneous elections after term completion](https://www.nation.com.pk/27-Apr-2023/pdm-united-over-holding-simultaneous-elections-after-term-completion)

On the other side, Article 19 of the Constitution provides: “Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of] or incitement to an offence.” In an earlier article, titled as, “Against the sedition law” dated 31-01-2023, this writer highlighted that Section 124-A of PPC is unacceptable in the modern era as it is a constraint against the legitimate exercise of constitutionally guaranteed freedom of expression and speech. Guaranteed by the Constitution, the judicially enforceable rights are among the necessary auxiliary precautions against tyranny. The predominant view of the courts in the United States of America is that absolute privilege attaches to criticism of government and governmental system. This has been entrenched by US Supreme Court and established as a sense of free expression in New York Times Co. v. Sullivan 376 U.S. 254.

[MQM-P delegation meets govt ministers, join hands to resolve census issues](https://www.nation.com.pk/27-Apr-2023/mqm-p-delegation-meets-govt-ministers-join-hands-to-resolve-census-issues)

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress. Also, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1958 provides: “Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” However, Section 124-A of PPC, a relic of autocracies and colonial subjugation, was the abridgement of political speech which is discountenanced by all liberal democracies based on constitutionalism and which makes such freedom the very basis of rule of law and one of the core values of any legal system.

Now declared void as a whole, Section 124-A of PPC would seriously dent the right to publish freely by the press and to impart information through different platforms used by media. Any writings on political issues or discourse on matters of public importance might be caught by the mischief of Section 124-A and would have the unpalatable effect of inhibiting the free press. Striking down this colonial provision, the judgement reads “Freedom from colonial rule was meant to usher in freedom of thought and it is impermissible for the citizens of Pakistan to be vilified and persecuted by allowing Section 124-A to remain part of our legal system.”

[‘Pakistan's sports need govt, corporate sector support to grow’](https://www.nation.com.pk/27-Apr-2023/pakistan-s-sports-need-govt-corporate-sector-support-to-grow)

The law was meant to place limits so that the primary purposes of servility and subjugation were achieved. The purpose of the law, then, was an affront to constitutional rights now conferred. Right to freedom of speech is incomplete without the freedom of the press and which in turn, secures the right to have access to information in all matters of public importance.” The Constitution enshrines fundamental rights which are conferred upon people and the most cherished of those rights is the right to freedom of speech and expression. Nevertheless, section 124-A of PPC was in significant tension with constitutionalism and constitutional democracy. The judgement also finds expression in the preamble of our Constitution where it is stated: “Now, therefore, we, the people of Pakistan, are dedicated to the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny.” This statement is a clarion call by the people of Pakistan regarding their dedication to the preservation of democracy which can only be achieved by raising voices against oppression and tyranny. Now, these voices cannot be suppressed or stifled by the provisions of Section 124-A of PPC.

[Shoaib, Nouman dominate Smart City 62nd National Amateur Golf](https://www.nation.com.pk/26-Apr-2023/shoaib-nouman-dominate-smart-city-62nd-national-amateur-golf)

One of the founding fathers of present India, Jawaharlal Nehru said in Parliament, on May 29, 1951: “Take again Section 124-A of the Indian Penal Code. Now so far as I am concerned that particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons… The sooner we get rid of it the better.” In England, the repression of ideas antithetical to the government dates back to the 13th century. In 1275 and again in 1379, Parliament made it criminal to speak against the state. Later known as seditious libel, the words, that questioned the rulers in any way were punished by the King’s Council. The statement of Halsbury’s Laws of England captures the law relating to sedition in the United Kingdom. It says the government could not prescribe opinions or determine what doctrines or what arguments people should hear. The power itself is illegitimate. The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion than when in opposition to it.

[Police set fire to gangster's hideout in katcha operation](https://www.nation.com.pk/26-Apr-2023/police-set-fire-to-gangster-s-hideout-in-katcha-operation)

Various expressions and bases for freedom of expression have been used to a greater or lesser extent by the courts around the civilized world to justify the high value placed on freedom of speech in the constitutional scheme of government. In this way, the freedom to think as you will and speak as you think is indispensable to the discovery and spread of political truth. But without free speech, a discussion would be futile. The functionaries of the state are fiduciaries of the people and ultimately responsible to the people who are also their paymasters, it was stated in Syed Yousaf Raza Gillani v. Assistant Registrar Supreme Court (PLD 2012 SC 466). The Constitution guarantees freedom of speech by Articles 19 and 19A to confer a right to have access to information in all matters of public importance. It is incredulous to conceive that the constitutional mandate of free speech and freedom of the press would still remain subservient to a colonial law enacted for a specific purpose to stifle speech.

Against this tyrannical approach, Justice Shahid rules that “Section 124-A of the Pakistan Penal Code (PPC) is unconstitutional and offends the fundamental rights enshrined in Articles 19 and 19A of the Constitution.” The judgement also maintains that the holders of public office have to remain conscious that in terms of the Constitution, it is the will of the people of Pakistan which has established the constitutional order. Under this will, they hold office. As such, they are first and foremost fiduciaries and trustees of the people of Pakistan. And, when performing the functions of their office, they can have no interest other than the interests of the honourable people of Pakistan in whose name they hold office and from whose pockets they draw their salaries and perquisites. Such provision has no place in a society which relishes new ideas and critical analysis to advance itself. But speech is powerful. It is the lifeblood of democracy, a precondition for the discovery of truth and vital to our self-development. The judgement also says, “The offence of sedition in section 124-A travels beyond the limitation placed by Article 19 regarding the role of the press and its freedoms which must not be abridged on the misplaced notion that the government of the day can suppress political speech at will.”

The Constitution guarantees freedom of speech by Articles 19 and 19A to confer a right to have access to information in all matters of public importance. It is incredulous to conceive that the constitutional mandate of free speech and freedom of the press would still remain subservient to a colonial law enacted for a specific purpose to stifle speech. Against this tyrannical approach, Justice Shahid rules that “Section 124-A of the Pakistan Penal Code (PPC) is unconstitutional and offends the fundamental rights enshrined in Articles 19 and 19A of the Constitution.” In a nutshell, the people of this country are the masters and the holders of offices of the government are the public servants. This situation cannot be rendered topsy-turvy by arming the public servants with the power to stifle the masters. So, it has rightly been declared that Section 124-A of PPC is incompatible with the foundational principles of constitutional democracy and as a relic of the past, it has been consigned to oblivion.