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The Supreme Court puts one of India's Contentious laws - Sedition on Hold: The Rationale behind it

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Section 124A of the Indian Penal Code,1860 which criminalises the offence of sedition is one of those laws that has always been under controversy. From Kedarnath Singh v State of Bihar, a controversial case of 1962 to the recent judgment of Vinod Dua v Union of India that upheld the righteousness of freedom of speech and expression, the law of sedition, in one or the other way has always been under dispute. Supreme Court recently has put section 124A – The law of sedition on hold. The statute has drawn criticism, and many people are worried that the government may have used it unfairly to punish its critics. So, what is the reason behind it? What are the cases and issues that led to such a stay on the law? Does it mean that there is a possibility that the law would be held unconstitutional? And if that will be the case then, does that mean that all the previous judgments of cases that held the accused liable for the crime were incorrect? This article attempts to answer these questions and the rationale behind the issue that led The Apex Court to put the law on hold. Further, this article talks about the history of sedition in India, the recent landmark judgments, and the cases that led to the stay.

Keywords: *criminalizes, controversy, righteousness, rationale.*

INTRODUCTION

The sedition law has come under scrutiny, with many voicing concerns about how the government may have abused the law to target its detractors. On May 11, 2022, the Supreme

Court of India issued a landmark decision allowing the Central Government to rethink Section 124A[1], which makes sedition a crime. The operation of a sedition clause has never been suspended before in 162 years. [2]The legislation from the British era has also been questioned as to its constitutionality and legitimacy. The number of cases filed under Section 124A increased by 160% between 2016 and 2019, yet the percentage of convictions fell to 3%.[3] The SC urged the Center and the states to hold off on filing FIRs that allege sedition till after further review. It will be prudent to refrain from using the law, according to India's Chief Justice NV Ramana. The CJI added that those who have already been charged under the clause may go before the appropriate courts and request bail. The parties are free to seek remedy from the appropriate court if a new lawsuit is filed. In this situation, the bench has asked the courts to review the requested relief while taking this order into account. Previously, the Centre defended the constitutionality of the sedition statute by referring to the 1962 Kedarnath Singh decision of the SC. It said that the 1962 judgement and the statute had survived the test of time and that any abuse would never call for their review. However, on May 11, it made a U-turn and notified the SC that it had chosen to examine the law.[4]

WHAT IS SEDITION?

Thomas Babington Macaulay drafted Section 124A of the Indian Penal Code (IPC), which addresses sedition, and it was included in the IPC in 1870.[5] Section 124A of IPC, which deals with sedition, states, "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 the Government established by law in India shall be

[1] Indian Penal Code, 1860, s 124A
[2] Shailaja Tripathi, 'Supreme court puts sedition law on hold: 10 points to understand the historic judgment' (*Jagran Josh*, 11 May 2022) <https://www.jagranjosh.com/current-affairs/supreme-court-puts-sedition-law-on-hold-10-points-to-understand-the-historic-judgement-1652258312-1> accessed 07 July 2022
[3] Srishty Choudhury, 'Sedition: Supreme Court's historic judgment puts law on hold' (*News Bytes,* 11 May 2022)<https://www.newsbytesapp.com/news/india/keep-sedition-law-in-abeyance-supreme-court/story>accessed 07 July 2022
[4] *Ibid*
[5] 'What is sedition law: All you want to know about the law' (*The Times of India,* 15 July 2021)<https://timesofindia.indiatimes.com/india/what-is-sedition-law-all-you-want-to-know-about-the-law/articleshow/84436977.cms> accessed 08 July 2022

punished with 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."[6] A charge of sedition cannot be reduced to bail that is, it is a non-bailable offence. The legal penalties range from a fine and three years in prison to a life sentence. No government employment is open to anyone who has been charged under this statute. They are made to live without their passports and appear in court when needed. Sedition is commonly understood to be an anti-national offence. Sedition, however, is an act that is considered to be against the law. It is a provision of Section 124A of the Indian Penal Code (IPC), not a separate act of Parliament.[7]

HISTORY OF SEDITION IN INDIA

The Penal Code was drafted in 1837 by Thomas Macaulay, who is best known for his Macaulay Minute on Indian Education from 1835. The Penal Code 1837 added Section 113 for sedition. Later, it was removed, only to be reinstated in the Penal Code in 1870 by an amendment introduced by Sir James Stephen. This section on sedition was first published during the British Raj in India under the heading "Exciting Disaffection". In 1870, ten years after the Indian Penal Code went into effect, sedition was added to the penal code. It was a colonial law intended to suppress strong criticism of the British government. The Penal Code Amendment Act of 1870 was amended by the IPC Amendment Act of 1898. Its most renowned victims included Bal GangadharTilak and Mahatma Gandhi. "The prince among the political sections of the IPC designed to crush the liberty of the people," as Gandhi called it. With a few exceptions made in 1937, 1948, and 1950, and by the Part B States (Law) Act, 1951, it is claimed that the current Section 124A is similar to the revisions made to it in 1898.[8]

[6] Indian Penal Code, 1860, s 124A
[7] Srishty Choudhury (n 5)
[8] 'Sedition Law in India' (*Free Law*, 13 November 2021) <https://www.freelaw.in/legalarticles/Sedition--Law-inIndia#:~:text=History%20of%20Sedition%20Law%20in%20India%201837%20%E2%80%93,in%20the%20Penal%20Code%201837%20as%20Section%20113> accessed 08 July 2022

MOST FAMOUS CASES OF SEDITION IN INDIA

Queen-Empress v Bal Gangadhar Tilak& Keshav Mahadev Bal[9]

Bal GangadharTilak was tried for sedition in this case for alleged incitement through speech that led to the killing of two British Officials. A single judge panel of the Bombay High Court ruled in this case that any animosity toward the government, no matter how slight, is illegal. The High Court effectively rejected all genuine criticism in this way. It was also stated that the act of sedition need not have any material repercussions at all. According to the court, the primary consideration in sedition cases is the offender's intention, which can be inferred from the seditious speech's content, audience, and context. About two decades later, in the case of Emperor v Bal Gangadhar Tilak, Tilak was once more tried for sedition because of an article he had written in which he had argued for Indians to achieve swarajya ('self-rule'). Tilak openly acknowledged his loyalty to the British Crown in the piece, but he went on to criticise the civil services, claiming in court that the civil services and the British government were two separate organisations. The Bombay High Court's division bench dismissed Tilak's arguments, concluding that there was no basis for such a distinction because the civil services received their power directly from the State. However, the High Court made it clear that only criticism of the civil service that may be linked to the government should be regarded as seditious. The court in this decision adopted a rather liberal attitude, rejecting the broad definition of "disaffection" as anything that is opposed to affection provided by the single judge bench of the same court in Queen-Empress v Tilak& Bal[10]. This decision benefited free speech because it read the accused's intention while also considering the real effect of the allegedly seditious remarks on the public.

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[9] *Queen-Empress v Bal GangadharTilak&KeshavMahadev Bal* (1897) ILR 22 Bom 112

[10] *Emperor v Bal GangadharTilak* (1917) 19 Bom LR 211

Kedar Nath Singh v State Of Bihar[11]

The incident involved Kedar Nath Singh's use of offensive language. He belonged to the forward communist party of Bihar and called goondas to the Indian National Congress and hounds to the C.I.D. He also stated that he believes in the revolution that will burn the capitalists, zamindars, and congress leaders who have made it their profession to loot the nation. On the basis of the statement he made, a case was brought against Kedarnath Singh under Sections 124A Sedition and 505[12] Public Nuisance, and he was granted one-year imprisonment. The case was brought to the Patna High Court, which sustained the conviction, dismissed the appeal, and upheld the sentence. The experienced judges pointed out that the allegations against the appellant were nothing more than criticism of the government, that the speech itself was filled with calls for revolution, and that it was unquestionably seditious as a whole. Additionally, the SC was consulted regarding the constitutionality of Sections 124A and 505 of the IPC, and the constitution bench was consulted as well. A Constitutional Bench of the SC upheld the legality of Section 124-A but specified that only incitement to violence in speech or writing or a purpose or tendency to cause disruption or disturb law and order qualify as sedition offences. The appeal was denied, and the High Courts were given the case to rule by the Court's instructions.

SC PUTS A HOLD ON THE LAW

The Supreme Court has mandated that all ongoing cases must be put on pause while the Government reviews the statute and that no new FIRs for seditious activity be filed. The Supreme Court was referring to the petitions that contested the law, claiming that it had been applied improperly in situations like those in Maharashtra when it was done so in response to the recitation of the Hanuman Chalisa. Chief Justice NV Ramana of India stated, "It will be appropriate not to employ this legal provision till further re-examination is over. We hope and anticipate that, up till the conclusion of the re-examination, the Central and State governments will refrain from filing any FIRs under Section 124A (Sedition Law) or starting any related proceedings". The Chief Justice further said that anyone charged may go before the court if any

[11] Kedar Nath Singh (n 1)
[12] Indian Penal Code, 1860, ss 124A and 505

new proceedings are brought under the Sedition Act. Earlier in 2021, the Supreme Court of India had also voiced its concern over the massive influence of the colonial law's misuse in the nation and had questioned why it hadn't been repealed. Additionally, the Central Government recommended that for the time being, only police officers with the rank of Superintendent or higher might decide whether to pursue a Sedition charge. The government further stated that cases brought under the Sedition Act may also include terrorism-related allegations. These ongoing matters are before the court, not the government or police.[13]

CASES THAT LED TO THE STAY

After hearing multiple petitions filed to challenge the constitutional legitimacy of the sedition statute in the cases of Kishorechandra Wangkhemcha v Union of India[14] and Editors Guild of India & Anr. v Union of India & Ors.[15], the historic order is directed.

Kishorechandra Wangkhemcha v Union of India [16]

Two journalists, KishorechandraWangkhemcha and Kanhaiya Lal Shukla petitioned the Supreme Court on February 17, 2021, questioning the legality of the sedition law. In a video posted to social media, Mr. Wangkhemcha, a journalist based in Manipur and the anchor for the regional news channel ISTV, criticised the Manipur government and its relationship with the NDA government. He called the Chief Minister a "puppet of Hindutva." This led to his arrest. A journalist from Chattisgarh named Mr. Shukla took part in a different kind of political criticism by publishing cartoons on social media that parodied the phoney encounters that the Gujarat police reportedly staged between 2002 and 2006. Sedition-related charges were brought against Mr. Shukla in April 2018 and Mr. Wangkhemcha in August 2018. They then petitioned the Supreme Court in 2021 to overturn the law, contesting both its origin and present application. The law's expansive scope has historically drawn criticism for being a means of suppressing free speech. The petition submitted by Mr. Wangkhemcha and Mr. Shukla,

[13] Shailaja Tripathi (n 4)
[14] *Kishorechandra Wangkhemcha v Union of India* (2021) Writ Petition (Civil) No. 106/2021
[15] *Editors Guild of India & Anr. v Union of India & Ors.* (2021) Writ Petition (Civil) No. 552/2021
[16] Kishorechandra Wangkhemcha (n 16)

contends that the provision's ambiguity permits the arbitrary application of sedition law to stifle dissent echoes this criticism. The petition submitted by Mr. Wangkhemcha and Mr. Shukla has been tagged with nine other petitions contesting the constitutionality of sedition, gaining new traction

Among the petitioners are[17]:

- Major General S.G. Vombatkere;
- The Editors Guild of India;
- The Journalists Association of Assam;
- Mr. ArunShourie, former Minister of Communications and Editor of the Times of India and The Indian Express;
- The People's Union for Civil Liberties;
- Ms. MahuaMoitra, Member of Parliament from the Trinamool Congress;
- Ms. Patricia Mukhim, the Editor of the ShillongTimes;
- Mr. Anil Chamadia, Chairman of the Media Studies Group.

RATIONALE BEHIND THE ORDER

In recent years, there have been numerous instances where "misguided" individuals have been labelled "anti-national". The attitude might have been expressed by a slogan, a cheer, a declaration, a demonstration against a nuclear power plant, or a neutral social media post. Across regimes, the state has brought charges of sedition in each of these instances. This accusation was used by the British to stifle the freedom movement before Independence. Ironically, the same oppressive law is now being used by the nation against its own citizens. The government is employing an iron-fist policy with the sedition law playing a key role in entirely shutting out opposing viewpoints instead of critically analysing why citizens, are motivated to

[17] 'Constitutionality of Sedition' (*Supreme Court Observer*, 24 June 2022) <https://www.scobserver.in/cases/sg-vombatkere-v-union-of-india-constitutionality-of-sedition-case-background/#:~:text=SG%20Vombatkere%20v%20Union%20of%20India%20The%20Supreme,that%20criminalises%20sedition%2C%20is%20unconstitutional.%20Pending%20Case%20Description> accessed 09 July 2022

dissent. The Supreme Court has frequently noted that the mere possibility of a provision being misused does not automatically render the statute unlawful, which is the argument cited against repealing the sedition law. Even though the arguments are valid in their own right, it is difficult to picture navigating through the murky waters that exist between the written legislation and how it is put into practice in a nation where public discourse inevitably resolves to binary choices. Until then, India should avoid using the word "sedition" in its statute books and daily language in order to uphold the idea of democracy that the Constitution's creators had in mind.[18]

Sedition is still defined too broadly, which is the main criticism of the provision. 'Overbroad'definitions sometimes encompass both good and bad things. A few of the reasons for the stay may include criticism of sedition on various grounds such as, it is a remnant of the colonial era and a preventive clause that should only be interpreted as an emergency response. Further, the government's use of Section 124A may go beyond the boundaries of the Constitution's Article 19 which talks about the fundamental right to freedom of speech and expression. Also, despite the fact that authorities are accusing more people of sedition, very few instances result in a conviction. Another major ground is that dissent and criticism of the government should not be construed as sedition because they are vital components of lively public discourse in a functioning democracy.[19]

Even though sedition, as defined in Section 124A of the IPC, clearly violates Article 19(1)(a) of the Constitution, which grants the Fundamental Right of freedom of speech and expression the most important right of free citizens of a free country the law of sedition was not declared unconstitutional by the Supreme Court in 1962. Additionally, this provision is not protected by Article 19(2) due to a reasonable restriction. Sedition as a legitimate restriction was included in the draft of Article 19 but was removed when that Article was finally enacted by the Constituent Assembly, it should be noted in this connection. It is evident that the framers of the Constitution

[18] 'Why India's sedition law needs to be buried' (*Live Mint*, 19 January 2019) <https://www.livemint.com/Opinion/IQ2o3mXhLJ8kIzlVrStpZK/Why-Indias-sedition-law-needs-to-be-buried.html> accessed 10 July 2022

[19] Krishnadas Rajagopal, 'Supreme Court puts colonial sedition law on hold' (*The Hindu*, 12 May 2022) <https://www.thehindu.com/news/national/sc-asks-centre-states-to-not-file-fresh-firs-in-sedition-cases/article65403622.ece> accessed 11 July 2022

did not think that sedition constituted a justifiable prohibition. The verdict of the Constituent Assembly did not, however, have any effect on the Supreme Court. It interpreted Article 19(2)[20]'s use of the phrase "in the interest of public order" to hold that the crime of sedition occurs when seditious statements have the potential to cause disruption or violence. By interpreting Section 124A down, the law of sedition was preserved and it fell plainly under Article 19(2). Sedition would have needed to be declared unconstitutional in the absence of such.[21]

RECENT LANDMARK JUDGMENTS

Vinod Dua v Union of India & Ors.[22]

On March 30, 2020, Mr. Vinod Dua was accused of making implausible and strange accusations in his YouTube program 'The Vinod Dua Show' by stating that 'To win over voters, Narendra Modi has used casualties and terrorist attacks'. Further, he claims that the government lacks appropriate testing facilities, that he misspoke on the availability of personal protective equipment (PPE), and that there is not enough knowledge about them. He continued by saying that the only date beyond which ventilator and sanitizer shipments were prohibited was March 24, 2020. According to the F.I.R., Mr. Vinod Dua incited fear among the populace by making such unfounded accusations. The FIR further said that the program would only incite public unrest, which would cause panic and lead to people disobeying the lockdown to leave their homes and stockpile supplies, which is utterly unnecessary. The rumours were spread to terrorise the populace and encourage anyone to violate the law or disturb the peace of the community. On June 3, 2021, a bench of Justices UU Lalit and Vineet Saran of the Supreme Court of India dismissed the FIR brought against journalist Vinod Dua for his YouTube video regarding rioting in Delhi and maintained the right of citizens to criticise the government. Based on the circumstances of this case, the Court came to the conclusion that Vinod Dua's statements might best be characterised as expressions of opposition to the steps taken by the government and its representatives to quickly and effectively handle the current issue. They weren't made

[20] Constitution of India, 1950, art.19(2)
[21] *Ibid*
[22] Vinod Dua(n 2)

to provoke others or show a propensity for causing trouble or upsetting the peace in the community by employing violence.

Rajat Sharma v Union of India[23]

"Whatever they are doing at LAC in Ladakh is all due to the abrogation of Article 370, which they never accepted," Farooq Abdullah said in 2020. "I'm hoping that with their backing, Article 370 will be reinstated in J&K". In the appeal by Rajat Sharma and Neh Srivastava, Abdullah claimed to have talked about "restoring Article 370" with "China's support".Abdullah had said in an interview that the Kashmiris prefer to be ruled by the Chinese rather than feeling or wanting to be Indians. The petitioners contended that this statement was seditious in nature and that Mr. Abdullah should be punished in accordance with Section 124-A of the India Penal Code, 1860. Further, the petitioners alleged Abdullah was influencing Jammu and Kashmir residents to join China. The Supreme Court of India's bench of Justices Sanjay Kishan Kaul and Hemant Gupta assessed petitioners a fee of Rs. 50,000 for filing a "publicity interest litigation" to start legal action against former J&K Chief Minister Farooq Abdullah for his "pro-China" remarks about repealing Article 370[24] of the Indian Constitution. The bench continued by saying that it is not possible to label as seditious expressing a viewpoint that differs from one adopted by the Central Government. There was nothing in the statement that the Apex Court deemed offensive enough to initiate a warrant of legal action.

Zakir Hussain v UT of Ladakh[25]

On June 18, 2020, the J&K police filed an FIR against Zakir Hussain and NissarAhman Khan in relation to a widely circulated audio clip that contained objectionable dialogue disparaging the nation's armed forces. This incident took place against the backdrop of clashes between the Indian Army and Chinese armed forces in the Galwan Valley of Ladakh. The conversation was deemed to be extremely disrespectful because it contained derogatory remarks about the Indian Army's involvement in the Chinese military's Galwan misadventure. The petitioner had claimed

[23] *Rajat Sharma v Union of India* (2021) Writ Petition (Civil) No. 80/2021
[24] Constitution of India, 1950, art.370
[25] *Zakir Hussain v UT of Ladakh* (2021) CRM(M) No. 283/2020

before the J&K High Court that the police did not have the authority to register an FIR because the legislation specified that the Court could only take notice of a complaint made by a District Magistrate pursuant to Section 196[26] of the Code of Criminal Procedure and no such complaint had been lodged in this case. It was crucial to demonstrate that the words whether said or written as well as signals or other visual elements the potential or intent to stir up trouble in the community or disturb the peace by inciting offence in order to establish the guilt of an offence. Section 154[27] of the Code of Criminal Procedure, 1973, which gives police the authority to file an FIR when they acquire information that discloses the commission of a cognizable offence, was not in any manner controlled by Section 196 of the Criminal Procedure Code, 1973. The provisions of Section 196 of the Criminal Procedure Code would apply at the time the court was taking cognizance of the offence, and the court would have to decline to do so if there had been no prior sanction by the Central Government, State Government, or District Magistrate, as the case may be. The Court should not take cognizance of a report relating to an offence under Section 196 of the CrPC if it was given to the Judicial Magistrate without receiving prior approval from the appropriate authority. Instead, the report should be returned and presented only after receiving prior approval from the appropriate authority. Because of this, the petition was approved, and all criminal charges against the petitioner including the disputed FIR were dropped.

Sikha Sarma v State of Assam[28]

A complaint was made against the petitioner on the grounds that she disregarded the country's martyrs in a Facebook post on April 5, 2021. Additionally, it was claimed that the petitioner who was accused of defaming and disrespecting the sacrifice of the victims advised the "media" not to foster positive public sentiment toward them and not to refer to them as "Swahids" because, in her opinion, they were compensated for the services they rendered to the nation. It was also claimed that the defamatory remark prompted a social media backlash because the nation was

[26] Code of Criminal Procedure,1973, s 196
[27] Code of Criminal Procedure,1973, s 154
[28] *Sikha Sarma v State of Assam* (2021) Bail Application No 903/2021

mourning the murder of 22 Jawans who died on March 3, 2021, during an anti-Naxal operation in Chattisgarh, which also included two jawans from Assam. The accused, according to the authorities, humiliated the country's martyrs and also made an effort to instigate anti-social elements by asserting that the killing of our soldiers was not a crime. Through the aforementioned tweet, the accused attempted to stir hatred against the government as it carried out its lawful obligations. Her remarks also fueled opposition to India's government and could inspire terrorist and anti-national forces. The petitioner's attorney, Mr. A.M. Borah, insisted that the accused did nothing unlawful when she posted the phrases on her Facebook profile. She didn't say anything that was antinational or that was intended to stir up hatred, anger, disdain, or disaffection for the government. The petitioner asserted that the term 'Swahid/martyr is not defined in any law or by any official pronouncements and that the petitioner who was being accused of breaking the law did not do so since she exercised her right to free expression in a way that was not malicious. In this regard, the High Court was of the considered opinion that further detaining the accused petitioner, who is a woman, may not be necessary for the interests of the investigation after considering the merits and drawbacks of the allegations and evidence gathered thus far by the investigating officer in the case, as well as the threat to the prisoners' health posed by the second wave of novel COVID-19 pandemic. The petitioner was freed on bail in the amount of Rs. 30,000 with one guarantee in the same amount after the court agreed to the petitioner's request for bail.

CONCLUSION

One of the most important democratic ideals is freedom of speech. This freedom is meant to help people find their own sense of fulfillment, advance the search for the truth, improve their capacity for making decisions, and enable a balance between social development and stability. However, there are some limitations to this right, including those related to contempt of court, defamation, or inciting others to commit crimes. Other limitations include those related to public order, security, morality, or decency. Sedition is also categorized as one of these 'reasonable restrictions' to the freedom of speech and expression. It was included as a legitimate restriction in the draft of Article 19 but was then removed when that Article was finally enacted by the

Constituent Assembly which clearly shows that the framers of the Constitution did not think that sedition constituted a justifiable prohibition. However, the verdict of the Constituent Assembly did not have any effect on the Supreme Court. But, recently, for the same 'reasonable restriction', Supreme Court put a hold on the provision. If the statute came under the exception then what was the reason for such a judgment to be passed? It can be presumed that there is a possibility that Section 124A of the Indian Penal Code that criminalises sedition may be held unconstitutional. Reasons as discussed, there are many such cases in which individuals who just oppose the government are labelled as anti-national. Also, it is a preventive clause and should only be interpreted as an emergency response. Hence, it was necessary in such a case to put a stay on the provision and think further about the constitutionality of the law.