



## Democracy and Sedition

***This editorial is based on [“In abeyance of Section 124A, a provisional relief”](#) which was published in The Hindu on 17/05/2022. It talks about the sedition law in modern India and its merits and demerits.***

**For Prelims:** Sedition law (Section 124A of IPC), Kedar Nath Singh vs State of Bihar, Fundamental rights.

**For Mains:** Sedition laws and issues associated with it.

In a brief order delivered in **S.G. Vombatkere vs Union of India**, a three-judge Bench of the Supreme Court of India effectively suspended the operation of **Section 124A** of the Indian Penal Code (IPC). The provision, which criminalises sedition, has been used by successive regimes, including by governments post-Independence, to suppress democratic dissent.

Previously, during oral hearings, the Bench, presided by the **Chief Justice of India, Justice N.V. Ramana**, had indicated that it was of the view that the **law was an anachronism, a colonial-era relic**.

Now, through a recent order, the Supreme Court has directed governments, both at the level of the Union and the States, to **keep “all pending trials, appeals and proceedings” arising out of a charge framed under Section 124A “in abeyance”**.

In this context, it is imperative to investigate the sedition law (Section 124A of IPC) in depth and bring out its merits and demerits.

### What is Sedition Law?

- Section 124A defines sedition as **any action — “whether by words, signs, or visible representation” — which “brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India”**.
- The word “**disaffection**”, the provision explains, “**includes disloyalty and all feelings of enmity**”. However, comments without exciting or attempting to excite hatred, contempt or disaffection, will not constitute an offence under this section.

### What is the Basis of Consideration of Sedition Law?

- Direction for consideration of sedition law was issued after the Union government filed an affidavit informing the supreme court that it had decided to re-examine the law.
- The deposition, by itself, offered no firm commitment on whether the Government would recommend to Parliament a complete removal of Section 124A.
- But the Bench believed that the offer to reconsider the provision, if nothing else, showed that the

Government was in broad agreement with the Court's prima facie opinion on the matter, that the clause as it stands "is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime".

## What was the Debate in Constituent Assembly Regarding Sedition Law?

- K.M. Munshi argued forcefully in the Constituent Assembly to delete the use of the "equivocal" word "sedition" as a permitted restriction on free speech.
  - In the words of K.M. Munshi, should the word not be deleted from the Draft Constitution, an "erroneous impression would be created that we want to perpetuate 124-A of the I.P.C".
  - As is only too evident, the law was always meant to be used as a restraint on dissent, to crush any and every form of opposition aimed at the government.
- Munshi's amendment sailed through. The adopted Constitution did not permit a restriction on free speech on the grounds of sedition.
  - But despite this, governments across India continued to charge people with the offence.
  - In the 1950s, two different High Courts struck down Section 124A as offensive to freedom. But, in 1962, in **Kedar Nath Singh vs State of Bihar**, a five-judge Bench of the Supreme Court reversed these verdicts.
  - The Court found that Section 124A was defensible as a valid restriction on free speech on grounds of public order.
  - However, while upholding the clause, the Court limited its application to "acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence".
- The court's decision failed to recognise that terms such as "disaffection towards the government", which are fundamentally vague, ought to have no place in a penal statute, and that, all along, the intention behind criminalising sedition was to quell the right to dissent.

## What can be the Underlying Challenges of Sedition Law?

- **Against the Basic Structure:** "The essence of democracy," as Munshi put it in the Constituent Assembly "is criticism of government." The sedition law disregards this core spirit. It criminalises censure and opposition and it enervates, to the point of exhaustion, the basic structure of a democratic republic.
- **Marginalised most affected:** In its application by law enforcement, the limitations imposed in Kedar Nath Singh have rarely been observed. And in recent years, there is seen an enhanced exploitation of the law, where even the most benign acts of opposition have been met with a charge of sedition.
  - As is often the case with abuses of this kind, it is the most marginalised sections of society that have faced the brunt of the harm.
- Section 124A is a **relic of colonial legacy and unsuited in a democracy**. It is a constraint on the legitimate exercise of constitutionally guaranteed freedom of speech and expression.
- **Dissent and criticism of the government are essential ingredients of robust public debate** in a vibrant democracy. They should not be constructed as sedition.
  - Right to question, criticize and change rulers is very fundamental to the idea of democracy.
- The British, who introduced sedition to oppress Indians, have themselves abolished the law in their country. There is no reason why India should not abolish this section.
- The terms used under Section 124A like 'disaffection' are vague and subject to different interpretations to the whims and fancies of the investigating officers.
- IPC and [Unlawful Activities Prevention Act 2019](#) have provisions that penalize "disrupting the public order" or "overthrowing the government with violence and illegal means". These are sufficient for protecting national integrity. There is no need for Section 124A.
- Sedition law is being misused as a tool to persecute political dissent. A wide and concentrated executive discretion is inbuilt into it which permits blatant abuse.
- In 1979, India ratified the **International Covenant on Civil and Political Rights (ICCPR)**, which sets forth internationally recognized standards for the protection of freedom of expression. However, misuse of sedition and arbitrary slapping of charges are inconsistent with India's international commitments.

## What are the Arguments Given in Favour of Sedition Law?

- Section 124A of the IPC has its utility in **combating anti-national, secessionist and terrorist elements.**
- It protects the elected government from attempts to overthrow the government with violence and illegal means. The continued existence of the government established by law is an essential condition of the stability of the State.
- If contempt of court invites penal action, contempt of government should also attract punishment.
- Many districts in different states face a maoist insurgency and rebel groups virtually run a parallel administration. These groups openly advocate the overthrow of the state government by revolution.
- Against this backdrop, the abolition of Section 124A would be ill-advised merely because it has been wrongly invoked in some highly publicized cases.

## What could be the Way Forward for Sedition Law?

- **Time to Reform the Law:** It is no doubt true that a law cannot be invalidated merely because it has been subject to misuse. But in the case of sedition, the rationale for the decision in Kedar Nath Singh and the survival of Section 124A have both become untenable with time.
  - Since 1962, when the judgment was handed out, the Supreme Court's reading of fundamental rights has undergone a transformative change.
  - For instance, the Court has, in recent times, struck down penal laws on grounds, among other things, of imprecision in their language, and of the chilling effect that the restrictions have on free speech.
- India is the largest democracy of the world and the right to free speech and expression is an essential ingredient of democracy. The expression or thought that is not in consonance with the policy of the government of the day should not be considered as sedition.
- Section 124A should not be misused as a tool to curb free speech. The SC caveat, given in Kedar Nath case, on prosecution under the law can check its misuse. It needs to be examined under the changed facts and circumstances and also on the anvil of ever-evolving tests of necessity, proportionality and arbitrariness.
- The higher judiciary should use its supervisory powers to sensitize the magistracy and police to the constitutional provisions protecting free speech.
- The definition of sedition should be narrowed down, to include only the issues pertaining to the territorial integrity of India as well as the sovereignty of the country.
- The word 'sedition' is extremely nuanced and needs to be applied with caution. It is like a cannon that ought not to be used to shoot a mouse; but the arsenal also demands possession of cannons, mostly as a deterrent, and on occasion for shooting.
- To protect our democracy, we must ensure that the constitutional guarantees to personal liberty and freedom do not go in vain. For that, each of our penal laws must be animated by a concern for equality, justice, and fairness

### ***Drishti Mains Question***

"Our penal laws must be animated by a concern for equality, justice, and fairness ." Discuss the statement in the light of the sedition act in modern India.