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EVOLUTION OF SEDITION LAW AS PER THE JUDICIAL INTERPRETATION

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ABSTRACT

Sedition laws have been prevalent in India since the time of British rule. The British used these laws to stop people from speaking out dissenting opinions that vary from their opinions and to keep control over India. They introduced Section 124A of the Indian Penal Code in 1870, which gave them wide-ranging authority to silence anyone who spoke against colonial rule. Even after independence, these laws persisted, drawing criticism for their stifling effect on free speech and democratic discourse. While landmark cases like Kedarnath Singh upheld the constitutional validity of sedition laws, judicial interpretations have varied, leading to inconsistency and ambiguity in their application. This lack of clarity underscores the urgent need for a more coherent framework to interpret and apply sedition law in India, balancing national security that concerns the protection of fundamental freedoms. Recent cases like SG Vombatkere, where the court placed a stay on the sedition law, highlights the ongoing efforts to reassess and potentially reform these contentious laws on the subject of sedition. This paper will help in understanding the complexities of sedition laws and analysing the judicial interpretation of several case laws prior to and after the independence of India.

Keywords

Dissent, Freedom of Speech, Kedarnath judgement, Sedition laws, Tendency.

CONCEPTUAL/THEORETICAL FRAMEWORK

Sedition laws in India have a long and complex history. The origins of sedition laws in India date back to the period of colonial rule, where the British colonial regime's efforts were to suppress dissent and maintain control over/ oppress the Indian population and their opinions.

During British rule, sedition laws were enacted as a means to quell any form of opposition or resistance to the colonial authority. The British authorities used these laws to target individuals and groups perceived as threatening their rule, particularly those involved in nationalist movements seeking independence from British colonialism.

One of the most significant enactments related to sedition was Section 124A of the Indian Penal Code (IPC), introduced by the British colonial government in 1870, now section 152 of Bharatiya Nyaya Sanhita.. This provision defined sedition broadly as any act or attempt to create hatred or contempt or excite disaffection towards the government. The language of Section 124A was intentionally kept vague, which can be considered beneficial for the colonial authorities, providing them wide-ranging powers to help in suppressing the dissent caused politically.

Throughout India's struggle for independence, sedition laws were extensively used by the British to silence political opposition and intimidate freedom fighters. Many prominent leaders who were part of the freedom movement, including Mahatma Gandhi, Jawaharlal Nehru and Bal Gangadhar Tilak, faced charges of sedition for their involvement in nationalist activities and advocacy for self-rule.

Following India's independence in 1947, Section 124A of the IPC was retained in the Indian legal framework. Despite calls for its repeal due to concerns over its draconian nature and potential violation of freedom of speech and expression, sedition laws remained in force.

Over the years, we have all known that India is a democratic country where we can assess the quality of democracy not merely by majoritarianism, i.e. the number of voters, but also by deliberation too. Sedition laws in India have faced criticism from various quarters, including civil society, human rights organisations, and legal experts. Critics argue that these laws have a chilling effect on free speech and legitimate dissent, stifling democratic discourse and hindering the expression of political opinions.

Despite the criticism, sedition laws have found judicial support in landmark cases such as Kedarnath Singh judgement,[1] where, in 1962, the Supreme Court upheld the constitutional validity of Section 124A. However, the Court emphasised that sedition charges could only be invoked when speech or actions pose a clear and present danger to public order or incite violence against the state.

[1] Kedarnath Singh v. State of Bihar(1962) AIR 1962 SC 955.

In recent years, sedition laws in India have been a subject of debate and controversy. While some advocate for their retention as necessary tools to safeguard national security and maintain public order, others call for their repeal or reform to align with constitutional principles and international human rights standards.

ISSUES INVOLVED

The evolution of sedition law in India has been marked by various judicial interpretations over the years, leading to a lack of clarity and consistency in its application. This inconsistency poses challenges for legal practitioners, scholars, and individuals alike as they struggle to navigate the legal landscape surrounding freedom of speech and expression. While some judicial pronouncements have emphasised the importance of safeguarding freedom of speech, others have prioritised national security concerns. These divergent interpretations of what constitutes seditious highlight the pressing need to address this issue and establish a more coherent framework for interpreting and applying sedition law in India.

JUDICIAL PERSPECTIVE

Judicial Decisions on Sedition Prior Independence

Before independence, Section 124A of the Indian Penal Code (IPC), (1860) was extensively used by the British to suppress the Indian nationalist movement. Several judicial decisions shed light on the interpretation and application of sedition laws during that period.

In Jogendra Chunder Bose v. the Queen,[2] The accused faced sedition charges for criticising the Age of Consent Bill and British colonialism's adverse economic impact. The court differentiated sedition under English law from Section 124A of IPC, stating that the latter penalised disaffection, not mere disapprobation. It was emphasised that acts under Section 124A must aim to resist lawful authority through force. However, no verdict was announced as the jury did not reach a unanimous decision, and the case was withdrawn after Bose tendered an apology.

In the case of Queen Empress v. Bal Gangadhar Tilak[3] Sedition charges were put forth against Tilak for advocating the overthrow of British rule in India through his writings. The court defined 'disaffection' as encompassing hatred, enmity, and ill-will towards the government. Disloyalty was mentioned to be the best term to comprehend every possible form of bad feeling to the government. It clarified that the intensity of

[2] Queen-Empress v. Jogendra Chunder Bose, (1892) l9 ILR Cal 35.
[3] Queen Empress v. Bal Gangadhar Tilak 1lLR (t898) 22 Bom I 12.

disaffection and its success in inciting others were immaterial under Section 124A. The significant finding was that any attempt to excite feelings of disaffection, regardless of the extent or success, constituted sedition. Tilak was ultimately convicted and sentenced to imprisonment.

Subsequent cases, such as Queen Empress v. Ramchandra Narayan[4] and Queen Empress v. Amba Prasad[5], further elaborated on the scope of disaffection under Section 124A. In Ramchandra Narayan, the attempt to excite feelings of disaffection towards the government was equated with attempting to produce hatred towards the established government, incite political discontent and alienate people from their allegiance. However, the court clarified that not every act of disapprobation towards the government constituted disaffection under Section 124A of IPC, provided the accused remained loyal at heart and was ready to obey and support the government.

A similar interpretation of disapprobation was applied in Amba Prasad[6], where the accused faced charges under Section 124A of IPC for publishing an article in the newspaper Jami-ul-ulam. After scrutinising the meaning of disaffection, the court ruled that disapprobation would only be protected as free speech if it didn't lead to disloyalty or subversion of the state's lawful authority. The court emphasised that disapprobation must be compatible with a disposition to render obedience to the government's lawful authority and support it against unlawful attempts to subvert or resist that authority.

Following a literal interpretation of Section 124A of IPC, the court asserted that the actual occurrence of rebellion, mutiny, or forcible resistance to the government was not necessary for an act to fall under sedition. The court stressed that sedition pertained to the excitement or attempt to excite certain feelings rather than inducing any specific course of action like rebellion or forcible resistance.

These cases highlighted the ambiguity surrounding the interpretation of disaffection under Section 124A. In response, the legislature introduced Explanation III to the section, aiming to clarify the law and protect fair and honest criticism aimed at altering government policies.[7] However, it can be inferred that the British government was reluctant to grant Indians the same freedom of expression which was enjoyed in England[8].

In Kamal Krishna Sircar v. Emperor[9]The court refused to label a speech condemning government legislation (that declared the Communist Party of India and various trade unions and labour organisations illegal) as seditious, emphasising the importance of preserving freedom of speech and expression.

[4] Queen Empress v. Ramchandra Narayan ILR 1898 22 Bom 152.
[5] Queen Empress v. Amba Prasad ILR (1897) 20 All 55.
[6] ibid
[7] K.l, Vibhute, PS. A. Pill(ri's Criminal Zaw 65 (Lexis Nexis Butterworths, Nagpur, 2012)
[8] ld. at 66.
[9] Kamal Krishna Sircar v. Emperor AIR 1935 cal 636

The Court argued that attributing seditious intent to such speech would effectively stifle freedom of speech and expression in India. It emphasised that merely suggesting an alternative form of government does not necessarily imply hatred or contempt towards the existing government. The Court underscored the importance of allowing individuals to express dissenting opinions without fear of being charged with sedition.

The Court in Niharendu Dutt Majumdar v. the King Emperor[10] deviated from the literal interpretation of Section 124A of the IPC. It held that sedition should be linked to the disruption of public order and the prevention of anarchy. Therefore, unless a speech leads to public disorder or creates a reasonable anticipation of it, it cannot be deemed seditious. This reaffirmed the defence argument presented in Bal Gangadhar Tilak's case[11].

Subsequently, the interpretation in Niharendu Dutt Majumdar was overturned in the case of King Emperor v. Sadashiv Narayan Bhalerao[12]. Here, the Court rejected the notion of 'public order' as defined in Niharendu Dutt Majumdar. Instead, it upheld the literal interpretation of Section 124A of the IPC, as seen in the cases of Bal Gangadhar Tilak, Ramchandra Narayan, and Amba Prasad.

Judicial Decisions on Sedition After the Enactment of the Constitution

Following India's independence, the constitutionality of Section 124A of the IPC was not directly challenged in the Supreme Court until 1962. In certain notable cases such as Romesh Thapar v. State of Madras[13] and Brij Bhushan v. State of Delhi[14]The court gave more emphasis to the freedom of speech and expression. The majority in Romesh Thapar ruled that any law restricting freedom of speech and expression must be solely aimed at safeguarding the security of the state or preventing its overthrow to be within the constitutional limits. Similarly, in Brij Bhushan, the majority, relying on Romesh Thapar, invalidated Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, as it exceeded the powers granted by Article 19(2) of the Constitution of India.

However, Justice Fazl Ali dissented in both cases and discussed the nature of sedition law. He argued that sedition primarily pertains to offences against public tranquillity and can be divided into two categories: those involving violence and those inciting violence. He contended that the omission of 'sedition' from Article 19(2) of Indian Constitution reflected the framers' intention to encompass broader terms that cover sedition and other activities detrimental to state security.

[10] Niharendu Dutt Majumdar v. the King Emperor AIR 1942 FC 22.
[11] ibid.
[12] King Emperor v. Sadashiv Narayan Bhalerao AIR 1947 pc 84.
[13] Romesh Thapar v. State of Madras AIR 1950 SC 124
[14] Brij Bhushan v. State of Delhi AIR l950 SC 129

In Tara Singh Gopi Chand v. The State [15]The Punjab High Court, while agreeing that sedition law may have been necessary during British rule, however, declared Section 124A unconstitutional, asserting that it infringed article 19(1)(a) of the Constitution.

In response to judicial interpretations, the Parliament introduced the Constitution (First Amendment) Act, 1951, amending Article 19(2) to include additional restrictions on freedom of speech, such as 'friendly relations with foreign states' and 'public order'. This amendment aligned with the rationale laid out in Romesh Thapar and the dissenting opinion of Justice Fazl Ali in Brij Bhushan.

Following the enactment of the Constitution (First Amendment) Act, 1951, the Patna High Court addressed the validity of Section 124A in the case of Devi Soren v. State of Bihar[16]. Despite contentions, the court upheld its validity, citing the expanded scope of Article 19(2) with the addition of "in the interest of public order" as a reasonable restriction on freedom of speech and expression. The court distinguished between 'public order' and 'in the interest of public order', noting that while 'public order' may necessitate evidence of violence incitement, the latter encompasses situations where mere sentiments of unrest exist without proof of violence or disorder.

In Ramji Lal Modi v. State of Uttar Pradesh[17], the Supreme Court delved into the meaning of 'in the interests of public order' in Article 19(2). Arguments were made regarding Section 295A of the IPC, which addressed insults leading to both public disorders and those that did not. While it was contended that the provision should be deemed unconstitutional for covering non-disorderly speech, the Court disagreed. It emphasised that the phrase had a broader connotation than mere maintenance of public order, encompassing activities with the potential to cause disorder, even if they didn't actually lead to it. The Court also clarified that Section 295A targeted deliberate and malicious insults to religion, inherently disrupting public order.

In the case of Ram Nandan v. State of Uttar Pradesh[18], a full bench of the Allahabad High Court deliberated on the constitutionality of Section 124A. The Court declared Section 124A unconstitutional, emphasising that it encompassed not only the aggravated forms of disaffection but also the mildest expressions of hatred, contempt, or disaffection. It highlighted the potential for Section 124A to capture even the slightest form of discontent, posing a challenge to the principles outlined in Article 19(1)(a) of the Constitution.

In 1960, the Constitution bench of the Supreme Court addressed the interpretation of the phrase 'in the interest of public order' in Article 19(2) in the case of The Superintendent, Central Prison v. Dr. Ram Manohar Lohia[19]. After evaluating various judicial opinions, the Court summarised its findings,

[15] Tara Singh Gopi Chand v. The State AIR 195 I Punj 27
[16] Devi Soren v. State of Bihar ILR (1953) 32 Pat I104
[17] Ramji Lal Modi v. State of Uttar Pradesh 1957 SCR 860.
[18] Ram Nandan v. State of Uttar Pradesh 1958 SCC Online All 117
[19] Central Prison v. Dr. Ram Manohar Lohia (1960) 2 SCR E2l.

emphasising several vital points. Firstly, it equated 'public order' with public safety and tranquillity, distinguishing it from national upheavals such as revolutions or civil strife. Secondly, the Court emphasised the necessity of a proximate and reasonable nexus between speech and public order.

Kedar Nath Singh, Judgment

The challenge to the constitutionality of Section 124A came directly before the Supreme Court for the first time in Kedar Nath Singh v. State of Bihar. The Constitution bench deciding the constitutionality upheld the validity of the sedition laws as per section 124A. The Court, after taking a detailed account of the history of Section 124A, explicitly recognised that the State needs protection from the forces who seek to jeopardise the safety and stability of the State. The Court made the following observation:

The court agreed with the point that every governmental institution needs to possess the authority to penalise individuals whose actions endanger the safety and stability of the State or propagate sentiments of disloyalty that may lead to the disruption of public order or the State itself.

While differentiating the term 'the Government established by law' from individuals currently engaged in administering, the Court noted that 'Government established by law' signifies the visible representation of the State. Therefore, if the Government established by law is subverted or undermined, it poses a threat to the State's very existence. Thus, the continuous existence of the Government established by law and the maintenance of public order is crucial for a stable State. This is why 'sedition,' as delineated in Section 124A, is categorised as an offence against the State. Consequently, any actions falling under Section 124A that aim to undermine the Government by inciting hatred or fostering disaffection would be considered seditious.

However, the Court clarified that Section 124A explicitly states that strong words used to criticise the government's measures to improve or alter them through lawful means do not fall within the ambit of the section. Similarly, even if strongly worded, comments expressing disapproval of government actions would not be penalised if they do not incite feelings of enmity and disloyalty, leading to public disorder or violence. In other words, criticising the measures or actions of the government or its agencies to improve the condition of the people through lawful means does not equate to disloyalty to the Government established by law.
The Court clarified that strong expressions of disapproval towards the government's measures, aimed at their improvement or alteration through lawful means, are not covered under Section 124A. Similarly, criticisms of government actions, regardless of their intensity, that do not provoke sentiments leading to public disorder or violence are not punishable. In essence, disloyalty to the legally established government differs from expressing strong opinions about government measures or actions, which aim to bring about positive change through lawful means without inciting enmity or disloyalty that may lead to public disorder or violence.

The Court, therefore, found a middle ground between the freedom of speech and expression and the authority of the legislature to regulate such freedoms by stating:

"The security of the State, which relies on maintaining law and order, is the fundamental consideration behind legislation aimed at punishing offences against the State. Such legislation must, on the one hand, fully protect and ensure the freedom of speech and expression, which is essential for the democratic form of Government established by our Constitution. However, this freedom must be safeguarded against becoming a license for defaming or condemning the Government established by law using words that incite violence or have the potential to cause public disorder. A citizen has the right to express criticism or commentary about the Government or its actions, as long as it does not incite violence against the Government or intend to create public disorder."

In the Kedar Nath Singh case[20], the apex court referenced its earlier ruling in Ramji Lal Modi to highlight the legislature's authority to impose reasonable restrictions upon the fundamental right of freedom of speech and expression. It acknowledged the stringent proximity test outlined in Ramji Lal Modi and reaffirmed in Ram Manohar Lohia. Thus, in establishing the criteria for sedition, the Court asserted that unless the words spoken or actions taken pose a threat to the security of the State or public or lead to significant public disorder, they would not fall under the purview of Section 124A of the Indian Penal Code.

It is pertinent to note that as per the Kedar Nath Singh judgement, proof of violence is not essential for establishing the offence of sedition. Regarding the nature of the test laid down in this case for determining the threat to violence, Kedar Nath Singh approved the "tendency test" of the UK rather than relying on the "imminent danger test" of the USA. This is so because, throughout the judgement, the focus is on the tendency or incitement to violence or disorder rather than actual violence or imminent threat of violence. That the accused, Kedar Nath Singh, was convicted and punished for his speech without any proof of direct incitement of violence or any imminent danger of public disorder is further testimony to the Court adopting the "tendency test" for interpreting Section 124A of IPC. This objective test of tendency applied by the Court entails the examination of alleged seditious material present before the Court, the circumstances and the conduct of the accused. This test does not necessarily investigate the consequences of the alleged seditious expression, such as actual violence or the real impact of the disputed material. If the speech or expression is deliberately made and the content is pernicious enough, there is no requirement of proof of any overt conduct to establish a tendency of violence. Without such an inference, the Supreme Court could never have upheld the conviction of Kedar Nath Singh.

[20] ibid.

Ruling Post Kedar Nath Judgment

After the pronouncement of the case of Kedar Nath Singh by the Supreme Court, public disorder has been considered to be a necessary ingredient of Section 124A of IPC by the courts. The courts have been categorical in expressing that every criticism of the government does not amount to sedition and the actual intent of the speech must be considered before imputing seditious intent to an act. The Supreme Court, in Raghubir Singh v. State of Bihar[21], held that in order to constitute an offence of conspiracy and sedition, it is not necessary that the accused should be the author of the seditious material himself or should have attempted hatred, contempt or disaffection. This order can be seen in the new Bharatiya Nyaya Sanhita, where the person who financially aids a person to make seditious speeches via electronic mode or through written or spoken will also be liable under section 152 of Bharatiya Nyaya Sanhita.

In the case of Balwant Singh v. State of Punjab[22], the court ruled that the mere raising of slogans a few times against the State, where there is no violence or reaction from the public, does not attract the provisions of Section l24A of IPC.

Briefly touching upon the issue of freedom of expression and its conflict with reasonable restrictions enumerated in Article l9(2), the Supreme Court in S. Rangarajan v. P. Jagiivan Ram[23], held that there has to be a balance between free speech and restrictions for particular interest as the two cannot be balanced as though they were of equal weight. While invoking the analogy of 'spark in a powder keg', the Court held that exceptions must be construed precisely so that free speech prevails, except in exceptional circumstances. The Court observed:

There is a requirement for compromise between the freedom of expression and special interests. The duty to protect the freedom of expression demands that it cannot be suppressed unless there is an immediate threat to the public interest. The court further elaborated by stating that the anticipated danger to the public should not be remote, and there should be a direct nexus with the speech or the expression.

In the case of Bilal Ahmed Kaloo v. State of Andhra Pradesh[24], the Court quashed the charges under the said section, as it was not established before the Court that the appellant had done anything which would threaten the existence of the government established by law or might cause public disorder.

The court in the case of Vinod Dua v. Union of India[25] relied upon the law laid down in the case of Kedar Nath, stating that citizens have the right to criticise or comment upon the measures undertaken by the Government so long as they do not incite people for violence against the Government or have the intention

[21] Raghubir Singh v. State of Bihar AIR 1987 SC 149.
[22] Balwant Singh v. State of Punjab (1995) 3 SCC 214.
[23] S. Rangarajan v. P. Jagiivan Ram (1989) 2 SCC 574.
[24] Bilal Ahmed Kaloo v. State of Andhra Pradesh
[25] Vinod Dua v. Union of India 2021 SCC Online 414

of creating public disorder. The court showed their acceptance of the test of tendency and intention to create public disorder or disturbance of law.

However, S.G. Vombatkere v. Union of India[26] contributed to the evolution of the sedition law by onceagain throwing light on the constitutionality of sedition law in India. On September 12, 2023, a three-judge bench, headed by Chief Justice D.Y. Chandrachud, referred several petitions which challenged the validity of the sedition law, mainly focusing on Section 124A of the Indian Penal Code, 1860, to a larger bench. While the exact number of judges for this Constitution Bench is yet to be determined, it has been hinted that it will consist of at least five judges. This bench will re-evaluate the landmark case of Kedarnath Singh[27], where the court upheld the constitutionality of sedition.

The petitions challenging Section 124A were initially filed in February 2021. In May 2022, the court imposed a stay on Section 124A's application until the Union reviewed the law. Chief Justice Ramana, expressed grave concerns over the chilling effect of sedition on free speech, likening it to "a carpenter being given a saw to make an item, [who] uses it to cut the entire forest instead of a tree."

During the proceedings, Senior Advocate Kapil Sibal emphasised on the importance of hearing challenges to Section 124A due to the numerous pending prosecutions involving thousands of accused persons. The Court deliberated on whether a five-judge bench should evaluate the validity of Section 124A, considering the evolution of constitutional principles since Kedarnath Singh's judgement, which primarily focused on Article 19(1)(a) (freedom of speech and expression), neglecting aspects related to equality, liberty, and proportionality under Articles 14 and 21 of Constitution of India.

The Union, represented by Attorney General R. Venkataramani and Solicitor General Tushar Mehta, urged the Court to defer the challenge, citing the Parliament's consideration of a new penal law, the Bharatiya Nyaya Sanhita Bill, 2023. However, Chief Justice Chandrachud rejected this argument, highlighting that the evaluation of Section 124A's constitutionality remains crucial despite the impending legislative changes. He emphasised that once a new law is enacted, it will apply prospectively, leaving the evaluation of pending cases and the provision's constitutionality essential.

The core issue revolves around the interpretation of Section 124A, particularly its application to persons who "excite disaffection" against a "government established by law." Petitioners argue that the distinction between "government established by law" and "state" must be addressed, as failure to do so could undermine the provision's protection under Article 19(2) as a reasonable restriction in the interest of state security.

[26] S.G. Vombatkere v. Union of India (2022) 7 SCC 433.
[27] ibid.

The case of S.G. Vombatkere v. Union of India[28] thus encapsulates the evolving discourse on sedition law in India, with the Supreme Court poised to reconsider its constitutional validity in light of contemporary legal and societal norms.

ANALYSIS

The evolution of sedition law in India, as delineated through judicial interpretations, reveals a complex interplay between the protection of free speech and the preservation of national security interests. From pre-independence colonial rule to the post-independence era, the courts have grappled with defining the scope and application of sedition laws, leading to significant developments in legal doctrine.

During the colonial period, sedition laws were wielded as tools of suppression against the Indian nationalist movement. Judicial decisions such as Jogendra Chunder Bose v. the Queen and Queen Empress v. Bal Gangadhar Tilak underscored the broad interpretation of sedition, encompassing acts or expressions aimed at inciting disaffection or public disorder against the British colonial government. Though the cases highlighted the ambiguity surrounding the interpretation of disaffection under Section 124A of the IPC and laid the foundation for subsequent legal debates.

Following independence, the judiciary grappled with reconciling sedition laws with constitutional guarantees of free speech and expression. Cases like Kedar Nath Singh v. State of Bihar marked significant milestones in this regard. The Supreme Court upheld the validity of sedition laws while emphasising the need to balance free speech with the state's security interests. The Court articulated that sedition laws should target acts aimed at endangering the safety and stability of the state rather than legitimate criticism of government actions. This nuanced approach reflected a departure from earlier colonial-era interpretations and underscored the judiciary's commitment to protecting fundamental rights within constitutional bounds.

Subsequent judicial decisions, such as The Superintendent Central Prison v. Dr. Ram Manohar Lohia and Ram Nandan v. State, further refined the legal framework surrounding sedition laws. The courts emphasised the importance of a proximate nexus between speech or expression and public disorder, rejecting overly broad interpretations of sedition that could stifle legitimate dissent.

However, challenges persist in interpreting and applying sedition laws in contemporary India. The recent case of S.G. Vombatkere v. Union of India highlights ongoing debates over the constitutionality of sedition laws and their compatibility with evolving legal and societal norms. The Supreme Court's decision to re-examine the constitutional validity of sedition laws underscores the need for a nuanced approach that balances national security concerns with the protection of free speech.

[28] ibid.

CONCLUSION AND SUGGESTIONS

The recent Vinod Dua case showed the judiciary's commitment to uphold the cherished principles of freedom of speech and expression enshrined u/s 19(1)(a) of the Constitution of India. It reaffirmed the guidelines laid down in the landmark case of Kedar Nath Singh v State of Bihar (1962), stating that sedition charges must only be invoked in cases where there is clear evidence of incitement to violence or a direct intention to cause public disorder. This clarification holds particular significance in safeguarding the rights of journalists and individuals engaging in legitimate criticism of government policies, thereby preserving the cornerstone of democracy: freedom of expression.

However, despite this reaffirmation, certain lacunae persist in applying sedition laws. For instance, the application of sedition to speeches critical of the government and the criteria for identifying seditious speech were not thoroughly examined. The reliance on the "bad tendency" test[29], rather than the more stringent "Clear and Present Danger" test[30], creates ambiguity and grants significant discretion to the executive in prosecuting individuals based on vague interpretations of sedition. Moreover, under the Kedar Nath principles, the dual classification of acts as both "incitement to offence" and "intent or tendency to cause disorder" further exacerbates this uncertainty, creating a chilling effect on the right to exercise freedom of speech and expression.

To address these concerns, the judiciary must adopt a more nuanced approach, such as applying the "Clear and Present Danger" test to determine the threshold for seditious speech. Additionally, the Court should consider clarifying the criteria for identifying seditious speech and establishing guidelines to prevent arbitrary arrests or prosecutions under sedition laws. This approach aligns with the recommendations outlined in Law Commission Report 279, emphasising the need for a robust legal framework that balances national security concerns with protecting fundamental rights.

Furthermore, when individuals are targeted through malicious or politically motivated filing of sedition FIRs, the judiciary should actively consider invoking compensatory public law remedies. By awarding compensation for violations of fundamental rights, as demonstrated in cases like in the 2018 case of Nambi Narayanan v Siby Mathews[31], where an ISRO scientist was wrongly imprisoned on false espionage charges, the Supreme Court awarded him ₹50 lakhs as compensation. Recognising the jeopardy to his liberty and the tarnishing of his reputation due to baseless charges, the Court justified the compensation as a public law remedy.

[29] Abrams v United States 250 US 616 (1919)
[30] Schenck v United States 249 US 47 (1919)
[31] Nambi Narayanan v Siby Mathews (2018) 10 SCC 804

This framework for compensation as a public law remedy was elucidated in 2006 in the case of Sube Singh v State of Haryana 2006 (3) SCC 178[32]**.** The Court clarified that compensation for violations of fundamental rights does not preclude seeking compensation under tort law or criminal law provisions. Moreover, compensation could be pursued under the Court's writ jurisdiction if the infringement of rights was glaringly evident.

The Supreme Court in the S.G. Vombatkere case looks forward to referring the case of reevaluating the Kedarnath Singh Judgment to a Constitution Bench, comprising a minimum of 5 judges, which is yet to be finalised shows the willingness to address the challenges of Section 124A and do justice to the pending prosecutions against numerous individuals.[33]

Chief Justice Chandrachud noted that Kedarnath was decided in 1962, before significant constitutional developments. During that time, Articles 14 and 21 had not been substantially interpreted. The Chief Justice's observations provided a compelling basis for referring the case to a larger bench. He emphasised that Kedarnath only tested Section 124A "only on the angle of Article 19(1)(a)"—freedom of speech and expression—without considering its validity in relation to the right to equality, the right to liberty, and the test of proportionality.

The Judiciary's future judgement will also affect section 152 of the Bharatiya Nyaya Sanhita Bill, 2023, which continues sedition under a "new label. Even though under the new law, some improvements have been made as per the recommendations made in the 279th Report of the Law Commission, where the sedition charges are levied only against the state and not the government. There is still room for more improvement as the intention has been given weightage rather than a speech's proximity or intensity.

[32] Sube Singh v State of Haryana 2006 (3) SCC 178

[33] Article 14, "Sedition Cases Tracker," Article 14 (April 1, 2024), https://sedition.article-14.com/.