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From Sedition to UAPA: Policing Dissent in India


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Few laws reveal the Indian State's unease with dissent as starkly as sedition. Drafted in 1870 to protect the British Crown from political unrest and infamously wielded against figures such as Bal Gangadhar Tilak and Mahatma Gandhi, Section 124A of the erstwhile Indian Penal Code was never meant for a constitutional democracy.

Yet, more than 70 years after Independence, it has resurfaced in one form or the other whenever the State felt politically challenged by citizens. As the Supreme Court now re-examines the law's constitutional validity, it is worth noting that the UK, from where India inherited sedition, has long since consigned it to history.

The immediate spark for this judicial reckoning came in February 2021, when journalists Kishore Wangkhemcha and Kanhaiya Lal Shukla, both charged with sedition, approached the Supreme Court challenging the law. They argued that the vague language, which criminalises attempts to "excite disaffection" against the government, stifles free speech and violates Articles 14 (equality), 19(1)(a) (freedom of speech), and 21 (life and liberty) of the Constitution. Their case quickly snowballed into a broader constitutional challenge, joined by the Editors Guild of India, the People's Union for Civil Liberties, Arun Shourie, Mahua Moitra, and several others.

Sedition's defenders often invoke Kedar Nath Singh v. State of Bihar (1962). But what they forget is the historical context in which Kedar Nath was decided: the annexation of Goa, the 1962 war with China, and the resultant national Emergency as well as poverty, drought, and separatist demands for independent states.

It was amid these exceptional pressures that the Court preserved Section 124A but read it down so that it applied only to speech inciting violence or public disorder, while drawing a firm line distinguishing the government in power from the nation itself. In doing so, it held that criticism of the government was constitutionally protected.

In practice, however, that judicial promise has frayed.

In recent decades, sedition charges have been filed for slogans, cartoons, social media posts, and campus activism. In May 2022, the Supreme Court took the extraordinary step of ordering that "no coercive action" be taken in sedition cases that remain pending while the

Union re-examines the law. But even as sedition receded from the headlines, another law quietly assumed centre stage: the Unlawful Activities (Prevention) Act, or UAPA.

Originally enacted in 1967 to deal with secessionist movements and terrorism, UAPA has evolved into India's most formidable national security statute. Its sweeping anti-terror code with stringent bail provisions, and broad definitions of "unlawful" and "terrorist" activity allows the State to treat individuals as terrorists long before establishing guilt.

This shift is visible in some of the most prominent political trials of recent years. Sharjeel Imam and Umar Khalid were both initially charged with sedition in connection with the Delhi riots of 2020. Yet, as the cases developed, sedition receded into the background, and UAPA ultimately anchored their incarceration. Courts hearing bail pleas under UAPA have repeatedly emphasised that they are not assessing guilt, only whether accusations appear "prima facie" true.

As a result, punishment precedes proof of guilt. This is the heart of the contemporary debate. The Supreme Court is examining sedition because it is a colonial-era law at odds with modern constitutional values.

At the same time, UAPA hovers over the discussion because its application often blurs into areas that sedition once occupied. If sedition reflected colonial anxiety, UAPA treats dissent itself as a presumed threat. The debate has taken on fresh urgency with the enactment of the Bharatiya Nyaya Sanhita in 2024, which witnessed fresh challenges to Section 152 on the ground that it is merely sedition repackaged in even broader and vaguer terms.

As a result, the Supreme Court will now examine the constitutionality of this new provision alongside the original sedition challenge. Ultimately, the debate over sedition is a test of constitutional sincerity. Striking down Section 124A may erase a colonial relic, but as long as the UAPA architecture remains unexamined, freedom to dissent remains on the chopping block — only the legal label changes. India must hold space for disagreement even when it is uncomfortable.

If the Constitution envisions a nation confident enough to tolerate disagreement, the law must mirror that courage.

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