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6. Section 124a (Sedition) Trials – Polity

The Supreme Court of India has clarified that lower courts can continue trials under Section 124A (Sedition) of the repealed Indian Penal Code if the accused consent, even though the law's constitutional validity remains under challenge. This clarification comes against the backdrop of the 2022 interim order that had frozen all sedition proceedings nationwide. The ruling reflects the court's attempt to balance the right to speedy trial with concerns about the constitutional validity of a colonial-era provision.

1. Historical and Legal Background

Colonial Origins of Sedition Law

1. Section 124A was drafted by Thomas Babington Macaulay and introduced into the Indian Penal Code in 1870, though the IPC itself was enacted in 1860.
2. The provision was not part of Macaulay's original draft but was inserted through an amendment associated with James Fitzjames Stephen in 1870.
3. The British colonial regime heavily used this provision to suppress freedom fighters, including prominent leaders like Mahatma Gandhi and Bal Gangadhar Tilak.
4. The sedition law became a primary weapon for colonial authorities to silence dissent and crush nationalist movements opposing British rule.

The 2022 Freeze on Sedition

1. In May 2022, in the landmark case of S.G. Vombatkere versus Union of India, a three-judge bench of the Supreme Court temporarily put Section 124A on hold.
2. The court directed central and state governments to refrain from registering any FIRs, continuing investigations, or taking coercive measures under this provision.
3. This extraordinary order was passed due to widespread concerns about the provision's misuse and its colonial-era nature incompatible with democratic values.
4. The freeze applied to all pending cases, trials, and appeals across the country, bringing relief to numerous activists, journalists, and citizens facing sedition charges.

The 2026 Shift in Judicial Approach

1. In Kamran versus State of Madhya Pradesh, the Supreme Court unlatched the 2022 freeze exclusively for consenting accused who seek progression or closure of their trials.
2. The court prioritized the Right to a Speedy Trial under Article 21, recognizing that prolonged pendency without trial violates fundamental rights.
3. This limited relaxation allows accused persons who have spent long periods in jail or under trial to seek expeditious resolution of their cases.

2. Key Supreme Court Judgments on Sedition

Romesh Thappar versus State of Madras (1950)

1. The Supreme Court held that the Constitution's framers intentionally deleted the word Sedition from Article 19(2) dealing with reasonable restrictions on free speech.
2. The court ruled that free speech cannot be restricted merely for criticizing the government, establishing a strong foundation for democratic discourse.

3. This judgment forced the government to pass the First Constitutional Amendment in 1951 to insert the term Public Order as a ground for restricting free speech.

Kedar Nath Singh versus State of Bihar (1962)

1. A five-judge Constitution Bench upheld the validity of Section 124A but severely limited its scope to prevent misuse.
2. The court ruled that sedition is applicable only when there is incitement to violence or intention to create public disorder.
3. It established that strong words against public measures or government actions do not amount to sedition, protecting legitimate criticism.
4. This judgment created the foundational distinction between criticism of government and incitement to violence.

Balwant Singh versus State of Punjab (1995)

1. The Supreme Court dropped sedition charges against two individuals who shouted pro-Khalistan slogans on the day of Prime Minister Indira Gandhi's assassination.
2. The court ruled that casual slogan-shouting which does not evoke any public response or lead to actual violence cannot constitute sedition.
3. This judgment reinforced that mere expression of sympathy or abstract support for even separatist causes does not automatically attract sedition charges.

Shreya Singhal versus Union of India (2015)

1. While striking down Section 66A of the Information Technology Act, the court drew principles directly applicable to sedition jurisprudence.
2. The court divided speech into three tiers namely Discussion, Advocacy, and Incitement, establishing clear boundaries for permissible restrictions.
3. It ruled that citizens have the constitutional right to advocate even radical causes, and the state can intervene only when speech directly reaches the level of incitement to violence.

S.G. Vombatkere versus Union of India (2022)

1. A three-judge bench passed an extraordinary interim order putting the 152-year-old colonial law in abeyance pending constitutional review.
2. The court ordered central and state governments to stop registering fresh FIRs under Section 124A and froze all pending trials and appeals nationwide.
3. This represented the strongest judicial intervention against the sedition law in independent India's history.

Kamran versus State of Madhya Pradesh (2026)

1. The Supreme Court unlatched the 2022 freeze exclusively for consenting accused individuals who have spent long periods in judicial custody.
2. The court ruled that lower courts can proceed with trials and pass judgments if the accused gives voluntary consent, prioritizing their Right to Speedy Trial under Article 21.
3. This ruling created a limited exception to the comprehensive freeze while keeping the main constitutional challenge pending before a larger bench.

3.The Legal Shift – From IPC Section 124A to BNS Section 152

Comparison of Legal Provisions

1. The Bharatiya Nyaya Sanhita explicitly claims to have abolished the offense of Sedition, replacing it with Section 152 that penalizes Acts endangering sovereignty, unity, and integrity of India.

2. While Section 124A explicitly used the term Sedition, Section 152 uses euphemistic language focusing on sovereignty and integrity.
3. The core offense under old Section 124A involved bringing hatred or contempt or exciting disaffection toward the government, whereas Section 152 focuses on endangering sovereignty through subversive activities.

Expanded Scope and Harsher Penalties

1. Section 152 expands the modes of communication to include words, signs, electronic communication, or use of financial means, reflecting technological developments.
2. The quantum of punishment has increased significantly from imprisonment for life or up to three years under Section 124A to imprisonment for life or up to seven years under Section 152.
3. Critics argue that despite changing nomenclature and terminology, the substance of the offense remains largely similar with even harsher penalties.

4.Key Constitutional and Legal Concerns

The Dilemma of Adjudicating Unconstitutional Provisions

1. The fundamental constitutional validity of Section 124A remains pending and under challenge before a larger bench of the Supreme Court.
2. Allowing trial courts to pronounce judgments of guilt or innocence based on a law whose very constitutionality is suspect creates severe legal asymmetry.
3. If the Supreme Court eventually strikes down Section 124A as unconstitutional, any convictions handed down by trial courts in the interim would become inherently flawed and potentially unjust.

Procedural Chaos in Joint Trials

1. Criminal cases often involve multiple co-accused individuals, creating complications when only some consent to trial while others refuse.
2. If Accused A consents to trial for quick closure but Accused B and C refuse invoking the 2022 stay, it creates a procedural deadlock.
3. Splitting trials for the same offense can lead to conflicting judgments, judicial inefficiency, and violation of the principle of joint liability in criminal jurisprudence.

Compromising the Chilling Effect Doctrine

1. Sedition has historically had a chilling effect on the Fundamental Right to Freedom of Speech and Expression guaranteed under Article 19(1)(a).
2. By breathing life back into the provision through this clarification, critics argue that the institutional threat of an oppressive colonial law returns to socio-political discourse.
3. This contradicts the executive's stated goal of shedding colonial baggage through introduction of new criminal laws replacing the Indian Penal Code.

5.Way Forward

1. **Early Constitutional Review** – The Supreme Court should expedite the constitutional review of Section 124A and comprehensively examine Section 152 of the Bharatiya Nyaya Sanhita to provide legal certainty and prevent continued misuse against legitimate dissent and democratic expression.
2. **Strong Safeguards** – Sedition-like provisions under the Bharatiya Nyaya Sanhita must include strict procedural safeguards, including mandatory prior approval by senior police officers at superintendent level or above before filing such cases, and judicial review of charges at an early stage.

3. **Balance Rights and Security** - The judiciary must carefully balance legitimate national security concerns and right to speedy justice with robust protection of fundamental rights, particularly free speech, ensuring that dissent is not criminalized while genuine threats to sovereignty are addressed.

Source - <https://www.thehindu.com/news/national/sc-revival-of-section-124a-proceedings-revives-debate-over-colonial-era-sedition-law/article71017818.ece/amp/>