

Supreme Court's verdict on sedition is a small win

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Till the time safeguards are built to prevent misapplication of the UAPA, or even laws like the National Security Act, the law of sedition will keep rearing its head under different names despite the Court's orders.

In a batch of petitions challenging the law of sedition, contained in section 124A of the Indian Penal Code (IPC), the Supreme Court on Wednesday issued a slew of interim directions. Things came to a head because the central government, instead of defending the constitutionality of the provision, proposed to reconsider the law purportedly because the prime minister wanted it to be reviewed in the spirit of "Azaadi ka Amrit Mahotsav".

Just to provide more context, the Court had first heard the petitions in July 2021 where the principal line of challenge was that the earlier judgment of the Supreme Court in Kedar Nath vs. State of Bihar (1962) which had upheld the validity of section 124A IPC was not good law anymore.

The central government was asked to file its response to the petitions it failed to do so by the time the matters were taken up in April 2022. The Court granted it time till May 5, but the government sought additional time again. Notably, on this date, the Attorney General of India differed from the stand of the central government (which was being represented by the Solicitor General) and stated that while the law was constitutional, it would be necessary to lay down guidelines to prevent misuse of the law. The central government on the other hand orally argued that the law was fine as it is.

The Court granted the central government time till May 10 to file its response, failing which it intended to decide the question of whether there was a requirement to refer the challenge to a seven-judge bench. Instead, the central government filed an affidavit stating that it will reconsider the law and requested that the challenge proceedings be kept in abeyance. It appears that the Court's oral observations in the matter, where it disapproved of the misuse of the law, had a bearing on the government's decision.

The petitioners took objection to this approach mainly because such a proposal didn't factor in pending cases and continued misuse of the provision while the law would be under the government's reconsideration.

The central government sought a day's time to take instructions on interim measures to allay the petitioners' fears. On Wednesday it proposed to establish a mechanism where sedition cases would be filed only after a superintendent of police rank officer justified it in writing, and such justification would be open to judicial review. The petitioners on the other hand insisted on the suspension of the law in totality. In fact, Senior Advocate Gopal Sankaranaryanan submitted proposed consequential directions of an absolute suspension of the law which inter alia included explicit stay of pending proceedings and bar on registration of new cases.

After some deliberation, the Court refused to confine itself to the suggestions proposed by the government and passed directions hoping and expecting the state and central governments to restrain themselves from registering new FIRs, continuing pending investigations, or arresting people under section 124A IPC. It is clear the order does not have an effect of absolute stay as it states that if a fresh case is registered the accused would have the liberty to approach appropriate courts and seek relief on the basis of its order. However, it left it to the discretion of the subordinate courts by recording that such courts are "requested" to examine such cases after taking into account its order and the stand taken by the central government.

By issuing such "requests" instead of absolute directions, the order may have left room open to the state and central governments to continue filing cases as the only consequence of not complying with the request would be that the accused would again be left to the mercy of the court to seek bail or stay of arrest. The order should have been more assertive and explicit in this regard and should have provided penal consequences for its non-compliance.

The only absolute direction passed was staying all pending trials under section 124A IPC where a chargesheet has been filed. However, the language used by the Court is "trials, appeals and proceedings", which would then also put in abeyance even such appeals where convictions are under challenge. The Court should have granted liberty to the appellate courts to grant appropriate relief in cases where the accused is incarcerated during the pendency of their appeal.

This order appears to be a small win but left a lot to be desired. Also, its implementation at the ground level remains to be seen.

Lessons should have been taken from the fact that police across the country continued filing FIRs under section 66A of the Information Technology Act, 2000 which was declared to be unconstitutional by the Supreme Court in 2015. The purported reason is that even though the provision was declared to be unconstitutional, it continued to remain on the statute book. The lack of awareness of local police is to blame here.

Further, the language of section 124A IPC is mirrored in the Unlawful Activities (Prevention) Act, 1967 (UAPA) under the definition of "unlawful activities" which continues to be misused across the country against journalists and civil society, most recently in Kashmir.

There is nothing preventing the government from simply switching to the UAPA instead of section 124A IPC. Provisions pertaining to bail under the UAPA are so stringent that it is near impossible to obtain the same.

It also elevates the offence of sedition to the level of being a federal offence and grants powers to the National Investigation Agency to investigate and prosecute such offences.

Till the time safeguards are built to prevent misapplication of the UAPA, or even laws like the National Security Act, the law of sedition will keep rearing its head under different names despite the orders passed by the Supreme Court.

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IN THE NEWS

What is sedition Law?

- ➔ According to the definition of sedition in section 124A of the Indian Penal Code, i.e. IPC, if any person insults or tries to degrade the national symbols or the constitution or writes or speaks against government, then case may be registered under IPC section 124A.
- ➔ Apart from this, any speech or expression which seeks to incite hatred, excitement or discontent against the government in the country also comes under sedition law.
- ➔ At the same time, if a person has any kind of cooperation with anti-national organizations, knowingly or unknowingly, then he also comes under the purview of sedition law.

Background

- ➔ This law was originally drafted by the British historian-politician Thomas Macaulay in the year 1837, but in the year 1870, when a law was felt to deal with such crimes, an amendment was introduced by Sir James Stephen. And through this section 124A was included in the Indian Penal Code.
- ➔ It was first used by the British in 1897 against freedom fighter Bal Gangadhar Tilak.
- ➔ However, Britain, the country of the British who made sedition law in India, has abolished this law in its place in 2009.
- ➔ Apart from India, this law is applicable in many countries of the world. These countries include many countries like Iran, America, Saudi Arabia, Australia, Malaysia.

Punishment

- ➔ A person found guilty in a sedition case can be punished with imprisonment from 3 years to life imprisonment.
- ➔ Sedition comes under the category of non-bailable offence. A person found guilty of sedition cannot apply for a government job.
- ➔ Also his passport gets cancelled. If necessary, he has to appear in court.

Expected Question (Prelims Exams)

Q. Consider the following statements in the context of Sedition Law:

1. A person who found guilty in a sedition case can be punished with imprisonment for a term ranging from 3 years to life imprisonment.
2. Section 124A was included in the Indian Penal Code in the year 1870.
3. This law was prepared by the British historian-politician Thomas Macaulay.

Which of the above statements is/are correct?

- (a) 1 and 2 (b) Only 3
(c) 2 and 3 (d) All of the above

Expected Question (Mains Exams)

Q. Throw light on the relevance of the sedition law in the present scenario; discuss whether India's sedition law has become a curse to free speech and right to dissent?

(250 Words)

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Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.