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# The reasons Law Commission gave while recommending a stronger sedition law

Section 124A of the Indian Penal Code penalises a crime against the state. What reasons has the Law Commission given for retaining the contentious provision? We explain.

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The report has come from the present or the 22nd Law Commission of India, headed by former Karnataka High Court Chief Justice Ritu Raj Awasthi. (Via Allahabad High Court website)

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Nearly a year after the Supreme Court stayed the operation of the sedition law, the Law Commission of India has recommended that the provision be retained with procedural safeguards and enhanced jail term. Why has the Commission recommended strengthening sedition law?

### What exactly has the Commission said?

The 88-page report by the present or the 22nd Law Commission of India, headed by former Karnataka High Court Chief Justice Ritu Raj Awasthi, stated that the Commission had received a reference from the Ministry of Home Affairs in March 2016, for a study of the usage of the sedition law and suggest amendments, if any.

The Commission, however, took up this reference in November 2022, a few months after the Supreme Court bench, headed by then Chief Justice of India N V Ramana, stayed the penal provision in May 2022. By ruling that “it will be appropriate not to continue” with the offence of sedition till the government reviewed the provision, the Supreme Court while testing the constitutionality of Section 124A of

the Indian Penal Code had raised the bar for the government to invoke the provision.

Although the court did not explicitly stay the provision — no criminal law in force has ever been stayed by the court — it virtually stalled the operation of the provision.

In its order, the Court, referring to the government's affidavit, recorded that “in view of the above, it is clear that the Union of India agrees with the prima facie opinion expressed by this Court that the rigours of Section 124A of IPC is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime.”

### What is the sedition law?

Section 124A of the Indian Penal Code penalises a crime against the state. It defines the crime as bringing “into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India.”

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In 1962, the Supreme Court in ‘Kedarnath Singh v State of Bihar’ upheld the constitutional validity of IPC Section 124A. However, the court attempted to restrict its scope for misuse. The court held that unless accompanied by an incitement or call for violence, criticism of the government cannot be labelled sedition.

### And what has the Law Commission recommended now?

The Commission recommended three changes to the law on sedition. The first is to include the ratio of the Kedar Nath ruling into the provision by adding the words “with a tendency to incite violence or cause public disorder.” The report also defines tendency to incite violence as a “mere inclination to incite violence or cause public disorder rather than proof of actual violence or imminent threat to violence.”

Second, the report suggests enhancing the imprisonment for sedition to “remove an oddity.” One of the criticisms against the provision is that it leaves judges with wide discretion on sentencing. Section 124A has a jail term of up to three years or life imprisonment. The 42nd Law Commission report, in 1971, had noted this to be very “odd” since it would mean either imprisonment for life or imprisonment up to three years only, but nothing in between, with the minimum punishment being only fine. The Law Commission has now proposed enhancing the jail term up to seven years or life imprisonment.

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Third, to prevent misuse of the law, the report suggested including a procedural safeguard that no FIR shall be registered for sedition “unless a police officer, not below the rank of Inspector, conducts a preliminary inquiry and on the basis of the report made by the said police officer the Central Government or the State Government, as the case may be, grants permission for registering a First Information Report”.

## What are the reasons given to retain the law?

The Law Commission, in its report, dealt with some of the criticism of the sedition law and also discussed a few reasons to retain the law:

**\*To safeguard the unity and integrity of India:** The report cited threats to India’s internal security, including Maoist extremism, militancy and ethnic conflict in the north-east, terrorism in Jammu and Kashmir and secessionist activities in other parts of the country, like Punjab. These, the Commission said, necessitate retaining the law on sedition. The Commission also justified criminalising sedition, saying it is a reasonable restriction under Article 19(2) of the Constitution (which deals with restrictions on the right to freedom of speech, assembly, etc. under Article 19(1)).

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**\*Realities differ in every jurisdiction:** Another argument made in favour of repealing the law of sedition in India is that while we continue to have the colonial law on our books, it was abolished through the Coroners and Justice Act, of 2009 in Britain. However, the Law panel said that "it is evident that even in some of the most advanced democracies are on the world, mere cosmetic changes have been affected in the law of sedition, without taking away the core substance of the offence."

The report also said that courts of competitive jurisdictions like the US, the UK, etc. had their own history, geography, population, diversity, laws, etc which are not compatible with Indian circumstances. Despite this, what some of these countries are actually doing is that they have merged their sedition law with counter-terror legislation, it said.

**\*Existence of counter-terror legislations:** One of the arguments made in favour of repealing the law on sedition is that there are several counter-terror legislations that could adequately take care of threats against the state. Where anti-terror legislations can be invoked for acts that threaten national security, sedition is frequently invoked to punish political speech or actions. However, the Law Commission simply states that the existence of anti-terror legislations does not by "implication cover all elements of the offence and envisaged under Section 124A of IPC."

"Further, in the absence of a provision like capital Section 124A of IPC, any expression that incites violence against the government, would invariably be tried under the special laws and counter terror legislation, which contain much more stringent provisions to deal with the accused," the report said.

**\*Sedition being a colonial legacy:** The Commission also refuted the argument that the sedition law must be repealed since it is an arcane law that has an imprint of colonial legacy and is a law which was used by the British against Indian freedom

fighters. Last year, the Supreme Court had also made the observation that the provision may be outdated for a democratic republic.

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“It is often said that the offence of sedition is a colonial legacy based on the era in which it was enacted, especially given its history of usage against India’s freedom fighters. However, going by that virtue, the entire framework of the Indian legal system is a colonial legacy. The police force and the idea of an all India civil service are also temporal remnants of the British era. Merely ascribing the term ‘colonial’ to a law or institution does not by itself, ascribe it to an idea of anachronism. The colonial origins of the Lord by themselves normatively neutral,” the report stated.

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