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Law, Dissent, and the State Constitutional Limits on Sedition and Preventive Detention in India

Sayyad Ismail Sayyad Nasir[1*], Salvatore Vitale[2]

[1]Jamiya college of law, Kavayitri Bahinabai Chaudhari North Maharashtra University, Jalgaon, beed, india

[2] Law School, Leonardo da Vinci University, UNIDAV, Chieti, Italy

* **Corresponding author:** ismailt02@gmail.com.

ABSTRACT: This paper will discuss the changing constitutional association between legislation, dissent and the state power in India with specific attention to the judicial review of sedition and the proliferation of preventive detention. It evaluates how the suspension of Section 124A of the Indian Penal Code under the Indian constitution by the Supreme Court was a critical event in the re-evaluation of the colonial penal codes in the presence of a democratic constitutional system. Concurrently, the paper examines the rising trend of relying on preventive detention in Unlawful Activities (Prevention) Act, under which legislation of national security has played a prime role in controlling political dissent. The paper will assess the issue of judicial review as to whether judges have played any role in limiting executive overreach or whether preventive detention has become normalized as a form of governance through a doctrinal analysis and secondary data gathered on the subject. The results indicate that there is an imbalanced constitutional reaction, with symbolic progress in the protection of free speech alongside the increasing establishment of preventive detention, with civil liberties and democratic accountability as a concern.

Keywords: Sedition, preventive detention, UAPA, constitutional law, dissent, national security.

I. INTRODUCTION

Law, dissent and state power are at the centre stage in the constitutional democracies and especially where the society is characterized by colonial legal legacies and the modern-day security fears. This association has been viewed as more controversial in India with the state depending on criminal law systems to control political dissent, civil protest and political dissent. The old colonial law on penalties like Section 124A of the Indian Penal Code that criminalized sedition have been used as a tool to curb political dissent, most notably in the freedom struggle[i]. Although under the Article 19 and 21 of the constitution there were constitutional guarantees of free speech and personal liberty, the fact that such laws are yet to be abolished in post-independence India indicates that frictions between the freedom of expression and the state continue to exist. In recent years, judicial questioning of such provisions has gotten more severe, and now, the Supreme Court has decided to place Section 124A on hiatus, indicating possible constitutional reconsideration of sedition as a valid limitation on speech[ii].

Along with the judicial reinterpretation of the statutes against sedition comes the growing application of preventive detention laws (especially the Unlawful Activities (Prevention) Act). By nature, preventive detention is a violation of the classical criminal law doctrine that presupposes one being imprisoned without trial due to what one is deemed to be threatening. Although constitutionally allowed in Article 22, its growing use is of great concern in terms of due process, proportionality, and the loss of civil liberties. The modification of the UAPA, in particular post-2019, has expanded executive discretion by allowing people to be labelled as terrorists without receiving a judgment in court, which further reinforced the preventive

rationale of the legislation[iii]. This move can be seen as part of the worldwide trend in which national security requirements are invoked as the justification of extraordinary legal regimes, but in the Indian case, it also indicates how preventative detention is becoming a standard rule of government instead of a special handling case[iv].

There has been a feeling of confusion concerning the role of judiciary in checking executive excess and ensuring constitutional values due to the increasing use of criminal law to contain dissent. Although there are cases when courts take action to curtail the abuse of sedition and preventive detention, critics believe that judicial actions have been inconsistent and deferential in cases defined by national security[v]. The suspension of Section 124A is a significant change in a symbolic sense, but the way it will go in practice will be determined by the extent to which judicial justification spans to wider reconsideration of preventive detention and security laws. This poses some basic questions as to whether the constitutional system in India is sturdy enough to resist the normalisation of exceptional powers. It is a matter of concern that the political responsibility of criminal law against journalists, activists, and opposition personalities is becoming a trend and the state is, apparently, redefining the thin line between legitimate opposition and criminality. The question of whether this trend has been meaningfully checked by the judicial intervention or whether preventative detention is becoming the new norm in the governance of a democratic state is pertinent in determining the future of constitutionalism in India.

II. IMPORTANCE OF THE STUDY

This research is important in that it will involve itself with a decisive constitutional episode in India during which the principles of democratic government are being challenged by the resorting to criminal and preventive detention legislation by the state. The fact that the Section 124A of the Indian Penal Code has been suspended by the Supreme Court is not only a mere procedural advancement but a deeper recognition of the Constitution by the judicial system that colonial logic of penalties is incompatible with the modern constitutional ideals. This development is important to examine how constitutional courts react to past injustices entrenched in legal systems and whether these reactions constitute substantive protection of civil liberties. Placing sedition into a wider constitutional framework concerning the freedom of expression, this paper would also be able to contribute to existing academic debates on whether inherited colonial laws are legitimate or not in postcolonial democraciesvi.

Of equal significance is the fact that the study puts into focus the preventive detention as outlined in the Unlawful Activities (Prevention) Act that has become a prevailing tool of state control as far as national security is concerned. The growing practice of using UAPA to detain persons without trial and in many cases, over an extended time, begs the question that inquires how the procedural protections are being weakened and how exception is turning into a norm. A constitutional perspective of preventive detention enables this paper to question the security/freedom balance that is so fundamental to the democratic legitimacy. By doing it, the study bridges the research gap that has frequently contrasted sedition and preventive detention as two different legal phenomena, instead of viewing them as mutually supportive measures employed to control dissentvii.

The research is also relevant because of its assessment of judicial intervention as an executive power check mechanism. Although the constitutional courts are considered as the protectors of the fundamental rights, their conduct when dealing with cases relating to national security has been characterized by confusion and institutional prudence. This study by critically evaluating the extent to which judicial adjudication has effectively limited executive profligacy or simply recalibrated it can add to a better comprehension of constitutional adjudication in political hot spots. In India, it is especially applicable, as judicial rationale is becoming a factor that defines the range of dissentable opinions and the extent of state power.

Lastly, the relevance of this study is not only in the Indian context but also in general comparative discourse of democratic governance in an age of high securitisation. Normalisation of preventive detention and broad criminal legislation are the trends of the world where democracies defend exceptional law enforcement under the guise of national security. Using India as a case study, the research provides an insight on how constitutional democracies can strike a balance between the dissent and order, legality and legitimacy. By so doing, it highlights the significance of constitutional restraint not only as the legal

limitations, but as the normative commitments that are necessary to maintain democratic pluralism and the rule of law.

III. SCOPE OF THE RESEARCH

This study is limited to the review of the constitutional and judicial aspects of the issues of sedition and preventive detention in India with specific reference to the years of heightened legal and political examination over the last ten years. The paper concentrates on the judicial review of the section 124A of the Indian Penal Code and the changing interpretation of preventive detention as defined in the Unlawful Activities (Prevention) Act, and its context in the context of the constitutional principles and constraints on state authority. By focusing on these two legal tools, the study attempts to examine the role of criminal law and national security law as tools of controlling dissent in a democratic polity without going further to analyse all the statutes concerning the maintenance of public order or the safeguarding of national securityviii.

The time frame of the analysis is also restricted to those judicial rulings, legislative changes, and constitutional discussions that have become popular within the mid-twenties of the past decade and the early 2020s, when the use of the national security justifications in governance has become more widespread. This period will permit a narrow evaluation of recent Supreme Court law, such as the changing reception of Articles 19, 21, and 22 to the Constitution, the judiciary attitude towards proportionality, procedural protection, and executive discretion. Past historical reference on the colonial law is not taken as objects of analysis, but it is taken as a ground to give some background.

Substantively, the study is doctrinal and analytical, with a focus on constitutional documents, judicial arguments, and literature-based interpretations and explanations of these intuitions as opposed to empirical evidence on arrest, prosecution, and conviction rates. The research does not provide a quantitative examination of how the sedition laws or the preventive detention laws are enforced, and the research does not evaluate the fact that the laws have a sociological effect on a particular community or political movement. Rather, it is focused on the logic of the law and institutional behaviour, specifically the conceptualisation of dissent, security, and constitutional restraint by the courts in the instances of political speech and the alleged threats to the state.

The research runs only geographically within India, and though it can make comparative referencing to international practices to aid in illustrating, the research does not involve the complete comparative constitutional analysis. It is concerned with the Indian constitutional system and with the postcolonial particularity whereby the colonial-era penal regulations can be found concomitant to the rights-based constitutional order. This definition of scope will allow the research to offer a focused and theoretically informed study of the question of whether judicial intervention has caused changes in the constitutional balance between state and individual liberty in the area of dissent and preventive detention.

IV. RESEARCH QUESTIONS

This study is guided by the following research questions:

- Has judicial intervention by the Supreme Court meaningfully curtailed executive excess in the use of sedition laws and preventive detention?
- Is preventive detention under the Unlawful Activities (Prevention) Act becoming normalised as a routine instrument of democratic governance?
- How has the judiciary balanced national security concerns with constitutional guarantees of free speech, personal liberty, and dissent?

These are the questions that define the analytical centre of the study and on which the dynamic relationship between state power and constitutional freedoms can be studied in India in a structured way. The study aims at naturating the efficacy of constitutional adjudification to reduce the misuse of criminal statutes by politicians by focusing on judicial reactions to the imperial penal statutes and the present-day security laws. The focus on preventive detention makes another step forward that allows determining

whether exceptional measures of law are being imported into the routine government, thus transforming the constitutional definition of freedom of dissent and liberty into a democratic context.

V. LITERATURE REVIEW

Three arenas of overlap of concern have characterized the past decade of articulation of the law of sedition and preventive detention in India, which are the colonial inheritance and the contemporary application of the law of sedition, the statutory and actual expansion of powers of preventive detention (especially under the Unlawful Activities (Prevention) Act), and the role that the court plays in policing the borderland between the lawful and the constitutional. Even the conceptual language of much of the subsequent empirical and normative interventions has been furnished in large part by mere doctrinal therapies of the freedom of speech and of social order. The re-conceptualisation of the free expression within the constitutional order of India is in the literature; it provides the framework of the domestication of the doctrines of the colonial era and further confronted by the postcolonial jurisprudence; the literature assumes the knowledge of why Section 124A has been open to the law despite all the arguments about

its irreconcilability with the rights-based polityix. Such cures identify the textual flaws of Articles 19 and 21 and the doctrinal codes comprising of the public-order exception that have facilitated massive state control. They thus offer a point of reference of interpretation that the current judicial trends and legislative acts can be evaluated.

The revival of the sedition in the modern context when it is applied to the campus politics and the coverage of journalists and the structure of the civil-society movements have been written extensively. The related empirical data and case studies show that FIRs targeting students, activists, and writers since the mid-2010s are growing exponentially and they report a prosecutorial overeagerness that tends to mistake vocal dissent as incitement to violence more frequentlyx. Legal criticism of the practice of prosecution is the focus of the strand and it is said that the unspecified residual colonial intent and an encouragement of sedition quite open-ended makes it especially liable to misuse. The problem that is not determined through the text of the statute can only be traced by different critics, which implies that legal reform is not going to be effective in the absence of institutional and procedural constraintsxi. In order to counter such criticisms, the studies of constitutional adjudication indicate a judicial ambivalent posture: on the one hand, the courts narrowed down the concept of sedition to the cases of imminent violence; on the other hand, it was not the courts that controlled the executive assertions of the preservation of the order in the politically sensitive cases, which creates an inconsistency jurisprudence, but not the doctrine.

The principles of parallel literatures are the preventive detention and UAPA. In addition to that, legal experts pay attention to statutory framework and practical implications: as the amendments to the UAPA took effect by the end of the 2010s, the state investigation and detention activity are authorized, and the principles according to which the individual can be declared as a terrorist and incarcerated without the charges are accepted. Based on the empirical judicial results of the study of the UAPA cases, there is the increased duration of the pre-trial custody, the low rate of convictions, and the frequent use of the preventive judicature as the alternative to the evidentiary prosecutionxii. Human rights scholarship contextualises such shifts in law in the context of a wider trend towards securitisation: preventive detention is not viewed as a tool of responding to individual threats but as a part of an administrative science to prioritize anticipation and containment over adjudication and remediationxiii. According to this literature, therefore, preventive detention is seen as a technical legal issue as well as a political decision on the way to deal with dissent and unrest.

One literature that borders on the subject is one that examines the ways in which preventive detention restricts the constitution. The jurisprudential protection that the Constitution mandates under Article 22 is considered in the aspects of the doctrinal perspective which finds out whether the control of the judicial system was strong enough to avoid any arbitrary loss of liberty. These investigations indicate that there are some old-fashioned points of tension: the legitimate interest of the state in the averting of violence, the secretive judicial discretion of evidence, the decades of detention and of lost criteria of examination furnish an unrivaled fishing-ground of judicial over-reaching. Some scholars believe that the courts have gone further than the formalistic criteria of the adequacy of the state without scrutinizing substantive viability of

the case which must be available in a right-protective constitutional democracy concerning the aspect of preventive detentionxiv.

The theoretical analysis and the comparison also assist in enriching the Indian-specific literature by locating the local developments in the global trends of securitisation and emergency legalism. Comparative constitutionalists demonstrate that liberal democracies which experience security pressure are likely to rehabilitate administrative detention and apply criminal law to cover non-violent political behaviour and give warning cases in other jurisdictions long since ceased being exceptionally justifiedxv,xvi. Such comparative shows supplement normative criticism: as preventive measures are shifted to the quotidian, rather than the extraordinary, government, institutions put in check of the democratic responsibility are undermined. The insights are then applied to ask themselves questions about the fundamental legal developments as either a policy reaction that has a short-term character or a long-term change in the manner in which governance is being practised (Khosla, 2020; Kapoor, 2019).

The other related literature is in the field of political economy of law enforcement and criminalisation. The impact of political incentives, electoral politics and institutional capture on prosecutor decisions are mapped in the empirical literature on politics and socio-legal research community. A number of empirical papers have reported co-movements in the spikes of politics and prosecution in response to voices of dissent, and which suggests that the criminal law is becoming politicised by pursuing political goals instead of attempting to address any real security issue. This literature exceeds the normative assertion that the question of legal reform could not be decoupled with that of political accountability; instead, it needs to be addressed in a more methodical fashion that includes statutory reform along with the accountability of the police, independence of the prosecutors and legal literacy of the citizens.

Lastly, the emergent scholarship also analyses how the judiciary can be utilized as one possibly strong point and where the weakness is found. The effectiveness of the judicial intervention in bringing about a lasting check to executive profligacy is doubtful in assessments of recent Supreme Court interventions, case by case, case by case, or even more fundamental basis. Elsewhere, judicial rulings of the high court and Supreme Court have proposed some meaningful procedure protection and additional definition of doctrine, undermining abusive application of sedition and preventive detention in specified situations. Others, in its turn, refer to the episodic character of such interventions and the way in which the courts will not interfere in interventions that would remedy the systemic abuse; they stress that the interventions of the judicial relief, important as it is, can only help a few litigants and leave the more general practices in the sphere of administration to work on their own. Collectively, the literature characterizes a research field of high doctrinal quality, which is increasingly becoming more empirical with respect to prosecutorial and detention practices and abundant normative discourse concerning the appropriate tradeoff between security and liberty. In these publications, it is possible to identify such popular themes as colonial genealogy of the sedition, the extension, the normalisation of the legislative administrative preventive detention practice, the history of judicial restraint, interaction of political motive and the law. It is not only the analytical words involved in the literature that engage the empirical contacts to the current study in order to find the answer to the question whether the judicial intervention has been highly restrained with the executive power and whether prevention detention is becoming the new norm under the constitutional governance in Indiaxvii.

VI. RESULTS AND DISCUSSION

1. JUDICIAL RECONSIDERATION OF SEDITION AND ITS PRACTICAL EFFECTS

A case study of judicial responses toward sedition cases during the past decade reveals that the change of doctrinal level has been significant particularly in the Supreme Court with regard to Section 124A of the Indian Penal Code. Available secondary sources, founded on reported judicial decisions, judicial decrees as well as scholarly commentary, indicate the conclusion that even though the judiciary is increasingly becoming constitutional uneasy regarding sedition, this uneasiness has not necessarily led to direct restraint of the executive. The interlocutory stay of Section 124A by Supreme Court was an imaginary escapade of essential elements of past jurisprudence which had seen the provision maintained within a strictly narrower interpretation. As per the researchers, it was a direct acknowledgment of the then court that colonial punishments cannot be readily reconciled with the contemporary constitutional assurance of free speech and

political opposition. However, the interpretation of secondary case-law would point to the fact that the secondary courts and the police agencies continued to apply the sedition clauses over the years before and even after the additional judicial scrutiny. Empirical legal practice has proved that the majority of sedition cases, which were brought since the mid-2010s, have never seen any conviction in court, however, in most instances, they have resulted in a lengthy legal process, imprisonment in custody or movement restrictions, in the form of bail conditions. This gap between what is dogmatically right and what is in fact the law determines one of the primary findings of this study: judicial review has been uneven in its effectiveness in correcting executive overreach. Even though the constitutional courts mention high principles of curtailment of speech, they are not applied consistently to the police investigation and the trial court level, which allows the chilling effects of the sedition prosecution to exist.

Such too, indicates that the judicial intervention in the field of sedition has been more generally treated in the context of proportionality and constitutional morality than in strict statutory interpretation. Such transformation of the discourse places Indian jurisprudence on the same level as the general trends in international constitutionalism, though the proportionality analysis, in its turn, is in its infancy, in the cases of national security, where courts are less inclined to cross-examine executive assessments of a threat. As a result, despite the constitutional challenge of the sedition as an institutional crime, its instrumental value as the tool of intimidation has not been delegated fully.

2. EXPANSION AND NORMALISATION OF PREVENTIVE DETENTION UNDER UAPA

This is shown in the analysis of the secondary data concerning the preventive detention under the Unlawful Activities (Prevention) Act that shows greater and more enduring growth of the executive power. The changes in the legislation, the judicial decisions on bail, and the documents of human rights are all signs that UAPA has progressively become the statute of choice when it comes to dealing with dissent as a security issue. Compared to sedition, which has received explicit constitutional criticism, the use of preventive detention under UAPA has been mostly naturalised by judicial arguments that put national security above individual freedom.

According to secondary quantitative data on parliamentary responses, summaries of the National Crime Records Bureau and independent legal audit, the number of UAPA cases has gradually increased in the late 2010s, with a low conviction rate and pre-trial incarceration. Scholars explain this trend as an indication that preventive detention is not applied as an exceptional measure to stop imminent violence but as a pre-emptive act to disable individuals who are perceived or deemed politically or ideologically dangerous personsxviii. The stress on denying of the bail, supported by such statutory presumptions in favour of the prosecution, is the de facto conversion of detention into adjudication-free punishment.

Table 1 presents consolidated secondary data illustrating trends in UAPA enforcement over selected years, based on NCRB summaries and peer-reviewed analyses.

Table 1. Selected trends in UAPA enforcement in india.

Year	Registered UAPA Cases	Arrests	Conviction Rate (%)
2015	897	1,128	11.0
2017	1,226	1,558	9.8
2019	1,948	2,482	8.3
2020	1,321	1,804	6.6

The statistics reflect a definite direction of the problem: as the cases and arrests were growing tremendously, the rates of the conviction decreased. Legal theorists believe that this gap is structural because of the preventive detention regimes, in which the function of the regime is incapacitation but not prosecution. Courts also often take a very liberal approach to bail cases under UAPA by accepting the prosecutors at their word and withholding constitutional review until trial, which in many cases happens years later. This would

be in stark contrast to the judiciary which has been growing more and more sceptical in sedition cases indicating that there seems to be a difference in the constitutional interpretation of various security legislations.

3. NATIONAL SECURITY, DISSENT, AND THE ROLE OF THE JUDICIARY

The findings also indicate a complicated balancing act in bill of rights and national security at the hands of the judiciary. When it comes to political dissent, courts usually put their analysis in terms of legitimacy of state ends and not the proportionality of state means. This is observed especially in the preventive detention jurisprudence where courts often restrict their examination of cases to procedural adherence, as opposed to a substantive review of the necessityxix. Researchers have argued that this method is dangerous to the emptying of constitutional protections by making executive accounts of danger prevail in courtly decision-making logic.

Meanwhile, the recent Supreme Court intrusions into matters of journalists, protestors, and their activists suggest a rising judicial consciousness of how criminology is abused in politics. Bail orders based on delay, the absence of prima facie evidence, or a disproportionate deprivation of liberty indicate a gradual change towards the use of rights-oriented adjudicationxx. Such interventions are however ad hoc and case-based and do not produce binding doctrinal standards, which may systematically restrain executive action.

The political context within which criminal law is conducted is also brought out in the discussion. The literature on secondary sources in political science reveals that prosecutions on grounds of sedition and UAPA tend to come along with the period of increased political mobilisation, thus indicating a situational law of criminal prosecution to deal with dissent instead of the actual security risksxxi. The limiting power of constitutional review is judicial resistance to directly address this political aspect. This has been achieved by courts considering individual cases as a single legal conflict and thus blinding larger trends of structural abuse.

When combined, the results allude to the fact that even though judicial re-examination of sedition is a significant constitutional change, preventive detention has become a more sustainable and less disputed tool of executive authority. This disparate treatment of the two legal mechanisms by the judiciary indicates that constitutional boundaries are easier to challenge the overtly colonial clauses than contemporary security laws in the terms of counter-terrorism. This discrepancy contributes to the thesis that preventive detention is increasingly turning into a new norm of the Indian system of democratic governance changing the constitutional interpretation of the meaning of liberty, dissent, and authority of the state.

VII. CONCLUSION

As the analysis conducted in this paper shows, the modern legal environment in which the dissent is regulated in India is characterized by the complicated and unequal re-calibration of constitutional boundaries on state power. Judicial review of sedition, which led to the suspension of Section 124A of the Indian Penal Code, is an essential recognition of the irrelevance in colonial penal justifications with a democratic constitutional order that embraces free speech. This is an indication of a change in constitutional reasonableness in which the courts are seen to be becoming more open to questioning the validity of legislation which criminalizes the activity of political speech without an obvious nexus to violence or disturbance of the peace. Nevertheless, the actual effect of this judicial intervention is limited by the fact that executive discretion is still obviated and a punitive load exerted through arrest, investigation, and protracted litigation is still applied using criminal.

Simultaneously, the study also indicates that preventive detention by the Unlawful Activities (Prevention) Act has become larger and more heated as it fills the vacuum left by the ever-increasing constitutional discontent with sedition. Compared to Section 124A, preventive detention has been shielded much more effectively against structural judicial review, with the assistance of statutory formulation and a jurisprudence which gives national security assertions primacy. The daily denial of bail, the long pre-trial imprisonment, the low conviction rate all of these are indicators that a detention by itself has become a key instrument of regulation, and that the line between prevention and punishment is now unclear. This

tendency poses grave constitutional issues, as it changes the criminal justice emphasis on adjudication to incapacitation and responds to the challenge of normative bases of due process and personal liberty.

The judiciary comes out as central and restricted. Although the courts have sometimes played the role of restraining heinous abuses, they have been largely sporadic and individual in their interference making no lasting doctrinal limits on the executive power. This aversion to intervening in the politics of using criminal law, especially in the context of these cases being conceptualised as a threat to national security, has enabled preventive detention to become more and more institutionalised in the politics of democracy. Consequently, constitutional security of action against arbitrary state action may be transformed into a conditional one instead of absolute security.

In general, the evidence indicates that judicial restraint has been more of a symbolic achievement in the difficult indulgence of the executive than it has been in the struggle against the present-day regime of preventive detention. The increasing inclination towards preventive detention as the tool of controlling the dissent bears testaments to the redrawing of constitutional boundaries, and has great consequences to the future of democratic freedoms, the rule of law, and constitutionalism in India.

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