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SEDITION LAWS - A STUDY ON EXPRESSING FREELY- Nehal Singh¹

“People shouldn't be afraid of their government. Governments should be afraid of their people.” — Alan Moore, V for Vendetta²

ABSTRACT

Your opinion counts. You have the right to express your opinions, spread knowledge, and call for a better world. Additionally, you have the freedom to support or oppose people in authority and to peacefully protest your views. Living in an open and just society, where people can obtain justice and exercise their human rights, requires that these rights be exercised freely and without interference from the government or other unjustified parties. Nevertheless, governments all across the world regularly put people in jail, or worse, for speaking out, despite the fact that practically every country's constitution mentions the importance of "free speech." Governments are required to outlaw abusive and inciting speech, but many misuse their power by establishing laws that restrict free speech in order to stifle peaceful protest. This frequently takes place under the name of national security, religion, or anti-terrorism. More recently, as a result of the government cracking down on activists, NGOs, and people who support refugees and migrants, freedom of expression has come under assault. Governments' tolerance of opposing viewpoints or dissenting voices frequently gives a decent indication of how they regard human rights in general.

WHY IS THE RIGHT TO FREE SPEECH IMPORTANT?

Article 19 of the Universal Declaration of Human Rights, which outlines in general terms the human rights that each of us has, established the right to freedom of expression. A number of international and regional treaties later provided it with legal protection. Amnesty International has always placed a high priority on defending free speech because it is essential

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to keep the powerful accountable. In addition, freedom of expression supports and promotes other human rights, including the freedom of religion, thinking, and conscience. It is also closely related to freedom of peaceful assembly, which is the right to take part in a peaceful protest or public gathering, as well as freedom of association, which is the freedom to found and join organizations, societies, labour unions, or political parties with whoever you like. However, regimes that aim to repress dissent frequently assault these fundamental freedoms. For instance, criticizing the government is currently very risky in Egypt. At least 113 people were detained by the authorities in 2018 for a variety of ludicrous offences, such as satire, tweeting, supporting a sports team, speaking out against sexual harassment, editing movies, and conducting interviews. The individuals detained have been charged with "membership in terrorist organizations" and "disseminating fake news." Even though military trials of civilians are fundamentally unfair in Egypt as well as elsewhere, individuals who eventually faced trial after being detained without charge for months were convicted by military courts.

PRESS PRIVILEGES

A crucial component of any society that respects human rights is a free press that reports on the topics that concern us and influence our daily lives. However, journalists endure persecution and violence in a number of nations, including Azerbaijan, Turkey, and Venezuela, to name a few. The passage of the Written Laws Bill, which would have entrenched censorship among other crimes, was accelerated by Tanzania's parliament in June 2019. A media legislation that mandates that media outlets "broadcast or publish news or topics of national importance as government may direct" places journalists in the nation under strict restrictions.

The Philippines' libel trial of Maria Ressa³, the executive editor of the online news source Rappler, started in July 2019. Ressa, a well-known opponent of President Rodrigo Duterte, was detained in February 2019 on fabricated libel charges after Rappler published in-depth investigations into some of the thousands of extrajudicial executions carried out by police and unidentified armed individuals during drug-related operations with Duterte's explicit encouragement. Many people believe that her case represents a government assault on press freedom. Repression can deteriorate during times of conflict, as was the case in Myanmar⁴

³<https://www.amnesty.org/en/latest/press-release/2018/12/philippines-end-harassment-prominent-duterte-critic-maria-ressa/> (visited on 23rd June, 2022)

⁴<https://www.amnesty.org/en/latest/press-release/2018/12/philippines-end-harassment-prominent-duterte-critic-maria-ressa/> (visited on 24th June, 2022)

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when journalists looking into the murder of Rohingya men and boys by security forces in Rakhine State were detained and imprisoned until being released as a result of international pressure.

RIGHT TO SPEECH

Freedom of speech, often known as freedom of expression, encompasses all ideas, even those that may be extremely objectionable. While free speech is protected by international law, there are some situations where that same law may lawfully limit speech, such as when it infringes the rights of others, preaches hatred, or incites discrimination or violence. Any limitations on the right to free speech must, however, be legally mandated, essential to preserve the rights of others or certain public interests, and demonstrably justified. According to data published by Twitter encourages women to self-censor what they post and restrict their interactions, rather than being a site where they may express themselves freely and where their voices are amplified. By failing to appropriately investigate and transparently address accusations of violence and abuse, Twitter as a company is failing to uphold women's rights online.

A NEW FRONTIER IN DIGITAL

Many more of us now have access to the information we need to confront governments and businesses thanks to the internet age. The seven billion people who live on our planet could become substantially more powerful thanks to the internet since knowledge is power. Today, however, our ability to express ourselves freely still frequently hinges on our social status, privilege, and financial resources. Powerful people rarely face restrictions on their ability to share their opinions. Comparably, people who don't own a laptop with broadband have much less access to information than those who can obtain it by walking a long distance to a coffee shop. More and more nations are attempting to protect digital communications via firewalls, or in the cases of Egypt, Sudan, and Zimbabwe, among others, responding to large-scale street protests by shutting down the internet. Iran, China, and Vietnam have all made attempts to create systems that allow them to regulate access to digital data. Mobile Internet and communications are shut off in the Kashmir area of northern India in the event of conflict.

Case Study: The Right to Protest in Poland

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Despite stringent laws, heavy-handed policing, monitoring, harassment, and punishment that threaten to stifle the freedom to peaceful protest, individuals in Poland have come to the streets to voice their ideas. Tens of thousands of people have demonstrated against restrictive legislation since 2016 in an effort to limit women's rights and undermine judicial independence. Regular displays of force and repressive actions that violate protesters' rights to be seen and heard have been used against them. Numerous people have found themselves in police detention and must endure protracted legal proceedings.

Case Study: Increase in Vietnamese political prisoners

Indications of an increasing crackdown on nonviolent activism by attorneys, bloggers, human rights defenders, environmental activists, and pro-democracy campaigners included a rapid jump of by a third in the number of prisoners of conscience unfairly imprisoned throughout Viet Nam. The inmates are still being held in horrible conditions, including evidence of torture and other ill-treatment. They are frequently kept incommunicado and in solitary confinement, kept in filthy surroundings, and refused access to food, drink, and fresh air. The vague and excessively broad sections of the penal code were used to target several prisoners of conscience who were imprisoned as a result of remarks made on social media sites.

Tran Hoang Phuc is one of the prisoners of conscience. He was detained in June 2017 and is an activist for both democracy and the environment. He was found guilty at trial of "conducting propaganda against the state" for posting films on social media that were seen to be critical of the government and was given a six-year prison term followed by four years of house arrest.

SEDITION

Sedition is overt behavior that aims toward rebellion against the established order through speech and organization. Sedition frequently involves the violation of a constitution as well as the instigation of rebellion against established authorities. Any disturbance that isn't directly and overtly violent against the law is considered sedition. Seditious language is seditious libel. A seditionist is someone who participates in or advances sedition. Sedition is usually not regarded as a subversive act because it is overt, and the overt activities that may be punished under sedition laws differ from one legal code to another.

In the Elizabethan Era (about 1590), sedition was first defined as the "notion of stirring through words or writings disaffection towards the state or established authority." "Sedition is

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a complement to treason and martial law, as sedition frightens intellectuals, whereas treason controls largely the privileged, ecclesiastical opponents, priests, and Jesuits, as well as certain commoners."⁵

Indian Approach

Sedition laws have historically been divisive. It is absurd to accuse people of sedition for writing letters to the prime minister. However, when such a letter is a regular pattern of a political campaign against the government and is a part of a wider scheme to discredit the nation and the duly elected government, the law would naturally apply against such people.

The Indian Penal Code (IPC)⁶, in its section titled "Sedition," defines the term in a broad and generous manner. It states that "anyone incites or seeks to incite hatred or contempt toward the Government constituted by law in India should be punished with imprisonment for life, whether by words, whether spoken or written, or by signs, or by physical representation, or otherwise." According to the IPC's justifications, "disaffection" comprises all forms of hatred and disloyalty." Additionally, it states that statements that strongly criticize government actions with the aim of obtaining the needed changes through legal channels without inciting or attempting to incite hatred, contempt, or disaffection do not violate this clause. Sedition is punishable under Section 124A of the Indian Penal Code. During the British Raj, the Indian Penal Code was enacted in 1860. Chapter VI of the Code, which deals with crimes against the state, contains Section 124A. Sections 121 to 130 of Chapter VI were added in 1870, including Sections 121A and 124A. The Indian subcontinent's Khilafat movement threatened to wage war against the country's then-British administration, which caused them great concern. It was considered that such a law was necessary, especially following the Wahabi/Waliullah Movement's effective repression. The clause was used to repress political opposition in support of independence throughout the Raj, notably that of Lokmanya Tilak and Mahatma Gandhi, who were both found guilty and imprisoned.

Developments

The clause was continually criticized for restricting free speech in independent India as well. During the rule of Prime Minister Indira Gandhi in 1973, sedition was made a cognizable

⁵ C. Breight (1996). *Surveillance, Militarism and Drama in the Elizabethan Era*. Springer. pp. 89–90. ISBN 978-0-230-37302-0.

⁶ IPC (Indian Penal Code, 1860) section-124a, [https://indiankanoon.org/doc/1641007/\(visited](https://indiankanoon.org/doc/1641007/(visited) on 25th June, 2022)
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offence in India for the first time in history, allowing for arrest without a warrant.⁷ The clause only applies, according to the Supreme Court of India's 1962 interpretation, if there is, for example, "incitation to violence" or "overthrowing a democratically elected government through violent means."⁸ When Thomas Babington Macaulay created the Penal Code in 1837, Part 113 was where the sedition-related section originally belonged. But the real Code didn't include it for some reason that isn't clear. James Fitzjames Stephen, who was in charge of legal matters for the colonial Government of India at the time, made the idea that it eventually be added in 1870.⁹ The Raj included this part under the heading "Exciting disaffection" due to an increase in Wahabi activity and its concern that Muslim preachers would stir religious conflict in the Indian subcontinent.¹⁰ The IPC Amendment Act of 1898 significantly revised Stephen's version from 1870. The current part is largely similar to this one from 1898, but there have been a few small changes during India's colonial and post-colonial history, including 1937, 1948, 1950, and the Part B States (Law) Act of 1951.¹¹ The sedition statute was found invalid in 1958 after *Ram Nandan v. State*¹² was heard by the Allahabad High Court. Additionally, the Punjab High Court had ruled against the law.¹³ Sedition was reinstated into the Constitution in 1962 thanks to a Supreme Court decision that interpreted the clause to mean that it only applies if there is "incitation to violence." During the rule of Indira Gandhi, the 1973 Code of Criminal Procedure (CrPC), which superseded the 1898 CrPC, made sedition a criminal offence for the first time.¹⁴ The colonial-era law was stopped by the Supreme Court of India on May 11, 2022. The court ruled that the statute had been out of date and had been abused by governments to suppress opposition. As a result, hundreds of people who were sentenced in accordance with the law are now qualified for bail. The court's decision merely temporarily suspends the sedition statute, which means no new charges can be filed under it until the government's ongoing study is finished.¹⁵

⁷Chndrachud, Abhinav (22 February 2021). "The Case to Amend Sedition Law, India's Self-Inflicted Wound".TheLeaflet.

⁸Utkarsh, Anand (4 March 2021). "Disagreeing with govt is not sedition, says SC". Hindustan Times.

⁹Gaur, Krishna Deo (2009).Textbook on the Indian Penal Code.Universal Law Publishing. pp. 220, 226–227. ISBN 978-8175347038.

¹⁰ Bhatia, Gautam (2016). *Offend, Shock, or Disturb: Free Speech under the Indian Constitution*. Oxford University Press.ISBN 9780199089529.

¹¹ *Supra* 9

¹² Kumar, Ayush (3 March 2021). "Section 124A: An Archaic Way to Stifle Dissent In India". Bar and Bench - Indian Legal news.

¹³ Bhatia, Gautam (24 January 2016). "The nine lives of the sedition law". Mint.

¹⁴ *Supra* 7

¹⁵ Kumar, Hari; Yasir, Sameer (11 May 2022). "India's Top Court Suspends Colonial-Era Sedition Law". The New York Times.ISSN 0362-4331.

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HISTORY

The first case under the provision that is known to have been filed was Queen Empress v. JogendraChunder Bose¹⁶ in the Calcutta High Court in 1891. Bose challenged the Age of Consent Act of 1891 in an essay that was published in his own Bengali magazine, Bangobasi. The Act was criticized as "forced Europeanization" and a gag on Hindus, who were said to be unable to challenge the law and hence barred from doing so. In his directions to the jury, Chief Justice William Comer Petheram defined "disaffection" as "an emotion opposed to attachment, in other words, dislike or hatred," and connected it to disobedience towards the government. The prosecution claimed that Bose had incited revolt.¹⁷ Despite this, Bose was granted bail and the matter was dismissed.¹⁸ The 1897 sedition trial of LokmanyaTilak is well-known in history. Tilak, who was educated as a lawyer, was also politically engaged in favour of independence. He founded and ran two newspapers, Kesari in Marathi and Mahratta in English, both of which were printed in Pune. Professor R. P. Karkaria delivered a talk on Shivaji, the Maratha monarch, to the Royal Asiatic Society in Bombay in 1894. This evolved into a yearly event honouring Shivaji's coronation anniversary. Three years later, Tilak released an article titled "Shivaji's Utterances," which was also an attack on the colonial authority, detailing this celebration. The judge who oversaw Tilak's case, Justice Arthur Strachey, expanded the interpretation of Section 124A.¹⁹

For two Kesari pieces, "The Country's Misfortune" (12 May 1908) and "These Remedies Are Not Lasting," Tilak was once more accused of sedition (9 June 1908). Tilak was found guilty once more under the recently created section 124A and given a six-year prison term in Burma.²⁰ Despite the outcome, this case "marked a key ideological rupture in the history of empire and laid the ground for widespread anticolonial uprisings under the leadership of Gandhi," according to historian Mithi Mukherjee.²¹ Mahatma Gandhi and Shankar Lal Banker were imprisoned in 1922 for their three Young India writings, which violated the sedition provision. Gandhi described Section 124A as "the prince among the political provisions of the Indian Penal Code designed to suppress the liberty of the citizen" while testifying in court.²²

¹⁶ (1892) ILR 19 Cal 35

¹⁷ Bhatia, Gautam (2016). *Offend, Shock, or Disturb: Free Speech under the Indian Constitution*. Oxford University Press. ISBN 9780199089529.

¹⁸ Saxena, Namit (8 July 2018). "A Look Back At Tilak's Sedition Trials". Live Law. Retrieved 28 May 2019.

¹⁹ *Supra* 10

²⁰ Saxena, Namit (8 July 2018). "A Look Back at Tilak's Sedition Trials". Live Law.

²¹ Mukherjee, Mithi. "Sedition, Law, and the British Empire in India: The Trial of Tilak (1908)". *Law, Culture, and the Humanities*. 16 (3): 454–476 – via SCOPUS.

²² Republic of dissent: Gandhi's sedition trial". Live Mint. 29th June 2022.

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The Punjab High Court declared Section 124A invalid in 1951. The Allahabad High Court made a similar decision in 1959 and came to the same conclusion that it violated the fundamental right to free speech. The Government of India appealed to the Supreme Court of India, which decided in 1962 that remarks critical of the government or political parties were not unlawful while upholding the legislation's applicability to forceful or coercive separatism. This decision had the effect of weakening the ban.²³ Numerous eminent writers, artists, activists, and politicians have faced sedition charges under Section 124A in the twenty-first century. Cases include those of the former general secretary of the Vishva Hindu Parishad (VHP), Praveen Togadia, Simranjit Singh Mann, BinayakSen, Arundhati Roy, cartoonist AseemTrivedi²⁴, student activist RinshadReera²⁵, and climate campaigner Disha Ravi (2020).²⁶

In India, 326 sedition cases were brought between 2014 and 2019; however, only 6 of these instances saw the filing of charge sheets, leading to no convictions.²⁷ On July 15, 2021, Chief Justice of India N.V. Ramana brought attention to the fact that there are relatively few sedition convictions and that the executive branch has abused this statute.²⁸ The intention of the law, according to some law critics, is not to punish those who have been accused but rather to harass and suppress government critics through a drawn-out legal procedure.²⁹

In a landmark decision, the Supreme Court suspended the 152-year-old sedition rule under Section 124A of the Indian Penal Code while the Union administration gave the clause another look. The court urged the Center and the state governments to hold off on filing any FIRs in accordance with the aforementioned provision until the Center has had a chance to review the British-era law. After noting that the Union government's position of "re-consideration and re-examination" indicates that the government agrees with the court's initial assertion that the "rigours of 124A IPC isn't in tune with current social milieu and was intended for when the country was under colonial regime," the supreme court issued the order. As a result, the court mandated that the Union of India revisit the clause. Civil liberties

²³ "Anti-sedition law needs the bin". Economic Times. 15 January 2019

²⁴ "5 high profile sedition cases in India". Rediff. 13 September 2012.

²⁵ Scroll Staff. "Kerala: Two students of Malappuram college arrested on charges of sedition".

²⁶ SAYEED, VIKHAR AHMED. "Disha Ravi, an environmental activist from Bengaluru, arrested by Delhi police and charged with sedition for 'formulation and dissemination' of a toolkit to aid protesting farmers which was shared by Greta Thunberg". Frontline.

²⁷ 326 sedition cases filed in india between 2014 19 only 6 convictions, freepressjournal.in, 19 July 2021.

²⁸ Rajagopal, Krishnadas (15 July 2021). "Why do you need the 'colonial law' of sedition after 75 years of Independence, CJI asks govt". The Hindu. ISSN 0971-751X.

²⁹ Gupta, Shekhar (17 July 2021). "Is India made of porcelain? Question CJI Ramana should ask Modi govt at next sedition hearing". ThePrint. Retrieved 20 July 2021.

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advocates, human rights attorneys, and journalists have questioned the validity of the sedition law. Sedition laws in India have received a lot of criticism for being outdated. The majority of the global anti-sedition movement has resulted in many nations either relaxing or abolishing the ban. The United Kingdom, Ireland, Australia, Canada, Ghana, Nigeria, and Uganda are among the democratic nations that have rejected sedition laws as undemocratic, unwanted, and unneeded.

SEDITION LAW IN INDIA

The Statute Commission of India has previously discussed the need to review the sedition law. According to the Commission's 39th Report (1968), "The Punishment of Imprisonment for Life Under the Indian Penal Code," there are some incredibly unusual circumstances in which specific offences have been rendered punishable by harsh penalties. It was suggested that crimes like sedition should be punished by either a life sentence in prison or a sentence of strict or simple imprisonment that might last up to three years but not longer. Additionally, the Commission made three significant recommendations for Section 124A of the IPC in its 42nd Report (1971). They are: -

- The section's inclusion of mensrea.
- The section's scope being enlarged to include the executive government, legislatures, and the administration of justice (Judiciary), against whom disaffection would not be permitted, and
- Setting the maximum penalty for sedition at "seven years rigorous imprisonment and fine," bridging the "odd" gap between "imprisonment for life" and "imprisonment which may extend to three years or fine."

The 267th Report of the Commission on Hate Speech (2017) made a distinction between hate speech and sedition, stating that whereas sedition is a direct offence against the State, hate speech damages the State indirectly by upsetting the peace in the community. According to the report, for a remark to be considered sedition, it must pose a threat to both the security of the State and India's sovereignty and integrity. The Constituent Assembly resisted including sedition as a restriction on the right to free speech and expression under the then-current Article 13, the Law Commission of India's 2018 report claims. It considered the clause to be a remnant of colonial rule that had no place in a free India. But the offence persisted, under section 124A IPC.

CONCLUSION AND SUGGESTIONS

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Several private member bills on sedition have been submitted in India, and the bulk of them call for reform rather than repeal. While Section 124A of the IPC was called out as being draconian and colonial in the private member bills put forth by Shri D. Raja, Shri P. Karunakaran, and ShriElamaram Kareem, other bills, including those from ShriShashiTharoor, ShriBhartruhariMahtab, ShriSaugata Roy, and ShriBaijayant Panda, propose reformation of the provision. While some people may be excited about the potential elimination of sedition in the nation, many private member bills have suggested modifying the restrictions of Section 124A of the IPC. Even the Law Commission believes that sedition is crucial for preserving national integrity in its comment document. A few of the reforms could include:

- Addition of a disclaimer stating that actions not constituting sedition do not convey disapproval of governmental actions or administrative decisions.
- Clarifying that sedition only applies when it directly leads to the inciting of violence and the commission of a crime subject to a specific punishment.
- Clarifying the definition of "disaffection" as it pertains to this clause.
- Adding a clarification on lawful demonstrations.
- adding procedural safeguards via policy guidelines or Section 124A of the Code of Criminal Procedure.

It might be claimed that despite *Kedarnath v. State of Bihar*³⁰ providing clear instructions, Section 124A of the IPC is still being misused by the police and state agencies, making any reforms unlikely to be effective in practise. It may also be argued that, in the absence of any institutional improvements, changing the language of Section 124A alone would not significantly alter the current situation. It is crucial to educate the public, law enforcement, the executive branch, and the lower judiciary about the modified section in order to combat these. Advocacy efforts are necessary to inform the various facets of society about the significance of this provision in addition to the reform.

The future of dissent and free expression in the nation may benefit from repealing or amending the sedition statute. The legal reforms will have a significant impact on whether a person feels comfortable voicing beliefs that are opposed to those of the government. One can only hope that the alterations safeguard the people's right to free expression and dissent while taking into account the interests of the nation and security.

³⁰ 1962 AIR 955 1962 SCR Supl. (2) 769

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Suppressing free expression and free thought, both of which are disfavored by the government, is the main goal of the sedition statute. When the threat of a life sentence can silence a critic, that in and of itself serves as a deterrent. These incidents are frequently brought up against show-off dissidents to get the other people to agree. Convictions don't truly interest governments. Sanctions are frequently not given in these situations, but the local police have a useful tool in that they can register a case first. Additionally, it can be an effective instrument in the hands of a local authority figure or the leader of a certain group that seeks to silence a specific critic. The 124 A of the IPC is invoked summarily and has many limbs and claws to grab hold of anyone who makes a seditious remark. *Ram Nandan v. State of Uttar Pradesh* (1958) was the first such case in independent India, and numerous others have followed. Not simply IPC Section 124A but the entirety of Sections 121–124A, which deal with "waging war against the state," is the problem with India's sedition laws. It is not unusual for charges to be filed under various headings as specified by these sections, giving the public prosecutor considerable leeway to prosecute someone with "effective sedition." The issue with sedition charges isn't just 124A; it's also the additions made to a chargesheet, which makes it difficult for an accused person to have protection due to the ban on 124A charges being invoked. This is comparable to chopping off a branch from a tree that has produced a toxic fruit but leaving the tree so that other branches can continue to produce more of the same. It's also important to think about whether the SC has hampered the government's goal of a consultative approach. The government's delay strategies were duly acknowledged by the top court, but it did not offer relief in the context of the 324 sedition cases that were filed between 2014 and 2019 and had a 99.98% acquittal rate as long as the cases moved forward. There is precedent for this internationally. The International Covenant on Civil and Political Rights was adopted by the UN General Assembly on December 16, 1966. (ICCPR). Everyone shall have the right to freedom of speech (sic), regardless of boundaries, whether expressed orally, in writing, or in print, according to Article 19 of the aforementioned resolution (sic). Such a right is restricted by issues including public morals, national security, or public order, as well as by reputational harm to others. According to the ICCPR, the prosecution must now establish beyond a reasonable doubt that other options were available (*Shchetko v Belarus*, 2006).

The European Court of Human Rights determined in *Erbakan v. Turkey* that even if an action doesn't support secularism, it won't result in the arbitrary denial of freedom of expression, and upheld Article 10 of The Human Rights Act (the EU equivalent of the Article 19 of ICCPR).

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The court continued by stating that it was the responsibility of the state to prove that there were no other accessible options to filing a criminal complaint against the defendant.

The SC's prohibition on new cases is rash; other methods of charging a person are still readily available to law enforcement organisations, who can use them wherever at any time.

"If, to expose the fraud and imposition of monarchy to promote universal peace, civilization, and commerce, and to break the chains of political superstition, and raise degraded man to his proper rank; if these things be libelous, let the name of libeler be engraved on my tomb."- Thomas Paine, The Thomas Paine Reader



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