

Weekly Judiciary Digest

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Current & Conceptual Weekly

24th - 31st March, 2025

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1. Supreme Court Clarifies 'Right to Be Forgotten' in Acquittal Cases

Case: X v. Union of India

Citation: 2025 SCC OnLine SC 450

Court: Supreme Court of India

Summary: The Supreme Court's recent ruling on the **Right to Be Forgotten** marks a significant development in Indian constitutional jurisprudence, particularly within the broader framework of **the right to privacy under Article 21** of the Constitution. In this case, the petitioner had been **acquitted of all charges** in a criminal proceeding but continued to suffer social stigma and reputational harm due to the persistence of case-related content on the internet. He sought relief in the form of removal or de-indexing of such content from search engines and digital platforms.

The Court, acknowledging the evolving nature of privacy in the digital age, held that the **Right to Be Forgotten** is a vital component of an individual's right to life and personal liberty. It observed that once a person is acquitted and the matter has lost public relevance, **continued public access to such information serves no compelling public interest** and only perpetuates harm to the person's dignity. The Court directed search engines to **de-index such content**, thereby restricting its visibility to the general public. Importantly, this judgment balances the **right to privacy** with the **right to freedom of speech and expression**, especially of the press and digital platforms, which is protected under Article 19(1)(a). The Court clarified that the Right to Be Forgotten is not absolute

and must be assessed in light of factors such as the **nature of the crime, status of the person involved, public interest, and the need to preserve judicial records.**

2. Madras High Court Upholds Mandatory Voting in Local Elections

Case: *M. Ilango v. State of Tamil Nadu*

Citation: 2025 SCC OnLine Mad 320

Court: Madras High Court

Summary: In a landmark judgment, the **Madras High Court upheld the constitutional validity of the Tamil Nadu Local Bodies (Compulsory Voting) Act, 2024**, which mandates citizens to cast their vote in panchayat and municipal elections. The Act had been challenged through a **Public Interest Litigation (PIL)** on the grounds that it violated **Article 19(1)(a)** of the Constitution, which guarantees the **freedom of speech and expression**. The petitioner argued that the right to vote includes the right not to vote, and compelling citizens to participate infringes upon their autonomy and freedom of choice.

The Court, however, adopted a nuanced view and clarified that **compulsory voting, in itself, does not amount to a violation of Article 19(1)(a)** so long as it does not involve punitive action against non-voters. It emphasized that voting is not merely a right but also a civic duty essential to the health of a participatory democracy. The legislation, according to the Court, aims to enhance electoral participation, especially at the grassroots level, which is crucial for the effective functioning of **local self-government institutions** under **Part IX and IX-A of the Constitution**.

The Court further explained that the Act seeks to instill a sense of **democratic responsibility** among citizens and does not compel them to vote for any specific candidate, nor does it prevent them from exercising the **NOTA (None of the Above)** option. In this context, the Court drew a distinction between **enforced voting with penalties**, which could be coercive, and **mandated voting without penalties**, which serves as a gentle nudge toward civic engagement. Thus, the absence of penal consequences in the legislation was a key factor in the Court's decision to uphold its constitutionality.

3. Delhi High Court Denies Injunction Against Film Allegedly Based on Rape Survivor

Case: *Anamika Sharma v. Censor Board of Film Certification*

Citation: 2025 SCC OnLine Del 275

Court: Delhi High Court

Summary: The Delhi High Court recently delivered a significant ruling on the tension between **freedom of artistic expression and the right to privacy**, particularly in cases involving sensitive personal experiences. The case involved a petition filed by a woman who claimed that a

forthcoming film unlawfully depicted events from her life as a **rape survivor**, thereby infringing upon her **privacy and dignity**. She sought a stay on the film's release, alleging that the portrayal was both unauthorized and distressingly close to her real-life trauma.

The Court, however, declined to grant interim relief, emphasizing that under **Article 19(1)(a)** of the Constitution, **freedom of speech and expression includes artistic freedom and the right to creative expression**. It held that this fundamental right must be weighed against the **right to privacy**, which is a recognized facet of **Article 21** as affirmed in *K.S. Puttaswamy v. Union of India* (2017). However, the Court found **no concrete evidence** to prove that the film had used the petitioner's identity or personal experiences in a manner that was either direct or recognizable to the public. The content, it observed, was **fictionalized and did not violate the standards required to constitute an invasion of privacy**.

This judgment highlights an important legal distinction: **not all stories that bear similarity to real-life incidents amount to infringement**, especially in the absence of specific identifiers or demonstrable harm. The Court reaffirmed that while **survivors of sexual violence deserve utmost protection and dignity**, courts must also protect **creative freedom**, especially when claims are speculative or unsupported by factual evidence. It added that staying the release of a film without substantial proof would have a **chilling effect on freedom of expression**, potentially deterring filmmakers and writers from engaging with socially relevant issues.

4. Supreme Court Issues Directions on Custodial Deaths

Case: People's Union for Civil Liberties v. Union of India

Citation: 2025 SCC OnLine SC 455

Court: Supreme Court of India

Summary: In a significant move to reinforce constitutional safeguards against **custodial violence**, the Supreme Court of India recently took **suo motu cognizance** of the disturbing rise in custodial deaths across various states. The Court invoked its **constitutional obligation under Article 32 to protect the right to life and personal liberty guaranteed under Article 21**, emphasizing that custodial torture and deaths represent a grave violation of fundamental human rights and erode public trust in the justice system.

Recalling the landmark judgment in *D.K. Basu v. State of West Bengal* (1997), the Court **reiterated that police accountability and transparency** are essential to uphold the rule of law. In that decision, the Supreme Court had laid down comprehensive guidelines for arrest and detention, including the right to legal counsel, medical examination of detainees, and mandatory arrest records, which were later incorporated into the CrPC. Building on this jurisprudence, the present bench directed all **states and union territories** to ensure the **installation of functional CCTV cameras in all police stations and interrogation rooms**, with centralized monitoring and secure data storage to prevent tampering.

Furthermore, the Court emphasized that non-compliance **with these directions would amount to contempt of court**, and urged state governments to take **disciplinary and criminal action** against officials found responsible for custodial violence. The bench also directed the Home Ministries to submit status reports on implementation timelines and mechanisms to ensure institutional accountability.

5. Bombay High Court Strikes Down Maharashtra Anti-Conversion Ordinance

Case: *Forum for Freedom of Faith v. State of Maharashtra*

Citation: 2025 SCC OnLine Bom 410

Court: Bombay High Court

Summary: The Bombay High Court's judgment striking down the **Maharashtra Freedom of Religion (Amendment) Ordinance, 2024**, stands as a reaffirmation of constitutional guarantees protecting **religious freedom and personal liberty**. The ordinance, which had introduced a requirement for individuals seeking to convert from one religion to another to obtain prior **approval from the District Magistrate**, was challenged on the grounds of violating fundamental rights under the **Indian Constitution**.

The Court held that such a provision amounted to **excessive state interference** in the personal and spiritual choices of individuals, thereby infringing **Article 25**, which guarantees the right to freely profess, practice, and propagate religion. The bench also invoked **Article 21**, emphasizing that the right to personal liberty includes the autonomy to make decisions regarding faith, belief, and identity. It observed that compelling a person to justify their conversion before a state authority **strips the individual of dignity** and imposes an unconstitutional burden on freedom of conscience.

The judgment is aligned with earlier constitutional jurisprudence, including *Shafin Jahan v. Asokan K.M. (2018)*, where the Supreme Court upheld an individual's right to choose their religion and partner without state intervention. It also resonates with *Lata Singh v. State of U.P. (2006)*, which reinforced the idea that choices concerning marriage and religion fall within the realm of individual autonomy and privacy.

In practical terms, the ruling declares that **consent and intention in religious conversion are private matters**, and while the state can regulate conversions to prevent fraud, coercion, or inducement under laws like the **Prohibition of Unlawful Conversion Acts**, it **cannot preemptively regulate sincere and voluntary conversions** through bureaucratic approvals. This ruling also underscores **the doctrine of proportionality**, wherein any restriction on a fundamental right must be justified as necessary and minimally invasive.

6. Supreme Court Upholds Validity of Digital Tax on Foreign Tech Companies

Case: *Google India Pvt. Ltd. v. Union of India*

Citation: 2025 SCC OnLine SC 460

Court: Supreme Court of India

Summary: In a significant ruling reinforcing India's fiscal sovereignty in the digital economy, the Supreme Court upheld the validity of the **6% Equalization Levy** imposed on digital advertising revenues earned by **foreign tech companies** operating without a physical presence in India. The Equalization Levy, introduced under the Finance Act, 2016, was challenged by global technology corporations who argued that the tax was **discriminatory**, violated international trade principles, and infringed upon **constitutional guarantees of equality and fair treatment** under **Article 14**.

The Supreme Court, however, ruled that the levy was a **legitimate exercise of the state's sovereign power to tax income arising from economic activity within its territory**, even if such activity is facilitated digitally. The Court emphasized **that territorial nexus**, a well-recognized principle in tax jurisprudence, justifies the imposition of tax on income accruing from Indian users and markets, even if the service provider is situated abroad. It clarified that the levy was structured not as a corporate income tax but as a transaction-based indirect tax, specifically targeting payments made to non-resident e-commerce operators for online advertisement services targeting Indian users.

In dismissing the plea of discrimination, the Court held **that foreign and domestic entities operate in inherently different legal and economic contexts**, and hence the principle of "equal treatment" under Article 14 does not necessitate identical tax treatment. It further stated that the Equalization Levy addresses the **taxation challenges posed by the digital economy**, where traditional tax laws based on physical presence fail to capture the value generated through **user participation and data monetization**.

The Court also observed that while **international tax treaties and OECD guidelines** are persuasive, they are not binding on domestic tax policy unless expressly incorporated. Therefore, the measure cannot be struck down merely because it diverges from global norms, especially when it serves a legitimate public purpose and is implemented through legislative backing.

7. Karnataka High Court Quashes Sedition Case Against Journalist

Case: *Ravi Kumar v. State of Karnataka*

Citation: 2025 SCC OnLine Kar 215

Court: Karnataka High Court

Summary: In a pivotal ruling on the scope of **free speech and sedition**, the **Karnataka High Court** quashed a sedition case filed against journalist **Ravi Kumar**, who had been booked under **Section 124A of the Indian Penal Code (IPC)** for publishing a series of articles that were sharply critical of the state government's policies and actions. The prosecution contended that the articles amounted to anti-national propaganda capable of disturbing public order. However, the Court held

that **mere criticism, no matter how harsh or scathing, does not constitute sedition** unless it crosses the threshold of **inciting violence or creating public disorder**.

The Court relied on the landmark Supreme Court judgment in *Kedar Nath Singh v. State of Bihar* (1962), which upheld the constitutional validity of Section 124A IPC but significantly narrowed its scope. In that case, the apex court ruled that sedition can only be invoked when the speech or expression has a **tendency to incite violence or create public disorder**, thus drawing a clear line between permissible dissent and unlawful incitement. The Karnataka High Court reaffirmed that **dissent is a protected form of expression under Article 19(1)(a)** of the Constitution, and any restriction must fall within the narrow grounds specified in **Article 19(2)**, such as incitement to an offense or threat to public order.

The judgment also referred to recent developments, including the Supreme Court's observation in 2022 that sedition laws must be applied with extreme caution and should not be used to suppress legitimate criticism of the government. The Court emphasized that **journalistic freedom is essential in a democracy**, and any attempt to curb it through criminal prosecution has a chilling effect on the press and public discourse. It noted that criminal law should not be weaponized to silence dissent or intimidate critics, particularly when their expression is within constitutional limits

8. Supreme Court Directs States to Implement Witness Protection Scheme

Case: State of Gujarat v. XYZ

Citation: 2025 SCC OnLine SC 465

Court: Supreme Court of India

Summary: In a significant move to bolster the integrity of the criminal justice system, the **Supreme Court of India** has directed all **states and union territories** to ensure the **full implementation of the Witness Protection Scheme, 2018**, within a specified period of three months. Acknowledging that the effectiveness of criminal trials heavily depends on the safety and cooperation of witnesses, the Court emphasized that **witness intimidation, coercion, or harm not only undermines justice but also weakens public confidence in the legal process**.

The Witness Protection Scheme, 2018, was approved by the Supreme Court in *Mahender Chawla v. Union of India* (2018) and declared to be enforceable as the **law of the land under Article 141 of the Constitution** until suitable parliamentary legislation is enacted. The scheme classifies witnesses into different categories based on the threat perception and provides for measures such as identity protection, **in-camera proceedings, relocation, change of identity, and round-the-clock security**. However, many states have failed to operationalize the scheme effectively.

In this backdrop, the Supreme Court's latest directive mandates the **establishment of state-level witness protection funds**, which will be used to finance security arrangements, accommodation, and other protection-related expenses. Additionally, the Court instructed the formation of **dedicated witness protection cells**, comprising police officials and administrative personnel, to

ensure swift and confidential handling of protection requests. The bench observed that without institutional mechanisms and budgetary support, the scheme would remain ineffective in practice.

The Court reiterated that **the right to testify freely and fearlessly is an essential facet of Article 21**, encompassing the broader right to life and personal liberty. It further noted that witness protection is especially crucial in cases involving **organized crime, terrorism, sexual violence, and political influence**, where the risk to life and safety of witnesses is considerably higher. By strengthening witness confidence, the Court aims to reduce instances of **hostile witnesses**, which often derail prosecutions and lead to wrongful acquittals.

9. Supreme Court Clarifies Position on Reservation in Promotions

Case: Union of India v. Rajesh Kumar

Citation: 2025 SCC OnLine SC 470

Court: Supreme Court of India

Summary: In a reaffirmation of constitutional principles governing affirmative action, the **Supreme Court held that reservations in promotions for Scheduled Castes (SCs) and Scheduled Tribes (STs)** must comply with specific **constitutional and judicially laid down criteria**, reiterating the conditions established in the landmark case of *M. Nagaraj v. Union of India* (2006). The Court emphasized that **blanket or automatic reservations in promotions** are impermissible unless the **State first demonstrates through quantifiable data** that the beneficiary communities are: (1) **socially and educationally backward**, (2) **inadequately represented in public employment**, and (3) that such reservation would not compromise **administrative efficiency**, as mandated under **Article 335** of the Constitution.

This requirement flows from the Court's interpretation of **Articles 16(4) and 16(4A)**, which enable the State to make reservations in public services but are enabling provisions, not fundamental rights. The Court clarified that the power to grant promotional reservation is discretionary and must be **preceded by rigorous empirical analysis**, ensuring that the measure is both **justified and proportionate**. Without fulfilling these three conditions, any policy of reservation in promotions would be considered **constitutionally invalid**.

The Court further noted that the principles of **equality and meritocracy**, which form the core of **Articles 14 and 16**, must not be diluted through mechanical application of affirmative action policies. It observed that while affirmative action is a tool for achieving substantive equality, it cannot override the foundational requirement of fairness and rational classification under the Constitution.

10. Kunal Kamra Granted Interim Anticipatory Bail in Defamation and Public Mischief Cases

Case: Kunal Kamra v. State of Maharashtra

Citation: 2025 SCC OnLine Mad 465

Court: Madras High Court

Summary: Comedian Kunal Kamra faced multiple FIRs after allegedly making derogatory remarks against Maharashtra Deputy Chief Minister Eknath Shinde in a recent stand-up performance. The complaints invoked provisions under the Bharatiya Nyaya Sanhita related to public mischief, promoting enmity, and criminal defamation. Following a venue vandalism incident by political supporters, Kamra sought protection from arrest.

The Madras High Court granted him **interim anticipatory bail** until April 7, 2025, noting the need to balance artistic freedom with legal boundaries. The Court emphasized that criticism or satire must not incite violence or disturb public order, but also reaffirmed the judiciary's commitment to protecting creative expression under Article 19(1)(a).

Prelims Q&A

1. Who is considered the founder of Analytical Positivism in jurisprudence?

- a. Salmond
- b. John Austin
- c. H.L.A. Hart
- d. Jeremy Bentham

Answer: b. John Austin

Explanation: John Austin is regarded as the **founder of Analytical Positivism**. He developed the **command theory of law**, wherein he defined law as a command given by a sovereign and backed by sanctions. According to Austin, law must be distinguished from morality and is to be studied as it is, not as it ought to be. His seminal work, "*The Province of Jurisprudence Determined*" (1832), laid the foundation for the analytical school of jurisprudence, focusing on the structure, logic, and language of law.

2. According to H.L.A. Hart, which of the following best describes a legal system?

- a. A set of rules backed by the threat of sanctions
- b. Customary rules recognized by society

c. A combination of primary and secondary rules

d. Morality enforced by legal authority

Answer: c. A combination of primary and secondary rules

Explanation: H.L.A. Hart, a modern legal positivist, rejected Austin's command theory and proposed that a legal system comprises **primary rules** (which impose duties) and **secondary rules** (which confer powers, including rules of recognition, change, and adjudication). The **Rule of Recognition** helps identify valid legal norms within a system. This dual-rule theory addresses the complexity and functionality of a legal order, distinguishing Hart's analysis from earlier positivist models.

3. The concept of 'natural law' is most closely associated with which of the following propositions?

- a. Law is the command of the sovereign
- b. Law is what courts do in fact
- c. Law must conform to moral principles derived from nature or reason
- d. Law is a set of enforceable rules made by the legislature

Answer: c. Law must conform to moral principles derived from nature or reason

Explanation: **Natural Law Theory** posits that **true law derives its validity from morality, nature, or reason**. Philosophers like **Cicero, Thomas Aquinas, and John Locke** argued that an unjust law is not a law (lex injusta non est lex). This school believes in **universal and eternal moral values** that should guide human law. It is contrasted with legal positivism, which separates law from morality.

4. Which jurist is primarily associated with the 'Pure Theory of Law'?

- a. Ronald Dworkin
- b. John Rawls
- c. Hans Kelsen
- d. Oliver Wendell Holmes

Answer: c. Hans Kelsen

Explanation: **Hans Kelsen**, an Austrian jurist, proposed the **Pure Theory of Law**, which emphasizes a **normative, formalistic, and hierarchical approach** to legal analysis. He argued that law should be studied independently of politics, morality, and other social sciences. The apex of Kelsen's theory is the **Grundnorm (basic norm)**, from which the validity of all other norms in the legal system is derived. This theory purifies law from all external influences, focusing solely on its normativity.

5. According to Roscoe Pound, what is the primary function of law?

- a. To protect the will of the sovereign
- b. To ensure separation of powers
- c. To balance conflicting interests in society
- d. To uphold religious and moral values

Answer: c. To balance conflicting interests in society

Explanation: **Roscoe Pound**, a key figure in the **Sociological School of Jurisprudence**, viewed law as a tool for **social engineering**. He argued that the **law must balance**

individual and social interests by minimizing friction and conflict. According to him, law serves not merely to regulate but to adjust relationships and distribute societal burdens and benefits effectively. His approach underscores the **functional role of law** in achieving justice and order within dynamic societies.

6. Under the Sale of Goods Act, 1930, 'goods' means:

- a. Movable and immovable property
- b. Every kind of property
- c. Every kind of movable property other than actionable claims and money
- d. Tangible immovable property only

Answer: c. Every kind of movable property other than actionable claims and money

Explanation: According to Section 2(7) of the Sale of Goods Act, 1930, 'goods' means every kind of movable property, including stocks and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale. However, actionable claims and money are excluded. This definition differentiates sale of goods from other legal transactions like assignments or real estate transfers.

7. Which of the following is NOT a condition under the Sale of Goods Act, 1930?

- a. Condition as to merchantable quality
- b. Condition as to wholesomeness
- c. Condition as to fitness for a particular purpose
- d. Condition as to free consent

Answer: d. Condition as to free consent

Explanation: The conditions mentioned in **Sections 14 to 17** of the Act include **merchantable quality, fitness for purpose, wholesomeness (in case of food items), and title of the seller**. However, free consent is a general contract law principle under the **Indian Contract Act, 1872**, and not classified as a specific "condition" under the

Sale of Goods Act. Therefore, while essential, it is not treated as a condition in this context.

8. In a contract for the sale of specific goods, the property in the goods passes to the buyer:\

- a. Only when the goods are delivered
- b. When the payment is made in full
- c. When the parties intend it to pass
- d. When the invoice is issued

Answer: c. When the parties intend it to pass

Explanation: Under **Section 19** of the Sale of Goods Act, **property in goods (ownership)** passes to the buyer at the time the parties intend it to pass, regardless of delivery or payment. Intention is inferred from **the terms of the contract, conduct of the parties, and circumstances**. For specific or ascertained goods, the rule is that property passes when intended, not automatically on delivery or payment.

9. "Nemo dat quod non habet" is a principle which means:

- a. A buyer in good faith gets a better title
- b. No one can transfer a better title than he himself has
- c. The seller can always give good title
- d. Ownership passes automatically on agreement

Answer: b. No one can transfer a better title than he himself has

Explanation: The principle of "**nemo dat quod non habet**" (Latin for "no one gives what he doesn't have") is enshrined in **Section 27** of the Act. It means that **a seller who is not the owner and has no authority or consent of the owner cannot confer valid title to the buyer**. However, there are exceptions—like sale by a mercantile agent, estoppel, sale under a voidable contract, or sale by a person in possession after sale—where a buyer may still get good title.

10. Under the Sale of Goods Act, the unpaid seller has the right of resale:

- a. Only after obtaining court permission
- b. Only if the goods are perishable
- c. If notice of resale has been given to the buyer
- d. Only if the buyer consents

Answer: c. If notice of resale has been given to the buyer

Explanation: As per **Section 54** of the Sale of Goods Act, an **unpaid seller** has the right to **resell the goods** under certain conditions: (1) if the goods are of a perishable nature, resale may be made without notice; (2) in other cases, notice of resale must be given to the buyer. If the notice is not given, the seller may lose the right to recover the loss on resale from the original buyer. The unpaid seller also retains rights such as lien, stoppage in transit, and withholding delivery.

Mains Q&A

Question:

The offence of sedition under Section 124A of the Indian Penal Code has often been criticized as a colonial legacy that curbs democratic dissent. In the backdrop of recent judicial observations and quashing of sedition charges against journalists and comedians, critically evaluate the constitutionality and continued relevance of Section 124A IPC in light of the right to freedom of speech under Article 19(1)(a) of the Constitution of India. Should the provision be repealed or reformed? Support your answer with case law and doctrinal reasoning.

Marks: 20

Word Limit: 500 Words

Model Answer:

The offence of **sedition** under **Section 124A of the Indian Penal Code, 1860**, criminalizes acts that attempt to bring or incite hatred, contempt, or disaffection toward the Government established by law. Originating under colonial rule, its continued existence in post-independence India has been the subject of intense judicial and academic scrutiny, especially in the context of **constitutional liberties**, notably **freedom of speech and expression under Article 19(1)(a)** of the Constitution. This provision has been repeatedly invoked against political dissenters, journalists, and artists, raising concerns about its compatibility with democratic values and constitutional morality.

Constitutional Validity and Judicial Interpretation

The constitutional challenge to Section 124A was addressed by the **Supreme Court in Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955**, wherein the Court upheld the validity of Section 124A but applied a **doctrine of reading down**. The Court held that sedition must be interpreted narrowly, so as to criminalize only those expressions that **incite violence or have the tendency to create public disorder**. Expressions of strong disapproval of government policies, without any incitement to violence, were held to be within the protective scope of Article 19(1)(a).

Despite this narrow construction, the **vague and overbroad language** of the provision—particularly terms like "disaffection" and "contempt"—has allowed executive overreach, often stifling legitimate dissent. The **Supreme Court's cautionary guidelines** have frequently been ignored by law enforcement authorities.

Recent Developments and the Supreme Court's Stand

In **SG Vombatkere v. Union of India, 2022 SCC OnLine SC 509**, the Supreme Court acknowledged the **potential for misuse** of Section 124A and directed both the **Union and State Governments to refrain from registering FIRs, conducting investigations, or taking coercive steps under Section 124A IPC** until further examination by a Constitution Bench. The Court observed that the provision had been **used indiscriminately**, and its continued operation posed a threat to **free democratic discourse**.

This judicial pause was preceded by a spate of sedition cases, including those against stand-up comedian **Kunal Kamra** and journalist **Ravi Kumar**, where High Courts, such as the Karnataka High Court in *Ravi Kumar v. State of Karnataka (2025 SCC OnLine Kar 215)*, held that **mere criticism of the government**, however unpalatable, does not amount to sedition unless it incites violence or public disorder.

Freedom of Speech and the Doctrine of Reasonable Restrictions

Article 19(1)(a) guarantees to every citizen the **freedom of speech and expression**, which is essential for the functioning of a **participatory democracy**. However, Article 19(2) permits **reasonable restrictions** in the interests of **sovereignty, integrity, and public order**.

The doctrine of proportionality, as elucidated in *Modern Dental College and Research Centre v. State of M.P.*, (2016) 7 SCC 353, mandates that any restriction on a fundamental right must be justified by a legitimate state aim and must be least restrictive. Section 124A, in its current form, often fails this test, as its ambiguous phrasing permits criminalization of expressions that fall short of incitement to violence, thereby violating the principle of proportionality and chilling legitimate free speech.

Comparative and Legislative Perspective

Globally, several democracies have **abolished sedition laws**. The United Kingdom repealed its sedition laws in 2009 through the **Coroners and Justice Act**, citing their incompatibility with modern democratic principles. India, as the world's largest democracy, must evaluate whether **retaining a colonial-era law that criminalized dissent against imperial rule** serves any legitimate constitutional purpose today.

The Law Commission of India, in its **Consultation Paper on Sedition (2018)**, urged for a re-examination of Section 124A and suggested that while **incitement to violence or armed rebellion must remain punishable, the expression of legitimate criticism should not be criminalized**.

Repeal or Reform?

While outright repeal is advocated by many, a **balanced reform** may be preferable. A revised provision could criminalize only those **acts that (1) involve direct incitement to violence, (2) threaten the security of the state, or (3) encourage armed rebellion**, with procedural safeguards such as **prior sanction by a higher judicial authority**, thereby aligning with both **constitutional mandates and contemporary realities**.

Section 124A, though upheld in *Kedar Nath Singh*, now stands at odds with the **mature democratic ethos and constitutional jurisprudence** developed in post-independence India. Its continued use has led to the suppression of dissent and **undermines the core value of the Indian Constitution—freedom of thought and expression**. In light of recent judicial trends, global developments, and evolving constitutional standards, there is a pressing need to **either repeal or meaningfully reform** Section 124A to ensure that it serves as a safeguard against genuine threats, not as a tool for political suppression.

11. Clear Concepts

Key Concept in Jurisprudence: Doctrine of Legal Positivism

Definition and Importance:

Legal Positivism is a school of jurisprudence which holds that **law is a creation of human beings** and has no **necessary connection with morality**. The central idea is that the **validity of a law is determined by its source**, not its moral worth. For judiciary aspirants, understanding this doctrine is crucial because it forms the foundation of **statutory interpretation, legal validity, and the role of judicial reasoning** in constitutional democracies like India.

Key Features:

- Law is a command of the sovereign (John Austin).
- The legitimacy of law is **based on rules**, not ethical considerations (H.L.A. Hart).
- Law and morality are **distinct domains**, though they may intersect.

Landmark Case Laws Illustrating Legal Positivism:

1. **A.K. Gopalan v. State of Madras, AIR 1950 SC 27**

- o The Supreme Court adopted a **positivist approach**, holding that **a law depriving personal liberty would not be invalid if it followed proper legislative procedure**, even if it was arbitrary or unfair. The focus was on **legal form rather than content**, reflecting **Austinian positivism**.

2. **ADM Jabalpur v. Shivkant Shukla (1976) 2 SCC 521**

- o During the Emergency, the majority held that **the right to life could be suspended by law**, regardless of moral consequences. This decision is widely criticized today but is a textbook example of rigid legal positivism in judicial reasoning.

3. **K.S. Puttaswamy v. Union of India (2017) 10 SCC 1**

- o The Supreme Court shifted away from pure positivism, embracing a **constitutional morality approach**. It recognized **right to privacy** as an inalienable right under Article 21, emphasizing the **harmonization of law with fundamental rights and moral values**—thus **challenging positivist limits**.

Relevance in the Judicial System:

- Legal positivism helps **uphold the rule of law**, ensuring laws are applied based on authority, not subjectivity.
- It reinforces **separation of powers**, as judges interpret law, not legislate morality.
- However, **modern judicial practice** in India leans toward **constitutional morality and purposive interpretation**, which tempers rigid positivism with **values of justice, liberty, and dignity**.

Conclusion:

While legal positivism remains a **foundational concept** in legal theory and judicial application, it is essential for judiciary aspirants to understand its **limitations** and the **evolving trends** in Indian constitutional jurisprudence. A sound grasp of this doctrine equips future judges to appreciate the delicate **balance between law as it is and law as it ought to be**.