The Supreme Court's Clarification on Sedition

Constitution, freedom of expression and the judiciary | News context: 21 May 2026 | Published: 17 October 2026

Four years after staying sedition trials, the Supreme Court clarified on 21 May 2026 that where the accused has no objection, courts may proceed on merits with trials, appeals and other proceedings related to Section 124A of the Indian Penal Code. The message is two-sided: the 2022 protective stay is a shield for the accused, not a shackle; but the core question of the law's constitutional validity remains undecided by this clarification.

Why in the News

On 21 May 2026, a three-judge bench of Chief Justice of India Surya Kant, Justice Joymalya Bagchi and Justice Vipul M. Pancholi gave this clarification in Kamran v. State of Madhya Pradesh (Diary No. 16320/2026). The petitioner has been lodged in Bhopal's central jail for 17 years; on 27 February 2017 the sessions court sentenced him to life imprisonment under IPC Sections 122, 124A, 153A, the Unlawful Activities (Prevention) Act (UAPA) and the Arms Act. His appeal before the Madhya Pradesh High Court remained pending because of the 2022 interim order - the High Court was hesitant to hear proceedings involving 124A. The bench clarified para 8(d) of the 11 May 2022 interim order in S.G. Vombatkere v. Union of India: where the accused has no objection to the proceedings continuing, there is no bar on courts; it also requested the High Court to hear the appeal on merits immediately. No comment was made on the merits.

Section 124A and the 2022 Interim Order: Background

The offence of sedition (Section 124A IPC) punishes exciting hatred or contempt towards the government with imprisonment up to life. In 1962, in Kedar Nath Singh v. State of Bihar, the Supreme Court upheld it but limited its scope - mere criticism without a tendency to incite violence or public disorder is not an offence. On 11 May 2022, in S.G. Vombatkere, a bench of then Chief Justice N.V. Ramana - amid the Centre's promise of "reconsideration" - stayed all pending proceedings under Section 124A and expressed the "hope and expectation" that the Centre and states would refrain from new FIRs, investigations and coercive action; it left the accused free to approach courts for relief; and it allowed proceedings under other sections only where the accused would not be harmed. The clarification of 21 May 2026 has changed none of this.

Main Facts

The bench and the essence of the order: 21 May 2026; Chief Justice Surya Kant, Justice Bagchi, Justice Pancholi. The order: "where the accused has no objection to a charge-sheeted trial, appeal or other proceedings under 124A continuing, courts may decide such cases on merits and in accordance with law" (verbatim text of the order from reports by The Hindu/LiveLaw).

Facts of the main case: the petitioner Kamran has been in prison for 17 years; sentenced to life imprisonment by the sessions court in 2017 (124A, 122, 153A IPC + UAPA + Arms Act); his appeal is pending before a division bench of the Madhya Pradesh High Court; senior advocate Trideep Pais argued for him (LiveLaw).

The 2022 order's three protections remain intact: the appeal to refrain from new FIRs, investigations and coercive action; the accused's freedom to seek relief; proceedings of those who do not consent will remain stayed - 21 May made no amendment (The Hindu analysis, 29 May).

The core constitutional question is pending: the Vombatkere petitions on the validity of Section 124A were under consideration as of May 2026; the question of referral to a larger bench, raised in 2023, was deferred after the Bharatiya Nyaya Sanhita (BNS) arrived; BNS Section 152 was also under challenge as "sedition's new form" (Supreme Court Observer, May 2026).

Oral remark of February 2026: Chief Justice Kant had orally said that a government review of the old IPC's sedition provision could not stop Parliament from bringing an equivalent provision (Section 152) in the BNS - the legislature is independent of the executive (The Hindu).

Why This Clarification Is Not "Sedition's Return" - and Why It Is Still Being Discussed

Shield versus shackle: the 2022 stay was meant to stop the state from using the law, not to bind the accused in indefinite custody. In the Supreme Court Observer's words, the clarification treats the 2022 order as a "shield", not a "shackle" - consent returns to the accused the agency to have their appeal heard.

A new equality challenge: The Hindu's analysis: the trials of those who consent will proceed, the rest will remain pending - two classes will arise under the same section. That too when the section's validity itself is undecided; the accused are caught between trial under an uncertain law and an uncertain wait.

A procedural question: the clarification came in an unconnected case (Kamran), without hearing the Vombatkere petitioners. If one accused consents and a co-accused does not, lower courts will face the practical problem of split proceedings.

Speedy justice versus constitutional suspension: 17 years of custody shows that even a protective stay can become a delay that takes away the right to justice. The bench's decision kept in mind the burden on the justice system and the accused's closure; but the true solution is not a suspended clarification, it is a decision on the core validity.

Analysis and Way Forward

The 21 May order is a procedural correction, not a revival of the sedition law - 124A is neither fully alive nor dead: "stayed, disputed, and now capable of being run selectively at the accused's initiative" (SCO). After this (in the context of May 2026), three points were worth watching: (1) the final hearing on the Vombatkere petitions - the validity of 124A; (2) the challenge to BNS Section 152 - does the new law repeat the old flaws; (3) Kamran's appeal in the Madhya Pradesh High Court - the first test of the clarification. The core question for Mains: how does the judiciary strike a balance - the state's security concern, the citizen's freedom of expression, and the prisoner's right to speedy justice.

Distinctions Within the Concept

Abeyance means the law exists but proceedings are halted; striking down ends the law itself - neither has happened to 124A, nor has validity been restored. Reading down is the remedy applied in Kedar Nath (1962) - the law survived, its scope shrank. Also: 124A IPC is the old provision (the IPC now stands repealed), while BNS Section 152 is a new, independent provision - the validity of both was being contested separately (as of May 2026).

Mains Angle

GS-II: the Indian Constitution (Article 19(1)(a) versus 19(2)), fundamental rights, the judiciary's role, governance. Useful context: reasonable restrictions on freedom of expression, the colonial legacy of the law, judicial delay and the undertrial crisis, the legislature-judiciary balance. In the conclusion, emphasise that "the alternative to the law's suspended state is a final decision".

UPSC CSE Mains Style: Original Practice Question

Review the current legal position of the sedition law between the 2022 stay arrangement and the 2026 consent-based clarification. Does this arrangement balance the interests of both freedom of expression and speedy justice?

(Answer in 150 words) | 10 marks

Answer Outline

Introduction: Keep the 2022 interim protection and the procedural clarification of 21 May 2026 (on the accused's consent) separate.

Main Body: The three protections of the 2022 interim order; the essence of the 2026 clarification and its reason (17 years in custody); the equality challenge of the consent-based division; the pendency of validity and BNS Section 152.

Conclusion: Link the accused's consent to real choice and speedy justice; do not let the protective stay become a cause of unwanted delay. Do not write the procedural permission as the final decision on the constitutional validity of Section 124A; keep the difference between old IPC cases and the independent challenge to BNS Section 152.

Verification note: we have not read the original order-sheet of the Kamran case (sci.gov.in PDF); the quotations of the order are taken from the verbatim text printed in The Hindu's and LiveLaw's 21 May reports. The case details (Diary No. 16320/2026, the bench, para 8(d)) were matched from these two sources and the SCI cause list.

Remember: keeping a law suspended indefinitely is no solution - neither for the accused nor for expression; 124A's fate will be decided by the validity hearing alone.

Sources

- The Hindu: Sedition trials can proceed if the accused agrees - SC, 21 May 2026
- LiveLaw: SC clarification on 124A cases (with text of the order), 21 May 2026
- Supreme Court Observer: Sedition in abeyance, but not in limbo, 22 May 2026
- The Hindu analysis: The revival of sedition tied to consent, 29 May 2026

Also read: The Place of Protest: The Test of Rights and Regulation (Hindi article)