

REVISITING SEDITION IN INDIA: CONSTITUTIONAL CONTINUITY AND CHANGE FROM THE IPC TO THE BNS

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ABSTRACT

The law of sedition in India has undergone a significant constitutional and legislative transformation, evolving from its colonial origins under Section 124A of the Indian Penal Code, 1860 to the contemporary framework of Section 152 of the Bharatiya Nyaya Sanhita, 2023. This paper examines the historical development, judicial interpretation, and constitutional implications of sedition law in India, with particular emphasis on the relationship between national security and the fundamental right to freedom of speech and expression. It traces the colonial origins of Section 124A and its application against nationalist leaders and political dissenters, followed by the divergent judicial approaches adopted by the Federal Court and the Privy Council. The study further analyses the constitutional challenges to the provision and the landmark decision in Kedar Nath Singh v. State of Bihar, which limited the application of sedition to acts involving incitement to violence or public disorder. The paper also examines subsequent judicial decisions that sought to distinguish legitimate criticism and political dissent from acts threatening public order and national security. Against this backdrop, the paper analyses the replacement of Section 124A IPC with Section 152 of the Bharatiya Nyaya Sanhita, 2023, dealing with acts endangering the sovereignty, unity, and integrity of India. It critically evaluates whether the new provision represents a substantive departure from the colonial sedition law or merely expands the scope of criminalisation through broader terminology. The paper also explores the challenges posed by digital communication and social media in regulating speech. It concludes that while the protection of national sovereignty and security is a legitimate state objective, broadly worded criminal provisions may adversely affect democratic dissent and freedom of expression. Clear statutory standards and effective judicial oversight are therefore essential to maintain an appropriate balance between national security and individual liberties.

KEYWORDS: *Sedition, Section 124A IPC, Section 152 BNS, Freedom of Speech and Expression, National Security, Political Dissent, Public Order.*

INTRODUCTION

According to the Oxford Dictionary the meaning of the word ‘sedition’ is “conduct or language inciting rebellion against the constituted authority in a state”. Before independence the law of sedition under section 124A, Indian Penal Code, was used against the national leaders such as Bal Gangadhar Tilak, Annie Besant and Mahatma Gandhi and after independence against a number of authors, artists, activists. Mahatma Gandhi called section 124A IPC as the prince among the political sections of the IPC aimed to suppress the freedom of the citizen. After independence, India has become a sovereign entity and sovereignty lies with the people of India as the Preamble of the Constitution emanates from them. Now the right of the citizens to criticize the government is superior to the right of the government to protect itself against sedition. The offense of sedition is also beyond the scope of the international standards which limits the freedom of expression of the people.

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The law of sedition was developed in the era of monarchy but in independent India, it has been used as a tool to violate the very purpose of democratic system of government. It is of no doubt that the sedition laws were one of the most extreme legal steps that were implemented by the state to silence public dissent. Though it is Section 124A of the Indian Penal Code that provides the definition and sanction for sedition, it should be noted that this did not form part of the Penal Code initially. It was only in 1870 that the provision on sedition was introduced into the IPC. The sole reason why the British brought this law was to suppress the opposition they faced from Indians and to penalize their actions. Sedition in no way resembles waging war against the government or making allies with the enemies of the Government of India and on this point, it differs from treason. Section 124A IPC qualifies well within the powers granted to the state under Article 19(2) of the Constitution of India, but the discussion on the impact of sedition laws should proceed on the understanding that Article 19(2) is not a power granted to the state to curb the right to freedom of speech and expression given under Article 19(1) (a) but is in fact a limitation on the state not to impose further restrictions than those contained in Article 19(2).

Sedition, dealt under section 124-A of the Indian Penal Code, 1860 characterized as an offence against the State is often misused by the ruling party as a restriction of free speech, violating the Fundamental Rights of the citizens. This section reads as follows:

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

The section contains three explanations, and the first explanation defines the expression “disaffection” as a term which includes disloyalty and all feelings of enmity. The second explanation states that those comments which express disapprobation with a view to obtain any form of alteration by lawful means without attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Lastly, the third explanation states that those comments which express disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under the section.

The scope of Section 124-A is fairly wide as the section itself is broadly worded. If a government so wishes, it may even indiscriminately use this law to suppress any form of dissent from the people. The Supreme Court through the

landmark judgement of *Kedar Nath*¹ has indeed interpreted this section to ensure that it applies only to actions that have a direct and unambiguous connection to violence or public disorder. But politicians with power, police authorities and lower courts have a tendency to ignore these niceties in applying such laws.

OBJECTIVES OF STUDY

This paper will provide a detailed historical overview of the origin and development of sedition laws in India, starting from their colonial inception under British rule, comprehending the motivations behind the initial introduction of sedition laws and their subsequent evolution. Further, it will also trace the legal and judicial evolution of sedition laws in India, focusing on key amendments, landmark judgments, and shifts in legal interpretations from independence to recent legal reforms under the Bharatiya Nyaya Sanhita 202, while assessing the impact of sedition laws on democratic freedoms, focusing on how these laws have been used to address dissent and criticism of the government.

RESEARCH METHODOLOGY

The research seeks to provide a comprehensive analysis of the evolution of sedition laws in India, tracing their origins from colonial times to their reformation under the Bharatiya Nyaya Sanhita (BNS) 2023. This study will examine legal texts, historical documents, and contemporary case laws to understand the shifts in the legal landscape and the implications for democratic freedoms. This includes examination of original legal documents- Constitution of India, Section 124A of the Indian Penal Code (hereinafter ‘IPC’) and Section 152 of the BNS 2023 and analysis of landmark Supreme Court judgments and lower court rulings on sedition, focusing on their interpretation and application of the law. Further, secondary sources like scholarly books, articles, and legal commentaries on sedition laws have also been referred to.

MEANING OF SEDITION

The word ‘sedition’ is derived from the Latin word *seditio* which means “a going aside”. Following three meanings have been assigned to the word sedition² :

- i. Dissensions ; strife between factions ; partisan, violence.
- ii. An insurrection against constituted authority; a tumult caused by dissension, partisan, hatred or discontent.

¹ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

² H. P. Gupta & P. K. Sarkar, *Law relating to Press and Sedition in India*, 1st edition (2002), Orient Publishing Company, 9, Lowther Road, Darbhanga Colony, Allahabad – 211 002 at p.140-141.

- iii. A commotion or the raising of the commotion, in a state not amounting to an insurrection; conduct tending to treason but without an overt act; excitement to discontent against government, or of resistance to lawful authority.

The offence has also been described as under³:

- (i) Violent party strife; a factious contest attended with rioting and disorder.
 - (a) A concerted movement to overthrow an established government ; a revolt, rebellion, mutiny
 - (b) Conduct or language inciting rebellion against the constituted authority in a State.
- (ii) Of inanimate things : Tumult, uproar

From the definition given above it is clear that the word sedition would include any word or act directed against the lawfully constituted authority, which may bring the Government or the sovereign into contempt, or hatred, or, generally which may cause breach of the peace of the State. In a wider sense, it can be defined as words, spoken or written, or conduct calculated to bring into hatred or contempt, or to excite disaffection against, the sovereign or his or her heirs, or the lawful government and Constitution, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt by unlawful means to alter any matter in church or State by law established, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote ill-will or hostility between different classes of subjects.⁴

The correct assessment of this offence is that it is an offence short of treason but more serious than the ordinary breach of peace or conduct tending thereto.⁵ From all the above, it appears that the term is an elastic one, including offences ranging from libel to treason. All separatist tendencies within a State are called seditious. Now the word sedition has come to be applied to practices which tend to disturb internal public tranquility by deed, word or writing but which do not amount to treason and are not accompanied by or conducive to open violence.⁶ In England, with the growth of liberty of speech and expression the courts began to introduce guiding principles so as to govern the judges in deciding when an intention to excite ill-will and hostility is seditious and when it is not. Fitzerland J, in *R. v. Sullivan*⁷ which was later followed and

³ Ibid.

⁴ Ibid.

⁵ *Supra* note 2.

⁶ *The law of sedition in India*, (1964), published by Indian Law Institute, Bhagwan Dass Road, New Delhi p.1.

⁷ 11 Cox. C.C. 44.

approvingly quoted in *R. v. Burns and Others*⁸ observed: “Sedition in itself is a comprehensive term and it embraces all those practices ‘whether by word, deed or writing which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the Empire. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government...and the very tendency of sedition is to incite the people to insurrection or rebellion.”

Similarly Coleridge, J. in *R. v. Alfred*⁹ said that the word ‘sedition’ in its ordinary natural sense means a tumult, an insurrection, popular commotion or an uproar; it involves violence or lawlessness in some form. Thus under English law it came to be established rule that in order to constitute the offence of sedition, the feelings expressed to the acts done must not only bring the government into hatred or contempt or disaffection but should generate or tend to generate or excite the feelings to such a degree as is likely to lead to tumult or public disorder. Thus public disorder is the crux of the offence of sedition.

Section 124-A of the Indian Penal Codes is also based on the common law. In *Nazir Khan v. State of Delhi*¹⁰, the Supreme Court explained the meaning of sedition in the following words:

*“Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.”*¹¹

Thus, sedition in the ordinary sense means stirring up rebellion or revolt against the Government. However technically, it means and includes all those acts and practices which are aimed at exciting discontent or disaffection towards the Constitution, or the Government, or Parliament so as to create public disturbance, or lead to civil war. In other words, sedition is used to designate those activities, whether by words, or deeds or writings, which are calculated to promote public disharmony and disorder and lead people to subvert the Government established by law.¹²

⁸ 6 Cox. C.C.355 , 361 quoted in K. N. Chandrasekhran Pillai, Shabisten Aquil, *Essays on the Indi Penal Code*, (2005), Indian Law Institute, Bhagwan Dass Road, New Delhi, p.283..

⁹ 22 Cox C.C.1,3.

¹⁰ (2003) 8 SCC 461.

¹¹ Ibid. ; also see K. N. Chandrasekhran Pillai, Shabisten Aquil, *Essays on the Indian Penal Code*, (2005), Indian Law Institute, Bhagwan Dass Road, New Delhi, p.284.

¹² *Supra* note 1.

COLONIAL ORIGINS OF SEDITION LAW

SEDITION LAW OF 1870 AND ITS IMPLICATIONS

Section 124A, the law defining sedition in the IPC, was originally embodied in Section 113 of Macaulay's Draft Penal Code of 1837-39, but ultimately this section was omitted from the IPC when it was enacted in 1860. According to James Fitzjames Stephens, known as the architect of the Indian Evidence Act, 1872, this was an accidental omission. Also, another plausible explanation for this could be that the British government wanted to impose more wide-ranging policies against the press like deposit-forfeiture system, preventive action powers etc.

NOTABLE CASES UNDER COLONIAL LAW

The initial cases registered under the offence of sedition included various prosecutions against the editors or chiefs of leading Indian nationalist newspapers. The case of Jogendra Chandra Bose¹³, editor of the newspaper, Bangobasi, was the first among them. His article criticising the Age of Consent Bill, for posing a threat to religion and for its coercive relationship with Indian nations and his comments on the negative economic effect of British colonialism was placed under the radar. Bose faced prosecution for allegedly exceeding the boundaries of lawful criticism and for inciting religious sentiments. Despite his defense that his article did not mention rebellion, the judge dismissed this argument. Nevertheless, the proceedings against Bose were dropped after he issued an apology.

In another case, *Q.E. v. Bal Gangadhar Tilak*¹⁴, some articles published in the Marathi newspaper Kesari addressing Shivaji killing Afzal Khan, were claimed to have incited seditious and anti-national feelings and thereby having instigated the assassination of British civil service officer Rand and another officer, Lieutenant Ayherst. In spite of a strong argument from Mohammad Ali Jinnah, one of the most prominent advocates of that time, the judges convicted Tilak and sentenced him to a six years rigorous detainment with transportation.

Strachey J. in this case observed that,

“the amount or intensity of the disaffection is absolutely immaterial...if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under this section. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any

¹³ *Empress v. Jogendra Chandra Bose* I.L.R. XIX Cal. 35(1892).

¹⁴ *Q.E. v. Bal Gangadhar Tilak*, ILR 22 Bom 12.

*disturbance or outbreak was caused by these articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion, or outbreak or forcible resistance to the authority of the Government, still, if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section.”*¹⁵

As per interpretation of the law in *Tilak* case, the offence of sedition is made out as soon as any ill-feeling about the Government is even attempted by anyone, whether or not the accused is successful in his attempt to do so. Such an interpretation was actually meant to gag and silence any kind of objection or dissent against the usurper Government so as to establish its authority in an alien land.

Mahatma Gandhi was charged, alongside the proprietor of *Young India*, Shankerlal Banker, for three articles published in the newspaper. The trial was presided over by Judge Strangman. In a dazzling statement, Gandhi remarked on the sedition law and asked the judge to award him the maximum punishment possible through the following words:

*“Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence. But the section under which Mr. Banker and I are charged is one under which mere promotion of disaffection is a crime. I have studied some of the cases tried under it, and I know that some of the most loved of India’s patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. I have endeavoured to give in their briefest outline the reasons for my disaffection”.*¹⁶ Judge Strangman expressed his failure to not hold him guilty of sedition under the law, and sentenced him to six years imprisonment.

¹⁵ K. D. Gaur, *The Indian Penal Code*, fourth edition (2012), Universal Law Publishing Co., p.231.

¹⁶ Mohandas Gandhi, “Famous Speeches by Mahatma Gandhi; Great Trial of 1922,” Gandhian Institute Bombay Sarvodaya Mandai and Gandhi Research Foundation, www.mkgandhi.org/speeches accessed on 2nd November 2016

Conflict in Interpretation between the Federal Court and Privy Council

In the case of *Niharendu Dutt Majumdar v. The King Emperor*¹⁷, the Federal Court had held that violent words just by themselves alone did not make a written document or words seditious in nature and that in order to establish sedition, “the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.” The liberal interpretation of the provisions of section 124A in *Niharendu Mazumdar*’s case brought the Indian law of sedition at par with the English law. However, by a subsequent decision of the Privy Council in *King Emperor v. Sadashiv Narayan*¹⁸, the binding effect of the rule in *Niharendu*’s case was nullified. The Privy Council, in the latter case overruled the decision and ardently confirmed the interpretation expressed in Tilak’s case to the effect that “the offence consisted in exciting or attempting to excite in others certain bad feelings towards the Government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small.” Thus, according to the Privy Council, incitement to violence was not an essential element of the offence of sedition.

SEDITION IN POST-INDEPENDENCE INDIA

THE RETENTION OF SEDITION IN THE IPC

Under the Constitution of India, the right to freedom of speech and expression became a fundamental right of a citizen under Article 19(1)(a). However Article 19(2) authorised the operation of existing laws or making of new laws by the State relating to libel, slander, defamation, contempt of court or any other matter offending decency, morality or security of State or which tends to overthrow the State. In the final draft of the constitution the restrictions to Article 19(1)(a) did not include sedition. Therefore the fundamental right to freedom of speech and expression appeared to be inconsistent with the offence of sedition.

Even though sedition was expressly excluded by the Constituent Assembly as a ground for the limitation of the right to freedom of speech and expression, this right was still being curbed under the cover of this provision of the IPC. The ambit of Section 124-A is fairly wide as the section itself is broadly worded. If a government so wished, it may indiscriminately use this law to suppress any form of dissent from the people.

¹⁷ *Niharendu Dutt Majumdar v. The King Emperor* AIR 1942 FC 22.

¹⁸ *King Emperor v. Sadashiv Narayan* (1947) L.R. 74, I.A. 89.

CONSTITUTIONALITY OF SEDITION LAW- SOME KEY LEGAL INTERPRETATIONS

In three significant lawsuits, the constitutionality of this provision was challenged in the Indian courts. These cases helped shaping the subsequent changes in the law of sedition. Following the judgement of Niharendu Majumdar, Section 124A was struck down as unconstitutional in *Romesh Thappar v. State of Madras*,¹⁹ *Tara Singh v. State*²⁰ and *Ram Nandan v. State*²¹. In the Romesh Thapar case, the Madras Government banned the left-leaning magazine 'Crossroads' after declaring the communist party illegal, owing to its sharp criticism of the Nehru government. The Court held that banning a publication based on threats to public safety or order cannot be considered constitutionally valid, as exceptions to Article 19(1)(a) must involve a threat to state security only..²² In the Tara Singh case, the East Punjab High Court held that a restriction on a fundamental right would be invalid if the language of the restriction was broad enough to include both constitutionally permissible and impermissible instances of legislative action affecting that right

During the debates on the first amendment to the Constitution in the year 1951, the then Prime Minister Jawaharlal Nehru was heavily criticized by members of the opposition for the widespread restrictions placed on the freedom of speech and expression during his regime. This criticism, accompanied by the above-mentioned rulings of the courts holding Section 124A to be unconstitutional, prompted Nehru to propose an amendment to the Constitution. Thus, through the first amendment to the Constitution, the additional grounds of 'public order' and 'relations with friendly states' were added to the list of permissible restrictions given under Article 19(2) on the freedom of speech and expression guaranteed under Article 19(1)(a). Additionally, the word 'reasonable' was inserted before 'restrictions' to prevent the possibility of misuse by the government. In the parliamentary debates, Nehru emphasized that the intention behind this was not to validate laws like sedition, describing Section 124A as 'objectionable and obnoxious' and stating that it did not belong in the IPC.

In the Ram Nandan case, the Allahabad High Court challenged the constitutional validity of Section 124A of the IPC, overturning the defendant's conviction and declaring the section unconstitutional. However, in *Kedar Nath v. State of Bihar*, the Supreme Court reversed previous rulings and clarified the current interpretation of sedition laws. The Supreme Court combined five

¹⁹ *Romesh Thappar v. State of Madras* AIR 1950 SC 124.

²⁰ *Tara Singh v. State* AIR 1951 SC 441.

²¹ *Ram Nandan v. State* AIR 1959 All 101.

²² Sedition laws & The Death of Free Speech in India", Centre for the Study of Social Exclusion and Inclusive Policy, NLSU, Bangalore & Alternative law forum, Bangalore, p. 22

appeals to address the constitutionality of Section 124A in relation to Article 19(1)(a) of the Constitution. The Court determined that incitement to violence is a crucial component of the offence of sedition, aligning with the Federal Court's interpretation in *Niharendu Majumdar*. Thus, sedition was defined as a crime against public tranquility rather than a political crime threatening the state's foundation. The Court considered the pre-legislative history and Constituent Assembly debates on Article 19, noting that sedition was deliberately excluded as a valid ground to restrict freedom of speech and expression, reflecting legislative intent that sedition should not be considered a valid exception to this freedom.

As a result, sedition could fall within the constitutional bounds, only if it could be read into any of the six grounds listed under Article 19(2) of the Constitution. Out of the six grounds in Article 19(2), the Court considered the 'security of the state' as a possible ground to support the constitutionality of Section 124A of the IPC. The reasoning of the Court was that since sedition laws would be used to maintain public order, and the maintenance of public order would in turn be in the interests of the security of the state, these laws could be justified in the interests of the latter. The Court applied the principle that when more than one interpretation can be given to a legal provision, that interpretation must be upheld which makes the provision constitutional.²³ Any interpretation that makes a provision *ultra vires* the Constitution must be rejected. Therefore, although the plain text of the section does not explicitly require it, the Court held that any seditious act must necessarily involve an attempt to incite violence and disorder.

The Court held that "any acts within the meaning of Section 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence." These words clearly indicate that the test for sedition is not a subjective test, but an objective test in the sense that the words spoken must have the tendency to create public disorder by the use of actual violence or incitement to violence. Therefore not only that the words should create the feelings of disloyalty, but also it should lead to the disruption of the state. So the court has used the test of proximate connection between the speech and its effect. Thus, mere speech does not call for application of the section unless there is actual harm or violence or incitement to violence.

Through the landmark judgment of *Kedar Nath Singh*, the Supreme Court made it clear that seditious speech and expression may be punished only if the speech is an 'incitement' to 'violence', or 'public disorder'. Lately, the

²³ *R.M.D. Chamarbaugwalla v. Union of India*, AIR 1957 SC 628.

Supreme Court has upheld the judgment in several cases. In the light thereof, it could be said that unless the words used or the actions in question threaten the security of the State or of the public; or lead to any significant public disorder, the act would not fall within the scope of section 124-A of IPC.

FREEDOM OF SPEECH AND EXPRESSION VIS-A-VIS SEDITION LAW

The judiciary has been categorical in expressing that every criticism does not amount to sedition and the real intent of the speech must be considered before imputing seditious intent to an act. In the case of *Balwant Singh v. State of Punjab*,²⁴ the Court refused to penalize casual raising of slogans (*Khalistan Zindabad, Raj Karega Khalsa, and Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da*) against the State by two persons. It was reasoned that raising of few isolated instances of slogans-raising by two individuals, without anything more, did not pose any threat to the Government of India lawfully established nor could the same incite the feelings of enmity or hatred among different communities or religious or other groups. The Court ruled that “advocating revolution, or advocating even violent overthrow of the state, does not amount to sedition, unless there is incitement to violence, and more importantly, the incitement is to ‘imminent’ violence”.

Similarly, in *Javed Habib v. State of Delhi*,²⁵ it was held:

“Holding an opinion against the Prime Minister or his actions or criticism of the actions of government or drawing inference from the speeches and actions of the leader of the government that the leader was against a particular community and was in league with certain other political leaders, cannot be considered as sedition under Section 124A of the IPC. The criticism of the government is the hallmark of democracy. As a matter of fact the essence of democracy is criticism of the Government. The democratic system which necessarily involves an advocacy of the replacement of one government by another, gives the right to the people to criticize the government. In our country, the parties are more known by the leaders. Some of the political parties in fact are like personal political groups of the leader. In such parties leader is an embodiment of the party and the party is known by the leader alone. Thus, any criticism of the party is bound to be the criticism of the leader of the party.”

In *Shreya Singhal v. Union of India*²⁶, the famous 66A judgment, the Supreme Court drew a clear distinction between “advocacy” and “incitement”,

²⁴ AIR 1995 SC 1785.

²⁵ (2007) 96 DRJ 693.

²⁶ *Shreya Singhal v. Union of India*, (2013) 12 SCC 73.

stating that only the latter could be punished. In the judgment authored by Justice R.F. Nariman, on behalf of a bench comprising himself and Justice J. Chelameswar, the Court has declared that Section 66A is not only vague and arbitrary, but that it also “disproportionately invades the right of free speech.” It maintained that the expressions used in Section 66A of the IT Act, 2000 are completely open-ended and under-defined and therefore the same was struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2). The Court went on to say that any provision of law which casts a net so wide that virtually any subject would be covered by it, the chilling effect on free speech would be total and such a law would have to be struck down. Most importantly, the Court ruled that a person could not be tried for sedition unless their speech, however offensive, annoying or inconvenient, had an established connection with any incitement to disrupt public order.

In the case of *Sanskar Marathe v. State of Maharashtra & Anr.*,²⁷ cartoonist Aseem Trivedi was booked under section 124A IPC for defaming the Parliament, the Constitution of India and the National Emblem and attempting to spread hatred and disrespect against the Government through his cartoons. The court distinguished between strong criticism and disloyalty observing:

“... disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.”

In the case of *Arun Jaitley v. State of U.P.*,²⁸ the Allahabad High Court held that a critique of a judgment of the Supreme Court on National Judicial Appointment Commission does not amount to sedition. It was merely a fair criticism. While interpreting section 124A, IPC the court observed:

“Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence.”

Thus, expression of strong condemnation towards the State or State institutions can never amount to sedition for the simple reason that no institution or symbol alone embodies the whole country in entirety. In many

²⁷ 2015 Cri LJ 3561.

²⁸ 2016 (1) ADJ 76.

cases the critique over a failed law expressed through for instance, the burning of Constitution, or expression of disappointment with members of Parliament through a visually disparaging cartoon or an image of Parliament cannot amount to sedition because often the protests may be routed in an idea of India which has been frustrated by its elected representatives, or a law that has demeaned or disappointed citizens of India.

But the truth remains that while the SC has stayed firm in its opinion on sedition from *Kedar Nath* onwards²⁹, yet the lower courts seem to continuously disregard this interpretation of the law. The law on sedition is being used to curb any sort of political dissent in the country, and also any alternate political philosophy which goes against the ruling party's mindset. Section 124-A has often been charged against persons regardless of whether the alleged seditious act or words tend to result in public disorder or any incitement to violence. There have been several instances where the law of sedition was misused by the party in power. This has occurred inspite of the fact that the Supreme Court had clearly stated that only that speech which results in "incitement to imminent lawless action" would invite punishment under Section 124A.³⁰

The conviction of Dr. Binayak Sen, a pediatrician and human rights activist, by a Raipur trial court in 2010 for allegedly facilitating communication between Maoist leaders; the threats of sedition charges against Arundhati Roy, Varavara Rao, and S.A.R. Geelani, who participated in a seminar titled 'Azadi, the Only Way' in Delhi in 2010; the charges against Manoj Shinde for criticizing then Chief Minister Narendra Modi's handling of the flood situation in Gujarat; the 2012 arrest of political cartoonist Aseem Trivedi on sedition charges for his website "Cartoons Against Corruption" critiquing government corruption; the 2016 sedition charges against Jawaharlal Nehru University students for allegedly raising incendiary slogans at public meetings on campus; the February 2021 arrest of environmental activist Disha Ravi for her involvement in creating and sharing a "toolkit" related to farmers' protests against new farm laws; and the sedition charges against veteran journalist Vinod Dua for his YouTube remarks criticizing the government's COVID-19 response—quashed by the Supreme Court in June 2021. These are some of the instances where a distinction had to be drawn between "anti-national incitement" and "mere political dissent."

None of these individuals did things that could have had a tendency to incite violence against the state, and were merely expressing their opinion through speeches or writings which criticised specific State activities. A significant disparity exists between the Supreme Court and the lower courts, leading to

²⁹ *Bilal Ahmed Kaloo v. State of Andhra Pradesh*, AIR 1997 SC 3483; *Balwant Singh v. State of Punjab*, AIR 1995 SC 1785.

³⁰ *Sri Indra Das v. State Of Assam*, (2011) 3 SCC 380.

many instances of injustice, for the judges seem ignorant of the correct position of law in many areas of the country. This issue is more so at the level of the trial court and the investigating authorities, with a number of cases showing that the High Court grants bail or acquits the accused in many alleged cases of 'sedition'. However, the punishment of those accused of sedition begins with the legal process. Even if they are eventually acquitted, they have to go through a long legal process, which serves as a punishment and as well as a deterrent for those who dare to speak out.

Finally, in the case of *SG Vombatkere v Union of India*, involving multiple petitions challenging the constitutional validity of the sedition law (Section 124A of the IPC), the Supreme Court, on May 11, 2022, put the law on hold, asking the central government to re-examine and reconsider its provisions. The court directed all pending sedition trials, appeals, and proceedings to be paused and refrained the authorities from registering new cases until the law is re-examined by the government. This interim order can be seen as a crucial step in protecting free speech and addressing the misuse of the sedition law to suppress dissent. In a more recent development, in September 2023, the Supreme Court referred the matter to a larger bench of at least five judges. This referral was necessary because the constitutionality of Section 124A was previously upheld by a five-judge bench in the *Kedarnath Singh* case. The Court emphasized the need to re-evaluate the law through the lens of contemporary legal standards, including the doctrine of proportionality. Despite the government's argument that a new penal code, the *Bharatiya Nyaya Sanhita* Bill, 2023, was under consideration and could potentially replace the current sedition law, the Supreme Court noted that ongoing cases under Section 124A would still need to be addressed. Therefore, examining the constitutionality of the existing law remains crucial. This referral to a larger bench aims to ensure a comprehensive and updated judicial review of the sedition law, balancing national security interests with fundamental rights to freedom of speech and expression.

BHARATIYA NYAYA SANHITA, 2023 - THE WAY FORWARD

The *Bharatiya Nyaya Sanhita* (BNS) 2023³¹, which replaced the Indian Penal Code (IPC) on 1st July, 2024, includes significant changes to the law concerning sedition. The pre-independence criminal laws were used by the Britishers to protect their colonial interests, to rule the people and the country and to maintain the authority and supremacy over India. There was a need for comprehensive review of the criminal laws, especially the Indian Penal Code. The previous Section 124A, which defined sedition, was replaced by Section 152 under the new legislation. The term "sedition" is replaced with "*Acts endangering sovereignty, unity, and integrity of India.*" It reads as follows-

³¹ https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Bharatiya%20Nyaya%20Sanhita,%202023.pdf

“Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine. Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.”

Thus, Section 152 criminalizes: (a) exciting or attempting to excite secession or armed rebellion, (b) committing subversive activities (c) encouraging feelings of separatism, (d) actions endangering the sovereignty, unity, and integrity of India. Section 152 of the Bharatiya Nyaya Sanhita (BNS) 2023 broadens the scope of the previous sedition law, Section 124A IPC, by including acts that endanger national sovereignty, unity, and integrity, thus adopting a more holistic approach to national security. Unlike Section 124A IPC, which focused on protecting the government from disaffection, Section 152 BNS emphasizes safeguarding national interests, recognizing that threats to sovereignty extend beyond dissent against the ruling authorities. Union Home Minister Amit Shah emphasized in parliament that the legislative focus is on addressing 'Deshdroh' (treason against the nation) rather than 'Rajdroh' (treason against the government), to better protect the nation's integrity.

The new law covers a wide range of actions, including speech, written words, signs, and other forms of communication, broadening the scope compared to the older sedition law. While Section 124A included the possibility of life imprisonment, the new Section 150 also prescribes life imprisonment or imprisonment up to seven years along with a fine.

Words like “disaffection towards the Government” have been removed, focusing instead on secessionist and subversive activities only. But the requirement of incitement to violence or disruption of public order has still been missed out by the law makers. Law enforcement agencies have considerable discretion in interpreting what constitutes a secessionist act or an act endangering sovereignty, unity, and integrity of India, similar to the broad interpretations that plagued the old sedition law.

Post-independence, Indian courts have had numerous opportunities to interpret Section 124A of the IPC, especially regarding its impact on the constitutional right to freedom of speech. Judicial decisions have limited the

scope of Section 124A to speech that poses an imminent threat to public order. These interpretations have provided a framework for applying the sedition law in a way that balances national security and free speech. Section 152 now introduces new standards and definitions, making the judicial tests developed for Section 124A potentially inapplicable. This creates ambiguity about how Section 152 will be enforced and interpreted, as the existing judicial framework does not apply to the new provision.

SEDITION IN THE DIGITAL AGE: CHALLENGES AND IMPLICATIONS

With the onset of the internet and social media, there has been a significant transformation of communication and public discourse across the globe, and India is no exception. Social media intermediaries such as Facebook, Twitter, Instagram, and WhatsApp have become an integral part of people's lives, serving as a platform for sharing information, spreading awareness, and expressing dissent. As of 2023, India has one of the largest user bases for social media, with millions of active users engaging in discussions that shape political, social, and cultural perspectives. Millions of individuals, including journalists, educators, students, business people, scientists, government officials, politicians, and regular residents, go online daily to express themselves, get access to information, and engage in practically every area of public and commercial life.

Public expression has become more inclusive and democratic due to social media presence, especially for the sidelined communities facing social, economic, and geographic challenges, that have historically been underrepresented in traditional media. Movements such as the #MeToo campaign and the farmers' protests are some examples of how social media can have the power to elevate voices that challenge the prevailing norms.. These platforms have empowered grassroots movements to gain attention and build support internationally, mobilizing citizens in unprecedented ways. Activists employed hashtags and real-time updates to draw national and international awareness, profoundly impacting public opinion and policy debates. These instances demonstrate the significant role of social media in fostering democratic participation and civic activism.

With the rise of digital communication, the application of laws like sedition has become even more complicated. Sedition laws that essentially restrict actions or speech inciting rebellion against the authority of the state are applied on social media posts, particularly when they criticize government actions or policies. With the growth of online dissent, government scrutiny of social media platforms has also grown. Authorities have employed various surveillance techniques to oversee digital discourse, resulting in increased censorship and

suppression of dissenting voices. The enactment of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 still remain controversial in this regard. Devoid of any precise definitions or statutory limitations, these rules enable the authorities to potentially stifle political dissent or manifestations of public opinion not favoring state policies. The failure to define terms like “fake” or “misleading” information and allowing anonymous government-controlled bodies to make such decisions, the rules enable biased censorship targeting opposition. Reports indicate that the Indian government has, on numerous occasions, requested the removal of content deemed seditious or inflammatory. In addition, imposing a legal obligation on internet intermediaries to continuously monitor users is contradictory to the Supreme Court’s verdict in *K.S. Puttaswamy (Retd.) v. Union of India and Ors*³² where privacy was held to be a fundamental right that can only be restricted in very limited circumstances. The requirement of traceability poses a great threat to an individual’s right to privacy. For platforms like WhatsApp, which provide end-to-end encrypted messaging services, fulfilling the traceability condition would require compromising end-to-end encryption, which would also be problematic for these platforms.

A prominent case is the case of Disha Ravi, a climate activist from Bangalore, who got arrested in 2021 for allegedly disseminating a toolkit related to the farmers’ protests. The government claimed her actions incited unrest, highlighting the growing application of sedition laws to online speech. This trend raises significant concerns about the limits of free expression in the digital space and the potential for these laws to be misused. Moreover, internet shutdowns have become a frequent strategy during protests or periods of civil unrest. For instance, during the protests in Kashmir following the revocation of Article 370 of the Indian Constitution giving special status to Kashmir and also during protests against the Citizenship Amendment Act (CAA), the government implemented widespread internet blackouts to suppress dissent. Such measures not only limit access to information but also hinder citizens’ ability to organize and voice their grievances.

The fear of prosecution under sedition laws has led to a chilling effect on free speech in India. Many individuals choose to self-censor their online opinions, apprehensive about possible consequences and prosecution. This atmosphere of fear can hinder open dialogue, the irony of it being that sedition laws that were intended to safeguard democratic values end up undermining the same. Surveys indicate that a substantial number of internet users in India avoid expressing dissenting views due to worries about legal consequences. This self-censorship endangers the health of democratic debate and restricts civil engagement.

³² *K.S. Puttaswamy (Retd.) v. Union of India and Ors* (2017) 10 SCC 1

On the other hand, it cannot be denied that social media has also contributed to the spread of misinformation and radicalization. The risk of seditious content emerging online raises important questions regarding the responsibilities of social media platforms in content moderation. The increase in the incidents of online hate speech and incitement to violence complicates the conversation around sedition laws. Although some content may deserve legal examination or surveillance, there is a danger that authorities might misuse sedition laws to suppress legitimate dissent while overlooking harmful, radical speech that actually incites violence.

As technology advances, the legal frameworks governing speech in the digital realm must also adapt and grow. There is an urgent need to revisit the relevance and practicality of sedition laws in a time when information spreads rapidly and dissent can be organized through online platforms. While the new law under the Bharatiya Nyaya Sanhita dealing with “*Acts endangering sovereignty, unity, and integrity of India*” under Section 152 of the code, is wider and the words used in the section are also different than its counterpart under Section 124A of the Indian Penal Code, 1860 (now repealed) but the fundamental essence of both these laws still largely remains the same. The new law mentions the words “sovereignty, unity, and integrity of India,” which were missing in the earlier Section. This could be seen as an attempt to enlarge the scope of the offense and can have far reaching implications. This inclusion of the words without any clear definitions on them, effectively introduces a new offense: being deemed 'anti-national.' This development raises serious concerns regarding the potential chilling effect on freedom of speech and expression.

Moreover, this situation underscores the need for careful examination of the legal framework governing freedom of expression in India. The use of vague and ambiguous language, such as 'sovereignty and integrity of India,' creates a slippery slope where even ordinary actions can be perceived as threats to national security. The implications of this shift are significant, as it threatens to silence critical discourse and dissenting voices, ultimately weakening the foundations of a healthy democracy.

Reform could involve clarifying the definitions and thresholds for what constitutes sedition in the context of social media, ensuring that laws do not infringe upon legitimate expressions of dissent. the lack of clarity in legal definitions as to what constitutes sedition in the context of online speech may lead to arbitrary enforcement and misuse. The vague language surrounding "harmful" or "inciting" speech again leaves legal gray areas that may suppress free expression. Striking a balance between regulating harmful speech and safeguarding the fundamental right to free expression is essential; overly broad provisions could infringe on legitimate dissent. Moreover, effective judicial oversight is crucial to ensure fair application of the law. The law's effectiveness

will also depend on its enforcement, as excessive censorship could foster a climate of fear among users, particularly given the complexities of digital communication and anonymity. Additionally, responses should be proportional to the severity of the speech involved to avoid disproportionately harsh penalties for dissenting opinions. Over-regulation may stifle civic engagement and undermine democratic discourse, while insights from other democracies can inform best practices in managing online speech. Ultimately, the law's success will hinge on the clarity of its provisions, the balance it achieves between regulation and free expression, and continuous dialogue among lawmakers, civil society, and technology stakeholders to uphold democratic values.

CONCLUSION

Tracing the evolution of sedition laws in India reveals a journey from the colonial-era restrictions designed to suppress dissent against British rule to the more contemporary framework under the Bharatiya Nyaya Sanhita (BNS) 2023. Initially codified under Section 124A of the Indian Penal Code (IPC) by the British, sedition laws were used as a tool to curb the freedom movement and silence opposition. Post-independence, despite the constitutional guarantee of free speech, the application of sedition laws continued to spark controversy and debate, leading to numerous judicial interpretations aimed at balancing state security with individual freedoms.

A democratic country should be capable of accepting criticisms and dissent, addressing the grievances of its citizens. The essence of democracy is that the government is of the people, by the people, and for the people. Citizens in a democracy should have the freedom to express their opinions, whether in support or opposition to government policies. Unfortunately, ruling parties often tend to label such expressions of dissent and grievances as seditious instead of addressing the underlying issues. In India, which follows a representative democracy, it is natural for people to critique the actions and policies of the government or the elected representatives. Strong criticism of these representatives or the government might lead to some level of disaffection or dissent towards the ruling party's policies but this needs to be differentiated from seditious acts targeting the national security by inciting public disorder or violence.

In recent times, the reformation of these laws under the BNS 2023 marks a significant shift in focus from "rajdroh" (sedition) to "desdroh" (treason), aiming to address modern threats to national sovereignty and integrity. However, the broad and ambiguous Section 152 of the BNS 2023 aims to address subversive activities and protect national security, but its broad definitions and ambiguity could lead to its potential misuse, much like its historical counterpart. Broadly worded laws often turn the criminal process into

a punishment, stifling dissent and free speech. The challenge remains to ensure that these laws do not become instruments of political repression but instead serve to genuinely protect national interests without undermining democratic freedoms. As India moves forward, it is imperative that the judiciary continues to play a pivotal role in interpreting these laws to prevent their abuse and to safeguard the fundamental rights enshrined in the Constitution. The evolution of sedition laws in India is a testament to the ongoing struggle to find the right balance between national security and the protection of individual liberties in a vibrant democracy.