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GAMUT OF SEDITION LAW IN INDIA: A CRITICAL STUDY WITH REFERENCE TO SECTION 152 OF THE BHARATIYA NYAYA SANHITA, 2023

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ABSTRACT

Section 124A of the Indian Penal Code (IPC), 1860, was enacted as a crime against the state and was intended to protect the very existence of the state. The section enacted during the colonial era provided broad discretionary powers to the government, and the Britishers continuously misused this power to suppress Indians. The Hon'ble Supreme Court, in Kedar Nath v. State of Bihar (Kedar Nath Singh v. State of Bihar, 1962), upheld the constitutionality of the law of sedition by striking a balance between the law of sedition and the fundamental right to freedom of speech and expression. However, now that section 124 A has been replaced by section 152 of Bharatiya Nyaya Sanhita (BNS) 2023, which, despite its claim to be distinct, has a similar nature and implications, draws attention to words susceptible to the broadest interpretation. Further, the new provision dilutes the judicial development of narrowing the law of sedition and others with similar implications. The term "encourages feelings" disturbs the already established essential intent requirement as laid down in Kedarnath Singh. Further words like "separatist activities" and "subversive activities" are of vast aptitude open to nebulous interpretations. Even the use of the term "India" in the provision opens the debate about the extent of its application. Such broad provision is a tool in the hands of the government to stifle criticism, creating a chilling effect on the freedom of speech and expression granted to the people of India by the supreme law of the land. In this light, the paper unfolds the scope of sedition law in India with respect to section 152 of BNS and further attempts to identify the true nature and breadth of the provision and its implication on freedom of speech and expression.

Keywords: Sedition, Bharatiya Nyaya Sanhita, 2023, Free Speech and Expression, Criminal Laws.

INTRODUCTION

The free flow of information, thoughts, opinions and ideas is the fulcrum of a democratic society (Baxi, 1970). The development of public opinion is contingent upon the freedom of speech and expression. In addition, it is necessary to develop political parties, trade unions, scientific and cultural societies, and, in general, for those who aspire to communicate with the public on a large scale. It denotes a collective entitlement to obtain information and to consider the perspectives of

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others. Despite such exemplary constitutional ideals, our legal framework contains a law that penalises dissent, a situation rife with irony. Section 124A of the Indian Penal Code (IPC), 1860 (Indian Penal Code, 1860, § 124A), previously defined sedition. Though the ambit of sedition was toned down, it was held to be constitutional in Kedar Nath Singh v. State of Bihar (Kedar Nath Singh v. State of Bihar, 1962). This provision criminalised words that bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards the Government established by law in India. However, this section only gave a marginal note on the law of sedition and did not provide the exact meaning of the term 'Sedition'. According to Stephen, "Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or the existing order of society. The seditious conduct may be by words, deed, or writing" (Jenks & Landon, 2010). According to Webster's Dictionary, "Sedition includes all those acts and practices which have for their object to excite discontent or dissatisfaction towards the Constitution, or the government, or Parliament to create public discord and disorder" ("Critical Analysis of Sedition Laws in India," 2017).

However, the Supreme Court made a historic decision by directing that the 152-year-old sedition law be effectively suspended until the Union Government reevaluates the provision ("SC Asks Centre, States to Not File Fresh FIRs," 2022). The Court issued an interim order urging the Centre and the State government to refrain from registering any FIRs (first information report) under the aforementioned provision ("Supreme Court Urges Centre," 2022). With the enactment of The Bharatiya Nyaya Sanhita, 2023 (Bhartiya Nyaya Sanhita, 2023, § 152), Section 124A has been superseded by section 152 of the BNS, which introduces a comparable provision under a new name. The government's assertion that the new legislation does not sanction the offence of sedition aligns with the Supreme Court's ruling and public demand; nevertheless, this statement is, in fact, questionable.

HISTORICAL DEVELOPMENT OF SEDITION LAWS

To decode the newly enacted provision under BNS, we must unfold the development of sedition laws in India to understand its extent, scope and operational reality. The origin of sedition law may be traced to the 13th century when English kings perceived the printing press as a menace to their authority. The extensive utilisation of the printing press consequently instigated a series of regulations to govern the press and the distribution of information from the latter half of the century (Mayton, 1984). The initial group of offences, designated as acts involving Scandalum

Magnatum, comprised a series of statutes adopted in 1275 and subsequently. This established a legislative defamation charge, rendering it illegal to fabricate or transmit 'false news' (written or spoken) concerning the monarch or the realm's magnates (Hamburger, 1985). The second category of offences was treason, which was subsequently interpreted as constructive treason. It was fundamentally an offence against the State and based on the principle that all of the rulers' subjects were acknowledged to be obligated to demonstrate fealty to the king. Therefore, any individual who committed an act detrimental to the rulers' interests would be culpable of the crime of treason. Initially, the offence necessitated the commission of an overt act to be classified as treason. Nevertheless, the 14th-century legislations and judicial pronouncements broadened the offence's purview to encompass discourse within their scope (Saksena & Srivastava, n.d.). The seditious libel offence was employed as a merciless instrument to suppress any speech detrimental to the government. It was only till the 18th century that the offence of seditious libel saw backlash and was perceived as a harsh and unjust law employed by the ruling classes to squash any criticism of the Crown (Manning, 1980).

Nevertheless, rulers perceived it as a practical instrument due to its utility. Consequently, it was inevitable that seditious libel would be introduced into the Indian subcontinent during the draughting of a penal code for colonial India, where the authorities were responsible for quelling opposition (Hamburger, 1985). Sedition was highlighted in the Draft Indian Penal Code, 1837, by Thomas Babington Macaulay. The current Section 124A of the IPC was similar in its formulation to the Draft's Section 113. Life imprisonment was the proposed penalty. Nevertheless, the section was not incorporated into the IPC during its enactment in 1860 as a result of an unknown incident later attributed to oversight. In 1870, James Fitzjames Stephen, the then Law Member of the Governor-General's Council, introduced section 124A, which criminalises "disaffection towards the Government established by law", referring to sedition with the help of an amendment (Aiyar, 2021). Even though Stephen introduced sedition in light of a comparable provision in Britain, it is essential to emphasise that the actual scope and applicability were disregarded. The provisions, such as the necessity of a unanimous jury for punishment, were distinctly applied. The first application of this draconian provision was on Bal Gangadhar Tilak, a nationalist, teacher, and prominent activist in the independence movement who was charged with sedition on two separate occasions. He was found guilty by the Bombay High Court in 1897 for publishing an article in Kesari, the Marathi newspaper he established in 1888, that invoked the example of Maratha warrior Sivaji to advocate for overthrowing British rule (Centre for the Study of Social Exclusion and Inclusive Policy et al., 2011). The irony was that his conviction was the result of a non-requirement of the unanimous jury. This judgement expanded the definition of disaffection towards the

government to encompass "disloyalty," which influenced an amendment to the IPC in 1898 to include disloyalty and sentiments of enmity in the definition of disaffection (The Hindu Centre, n.d.).

2.1 POST-INDEPENDENCE DEVELOPMENTS

In 1947, independence from British colonial control marked a significant turning point in its history in India. Throughout India, this period was characterised by optimism and hope. Section 124A persisted in the Indian, even though Article 19(1)(a) guaranteed unrestricted freedom of speech and expression despite numerous acrimonious discussions. The government passed India's first controversial constitutional amendment in 1951 in response to two landmark Supreme Court judgements in 1950 (Sathe, 1971). The first case concerned objectionable content in the RSS journal Organiser, while the second case involved criticism of the government by the magazine Crossroads. The Supreme Court rejected the government's arguments in both cases, emphasising that public order was not a valid exception to the right to free expression. The court determined that the right to freedom of speech and expression could only be curtailed if it directly endangered the state's security. The first constitutional amendment, which Jawaharlal Nehru sponsored in response to these rulings, denounced the sedition law and permitted the government to implement "reasonable restrictions" on free expression (Sathe, 1971).

The Supreme Court was afforded the opportunity to ascertain the legitimacy of section 124A in 1962. The aforementioned High Court precedents were overruled by a constitutional bench of the Supreme Court in the Kedarnath Singh case. It was determined that sedition is a legitimate exception to the right to free speech, provided it is intended to incite violence. Kedar Nath was a member of the Forward Communist Party of Bihar. In 1953, he was charged with sedition for his speech in Barauni. He accused the Congress administration of corruption and explicitly targeted Vinobha Bhave's efforts to redistribute land. Justice Sinha defined the parameters for the application of sedition. He observed that any expression of disloyalty towards the government in "strong terms" will not be classified as sedition unless it results in "public disorder by acts of violence." Therefore, this decision predicated the applicability of sedition on the probability of inciting violence. The Supreme Court also observed that the sedition clause must be invoked to be predicated on the existence of a pernicious tendency to incite violence. The court upheld the interpretation of section 124A of the IPC, by the former Federal Court (Niharendu Dutt Majumdar v. King Emperor, 1942). The judgement strongly supported legitimate criticism of the government and opposed arbitrary restrictions on the freedom of speech. The Federal Court had proposed that the offence of sedition must be accompanied by a public disorder or a reasonable probability of public disorder. The SC initiative toned down the nature of sedition law in the

country by restricting its scope. But again, in 1973, the late Prime Minister Smt. Indira Gandhi increased its gravity by making a substantial change by classifying section 124A as a cognisable offence under the new Code of Criminal Procedure,1973. This extended the state's power to arrest without a warrant, making this provision a perfect tool to cripple dissent. Even if conviction was not gained, the procedure could be deployed as punishment.

India has witnessed the misuse of section law irrespective of the political party in power. According to The National Crime Records Bureau's Crime in India 2019, 93 sedition cases were registered in 2019, up 165% from 33 in 2016. The conviction rate fell from 33.3% in 2016 to 3.3% in 2019 (Supreme Court of India, 2021). This demonstrates that the mere accusation of sedition is sufficient to restrict any form of speech or expression. The Law Commission of India in 2018 released a consultation paper that traced the history of sedition law and drew comparisons with the United Kingdom, the United States, and Australia. The paper posed several concerns that warrant further consideration, such as the advisability of maintaining the provision as a criminal offence. "In a democracy, patriotism is not measured by singing from the same songbook," it observed. Sedition provisions against the media and journalists have been an effective measure to muzzle dissent. This undermines the citizens' individual rights and curtails the collective rights of a democracy (Law Commission of India, 2018).

In 2021, numerous petitions were launched to challenge the constitutionality of the sedition law. Attorney General Tushar Mehta, representing the Union of India, submitted a written submission at a hearing of these cases; he argued that the Kedarnath Singh judgement was a sound precedent and that the petitioners had not provided any justification for the court to record a finding that Kedarnath Singh was patently illegal and required reconsideration. Surprisingly, later on the subsequent day of the hearing, the government's stance took a different turn. The Government of India asserted that it is aware of various views on sedition and civil liberties and human rights, while committed to maintaining and protecting the sovereignty and integrity of this great nation, has decided to re-examine and re-consider section 124A of the IPC, which can only be done before the competent forum. On this account, the court issued an interim order requiring the state and central administrations to refrain from registering the FIRs under the provision. The Supreme Court of India temporarily suspended the 152-year-old law, which has its roots in monarchical England of the 13th century. Paradoxically, India has held tight to the provision of sedition, which was nearly rendered obsolete in England by the evolution of its criminal and constitutional law. The crime has been charged against individuals only a handful of times in the past century (Basu, 2008). Law Reform Commission's persistent recommendations to abolish the crime finally led to its abolition by the Coroners and Justice Act of 2009 (Doğan, 2013).

REBRANDING SEDITION: THE TRANSFORMATION OF LEGAL JARGON

A significant concern is the re-emergence of the offence of sedition, a substantial remnant of the colonial past (Nathani & Bhalla, 2018). The fulcrum of criminal law reform in India was to overcome the colonial legacy and to break the shackles of colonial ideology. The continued abuse of sedition infringed upon fundamental rights, and its British origins aimed at suppressing dissent prompted the government to repeal it. The colonial heritage persists despite the government's efforts to reform criminal legislation. A comparable colonial continuity is evident in section 152 of BNS ("Decolonising the Law," 2024). This poses a critical inquiry into the rationality of such a provision within the modern democratic framework that values freedom of speech and expression. The significant similarity between section 124A and newly enacted section 152 is that the nature of the laws restricts the right to freedom of speech and expression, which is protected by Article 19(1)(a) of the Constitution. Moreover, the essence and substance of both laws are identical despite their distinct names ("Balancing Free Speech & National Security," 2024). Section 152 demonstrates the longstanding sedition laws in a much more draconian manner by incorporating nomenclatures such as "acts of secession," "armed rebellion," "subversive activities," "separatist tendencies," and "endangering the sovereignty or unity." BNS fails to clarify what constitutes exciting 'subversive activities' or promoting 'feelings of separatist activities,' leaving the terms up to interpretation. These terms can be interpreted broadly and nebulously, transforming "dissent" from a fundamental right under the right to expression into a crime punishable by law (Ali & Mukhopadhyay, 2024). The growing concern of misuse of section 152 poses severe threats to India's freedom of speech and expression and democratic framework. It is often argued that giving freedom of speech and expression its broadest possible interpretation is necessary. Mahatma Gandhi was charged with sedition 1922 for writing three articles in his weekly journal, Young India. In the trials, Gandhi called 124A "the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen." He added that affection cannot be forced out of the people for the government in power or any other entity (Gandhi, 1968). Similar continuity is apparent in section 152 of BNS, which attempts to unify ideas, thoughts and views ("Decolonising the Law," 2024). In the context of section 124A, courts have determined that any speech presenting an urgent danger to public order may be considered sedition. Section 152 of the BNS adds a novel provision with distinct legislative objective. The provision's language tends to escape these rigours of nexuses between speech and eminent action. This transition indicates that the precedents set in previous cases may be re-examined, transcending the colonial heritage of employing sedition laws to curtail free expression (Nathani & Bhalla, 2018). This raises a significant

query regarding the extent to which such provision is rational in the contemporary democratic system.

Even though the SC in Kedarnath Singh upheld the validity of the sedition law, it laid down the principle of its limited application and restricted scope ("The Origins and Validity of Sedition Law in India," n.d.). Excluding explicit references to the government in section 152 of BNS redirects the emphasis from governmental critique to overarching national security issues. This alteration may criminalise a broader spectrum of opposing comments that, while not explicitly aimed at government acts, are regarded as threats to national integrity. The provision must be critically examined in light of the history of misusing section laws, as it provides a grey area. This extensive extent grants the government the ability to hinder speech and expression. Additionally, the potential penalties for actions regarded as sedition are significantly increased by section 152 of the BNS. Section 124A permits imprisonment for a maximum of three years, although section 152 extends this restriction to seven years, with life imprisonment as a potential penalty for more egregious offences. This modification signifies a transition towards more severe sanctions for behaviours considered detrimental to national integrity ("How the Concept of Sedition as Mentioned in the Indian Constitution is Misused?" 2024).

3.1 JUDICIAL PERSPECTIVE

These concerns are not in a vacuum. Rajasthan High Court has expressed its opinion on section 152. It explained that examination of section 152 indicates that it originates from section 124A of the abolished IPC and it appears to be reintroducing sedition under a different name (Tejender Pal Singh v. State of Rajasthan, 2024). Further, the court emphasised that it is a matter of debate as to which of the two provisions—the one that was repealed (sedition) or the one that was reintroduced—is more stringent (Tejender Pal Singh v. State of Rajasthan, 2024). The court has read the jurisprudence of sedition law in section 152, developed by India by courts in cases like "Kedar Nath Singh Vs. State of Bihar", "Javed Ahmad Hajam Vs. State of Maharashtra &Anr." and "Balwant Singh &Anr. Vs. State of Punjab". It stated that legislation that limits speech must be "narrowly tailored". A direct and imminent link between the speech and the probability of revolt or secession is necessary to trigger such measures. Authentic dissent or criticism should not be conflated with sedition or anti-national conduct (Tejender Pal Singh v. State of Rajasthan, 2024). Further, the court cautioned the misuse of the provision and stated that:

"Careful application is required to prevent misuse or overreach due to its expansive language. The provision must be interpreted with the constitutional framework of the right to free speech and expression to prevent it from violating democratic freedoms. It is imperative to remember that the

provision is employed as a safeguard for national security rather than a weapon against legitimate dissent" (Tejender Pal Singh v. State of Rajasthan, 2024).

The court has also emphasised the necessity of maintaining a balance between freedom and restriction. It was asserted that:

"It is imperative to adhere to a strict interpretation of the law, as otherwise it could be misapplied to suppress legitimate expressions of critical opinions or dissent, particularly in sensitive matters such as regional disparities or caste. The provision must be evaluated against the constitutional right to freedom of speech and expression as outlined in Article 19(1)(a). This section should not apply to critical speech that does not incite violence or hostility" (Tejender Pal Singh v. State of Rajasthan, 2024).

CONCLUSION

It is palpable that the sedition laws enforced by the British in India were different in application in Britain, without regard to a stringent and draconian provision that was developed for India in order to curtail speech and expression against the British government. It was only through judicial interpretation that it was toned down to be functional in the Indian constitution, even though rampant use of the provision has been evident throughout history for ulterior political gains. It is undisputed that the law of sedition can be traced to the ideology of suppression of speech against the sovereign and promoting might is right. However, in modern society, its applications are different and are directed to protect the security of the state and the integrity of government established by law. In the Indian scenario where separatist tendencies are rampant, and forces from across the border have significant influence, such provision is required. Having said that, one must be cautious that freedom and restriction are two faces of a coin; disruption or imbalance will rupture its value. A balanced approach is imperative to protect the security of the state and also promote the flow of views, ideas and information in a democracy. The study reflects that India has freshly enacted sedition law through the backdoors of section 152 of BNS. The jurisprudence developed by the judiciary for sedition laws in India gets dissolved to some extent and would again require a fresh consideration of its scope and interplay with articles 19 (1) a and (2). It is apparent that in its current form, the provision is wide enough to overstep the fundamental right of free speech and expression. Even though the established jurisprudence of sedition law in India has already been read by the Rajasthan High Court in section 152. However, there is still a viable possibility of its interpretation, which we will witness in the near future.

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