



Revisiting Sedition Law In India: A Comparative Analysis Of The Colonial Legacy, Provisions In The Bharatiya Nyaya Sanhita, And Global Perspectives

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Abstract: Freedom of speech and expression is often viewed as the foundation of all liberties, as it embodies the spirit of a free and democratic society. It is considered the primary right essential for an individual's self-development. Democracy is highly valued, in large part, due to the presence of this fundamental freedom. Across the world, 'freedom of speech and expression' has been granted paramount importance, with limitations permitted only through legally established procedures.

Among the various restrictions on free speech, sedition laws serve as a mechanism to curb expression in the interest of maintaining public order. However, sedition is not explicitly listed as a ground for restricting 'freedom of speech and expression.' The sedition law in India, originally introduced under colonial rule, has been a issue of intense debate due to its implications on free speech and its alleged misuse. With the introduction of the 'Bharatiya Nyaya Sanhita (BNS)', which seeks to substitute the 'Indian Penal Code (IPC)', the provisions addressing sedition have undergone significant re-evaluation. This study follows a doctrinal approach and focuses on analyzing the legal framework governing free speech, with a particular emphasis on sedition laws in India, the United Kingdom, and the United States. This research also aims to analyze the transformation of sedition law from its colonial origins to its current form in the Bharatiya Nyaya Sanhita, 2023.

Index Terms - Sedition, Bharatiya Nyaya Sanhita, Separatist Sentiments, Sovereignty, Unity, Integrity.

I. INTRODUCTION

The British left behind numerous laws for independent India, many of which were adopted, some repealed, and others remain contentious.¹ 'Section 124A of the Indian Penal Code'², which describes sedition, falls into the controversial category. Over time, this law has become a tool for politicians, where dissent and criticism are often labeled as hate or anti-national sentiments and it also allows the government to wield authority in a manner reminiscent of colonial rule.³ The conditions that once justified the need for this law no longer exist, and it serves as a reminder of a time before Fundamental Rights were established in India.

¹Devika Garg, Addressing The Inconsistency: Sedition And Freedom of Speech and Expression, 4(3) Indian Journal of Law and Legal Research (IJLLR) 4514, 4514 (2022), <https://pure.jgu.edu.in/id/eprint/4560/1/Addressing%20the%20inconsistency%20sedition%20and%20freedom%20of%20speech%20and%20expression.pdf>.

²Indian Penal Code, Section 124A, No. 45, Acts of Parliament, 1860 (India).'

³Supra note 1.

Given the country's evolving social and economic landscape, there is a growing need to reassess, update, and reform sedition laws to align with modern democratic values.

However, these laws have been widely debated and criticized. Opponents argue that their vague wording allows for misuse, restricting free speech and suppressing legitimate government criticism.⁴ On the other hand, supporters believe sedition laws are essential for national security and preventing actions that could incite violence or destabilize the country.⁵ Over time, Indian courts have attempted to stabilize national security with 'freedom of expression.' The Supreme Court of India has ruled that sedition charges should only apply when there is a direct incitement to violence or public disorder.⁶

With the advent of new criminal laws, the word 'sedition' has been finally removed but some may argue that with the introduction of 'Section 152 of Bharatiya Nyaya Sanhita,'⁷ the substance of the crime of sedition has still been reserved by the legislature.

RESEARCH QUESTIONS

1. How has the concept of sedition evolved in India from its colonial origins to its current framework under the Bharatiya Nyaya Sanhita (BNS)?
2. What are the key differences in the application and interpretation of sedition laws in India compared to democratic nations like the United States and the United Kingdom?
3. To what extent do the provisions related to sedition under the Bharatiya Nyaya Sanhita align with constitutional principles of freedom of speech and expression in India?

RESEARCH OBJECTIVES

1. To trace the historic development of sedition law in India, from its colonial origins under the Indian Penal Code to its revised form under the Bharatiya Nyaya Sanhita (BNS), and assess the key changes in its scope and application.
2. To conduct a comparative examination of sedition laws in India, the United States, and the United Kingdom, focusing on the differences in their legal frameworks, judicial interpretations, and their impact on freedom of speech and political dissent.
3. To examine the alignment of the revised sedition provisions in the Bharatiya Nyaya Sanhita with constitutional principles of democracy, particularly in relation to the protection of fundamental rights such as freedom of expression.

RESEARCH METHODOLOGY

The research is doctrinal in nature, relying primarily on statutory provisions, judicial precedents, and scholarly interpretations. This study adopts a comparative legal research methodology to analyze the sedition laws in UK, USA and India.

II. SEDITION IN UNITED KINGDOM

The Statute of Westminster the First mentions an offense similar to sedition, warning against spreading "false news or tales" that could create discord between the king and the nobles.⁸ To prevent public unrest, anyone found guilty of such actions was to be brought before the court.⁹

By the 16th century, sedition was closely linked to treason when directed at the monarch and was otherwise covered under Scandalum Magnatum, which punished defamatory speech against high-ranking officials.¹⁰ The Treason Act of 1534 was used to punish seditious speech, especially during the Reformation, as

⁴ Deshraj Singh, *Legality of Sedition in India: A Comprehensive Analysis*, 11 International Journal of Creative Research Thoughts (IJCRT) b38, b38 (2023), <https://ijcrt.org/papers/IJCRT2306117.pdf>.

⁵*Id.*

⁶*Supra* note 4.

⁷Bharatiya Nyaya Sanhita, Section 152, No. 45, Acts of Parliament, 2023 (India).'

⁸Saptarshi Bhattacharya, *The Law of Sedition and India: An Evolutionary Overview*, THE HINDU (last visited Feb. 23, 2025), <https://www.thehinducentre.com/the-arena/current-issues/the-law-of-sedition-and-india-an-evolutionary-overview/article65721149.ece>.

⁹*Id.*

¹⁰Mohammad Rasikh Wasiq, *Legal Regime On Freedom Of Speech And Expression With Special Reference To Sedition Law Under India, The United Kingdom, And The United States Of America*, 10 International Journal of Creative Research Thoughts (IJCRT) e612, e621 (2022), <https://ssrn.com/abstract=4145163>.

England moved towards a stronger monarchy.¹¹ With England's shift away from church control in the 1600s, the king gained supreme authority, and the Court of Star Chamber (established in 1487) played a key role in suppressing dissent.¹² The Statute of Treason, 1351 originally defined treason in three ways: plotting the monarch's death, waging war against the king, or aiding his enemies.¹³ Over time, sedition became distinct from treason, especially with the rise of the printing press, which led the monarchy to use seditious libel laws to suppress criticism.¹⁴

In 1606, the Star Chamber broadened the definition of sedition to include inflammatory speech and writings, regardless of their truth.¹⁵ After the elimination of the 'Star Chamber in 1641', sedition laws continued to evolve, particularly under William III and Mary, when defaming the government became a crime. Sir Edward Coke further refined seditious libel principles, emphasizing that even posthumous defamation or criticism of public officials could be punished.¹⁶

By the late 18th century, various attempts were made to control the punishment to cases where speech directly incited crime. The Libel Act of 1792 shifted the power to juries, allowing them to determine both guilt and publication and this law redefined sedition as any act, speech, or writing that could disturb public peace, incite rebellion, or undermine government authority.¹⁷

In United Kingdom sedition was a common law offence.¹⁸ As a distinct offence, sedition emerged from the earliest days of the emerging capitalist class in Britain, during the seventeenth century, first in its struggles against the absolutist monarchy and then in its strivings to consolidate its ascendancy, particularly against the emerging industrial class.¹⁹

Sedition laws in Britain date back to the 13th century when they were introduced as a way to suppress freedom of the press and prevent criticism of the monarchy.²⁰ The **Sedition Act of 1661** made it a punishable offense to write, print, or preach anything against the King and over time, the definition of sedition expanded to include slander and libel against government officials and judges, aiming to preserve public trust in the government and prevent social unrest.²¹

By the 18th century, sedition laws in the U.K. faced growing criticism. However, British authorities saw their effectiveness in controlling speech and later implemented them in colonial India.²² The first recorded sedition case in India, '**Queen Empress v. Jogendra Chunder Bose**',²³ reinforced the idea that encouraging people to resist or disobey the government was a punishable offense.²⁴

In 1977, the Law Commission proposed abolishing sedition laws, arguing that existing legislation already addressed issues related to public order and that a law driven by political motives rather than legal necessity was redundant.²⁵ Eventually, in **2009**, Section 73 of the '**Coroners and Justice Act**' officially removed sedition as a crime in the U.K.²⁶

¹¹ Roger B., Manning, *The Origins of Doctrine of Sedition*, CAMBRIDGE UNIVERSITY PRESS (last visited Feb. 23, 2025), <https://www.cambridge.org/core/journals/albion/article/abs/origins-of-the-doctrine-of%20sedition/02D002BDB6AAB4E09DB37EB0D5F11E68>.

¹²*Id.*

¹³ William E. Conklin, *The Origins of Sedition Law* 289 *Crim L.Q.* 277 (1972-1973), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/clwqrty15&div=33&id=&page=> (last visited Feb. 23, 2025).

¹⁴*Id.*

¹⁵*Supra* note 10, at e628.

¹⁶*Supra* note 10, at e629.

¹⁷*Supra* note 10, at e629.

¹⁸*Supra* note 10, at e629.

¹⁹*Supra* note 10, at e629.

²⁰ Gauri Kashyap, *Sedition in the Common Law Jurisdictions: UK, USA and India*, SUPREME COURT OBSERVER (May 20, 2021), <https://www.scobserver.in/journal/sedition-in-the-common-law-jurisdictions-uk-usa-and-india/>.

²¹*Id.*

²²*Supra* note 20.

²³(1892)ILR 19CAL35.

²⁴*Supra* note 20.

²⁵*Supra* note 20.

²⁶*Supra* note 20.

III. SEDITION IN THE UNITED STATES OF AMERICA

Sedition is considered a grave crime in the United States, and is convicted for up to 20 years in prison and a hefty fine. It involves inciting violence or revolt against the authentic administration with the intent to overthrow it.²⁷ The United States Code (Title 18) contains federal laws addressing treason, insurrection, and related offenses, including sedition, to protect national security and maintain stability.²⁸

The landmark case *Schenck v. United States*²⁹ was the first to describe the bounds of sedition in relative to free speech. 'Justice Oliver Wendell Holmes' presented the "clear and present danger" test, affirming that speech could be controlled if it was directly linked to illegal action.³⁰ Though, in '*Gitlow v. New York*'³¹, the Supreme Court moved away from this test and adopted the "bad tendency" doctrine, allowing punishment for speech that posed a risk of significant harm.³² Later, in '*Dennis v. United States*'³³, the Court sustained the convictions of eleven Communist Party leaders under the 'Smith Act of 1940' for colluding to overthrow the government.³⁴ This case further weakened the "clear and present danger" test and introduced a "balancing test", as emphasized by 'Justice Frankfurter' and further argued that the 'First Amendment' does not provide absolute immunity for political speech and that free expression must be weighed against national security concerns.³⁵

The *Brandenburg v. Ohio*³⁶ case remains the most significant ruling on sedition in the context of free speech in the United States. The Supreme Court established that speech can only be limited if it poses a direct and immediate threat of lawless action.³⁷ The court stated that the 'First Amendment' does not allow the government to punish speech advocating violence or illegal acts unless it is specifically intended to incite imminent unlawful action and is likely to result in such action.³⁸

IV. SEDITION IN INDIA.

4.1 Pre Constitutional Era

The first explanation of sedition appeared in 'Section 113 of the Draft Penal Code of 1837', authored by 'Macaulay.' Though, it was not contained within when the 'Indian Penal Code (IPC)' was officially enacted in 1860. This omission was later considered an oversight, which was corrected in 1870 with the introduction of Section 124A through Act XXVII of 1870.³⁹

India's first sedition case was heard by the 'Calcutta High Court' in 1891 in '*Queen Empress v. Jogendra Chunder Bose*'⁴⁰. The 'proprietor, editor, manager, and printer' of the 'Bengali magazine *Bangobasi*' were charged with sedition for printing an article criticizing the British rule's decision to raise the age of consent for sexual intercourse. Chief Justice Petheram defined disaffection as an emotion opposed to affection—essentially, dislike or hatred. He distinguished it from disapprobation, which he described as mere disapproval. According to him, anyone who, through spoken or written words, instills in others a tendency to disobey the lawful government, resist its authority, or incite subversion, is guilty under this section if they do so with intent. However, the case was eventually dropped after the accused apologized.⁴¹

²⁷ANINDYA BHAN, *A Comparative Analysis On The Sedition Law Regime In India And The United States*, 3 (2) Indian Journal of Legal Review (IJLR) 100, 104 (2023), <https://ijlr.iledu.in/wp-content/uploads/2023/06/V3I212.pdf>.

²⁸*Id.*

²⁹ 249 U.S. 47 (1919).

³⁰*Id.*

³¹ 268 U.S. 652 (1925).

³²*Id.*

³³ 341 U.S. 494 (1951).

³⁴*Id.*

³⁵*Supra* note 10, at e620.

³⁶ 395 US 444 (1969).

³⁷*Id.*

³⁸*Supra* note 10, at e620.

³⁹*Supra* note 27, at 103.

⁴⁰ (1892) ILR 19 CAL 35.

⁴¹Malavika Parthasarathy, *Sedition Law In India: A Timeline*, SUPREME COURT OBSERVER (Apr. 27, 2022), <https://www.scobserver.in/journal/sedition-in-india-a-timeline/>.

Furthermore, 'Bal Gangadhar Tilak', a nationalist, teacher, and prominent figure in the Indian independence movement, was charged with sedition twice.⁴² In 1897, the 'Bombay High Court' convicted him in the case of 'Bal Gangadhar Tilak v. Emperor'⁴³ for printing an article in Kesari, the Marathi paper he started in 1888, where he invoked the legacy of Maratha combatant Shivaji to inspire resistance against British rule.⁴⁴ This ruling expanded the definition of estrangement toward the government to comprise unfaithfulness, leading to an 1898 amendment to the IPC that incorporated disloyalty and hostility in its explanation of sedition. Tilak was sentenced again for sedition in 1908 by the similar court for his writings in Kesari.⁴⁵

In 1922, Mahatma Gandhi was charged with sedition and tried at the Sessions Court in Bhadra, Gujarat, for publishing governmentally subtle articles in the 'Young India' journal.⁴⁶ During the trial, Gandhi delivered a statement expressing his long-standing discontent with British rule and he criticized Section 124A of the IPC, calling it a tool to suppress citizens' liberty, and asserted that "affection towards the government could not be manufactured."⁴⁷ As a result, he was punished to six years in prison.

In 'Niharendu Dutt Majumdar & Others v. Emperor'⁴⁸, the court took a pragmatic approach to sedition, ruling that for an act to be taken as seditious, it must include some form of lawlessness by the accused. Sir Maurice Gwyer remarked that maintaining public order is the government's foremost duty, as it is essential for civilization and societal progress. While some governments have exercised this duty in ways that were arguably excessive, it remains a fundamental responsibility. He explained that sedition encompasses any words, actions, or writings intended to disrupt peace, incite public unrest, or encourage disorder. The key element of the offense is the likelihood or reasonable anticipation of public disturbance. The judgment clarified that without an actual unlawful act, a charge of sedition could not be sustained. However, in 'King-Emperor v. Sadasiv Narayan Bhalerao'⁴⁹, the court overruled the decision in 'Niharendu Dutt Majumdar's case' and reiterated its earlier ruling in 'Tilak's case', reinforcing a broader interpretation of sedition.

4.2 Post Constitutional Era

In April 1947, during the 'Constituent Assembly Debates' on the 'Right to Freedom of Expression', Vallabhbai Patel proposed that seditious language should be an exception to free speech.⁵⁰ However, after additional discussion, the Constituent Assembly vetoed this proposal in 1948, following an argument by 'K.M. Munshi' wherein he highlighted the colonial roots of the sedition law and how it had been used to suppress the independence movement.⁵¹

Even after independence, sedition cases continued to be filed by the government.⁵² On March 1, 1950, the Madras administration barred the entrance and movement of Cross Roads, a journal printed by Marxist ideologue 'Ramesh Thapar', which was perilous of 'Prime Minister Jawaharlal Nehru's' policies, particularly on foreign affairs.⁵³ Thapar challenged the ban in the Supreme Court, making it the first case in independent India related to 'Section 124A' of the IPC. In 'Ramesh Thapar v. State of Madras (1950)'⁵⁴, the Supreme Court struck down the ban, ruling that 'freedom of speech and expression' could only be restricted if it threatened the security of the State or aimed to take over it. The court clarified that any law imposing restrictions beyond this scope would not be valid under 'Article 19(2) of the Constitution.'⁵⁵

The legitimacy of 'Section 124A' has been interrogated repeatedly over time. The challenge to the constitutionality of 'Section 124A' came straight before the Apex Court for the first time in the

⁴²*Id.*

⁴³(1897) ILR 22 Bom 112.

⁴⁴*Supra* note 41.

⁴⁵*Supra* note 41.

⁴⁶*Supra* note 41.

⁴⁷*Supra* note 41.

⁴⁸MANU/WB/0224/1939.

⁴⁹ AIR 1947 PC 84.

⁵⁰*Supra* note 41.

⁵¹*Supra* note 41.

⁵²*Supra* note 41.

⁵³ BAR AND BENCH, <https://www.barandbench.com/columns/70-years-of-the-crossroads-the-organiser-cases-a-revisit> (last visited on Feb. 24, 2025).⁷

⁵⁴ AIR 1950 SC 124.

⁵⁵*Supra* note 8.

revolutionary case of 'Kedar Nath Singh v. State of Bihar',⁵⁶ wherein the Court sustained the legitimacy of 'Section 124A.' The constitution bench said that strong language used to express disapproval of the dealings of the government with a view to their development or change by legal means would not come within the definition of Sedition. The Supreme Court acknowledged that while criminalizing sedition does restrict the 'Right to Free Speech' under 'Article 19(1)(a)' of the Constitution, it still qualifies as a 'reasonable restriction' under 'Article 19(2)' since 'Article 19(2)' allows certain limitations on free speech.⁵⁷ The bench further said "a citizen has a right to say or write whatever he likes about the government or its measures as long as it does not incite people to violence against the Government established by law or with the intention of creating public disorder." This judgment was significant as it upheld the law while limiting its misuse, making its application more precise and narrowly defined.

A two-judge bench of the Supreme Court in the case of 'Vinod Dua v. Union of India'⁵⁸ dismissed the sedition FIR against late 'journalist Vinod Dua' for his remarks on the Prime Minister's management of the 'COVID-19 crisis.'⁵⁹ Justice U.U. Lalit ruled that while Dua had criticized the government, his statements did not quantity to sedition.⁶⁰

The Supreme Court further clarified in the case of Umesh Kumar Sharma v. State of Uttarakhand and Anr.,⁶¹ that steamrolling false accusations against a person can never be sedition, save it qualifies the test laid down in the case of 'Kedar Nath Singh.'

The constitutionality of 'Section 124A' was challenged in the case of 'S.G. Vombatkere v. Union of India'⁶² before the Supreme Court of India. The Union government assured the Hon'ble Supreme Court that it has been re-examining the provision of sedition and the Court may not participate its treasured time in doing the same. Thereafter, the Supreme Court directed the Central Government and all the State Governments to keep all pendant trials, appeals and proceedings arising out of a charge framed under 'Section 124A' in suspension. The Court in its prima facie opinion preached that the rigors of 'Section 124A' were not in tune with the present communal setting and were envisioned for a time when this nation was under the colonist government.

V. ANALYSIS OF SEDITION UNDER SECTION 124A, INDIAN PENAL CODE

Sedition (Sec. 124a)

"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred 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".⁶³

For an act to establish sedition under this section, two key conditions must be met:

1. The act must involve bringing the Government of India into hatred or contempt, or attempting to incite disaffection against it.
2. This can be done through:
 - Spoken or written words
 - Signs
 - Visible representations
 - Any other form of communication

⁵⁶ AIR 1962 SC 955.

⁵⁷ *Supra* note 41.

⁵⁸ SCC OnLine SC 414.

⁵⁹ Satya Prasoona, *A Missed Opportunity: Vinod Dua's Sedition Case*, SUPREME COURT OBSERVER (June 29, 2021), <https://www.scobserver.in/journal/a-missed-opportunity-vinod-duas-sedition-case/>.

⁶⁰ *Id.*

⁶¹ AIR 2020 SC 5488.

⁶² (2022) 7 SCC 433.

⁶³ Indian Penal Code, Section 124A, No. 45, Acts of Parliament, 1860 (India).'

Role of Intention in Seditio

The spirit of seditio lies in the intention behind the words or actions. The purpose of the speech, article, or publication determines whether it qualifies as seditio. However, if an individual was uninformed of the content of a seditious journal, they cannot be held liable for having the necessary intent.

If, upon reviewing a speech or article, it becomes evident that its natural and probable effect on listeners or readers would be to instill 'hatred, contempt, or disaffection' toward the government, then the offense is considered committed.

When evaluating whether a speech constitutes seditio, it must be analyzed in its entirety, without overemphasizing specific phrases in isolation. A fair and comprehensive assessment of the speech as a whole is necessary to determine its true intent.

Attempts to Incite Hatred or Disaffection

A key point to note is that under this section, an attempt does not need to be successful to be considered an offense. The mere act of trying to incite 'hatred, contempt, or disaffection' is sufficient to be punishable, regardless of whether it achieves the intended outcome. If an individual makes an effort to provoke such sentiments, failing to do so does not absolve them of liability.

For instance, if someone sends a package through the postal service containing a seditious document, along with a letter urging the recipient to distribute it further, the act is still considered an attempt at seditio—even if the package is intercepted and never reaches its intended destination.

Hatred or Contempt

Hatred refers to strong ill will, though contempt infers having a low belief of something. In the context of Section 124A, these emotions must be focused toward the State or the recognized form of government to be punishable. Hatred or contempt against the government can be incited through writings that accuse it of dishonorable, corrupt, or malicious motives while carrying out its duties. Similarly, unjustly portraying the government as hostile or indifferent to the people's welfare can also fall within the scope of this section.

Disaffection

As per 'Explanation 1 of Section 124A', dissatisfaction encompasses betrayal and all forms of enmity toward the government. The term essentially means the opposite of affection and conveys sentiments similar to hatred or strong dislike. Encouraging people to grow against the government is an attempt to instill feelings of betrayal in their minds, which falls under this provision.

Government Established by Law in India

The phrase Government recognized by law refers to the ruling authority and its representatives, rather than any specific group of administrators. It encompasses the various governments formed under Indian law, now unified under the Constitution of India. This term applies to those legally authorized to administer executive power across the country, including both the Central and State Administrations.

However, government in this context does not mean the individuals holding office at a given time. It refers to the governing institution as a whole, which operates through different individuals in succession. Criticizing or opposing a specific group of politicians does not necessarily amount to seditio, as they are distinct from the concept of government itself. Expressing discontent with a ruling party or demanding the repeal of a law, as long as it is done through legitimate means, is not seditious. In a democracy, the government is run by the majority party, but it remains a government established by law.

Forms of Seditious Acts

Seditio can be committed through numerous means, counting spoken or written words, symbols, or visual representations. The law applies not only to the original author of seditious content but also to anyone who distributes or uses such material to incite disaffection against the government.

Editors, printers, and publishers bear as much responsibility for seditious content as the writer. If someone publishes or distributes a seditious article, they can be held accountable, even if they were not the original author. Simply claiming ignorance of a seditious publication appearing in one's newspaper is not a valid defense. If an editor did not authorize the content, it is their responsibility to prove that they had no knowledge of it, as such information would be within their control. If a person can prove that they were unaware of the contents of a publication, beyond the fact that they were its declared owner and in charge of the press, they would not be held liable, as intent is a crucial element of the offense.

Scope of Explanations 2 and 3

These explanations have a narrow and specific application. They only apply when a publication critiques government policies, administrative actions, or decisions without trying to provoke 'hatred, contempt, or disaffection.' Their purpose is to safeguard genuine criticism aimed at improving public policies, addressing grievances, or highlighting governmental shortcomings. However, while journalists and public speakers have the right to critique government actions, they cannot accuse the government of dishonesty or immoral intentions without evidence. In a democracy, policies and legislative measures are open to public debate, and the freedom to express objections to them is a fundamental right. A free press has the liberty to analyze and challenge government actions, provided this is done responsibly. However, this freedom does not extend to spreading misinformation or encouraging actions that harm the state.

For instance, if a newspaper article critiques a proposed bill and the policy behind it rather than directly attacking the government itself, it does not constitute sedition. Even if the criticism is harsh, exaggerated, or written in strong language, it remains within legal bounds as long as it does not encourage hatred or incite unlawful actions. Criticizing the government even in a forceful or bitter manner is not seditious, nor is advocating for its replacement through constitutional means. However, the line is crossed when the intent or effect of such speech is to incite people to defy the law or refuse to recognize legitimate authority.

In the 2016 case 'Common Cause vs. Union of India'⁶⁴, the Supreme Court directed all relevant establishments to follow to the principles laid down in the landmark 'Kedar Nath Singh vs. State of Bihar (1962)' judgment, which had defined and restricted the scope of the sedition law under 'Section 124A' of the 'Indian Penal Code.' The Court emphasized that all authorities must comply with the precedent set in Kedar Nath when handling sedition cases. The Court further clarified that the 'right to freedom of speech and expression' under 'Article 19(1)(a)' is not unqualified and can be subject to 'reasonable restrictions' under Clause (2). These restrictions apply in cases related to '(a) the security of the State, (b) maintaining friendly relations with foreign nations, (c) public order, and (d) decency or morality', among others.

Regarding the validity of 'Section 124A' of the IPC, the key issue is whether it aligns with the limitations prescribed under Clause (2) of Article 19, particularly concerning State security and public order. The section criminalizes any speech, writing, sign, or observable representation that provokes or attempts to incite hatred, contempt, or disaffection against the government established by law.

It is essential to differentiate between criticizing the individuals currently in power and attacking the government as an institution. The term government recognized by law represents the legal authority and framework of the State, rather than just the administrators in office at a given time. Undermining or attempting to subvert this framework poses a direct danger to the constancy and existence of the State itself.

Reports Of Law Commission

The 'Law Commission' has formerly examined the subject of sedition in several reports. In its '39th Report (1968)', titled 'The Punishment of Imprisonment for Life under the Indian Penal Code', the Commission suggested that sedition should be punishable either by 'life imprisonment or a maximum of three years of rigorous or simple imprisonment', but not beyond that.⁶⁵

The matter was revisited in the 42nd Report (1971), where the Commission identified key elements pertinent to the crime of sedition, including India's integrity, state security, and public order. It noted a flaw in the law, specifically, that the "pernicious tendency or intention" behind seditious speech was not explicitly linked to the protection of these interests.⁶⁶ To address this, the Commission suggested clarifying the mens rea (criminal intent) by stating that sedition should apply only when the act is committed "intending or knowing it to be likely to endanger the integrity or security of India or any State, or to cause public disorder."⁶⁷

In its 267th Report (2017) on "Hate Speech", the Law Commission differentiated amid sedition and hate speech. It explained that while hate speech indirectly affects the state by disrupting public peace, sedition is

⁶⁴ (2016) 15 SCC 269.

⁶⁵ Law Commission of India, *39th Report on The Punishment of Imprisonment for Life under the Indian Penal Code (July, 1968)*.

⁶⁶ Law Commission of India, *Forty-Second Report Indian Penal Code (June, 1971)*.

⁶⁷ *Id.*

a direct offence against the state itself. According to the report, for an expression to qualify as sedition, it must pose a direct threat to India's sovereignty, integrity, or national security.⁶⁸

In April, 2023, the 22nd Law Commission started a complete study of the law relating to sedition and its usage in India, drawing its origin and expansion. The Commission also analyzed the history of sedition, both in colonial and independent India, the law on sedition in numerous jurisdictions, and the several statements of the Supreme Court and the High Courts on the subject matter.⁶⁹

VI. ANALYSIS OF SECTION 152, BHARATIYA NYAYA SANHITA, 2023

Before the introduction of the BNS, the Supreme Court, in 2022, had put a hold on all ongoing criminal trials and court proceedings under 'Section 124A' of the 'Indian Penal Code (IPC)', commonly known as the sedition law, while the government reviewed its validity.⁷⁰ Following this, the Union Home Minister verbally announced that sedition would be repealed as a criminal offence.

Section 152 of the BNS now penalizes actions that provoke 'secession, armed rebellion, or other subversive activities.' It also criminalizes acts that promote separatist sentiments or threaten India's sovereignty, unity, or integrity.⁷¹

A section from the '246th Report of the Law Commission', released on November 10, 2023, states: 'The Committee' commends the Government for removing the term 'sedition' from criminal law and rewording the provision without undermining state security. The Committee views this as a significant and progressive step.⁷²

The wording of this provision differs significantly from 'Section 124A of the IPC', and the term "sedition" is notably absent. However, despite this distinction, both laws share a fundamental similarity, they impose restrictions on the 'right to freedom of speech and expression' guaranteed under 'Article 19(1)(a)' of the Constitution. In essence, while the terminology has changed, the core intent and impact of both laws remain the same.

Although the government aimed to align with public sentiment and comply with Apex Court directives, 'Section 152' of the BNS contains critical flaws. Unlike Section 124A, it does not strike a careful balance, making it susceptible to legal challenges on several grounds.

The Rajasthan High Court's ruling suggests that the essence of the offence may still persist within the new legal framework.⁷³ In 'Tejender Pal Singh v. State of Rajasthan'⁷⁴, the Rajasthan High Court cautioned against the misuse of 'Section 152' of the 'Bharatiya Nyaya Sanhita (BNS)' to suppress authentic dissent and ruled that 'Section 152' of the BNS is rooted in 'Section 124A' of the IPC and closely resembles the offence of sedition.⁷⁵ The Court emphasized that this provision should not be misused to suppress authentic dissent and should only apply to cautious activities carried out with malicious intent.⁷⁶ The ruling came from a bench led by Justice Arun Monga while hearing a petition seeking to quash charges against a Sikh preacher. The preacher had been booked under 'Section 152' and 'Section 197' of the BNS for posting a video on Facebook expressing sympathy for pro-Khalistani leader 'Amritpal Singh.'⁷⁷ After considering arguments from both sides, the Court stressed the need for careful application of 'Section 152', ensuring it aligns with the 'right to freedom of speech and expression.'⁷⁸ The court carefully examined the audio-video recording at

⁶⁸ Law Commission of India, *267th Report on Hate Speech (March, 2017)*.

⁶⁹ Law Commission of India, *279th Report on Usage of The Law of Sedition (April, 2023)*.

⁷⁰ Pushkar Anand, Shivang Tripathi, *Section 152 of BNS Should Not Become A Proxy For Sedition*, THE HINDU (Jan. 10, 2025, 12:55 AM), <https://www.thehindu.com/opinion/op-ed/section-152-of-bns-should-not-become-a-proxy-for-sedition/article69081250.ece>.

⁷¹ *Id.*

⁷² Law Commission of India, *246th Report on The Bharatiya Nyaya Sanhita, 2023 (November 10, 2023)*.

⁷³ *Supra* note 70.

⁷⁴ 2024 LiveLaw (Raj) 413.

⁷⁵ Nupur Agrawal, *[S. 152 BNS] Sedition Law Is A Shield For National Security, Not A Sword Against Political Dissent: Rajasthan High Court*, LIVE LAW (Dec. 22, 2024, 01:43 PM), <https://www.livelaw.in/high-court/rajasthan-high-court/rajasthan-high-court-quashes-fir-against-sikh-preacher-pro-khalistani-video-amritpal-singh-279162>.

⁷⁶ *Id.*

⁷⁷ *Supra* note 75.

⁷⁸ *Supra* note 75.

the heart of the case and noted that while the speech expressed criticism of the government, it did not demonstrate the intent required to qualify as an offence under Section 152.⁷⁹ The court emphasized that **authentic dissension or criticism should not be mistaken for sedition or anti-national activities.**⁸⁰ The Court further detected that the provision was not supposed to be seen as a sword against dissent but as a shield required for national security.⁸¹

Old Law vs. New Law

1. Under the 'Indian Penal Code (IPC)', 'Section 124A' was previously known as Sedition. However, in the 'Bharatiya Nyaya Sanhita (BNS)', it has been redefined as "Act Endangering Sovereignty, Unity, and Integrity of India."⁸²
2. The earlier sedition law included three explanations clarifying its scope. In contrast, the new provision under BNS contains only one explanation, which states: "Comments expressing disapproval of government measures or administrative actions, aimed at seeking lawful changes, without inciting or attempting to incite activities mentioned in this section, do not constitute an offence."⁸³ In simpler terms, merely disagreeing with or criticizing government actions through legal means does not fall under Section 152 of BNS.

The new Act makes the interpretation of Section 152 so broad that it can include any act in the name of imperiling the unity and integrity of India. It leaves a lot of room for choice which is the contradictory of what was advised by the 'Law Commission.' A key concern is that 'Section 152' criminalizes acts imperiling the sovereignty, unity, and integrity of India without clearly defining what creates such an endangerment. This lack of precise definition creates ambiguity, leaving room for broad and potentially arbitrary interpretation by law enforcement authorities. This provision emphasizes the impact of 'encouraging feelings.' While numerous cases have addressed sedition and its interpretation, the courts have yet to provide a clear definition of what constitutes 'encouraging feelings.' Additionally, there is an important difference between the severity of threats to public order and the mere act of encouraging sentiments. As a result, imposing restrictions based on the notion that it fosters separatist activities raises questions about the reasonableness of such limitations. As a result, even speeches criticizing historical or political figures or expressing sympathy toward controversial individuals could be interpreted as threats to national unity, leading to legal action. In an increasingly polarized sociopolitical climate, a vaguely worded penal provision without safeguards against misuse could become a tool for silencing dissent and curbing free expression.

VII. CONCLUSION

Jawaharlal Nehru also spoke about the law of sedition, a statement later quoted in 'The Great Repression: The Story of Sedition in India' by Chitranshul Sinha. He emphasized that "Freedom and oppression cannot coexist, just as truth and falsehood stand in stark contrast. We have come to understand that the cost of freedom is often paid with blood and suffering—the sacrifices of our own people and the hardships endured by the most honorable among us. And we are prepared to pay that price in full."

Given the long-standing debate surrounding Section 124A of the IPC and the evolving socio-political landscape, it was necessary to reformulate the law to ensure it be eligible as a justifiable restriction under 'Article 19(2)' of the Constitution. The key aspects of Article 19(2) relevant to sedition include the 'integrity of India, the security of the State, and public order.' Courts had previously highlighted a flaw in the section, noting that it does not explicitly link seditious intent or actions to threats against these fundamental interests. While the government sought to reflect public sentiment and adhere to Supreme Court directives in the case of 'S.G. Vombatkere v. Union of India'⁸⁴, 'Section 152' of the BNS has significant shortcomings. 'Section 152 of the BNS' intends to protect India's 'sovereignty, unity, and integrity.' Unlike Section 124A, it lacks a well-defined balance, making it vulnerable to legal challenges on

⁷⁹ Dinesh Bothra, *Legitimate Dissent Can't Be Equated With Sedition: Rajasthan HC*, HINDUSTAN TIMES (Dec. 23, 2024, 05:12 AM), <https://www.hindustantimes.com/india-news/legitimate-dissent-can-t-be-equated-with-sedition-rajasthan-hc-101734893546820.html>.

⁸⁰*Id.*

⁸¹*Supra* note 75.

⁸² Bharatiya Nyaya Sanhita, Section 152, No. 45, Acts of Parliament, 2023 (India).

⁸³ Bharatiya Nyaya Sanhita, Section 152, No. 45, Acts of Parliament, 2023 (India).

⁸⁴(2022) 7 SCC 433.

multiple fronts. Moreover, it employs broad and ambiguous language, which raises concerns about its potential misuse. The ‘pith and substance’ of both the laws is same, notwithstanding the dissimilar name.⁸⁵

Justice Monga of Rajasthan High Court also concluded by highlighting the need for constitutional balance amid individual rights and public order, stating that Section 152 “must be interpreted in conjunction with the constitutional rights to free speech and expression to ensure it does not infringe on democratic freedoms.”⁸⁶ Thus, without well-defined safeguards, Section 152 could effectively serve as a substitute for the sedition law, enabling authorities to suppress dissent under a different label. To prevent potential misuse, strong judicial and legislative oversight is essential to preserve a fair balance amid protecting national security and keeping civil liberties.

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⁸⁵Shrushti Taori & Tatva Damania, *Balancing Free Speech And National Security: A Critical Analysis Of Section 152 Of The Bharatiya Nyaya Sanhita And Section 124-A Of The IPC*, LIVE LAW (June 2, 2024, 11:25 AM), <https://www.livelaw.in/lawschool/articles/balancing-free-speech-national-security-critical-analysis-section-152-bhartiya-nyaya-sanhita-section-124-a-ipc-259465>.

⁸⁶*Supra* note 79.’