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## A CRITICAL LEGAL ANALYSIS OF SEDITION:- SECTION 152 OF THE BHARTIYA NYAYA SANHITA AND SECTION 124-A OF THE INDIAN PENAL CODE

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### Abstract

On the 11th of August 2023, a decision that could potentially alter the Indian Legal Landscape occurred; a new law was proposed to replace the current IPC of 1860 - The Bharatiya Nyaya Sanhita. Section 150 of the proposed legislation, which lies under the title of 'Acts endangering sovereignty, unity and integrity of India,' Sedition law in India since the inception of the Indian Penal Code, has been known for its draconian nature. This paper attempts to bring to the fore the pertinent fact that Sedition Laws have not been repealed but rather brought in a new form through the proposed code. The article mainly discusses the concept of sedition law and Applicability of this law in the current Indian legal context. Law Barbiturates were introduced in India as a measure to reduce unwanted use About freedom of expression. The punishment for sedition was harsh With a prison sentence of not less than seven years and possibly life imprisonment. It is considered a known item, non-returnable and non-refundable Complex crimes under Indian law. Over time, there was widespread abuse Specific arrangements and is currently used as an instrument Harassment to limit freedom of expression. As a result, strong calls were issued to remove the outdated rebellion requirement laws aimed at protecting colonial interests. In its latest petition, the Supreme Court declared this sedition . The law dates back to colonial times and challenges the central government And whether it is still necessary 75 years after independence. According to the sedition laws of India It is used as a tool of harassment to limit freedom of expression. This is the result In the face of widespread demands to abolish current regulations regarding incitement to rebellion It is considered an outdated law intended to serve colonial interests.

**Keywords** – Sedition, Crime, Constitutional Freedom, India.

### Introduction

Sedition is a crime that has long been a source of tension and debate in India for many people. He said it is often used to suppress dissent and stifle freedom of expression. In India, sedition is a cognizable offense that does not require bail, which means the police can. People suspected of inciting riots are arrested without a warrant and may be detained unsecured. The penalty for rebellion is imprisonment for up to three years, or even life imprisonment if the act of rebellion involves violence. However, this law has become a controversial topic in India, with many seeing it as violating constitutional law

and fundamental rights guaranteed by the Indian Constitution. Several ways in which the Indian Sedition Act allegedly violates constitutional law and fundamental rights. The Law Commission, under the chairmanship of Lord Macaulay, was established in India in 1834 under the supervision of the Charter Act of 1833. Begins the Indians' continuing quest for increased freedom It created problems for British rule in the country. Current newspapers and magazines The main means of communication at that time, it helped spread awareness and Unite the people against the British Empire. The uprising of 1857 was the result



of unification and Growing demand for independence in India. The riots of 1857 led to the handover of Indian rule to Great Britain<sup>9</sup>. To suppress such riots, it would henceforth be important to remove or at least restrict the content printed in newspapers and magazines. After the riots of 1857, an attempt was made to codify criminal law in India. The Law Commission drafted the IPC in 1860 However, it came into effect in 1862<sup>10</sup>. The project included Imposing restrictions on speech, speech or writing that is likely to incite hatred against the British Raj, referred to in sec 113, is an offence. However, for reasons Unknown, this section was not mentioned in the original Indian Penal Code It took effect in 1862. At the suggestion of James FitzJames Stephen, the rebellion began<sup>11</sup>. It was eventually added to Section 124A of the IPC in 1870. India's sedition law, defined in Section 124A of the Indian Penal Code (IPC), has recently become a topic of heated debate. This Act criminalises any speech or expression which causes or attempts to cause hatred or contempt or incites or attempts to excite discontent against the government established by law in India. However, the law has been widely criticized for being abused and used as a tool to suppress dissent. In view of this, the Indian government recently proposed a new law called the Bharatiya Nyaya Sanhita (BNS) law, 2023, which aims to repeal the sedition law and introduce a new provision with a broader meaning for the crime. The main argument against sedition is that it is a relic of the colonial past. Looking into the antecedents of the law, it was first formulated by Macaulay in 1837, and eventually added by James Stephen in 1870 as Section 124A of the IPC. The Minister of the Interior announced the abolition of the article on the seduction law. Meanwhile, a closer look

at section 150 of the Bharatiya Nyaya Sanhita law reveals worrying details<sup>12</sup>.

### Meaning and Definition

Sedition is generally defined as incitement to discontent or rebellion against authority. condition. Any action, written or verbal, that encourages such discontent can also be defined as insurgency. Condemning the state or inciting or promoting armed rebellion against it established, belongs to rebellion, is the meaning of rebellion. It is also associated with separatist tendencies within the state. During the early medieval period in Europe, it was also intended to criticize the church, the clergy, and the court Officials holding the throne. And so are the criticisms of religious sentiments that are encouraging and powerful In most theocratic countries, it is associated with sedition, and is also known as blasphemy from Rebellion comes from the Latin word sedition, which literally means "to take sides." Sedition is a tool intended to repel any threat or danger to the state<sup>13</sup>. Against the public, as well as to prevent any public disturbances, provocation or even hatred. The sedition law in India essentially arises from Section 124-A1 of the Indian Penal Code, 1860 (Law No. 45 of 1860)<sup>14</sup>. In addition, there are several other special laws that provide for the prevention of such disturbances, such as the Armed Forces (Special Powers) Act 1958 (Law No. 28 of 1958) 1958). There are also some canceled actions such as terrorist and sabotage activities (Prevention Law) 1987 (Law No. 28 of 1987) and the Prevention of Terrorism Law 2002-2004. However, there are special laws to prevent terrorism. But there is a fine line between insurgency and terrorism, because they both pose a threat to the state equally in public or both.

<sup>9</sup> Josiah Ober, Kurt Raaflaub, and Robert Wallace, ORIGINS OF DEMOCRACY IN ANCIENT GREECE (2007).

<sup>10</sup> Doris Mary Stenton, Magna Carta, ENCYCLOPEDIA BRITANNICA ONLINE

<sup>11</sup> Agathocleous, Reading for the Political Plot: A Genealogy of Disaffection, 61 CRITICISM 569 (2019).

<sup>12</sup> Gaur, Hari Singh, (11th ed. 2011), II Penal Law of India, Law publishers (India) Pvt. Ltd., Allahabad.

<sup>13</sup> Sinha, Manoj Kumar & Anurag Deep, (2018), Law of Sedition in India and Freedom of Expression in India, The Indian Law Institute.

<sup>14</sup> Indian Penal Code IPC by Rajeev Kumar (2024)





### Indian Penal Code Section 124–A<sup>15</sup>

Any person who causes or attempts to incite hatred or contempt by word, speech, writing, gesture, visual representation, or by any other means, or incites or attempts to incite dissatisfaction. His Majesty or the Government established by law in British India shall be punished with banishment for life or for a shorter period, or with fine, or with imprisonment which may extend to three years, or with a further fine.

Explanation 1.--The expression "discontent" includes disloyalty and all hostile feelings.

Explanation 2.--Comments expressing disapproval with the measures taken by the Government to obtain the amendment by lawful means, without inciting or attempting to incite hatred, contempt or indignation, do not constitute an offense under this section.

Explanation 3- Comments disparaging government administration or other conduct that does not incite or attempt to incite hatred, contempt or anger shall not constitute an offense under this section. In this amendment, Justice Petrin said that in the Panjbasia case, anger refers to the opposite feeling, in other words, as Justice Strachey said in Bal Gangadhar Tilak (which was found in the first trial against Bal Gangadhar Tilak, hatred, contempt or disgust; , disloyalty is probably the best general terms to cover all possible antipathies to the government.

### Bharatiya Nyaya Sanhita, section 150- Acts Endangering, Sovereignty, Unity and Integrity of India<sup>16</sup>.

Anyone who knowingly or intentionally incites or attempts to incite, secession, or armed rebellion, by speech, writing, gesture, clear expression, electronic communication, use of financial means, or otherwise. . Subversive activities or encouraging separatist activities or endangering the sovereignty, unity and integrity

of India; Condoning or committing any such act shall be punishable with imprisonment for life or with imprisonment for a term which may extend to seven years and shall also be punishable with fine.

Explanation.--Comments expressing disapproval of administrative or other measures or actions taken by the government intended to achieve redress through legislative means without inciting or attempting to incite the activities described in this section.

### Judicial Interpretation

In **Kedar Nath Singh v. State of Bihar**<sup>17</sup>, Supreme Court overruled the choice of **Ram Nandan v. State**<sup>18</sup> and hold that Sedition law under sec.124A, We imagine that the section precisely expresses the law of all things considered to be accumulated from an assessment of an extraordinary number of legal proclamations. The first and foremost duty of any government is to maintain demand, because demand is the reference condition for all development and human happiness. This oath was doubtless given and intended to promote a cure rather than to aggravate the condition, but this incident did not interfere with the performance of the duty, as some of those who had to perform it fell ill. We would like to believe that the crime of sedition is related to this part of the government. This is a state's appropriate response to those individuals who seek to disturb its peace (based on the above approach), create a demonstrable disruptive effect and promote the issue, or influence others to influence others with the intent to attack or assault others. this way. If such a hope or inclination exists, then words, deeds or actions turn out to be acts of sabotage, if they attempt to defame the government as mentioned, it is easy to see why they should also be in opposition. It is a crime to emphasize the futility of a broken government, but when government and laws are no longer respected because they are no longer respected, only

<sup>15</sup> K.D. Gaur, THE TEXTBOOK ON INDIAN PENAL CODE 378 (2020).

<sup>16</sup> Ministry of Home Affairs [https://www.mha.gov.in/filesPDF/ THE BHARATIYA NYAYA SANHITA, 2023 NO. 45 OF 2023 An Act to ...](https://www.mha.gov.in/filesPDF/THE%20BHARATIYA%20NYAYA%20SANHITA,%202023%20NO.%2045%20OF%202023%20An%20Act%20to%20...)

<sup>17</sup> Kedar Nath Singh v. State of Bihar, 1962 AIR 955.

<sup>18</sup>Ram Nandan v. State AIR 1959 ALL 101.



rebellion ensues. Therefore, the essence of this offense is a public trial or a reasonable expectation of or opportunity for a public trial. Demonstration or arrest speech must cause a disturbance or satisfy the expectations or desires of a reasonable person.

### DR. BINAYAK SEN VS. CHANDIGARH<sup>19</sup> (2007)

In the pending case, Naxalite pamphlets, booklets and letters were found in the possession of the petitioner Binayak Sena, which were admitted as evidence of the formation of the PLGA organization and "Guerrilla Jan Sena Krantikari Samyukta Morcha" to directly fight the government. machines with the power In this incident there was a clear attempt to create disaffection against the statutory government and to create hatred and disaffection against the statutory government. There is strong evidence of incitement to hatred and discontent against the statutory government. Which reveals the act of alleged organizations and their success in killing members of armed force, destructing mine proof vehicles of police, use of pressure bomb, robbery of arms & ammunition from police and armed forces.

Dr. Binayak Sena was charged with sedition by a Raipur court and sentenced to life imprisonment for allegedly helping Naxalites, among other crimes. He was accused of passing on the medical records of a Maoist prisoner to people outside the prison, thus aiding the insurgents operating in the area at the time. The state-backed group is said to be aiming to quell unrest in indigenous tribal villages where insurgency has become widespread. However, Dr. is both a human rights defender and a pediatrician. Sen claims that the group's main mission is to clear the village's land, which is rich in iron ore, bauxite and diamonds. After a full analysis of the facts of the case, the court decided to prosecute him for the crime of sedition.

**Toolkit Case Disha Ravi<sup>20</sup>**, an environmental activist in India, was charged with sedition in

2021. She was accused of editing and disseminating a toolkit related to the farmers' protest, which authorities claimed had seditious content. The case sparked debates on freedom of speech, online activism, and the misuse of sedition laws.

### In the case of S.G. Vombatkere vs Union of India<sup>21</sup>

A Chief Justice of India N. Ramana, Justice Surya Kant and Justice Hema Kholi said they have taken note of the Supreme Court of India's May 12, 2022 order to the Government of India to review the law. The Attorney General has also brought a number of abuse of inducement cases. The court passed an order directing the central government to reconsider and amend Section 124-A of the Indian Penal Code. Although this objection is based primarily on constitutional grounds and does not delve into criminal law principles, the parliamentary review of Section 124 paves the way for a more in-depth, normative analysis of the right to riot. Although the newly introduced National Security Law has abandoned the term "incitement", Article 150 of the National Security Law clearly reflects the crime of incitement and even increased the number of penalties for incitement in line with the Law Commission's recommendations. Report no. 279 The power of punishment. However, from a limited strict criminal liability perspective, Section 150 of the NSA makes up for the shortcomings of Section 124-A in three respects. First, in Article 150, the word "tendency" is deleted and the word "intentionally or knowingly" is added to the entire crime, clearly foreseeing the element of human rea. This negates the aspect of strict liability from the offence of sedition. Second, by removing "disaffection towards the Government" as a constituent of the offence and by replacing the same with terms including "armed rebellion" and endangering sovereignty and integrity of India", the new Section protects a justifiable "legal good" since it is traceable to grounds for restricting Fundamental Rights [For

<sup>19</sup> 2011 ELT 193 Chhattisgarh.

<sup>20</sup> Disha A. Ravi vs State (Nct Of Delhi) & Ors. AIRONLINE 2021 DEL 159.

<sup>21</sup> S.G. Vombatkere vs Union of India, (2022) 7 SCC 433.



instance, under Article 19(2)]. Thirdly, since Section 150 does not provide for an offense of strict liability, the ground of strict liability need not be satisfied, as we have shown above, Section 124-A cannot provide for it.<sup>22</sup>.

### Law Commission Report<sup>23</sup>

Law Commission of India on 30 August 2018.<sup>34</sup> In his report Law Commission of India fined in order to study revision of section 124A further, the following issues would require consideration:

- The UK nullified dissidence laws ten years back referring to that the nation would not like to be cited for instance of utilizing such draconian laws. Given the way that the segment itself was acquainted by the British with use as an instrument to mistreat the Indians, how far is it advocated to hold s.124A in India Penal Code?
- Should subversion be not re-imagined in a nation like India, the biggest popular government of the world, taking into account that the option to free discourse and articulation is a basic element of the majority rules system guaranteed as a Fundamental Right by our Constitution?
- Will it be advantageous to think about an alternative of renaming the area with a reasonable substitute for the term subversion and endorse discipline in a like manner?
- What is the degree to which the residents of our nation may appreciate the option to insult?
- How to find some kind of harmony among s.124A and right to the right to speak freely of discourse and articulation?

### Constitutional Validity Of Section 152 Of The BNS

Although the validity of the Inducement Act has been questioned many times, the Law Commission has recommended that the provision should not be repealed in any case citing the same reasons as in the Kedarnath Singh case. In comparison, BNS section 152 aims to protect the sovereignty, unity and integrity of India, but its meaning is vague and broad. The wording of the section is completely different from Section 124-A of the Indian Penal Code and the word "sedition" is not used anywhere. Moreover, although the names are different, the substance and content of the two laws are the same. Despite the government's intention to comply with public demands and Supreme Court orders, Article 152 of the BNS is flawed<sup>24</sup>. It lacks the meticulous balance of section 124-A and can be challenged on the following grounds–

#### Section 152 of the BNS violates Art. 14 of the Constitution of India–

The Supreme Court identified five circumstances in which any order or decision is arbitrary, non-implementation of legitimate reasons and disregard of the rights of the parties and public interest. In the Shreya Singhal case, the court held that Section 66A of the Information Technology Act, 2000<sup>25</sup> was unconstitutional on the grounds that it contained expressions such as "seriously offensive or threatening in nature", "nuisance", "distress", "danger" etc. , "problems" and "dangers". Terms like "hostility," "hatred," and "malicious intent" are vague and open to abuse by those in power. There is also much controversy and confusion about the accuracy of the terminology used in the decision. For example, the term disruptive activity. According to the Cambridge Dictionary, "subversion" means "an attempt to destroy or damage something, especially an existing political order." The Oxford dictionary defines "subversion" as "an attempt or purpose to

<sup>22</sup> Indian Penal Code, 1860, CK Takwani, 2nd ed. 3.

<sup>23</sup> Law Commission of India, "279th Report on Usage of The Law of Sedition" (April, 2023)

<sup>24</sup> K.I. Vibhute, PSA Pillai's Criminal Law, 568 (14th ed., LexisNexis 2019).

<sup>25</sup> Information Technology Act, 2000, sec 66-A, No. 21, Acts of Parliament, 2000 (India).





destroy an existing system or institution" and "sabotage" as "undermining the power and authority of (an existing system or institution)". As these activities often aim to question the legitimacy and authority of government policies and actions, their components are broad enough to include legitimate protests and expressions of disagreement with those in power. Furthermore, Article 124-A of the Turkish Civil Code states that the object of the violation is the government established by law. In Kedar Nath Singh, the Supreme Court defined "statutory government" as a visible sign necessary for the continuity and stability of the State and distinguished it from persons exercising administrative functions. This clarity helps identify specific things that need protection and also shows the level of harm needed to trigger a conflict. In another case, the court interpreted section 3 of the repealed TADA Act (which covered the same damages) as meaning "statutory government". The court ruled that the assassination of former prime minister Rajiv Gandhi could not be described as an act of terrorism because he was not the current prime minister and targeting him was not an attempt to instill fear in the central or state governments. . But under Article 152 of BNS it was changed to the Indian name. This widens the scope of crime as it can also include criticism of the government, public officials and even society and society in general. The vague definition raises questions about the government's motives. The vagueness of the terminology is completely at odds with the precision required in the legal interpretation of section 124A. This uncertainty may lead to arbitrary application and violation of Article 14 of the Constitution of India.

**Section 152 of the BNS violates Art. 19 of the Constitution of India-** Freedom of speech and expression is an internationally recognized human right<sup>26</sup> and is the foundation of any free

and democratic society<sup>27</sup>. This includes the right to express ideas or opinions that are unpopular or offensive to others. Article 19 subsection 1(a) includes the right to dissent and promotes the development of democracy. The Court encourages open debate, including dissent. The court held that everyone has a fundamental right to form their own opinion. The state cannot stop public debate and clear views, but to criticize its views. Kedarnath Singh The Supreme Court cannot restrict citizens' rights to the opposition. Further, in the Balwant Singh case, the Supreme Court held that even the shouting of slogans like 'Khalistan Zindabad' cannot be restricted because the mere shouting of such slogans does not create any disturbance or incite people to create mayhem. Not subject to the limitation art 19(2). Also, the court ruled that even an expressed claim to inheritance is not rebellion. Moreover, courts from Sadashiv Narayan Bhalerao to Niharendu Dutt Majumdar and Kedarnath Singh have narrowly and strictly interpreted the "reasonable" effect of the restriction. Sedition is permitted only if the sedition has an object or tendency to disturb public order, as this makes it "reasonable" under Article 19(1)<sup>28</sup>. However, the effect mentioned in section 152 of the BNS is less likely and does not fall within the scope of the subsection of section 19 of the BNS. The stated effect of this rule is "emotion stimulation". Many questions arise about fitnah and its interpretation. The court did not define this word as an encouraging feeling. Also, there is a huge difference between being serious about policing and being serious and promoting sentiment. Therefore, the legality of restrictions imposed with the aim of promoting separatist sentiments is questionable; section 152 of the BNS will indeed have a very serious impact on individual rights. The rebellion, in all its accepted interpretations, very delicately balanced the rights of citizens and the duties of the state. The way the BNS is worded is vague and violates the fundamental rights of citizens.

<sup>26</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) ('UDHR') art 19; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR') art 19.

<sup>27</sup> UNHRC 'General Comment No 34, Article 19: Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34."  
<sup>28</sup> Indian Constitution article 19.





## Conclusion -

The new Bharatiya Nyaya Sanhita code, as a revolutionary step in reforming the Indian Judicial System, falls short in reducing the ambiguities as well as the Uncertainty that existed under Section 124A of the Indian Penal Code, the step to remove the word 'Sedition' in the new Bill is in furtherance of the changing view of the Supreme Court on Sedition Law, a law which evolved to safeguard the national security and the sovereignty of the nation has far exceeded its use and the misuse of the section is more prevalent than its rightful use, section 150 of the Bharatiya Nyaya Sanhita should be brought in a manner which safeguards both the freedom of speech and expression as well as public order. Ultimately, the success of any sedition law in India or elsewhere should be measured not only by its effectiveness in maintaining national security but also by its commitment to upholding the democratic values and freedoms that are at the heart of any thriving democracy. In recent years the number of arrests under sedition has increased exponentially. However, a far smaller number of people are actually convicted for the crime. There has been a significant hike in the number of cases of sedition in recent years, according to

the National Crime Records Bureau (NCRB). As per the NCRB reports, between 2016 and 2019, the number of cases filed under sedition has increased by 60 %, while the rate of conviction dropped to 3.3 % in 2019 from 33.3% in 2016.53 According to the data of the Union Home Ministry, there have been a total of 326 arrests between the years 2014 and 2019, while only six people were actually convicted. This non-bailable section is being used solely to suppress voices and not to convict the criminals. Despite the judgement of Kedar Nath Singh, which particularly states that: The hate speech should be against the country and not against a party or any political leader. It should directly incite violence. People are being arrested for mere expression of their views on the internet or even for protesting peacefully.