REPEAL OF SECTION 124A OF THE INDIAN PENAL CODE AND INTRODUCTION OF SECTION 152 IN THE BHARATIYA NYAYA (SECOND) SANHITA: A COMPREHENSIVE ANALYSIS OF SEDITION LAW REFORMS IN INDIA

Shurbhi Kumar, National Law University, Delhi

ABSTRACT

Sedition law in India has forever been a contentious issue. The law was in force in the post-independence era, but now, with the advent of the new criminal law bill, The Bharatiya Nyaya (Second) Sanhita, Bill No. 173 of 2023, the section 124A of the Indian Penal Code, Act 45 of 1860 that defines and punishes sedition, stands repealed. However, a new section 152 has been added which, though does not mention sedition, but echoes the same offence with a wider and stricter criteria.

This research paper delves into the foundational concept of sedition, its evolution and implications in the modern world, particularly India and the reason for its repeal. The paper also analyses and compares the new section of 152 in The Bharatiya Nyaya (Second) Sanhita with the repealed section 124A of The Indian Penal Code. By drawing insights from various Supreme Court decisions, the paper thoroughly examines the age-old rhetoric to repeal the sedition law and how this 'imperialistic' rule was a perceived in the largest democracy of the world.

Keywords: Sedition law, Section 124A IPC, Bharatiya Nyaya (Second) Sanhita, Section 152, Criminal discourse

Introduction

Sedition is a criminal offence that was first enacted in the English Common Law system. It is a language intended to incite insurrection against the governing authority. Edward Jenks, in The Book of English Law, contends that sedition is "perhaps the very vaguest of all offences," and attempted to define it as "the speaking or writing of words calculated to excite disaffection against the Constitution as by law established, to procure the alteration of it by other than lawful means, or to incite any person to commit a crime to the disturbance of the peace. . ."[1]

In India, sedition was defined under **Section 124A** of the Indian Penal Code (IPC). This section was originally introduced during the British colonial rule in 1870 and has been a source of considerable debate post-independence because of its oppressive outlook. It is defined as- *"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."* Further the word 'disaffection' includes disloyalty and all feelings of enmity and that comments expressing disapprobation of the measures of the Government (with a view to obtain their alteration by lawful means), or comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection will not amount to the offence of Sedition under the aforesaid section.[2]

Sedition, the 17th century rule of England was originally drafted for colonised India in 1837 by Thomas Babington Macaulay, a British historian-politician. However, when the Indian Penal Code was enacted in 1860, this law was dropped. Section 124A was inserted in 1870 by way of an amendment brought by British politician and lawyer James Fitzjames Stephen. Although the British said that such a law was necessary to account for political conditions in India, many scholars have argued that the 1870 amendment was passed in response to growing Wahabi activities in the subcontinent.[3]

[1] "Sedition", Legal Information Institute, Cornell Law School available at: https://www.law.cornell.edu/wex/sedition (last visited on June 26, 2024).
[2] Indian Penal Code, 1860 (Act 45 of 1860), S.124A.
[3] "Sedition Law in India: A Timeline", Malavika Parthasarathy, Supreme Court Observer available at: https://www.scobserver.in/journal/sedition-in-india-a-timeline/ (last visited on June 11, 2024).

Presently, as the Indian Penal Code of 1860 is replaced by the Bharatiya Nyaya (Second) Sanhita, 2023, section 124A has not been retained but repealed. However, a new section in Part seven that delves into the 'Offences against the State' features **Section 152** titled 'Act endangering sovereignty, unity and integrity of India' which confers equivalent authority and power as that conferred by sedition laws." The exact legislation reads as- *"Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean,or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years,and shall also be liable to fine".*[4]

While the language of former section includes 'hatred', 'contempt', and 'disaffection towards the Government', the latest provision has used 'secession', 'armed rebellion', 'subversive activities' and 'separatist activities' that 'endangers sovereignty or unity and integrity of India'. Albeit the sedition term has been expunged from the new criminal law, but its remnants can still be found in the recently developed legislation which appears to be as rights-restrictive as the former 'colonial' law over which, for decades, the legal discourse has been going on for its expulsion.

So, has the government truly repealed the sedition law, or does it linger in the shadows, retained under a different guise?

Sedition: Pre-Independence Era

1870 was the year when, by way of an amendment, section 124A was inserted in the Indian Penal Code (IPC) of 1860, following the footsteps of the English Treason Felony Act of 1848 with the sole purpose of suppressing the dissent, mutiny and other revolutionary activities in India.[5] After the Mutiny of 1857, it was the Crown which was the target of new rebels to overthrow from India. With the law coming into effect, many arrests under this law began; Revolutionaries, Party leaders, protesters etc. Prominent names like Bal Gangadhar Tilak,

[4] Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), S.152

[5] "The origins and validity of Sedition Law in India", Ankesh, Manupatra Articles available at: https://articles.manupatra.com/article-details/The-origins-and-validity-of-Sedition-Law-in-India (last visited on June 11, 2024).

Mohandas Karachand Gandhi were also arrested by the British for activities which they labelled as 'seditious' and against the Majesty.

The first case that was registered was against Jogendra Chunder Bose in 1891 (Queen-Empress vs Jogendra Chunder Bose And Ors.).[6] The case was taken up in Calcutta HIgh Court and presided over by Chief Justice William Comer Petheram and he decided that it was a perfect case to go to the Jury as against the Defence Counsel opposing it. Petheram, C.J. was of the opinion that "*The offence is attempting to excite disaffection by words intended to be read, and I think that whoever the composer or the writer might be, by whomsoever the writing or the printing was composed, the person who used them for that purpose within the opinion of the Jury was guilty of an offence under Section 124-A.*". The articles in contention were the five published articles in Bengali magazine *Bangobasi* whose original authors could not be identified and hence the proprietor, editor, manager and printer, Jogendra Chunder Bose was held liable. The judgement of this case also provides reasoning for the inclusion of this section in para 9, "*because if there were no provision in the law of India, the offence would fall under the common law of England, and would be more severely punishable; and he [Sir. J. STEPHEN] most distinctly asserted that there must be an intention to resist by force or an attempt to excite resistance by force before the offence could be brought under the present section*."

It was pleaded in the court by the Defence Counsel, Mr. Jackson that the articles contained no direct incitement to rebellion or the use of force, and did not exceed the bounds of legitimate criticism. He also contended that the words "disaffection" and "disapprobation" were synonymous words and had one and the same meaning. Disaffection means a feeling contrary to affection; in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or actions and yet to like him. [Para 13] Hence, two questions were put forth for the Jury to adjudicate whether the two words were synonymous and whether the articles were seditious to create such feelings in the mind of readers.

While adjudicating on this matter, the Chief Justice appealed to the Jury to also take into consideration, the probable effect of the language indulged in by the authors of the articles and not only the intent, as well as the relations between the Government and the people and the

[6] (1892)ILR 19CAL35

consequence of this 'well-organised' disaffection. "*There is a great difference between dealing with Government in that sense and dealing with any particular administration. Were these articles intended to excite feelings of enmity against the Government, or, on the other hand, were they merely expressing, though in strong language, disapprobation of certain Government measures?*"

The ultimate question was narrowed down in para 18 as "were the articles intended, and were they likely, to cause disaffection. The defence urged that the articles only expressed disapprobation of Government measures: the prosecution say they were deliberate attempts to incite the people to disaffection." However, the Jury could not give a unanimous verdict and were discharged while the accused was enlarged on a bail.

Another famous case of sedition was the trial of Bal Gangadhar Tilak, a prominent figure in India's freedom struggle. He was convicted twice, first[7] in 1897 and secondly[8] in 1908. In 1897, Tilak was held guilty of sedition for his speeches and publications during Shivaji festival in Pune, which led to the killing of two British policemen.[9] According to the Bombay High Court, presided over by Justice Arthur Starchey, the articles presented to incite enmity between the Government and the people and hence, Tilak was convicted under S.124A. This is a landmark judgement because Justice Starchey widened the scope of "*disaffection*" in the definition of sedition. He noted that, "*'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government." "If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within s. 124-A, and would probably fall within other sections of the Penal Code.*" This interpretation was used as a precedent in various cases like Queen Empress v. Amba Prasad ILR (1898) 20 All 55 and Mrs. Annie Besant v. Emperor (1916) I.L.R Mad 55.[10] Ultimately, Tilak served an 18-month prison term.

[7] Queen Empress v. Bal Gangadhar Tilak and Keshav Mahadev ILR (1897) 22 Bom 112.
[8] Emperor vs Bal Gangadhar Tilak (1908)10 BOMLR 848
[9] "SEDITION LAW IN INDIA: AN ANALYSIS THROUGH CASE LAWS", Blog by Journal of Legal Research & Judicial Sciences, available at: https://jlrjs.com/sedition-law-in-india-an-analysis-through-case-laws/
[10] Live Law, "Arun-Shourie-moves-supreme-court-against-sedition-law-" https://www.livelaw.in/pdf_upload/arun-shourie-moves-supreme-court-against-sedition-law-396717.pdf

In 1908, Bal Gangadhar Tilak was again convicted for Sedition because of his seditious publications in Kesari and Mahratta which criticised the British policies. Tilak was accused of inciting disaffection and violence among the masses through the newspaper. The case was again heard in the Bombay High Court and presided over by Justice Dinshaw Davar. This time the punishment for Tilak was much harsher as he was exiled to Mandalay in Burma for six years.

These two convictions of such a key figure began to show how the rule of sedition was used as a tool to suppress dissent amongst the Indian leaders during the National Movement.

Another stupendous figure of India Nationalist movement was held guilty under this section; Mohandas Karamchand Gandhi. He was given six years in prison as he himself pleaded guilty to his politically contentious essays published in the "Young India" Journal and also vociferously voiced his opinion as to how controlling s.124A was as well as violative of individual rights. He was tried in 1922, at the Sessions Court in Bhadra, Gujarat.

Therefore, it is evident that for the British, sedition was a legal instrument in controlling the people of India and putting anybody behind bars who went against the Majesty of the British Government. By broadly interpreting sedition, the British ensured that any challenge to their authority was swiftly and severely dealt with.

What did Constituent Assembly Debates Decide on Sedition?[11]

Sedition was an extensively debated topic which can be found in Volume 7- 1st December 1948. The Constitution makers had different views on whether sedition should be retained or not.

Arguments in support of having sedition claimed that it would aid in maintaining law and order in the public as well as protection to the State. They wanted the government's authority to be preserved and that some notorious elements of the society may try to topple the State whenever they wanted. Hence, sedition law can prevent such mischief from taking place.

Arguments against sedition law put forth the individual freedom of right to speech and

[11] Constitution of India, Debates, Vol.7 available at: https://www.constitutionofindia.net/debates/01-dec-1948/ (last visited on Aug.01, 2024).

expression. Also, the potential for misuse of such law in the hands of few was another big concern. Positive criticism was to be encouraged but such a law could be misused in suppressing all the voices that are raised against the government.

Therefore, the Constituent Assembly did not go ahead with sedition but retained the power to the Parliament that such a law could be framed. It was decided while considering the possible conflict it poses to the rights of the individuals.

K.M. Munshi, one of the esteemed members of the Constituent assembly remarked that, "*The object is to remove the word 'sedition' which is of doubtful and varying import and to introduce words which are now considered to be the gist of an offence against the State.* "

The Law Commission Reports on 'Sedition'

Sedition has been discussed by the Law Commission on various occasions. The 39th Report, 42nd Report, 43rd Report, 267th Report and 279th Report have taken the use of sedition in the Indian Context for consideration whether it should be retained, repealed or modified; the latest report on sedition has suggested proposals for the Amendment of section 124A of the Indian Penal Code.

The Law Commission suggested that sentences for crimes like sedition should be either life in prison or rigorous or simple imprisonment, with the latter being limited to three years. This recommendation was made in its *39th Report (1968), "The Punishment of Imprisonment for Life under the Indian Penal Code".*[12]

In the *42nd Report (1971) "Indian Penal Code"*[13], section 124A went through a holistic overview by the Law Commission and it was recommended that in the then existing definition of Sedition, the element of mens rea or guilty intention must be added to remove the defect of charging a person under sedition merely on the ground of action and no intention to cause a violent mischief in the society. They also recommended revising Section 124A because it did not include disaffection towards the Constitution, the Legislature and the administration of Justice. Also, the punishment was advised to be made more logical and firmer as per the gravity

[12] Law Commission of India, 39th Report on The Punishment of Imprisonment for Life under the Indian Penal Code (July, I968).
[13] Law Commission of India, 42nd Report on Indian Penal Code (June, 1971).

of the offence.

In the *43rd Report (1971) "Offences Against the National Security"*[14] , a part of the National Security Bill, sedition was also mentioned in its Section 39. In this, the Law Commission reiterated their suggestions to revise section 124A as per the recommendations of the 42nd Report, 1971.

The *2017 Report, 267th by the Law Commission on "Hate Speech"*[15]*;* a difference was established by the report between 'sedition' and 'hate speech'. The latter was categorised as an offence that indirectly affects the State while the former directly affects the State and is against the State.

The 279th Report 2023, "Usage of the Law of Sedition".[16]

Sedition vis-a-vis Free Speech, Chapter 5 of the Report:

The chapter 5 of the report begins while emphasising that "Free speech is a hallmark of democracy." It is also maintained that reasonable restrictions can be imposed by the State to guarantee its 'responsible exercise' and that no other person's rights are infringed while this right is accessible to all. The Report also cited Article 19(3) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) as well as the Preamble and Article 19 of the Universal Declaration of Human Rights, 1948 (UDHR) to highlight the importance of reasonable restrictions and individual rights to freedom respectively. Similarly attention is drawn to the significant articles and clauses of the Indian Constitution, Art.19 (1)(a) & Art.19(2) where the same has been discussed.

The Report further addresses the key ingredient of sedition law; the balance between the freedom of expression and the national interest. Those who oppose the law contest that it is a part of the colonial past while on the other hand its supporters raise the issue of national security as well as the integrity of the nation. They maintained that the purpose of sedition was to check any threats against the government's instability but also to not shadow the positive criticism of the government. Also, the means to propagate such criticism should not be unconstitutional or

[14] Law Commission of India, 43rd Report on Offences Against the National Security (August, 1971).
[15] Law Commission of India, 267th Report on Hate Speech (March, 2017).
[16] Law Commission of India, 279th Report on Usage of the Law of Sedition (May, 2023).

provoke violence otherwise sedition charges will be applicable. The commission deliberated upon the 'one after another' reasonable restrictions that are being imposed on freedom of speech and expression. Ultimately, it is underscored why rights cannot be absolute and so is this one as well.

Conclusions, Chapter 9 of the Report:

As a conclusion to the 279th Report of the 22nd Law Commission, it was decided to retain the section 124A of the IPC (and reasons have been specified in the Report as A, B, C, D) but suggestions were put forth to bring about some amendments in the aforesaid section and make it more conducive for the nation. The reasons were-

A: To safeguard the Unity and Integrity of India. This head was discussed elaborately by the Law Commission and found that India has innumerable internal threats which make the law of sedition suitable for protecting India's security albeit special terror laws exist. The Report mentions sedition as a 'traditional penal mechanism' that has the ability of 'prompt and effective suppression of disintegrating tendencies is in the immediate interest of the nation' against issues like Maoist Extremism, Militancy and ethnic conflict in Northeast, terrorism in Jammu & Kashmir and secessionist activities in other parts of the country. The role of social media is also flagged in radicalising the issue and hatred against India which eventually makes this law pertinent to safeguard the government from being overthrown by illegal means.

B: Sedition is a reasonable restriction under Art.19(2). The Report enlists reasons as to how sedition is not violative of Art.19(1)(a) and cites how the Constitutive Assembly denied the phrase 'which undermines the security of, or tends to overthrow, the State', as it was broader in purview. Also, the first Constitutional Amendment instituted the words 'public order', 'friendly relations with foreign states' and 'incitement to offence' as restrictions to Art. 19(1)(a). Then, in the Kedar Nath Singh Judgement, the Supreme Court upheld the constitutionality of section 124A. The report also mentions that as per various Supreme Court decisions on Sedition, the two widely discussed aspects have been whether it is constitutional and unconstitutional and that 'the former construction should prevail over the latter'. This is substantiated by the Supreme Court's view in the Janhit Abhiyan v. Union of India.

C. Existence of Counter-Terror Legislations does not Obviate the Need for Section 124A.
The Law Commission here deliberates on the point that special legislations that relate to

counter terrorist acts cannot fully cover the needs and objectives set by the sedition law. The special anti-terrorist legislations serves a specific purpose of preventing or punishing terrorist acts/subversive activities that are threat to the security of the nation, like the Unlawful Activities Prevention Act, 1967 (UAPA), the Prevention of Terrorism Act,2002 (POTA), Disruptive Activities Act, 1987 (TADA) and National Security Act, 1980 (NSA). On the other hand, sedition deals with violent and unconstitutional means of throwing a democratically elected government. And if seditious activities are treated under any of the special laws mentioned above, the accused will be more strictly dealt with as these acts follow more stringent punishments.

D. Sedition being a Colonial Legacy is not a Valid Ground for its Repeal. The report here throws light on the controversy of sedition being a reminder of our colonial legacy and thus should be done away with. It invalidates this discussion and talks about how the police force and Civil Services, etc. are also an idea by the Britishers and by the virtue of this controversy, it should also be labelled as remnants of the British past. But merely calling them as 'colonial' does not render it as an ideal of the imperial mindset. Also, sedition only seeks to penalise the 'pernicious' tendency to invoke violence in the masses and does not curtail harmless criticism of the Government.

E. Realities Differ in Every Jurisdiction. With this part, the Law Report conclude chapter 9 of the 279th Law Report and maintains that every country has its own different set of realities and struggles and thus, Comparing India's political, geographical, historical elements, diversity, laws, etc. to that of UK, Canada, Us is not appropriate as their system is not similar to ours. It is also pointed out that these foreign jurisdictions have also integrated their sedition laws with counter terror legislations.

Recommendations, Chapter 10 of the Report:

The Law Commission ends the Report by putting forth four recommendations. The Commission comprised Justice Ritu Raj Awasthi as the chair, along with other members, Justice K.T. Sankaran, Prof. (Dr.) Anand Paliwal, Prof. D.P. Verma, Member Secretary/member (EX-Officio) Dr. Niten Chandra and Member (Ex-Officio) Dr. Reeta Vashista.

A. Incorporation of Ratio of Kedar Nath Judgment in Section l24A of IPC. The report championed the use of the settled proposition of law in the Kedar Nath Singh case, in which

the Supreme Court laid down a test as to what actions would amount to an offence under Section 124A. Words or actions that could excite violence or cause public unstability or disturb the peace of the public were deemed to be seditious.

B. Procedural Guidelines for Preventing any Alleged Misuse of Section I24A of IPC. The Report put forward that a mandatory recourse should be provided like the S.196(3) of the Code of Criminal Procedure, 1973 CrPC that would require a police officer, not below the rank of an Inspector to undertake a preliminary investigation before registering a First-Information Report (FIR) on the charges of sedition, in order to prevent the misuse of this provision. Another way suggested was to amend S.154 of CrPC to insert the same guideline.

C. Removal of the Oddity in Punishment Prescribed for Section l24A of IPC. As the 42nd Report on sedition pointed out the peculiar punishment mentioned under S.124A and also not being in consonance with the Chapter VI of IPC, the Law Commission suggested to revise the punishment for sedition in order to create more reasonable room for the judges while awarding punishments.

D. Proposal for Amendment in Section 124A of IPC. The most important part of this report is the proposal for amending the Section 124A of the Indian Penal Code. The Law Commission reported for the retention of the section but with certain amendments. As per this part, the definition of sedition was to be added with "***with a tendency to incite violence or cause public disorder shall be punished with imprisonment for life, to which Jine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.***" instead of " *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 withfine.*"

Also, it was proposed to add another explanation as the fourth one, to elaborate the meaning of 'tendency' as- "***Explanation 4.-The expression "tendency" means mere inclination to incite violence or cause public disorder rather than proof of actual violence or imminent threat to violence.***"

Cases that led to the present day

Post-Independence, sedition was debated many times and many High Courts called it to be

unconstitutional. Such developments can be traced by a few significant judgments pertaining to the law of sedition.

In Romesh Thapar v. State of Madras (1950)[17], the Supreme Court ruled that critics of the government "*inspiring disaffection or bad feelings towards it, is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the state.*"

In Tara Singh Gopi Chand v. The State[18] on 28 November, 1950, the Punjab - Haryana High Court while hearing the appeal which related to a seditious speech delivered by Master Tara Singh was being adjudicated, the court reasoned that S.124A was in violation of Fundamental right to Speech and Expression, and also that legitimate criticism of the government cannot be curbed. Hence, the High Court held all the prosecutions to be void and the section 124A was also held as unconstitutional.

In Ram Nandan v. The State [19]on 16th May, 1958 the Allahabad High Court also declared sedition as unconstitutional and void. The case dealt with a speech delivered to a gathering of 200 people which had mostly villagers; it was held by the defendant that the speech had the potential to cause public disorder as it encouraged his fellow people to form an army to overthrow the State. The Court reasoned that it was just a mere possibility of public disorder which is not enough to justify the arrest of Ram Nandan under sedition charges. Again, freedom of speech and expression were the key points upheld while maintaining that section 124A is void.

The JNU sedition case (2016). It refers to the highly controversial sedition case of the past in which a protest organised by students in the Jawaharlal Nehru University for commemorating the anniversary of the hanging of Afzal Guru, a convicted terrorist involved in the 2001 Indian Parliament Attack, were charged under S.124A for this act. It was alleged that anti-India slogans were raised during the protest. The issue of contention was whether the act of the JNU students was protected by the Art.19 of the Constitution; it also raised questions on the

[17] Romesh Thapar v. State of Madras,1950 AIR 124.
[18] Tara Singh Gopi Chand v. The State, AIR 1951 PUNJAB 27.
[19] Ram Nandan v. The State, AIR 1959 ALL 101.

definition of sedition and application in India. Ultimately, all the accused were given acquittal from the charges after the hearings went on for several years.

In Binayak Sen v. State Of Chhattisgarh, 2011. In 2010 activist Binayak Sen was convicted of sedition by the sessions court. He then sought bail and suspension of sentence on appeal and the Chhattisgarh High Court refused the same. Sen then appealed this decision to the Supreme Court of India only to have one of its judgments cited liberally in another decision in 2008. The High Court had relied in its judgement on the grounds of Sen's links with Maoist organisations and activities that were claimed to have caused rebellion and terrorism against the government. Sen however rebutted that he was only working as an activist of sending for PUCL and reporting the cases of police and armed forces brutality in the hill tracts. The High Court noted that the right to free speech and expression as enshrined in the Article 19 (1) (a) of Indian Constitution does not entitle someone to incite violence against the government that will lead to public unrest. The most crucial reason that the High Court used to refuse bail to Sen was probably with reference to documents capable of causing disaffection towards the government.

In an appeal to the Supreme Court the bail was granted without further elaboration given in the order passed by the court on grounds of hardship and prejudice likely to be faced by Sen. There was even talk that the Supreme Court may have exonerated the charges against Sen and therefore the mere possession of such papers may not be seditious and merely supporting a cause does not mean a person seditious.

Finally, in Sen's case the Supreme Court ruling enabled him to be granted bail and to await the outcome of the appeal indicating the more disguised aspects of the consideration of the prohibition of seditious materials and freedom of speech as well as national security.

The Disha Ravi Toolkit Case (2021). In February 2021, 22 years old climate activist named Disha Ravi was arrested for producing a 'toolkit' to support the farmers' protest, for sedition, conspiracy, and promoting enmity. The charges were made because of the claimed collaboration in the preparation of a "toolkit" related to farmers' protests in India, proposing nonviolent means to support the cause. The Delhi Police said that the toolkit was part of a plan to provoke violence and tarnish the image of India globally. But the Delhi Sessions Court later released Ravi on bail, after observing that there was no proof that she had anything to do with violent acts or plans for a rebellion. The court stated that opposition is enshrined in democracy,

and that the toolkit did not incite rebellion. The case raised issues relating to high profile cases of human rights abuse, particularly the use of sedition laws to restrain protestation in India.

The Landmark case of Kedar Nath Singh v. State of Bihar (1962)[20]

In the case of Kedar Nath Singh v. State of Bihar the Supreme Court of India upheld the constitutionality of section 124 A, the IPC provisions that penalise sedition. The appellant Kedar Nath Singh was charged and convicted of the offence of sedition and calling the public to commit an act of mischief due to a speech where he was discouraging the Congress party and called for formation of Forward Communist Party. The issues arising before the Supreme Court were pertaining to the question of whether these provisions infringed the constitutional right to freedom of speech and expression envisaged under Article 19(1)(a) of India's Constitution.

Again the High Court of Judicature at Patna dismissed his appeal, however, Kedar Nath Singh filed a petition in the Supreme Court of India pointing to the infringement of his fundamental right by exercising the sedition provisions. The case was eventually transferred to a Constitutional Bench (as Criminal Appeal No. 169 of 1957) and was combined with several other appeals concerning similar charges of sedition:

- *Criminal Appeal No. 124 of 1958:* Arrests for speeches made at the All India Muslim Conference in Uttar Pradesh.
- *Criminal Appeal No. 128 of 1958:* Arrests for speeches made at a meeting of the Bolshevik Party.
- *Criminal Appeal No. 126 of 1958:* Conviction for a speech in a village in Uttar Pradesh that attempted to create an army to overthrow the State.

The judgement was delivered by the Bench comprising of Chief Justice B P Sinha & Justices A K Sarkar, J R Mudholkar, N Rajagopala Ayyangar & S K Das, regarding the constitutionality of sedition law contending whether the restriction imposed could be authorised under Article 19(2) of the Constitution which allows restrictions in the interest of public order.

[20] Kedar Nath Singh v. State of Bihar, 1962 AIR 955.

The Court agreed with the fact that sedition is a restriction on the right of freedom of speech to be provided under Section 124A of the IPC. Yet, the Court explained that this limitation is constitutional as regards the speech which aims at causing disturbance of peace through the use of violence on the words spoken or written. The Court also stressed that freedom of speech entails the freedom to criticise the government and that such criticism cannot be regarded as inciting disaffection against the State … Sedition is constituted only when there is tendency or intention to cause disorder under the use of force.

Further, it looked into Section 505 of the IPC that deals with the penalty given to those who makes or publishes any statement, rumour, report or any matter that incites violence or can fear or alarm any group of the public or excite enmity between them. The Court further found that this provision was also constitutional for the very same reasons of a proper principle of construction, it can be seen that this provision is also a reasonable restriction on the freedom of speech in the interest of public order.

Finally the Court dismissed the appeal of Kedar Nath Singh, thereby affirming the conviction. However, the other appeals (nos. 124-126) have been sent back to the High Courts for decision according to the law as stated by the Supreme Court above. The judgement also affirmed that the law of sedition not only in India must be interpreted strictly to confine it to those acts which are justifiable with the aim to stir up violence or breach of public peace so as to protect essential human rights and freedom of expression.

The Case that halted Section 124A; Sedition in Abeyance

S.G. Vombatkere v. Union Of India (2022)[21]

In 2018 two journalists Kishore Wangkhemcha from Manipur and Kanhaiya Lal Shukla from Chhattisgarh were booked for sedition for commenting against the government. ISTV local news anchor, Mr. Wangkhemcha was arrested in August for posting on a social media video that captured the Manipur Chief Minister as a 'puppet of Hindutva' criticizing the Manipur government's affiliation with the NDA government. On the other hand, Mr. Shukla was charged with sedition in April for sharing cartoons on social media as a depiction of so-called fake

[21] Nandini.K.T, S.G. VOMBATKERE VS. UNION OF INDIA, The Legal Quorum, available at: https://thelegalquorum.com/s-g-vombatkere-vs-union-of-india/ (last visited on Aug.20, 2024).

encounters which, according to several human rights activists, were carried out by Gujarat police force between 2002 and 2006.

Both the journalists went to the Supreme Court in February 2021 seeking quashing of the sedition law by pointing out that sedition law has colonial origin and it is quite ambiguous in its application and thus, aimed to curtail freedom of speech and expression. It was revived and retagged with nine other petitions with a similar theme.

The case was taken up for hearing for the first time in July, 2021, before a bench of Justices U. U. Lalit and Ajay Rastogi. The court asked the petitioners to supply the Attorney General of India with a copy of the writ petition to a hearing scheduled for October 2021. Later in April, 2022, the Supreme Court of India gave notice to the central government to file a reply to the case. The Solicitor General of India, Tushar Mehta urged the court for more time to file a counter-affidavit which was filed on 7/05/2022.

Issues:

- Whether Section 124A of the Indian Penal Code which treats sedition as an offence violates the right to Freedom of Speech and Expression as enshrined in Article 19 (1) of the Constitution of India.

- Whether the colonially inherited sedition law holds good in the present day India or not?

- Whether the government is abusing the sedition law about suppressing anything and everything that is not in favour of the ruling party.

The Supreme Court also appreciated the appeal made on its appellate jurisdiction as well as constitutional nationality of Section 124 A, the vagueness of the section which makes its application arbitrary and whether, today, Section 124 A is relevant. The Court's order on May 11, 2022 , in the interim, was highly welcomed by the civil society and the human rights organisations as taken in the democratic interest.

Directions issued by the Supreme Court were:

This is merely an interim order and thus it has to be complied with until the Court comes up

with other orders. While the mentioned law is under review, the Central and State Governments are stopped from registering new FIRs, investigation or taking any coercive steps under Section 124A. No new cases of Section 124A may be brought any further. Any person who is subjected to fresh charges under this section can approach the relevant court for the requisite relief and the court in turn will have to take into consideration the directions of the Supreme Court. The operation of all Section 124A charges should be stayed safe for continuation of any other charge where to do otherwise would be prejudicial to the accused. The Union Government is directed to advise all States Governments and Union Territories NOT to file any new case under section 124-A henceforth.

These directions are to be in force until the reconsideration of the sedition law is over, and one or other steps are taken further.

NCRB findings related to Sedition[22]

The latest NCRB report (as in 2022), Crime in India, has depicted that total 76 persons have been booked under sedition act in the year 2021 slightly up from 73 cases in the year 2020. In past years, a total of 93 in 2019, 70 in 2018, 51 in 2017, 35 in 2016, 30 in 2015 and 47 in 2014 had been reported.

- It indicates that Assam has recorded the highest number of sedition cases in India over the past eight years.
- Sedition cases registered between the year 2014 and 2021 in India number 475 and in which 69 cases have been registered in Assam, making it 14. 52% of the total.
- Sedition charges were filed second time in Haryana with 42 cases, followed by 40 in Jharkhand, 38 in Karnataka, 32 in Andhra Pradesh and 29 cases in Jammu and Kashmir.
- These six states contributed 250 sedition cases, which is over 50 per cent of the total sedition cases reported across the country in the period under consideration, which is eight years.

[22] Harikishan Sharma, "Most number of sedition cases in last 8 years came from Assam: NCRB data" The Indian Express, Sep. 05, 2022.

- Seventy-six sedition cases were reported across the country in 2021, though slightly up from the 73 reported in 2020.

- The states and Union Territories which did not report a single case of sedition during this period include Meghalaya, Mizoram, Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli and Daman and Diu, Puducherry.

Comparative Analysis of Section 124A IPC, 1860 and Section 152 BNS, 2023

Section 124A of the Indian Penal Code and Section 152 of the Bharatiya Nyaya Sanhita present two different approaches to the crime of sedition. The difference can be addressed to the requisite adaptability that was required in the law and thus it reflects the change in legal philosophy. S.124A was an archaic-colonial era law meant to suppress the voice of dissent against the British; it was an attempt to check any rise of rebellion or revolution in colonial India. In fact, the judgements before the abeyance of the law, many high courts called it unconstitutional and void in spirit of the Fundamental Rights.

S.152 comes as a breath of fresh air and has attempted to redefine the law while also omitting the word explicitly as now it focuses on protecting the nation rather than the government. It aims to balance the state's need to maintain national integrity with the protection of individual rights, particularly Article 19(1)(a) that talks about freedom of speech and expression.

Also, BNS has rationalised the punishment for S.152 as per the gravity of the offence, thus aligning it with the principle of proportionality and democratic values. It has been framed while keeping in consideration the socio-legal circumstances of the country and judicial precedents. It seeks to penalise strict/severe threats to nations' integrity so that arbitrary application of this law can be prevented.

Legal Implications of Section 152 BNS

The legal consequences of the said section can be many, as it also depends on further interpretations by the court. However, some of the prospective legal implications can be that it will enhance the judicial scrutiny of cases filed under this section. The section gives liability when the accused has incited violence against India and not against the government. It will also have a great impact on the law enforcement agencies as they will have to adopt the revised legal framework and follow the black letters of the new law. Critics have also highlighted

potential legal challenges that the provision might face like misuse or politically charged cases. Therefore, future cases over this section and the judicial interpretation/application of the section while maintaining pace with the constitutional principles, will largely determine its success.

Conclusion

Hence, to conclude the word 'sedition' might have been erased from the new penal code but somewhere its essence is retained to protect the collective interest of the nation. Section 124A stands repealed and the new code with new Sections has come into effect from 1st July, 2024 to govern the criminal law of the country. The Indian Penal Code had been running in our legal system since 1860, albeit with many amendments but as a historic moment, it has now been replaced by the Bharatiya Nyaya Sanhita, 2023.

The new Section 152 has borrowed some terms from section 124A but has tried to change the concept of punishing dissent against the government to against the nation as a whole. It has attempted to curb anti-India sentiments that have the capacity to incite violence and aggression. Although critics argue that this section will lead to the same problems, it can be understood that the law has been made in accordance with the situations as reflected in the Law Commission's Report (279th).

The society and the law enforcement authorities should take cognisance of the fact that with proactiveness and knowledge, arbitrary misuse of this law can be prevented. Judicial oversight, regular updates and strict enforcement can pave the way forward to serve the intended purpose of section 152 BNS.