CRITICAL ANALYSIS OF SEDITION LAWS IN INDIA: IPC & BNS

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ABSTRACT

Sedition law in India was first enacted in 1870 to curtail dissent under colonial rule. Since then, it has been in India's Indian Penal Code up to Section 124A. As the Indian state gained independence in 1947, it did not change Section 124A; instead, there has been a continued debate on such a balance between freedom of speech and security of the state. Major Supreme Court cases and amendments are being conditioned against the tensions between the citizens' liberty and national security. The most spectacular of these trials include the one against Lokmanya Tilak and Mahatma Gandhi, among others. These cases represent the historical battle for free speech against a repressive state. Current debates over Section 124A and an alternative formulation in the Bharatiya Nyaya Sanhita (BNS) underscore how sedition law has been an intensely contested subject in India. The BNS expands offences of sedition to cover a wide area and, in so doing, creates several questions relating to ambiguity in definition and scope in the context of free speech, constitutional authority, and public discourse. A comparative analysis of Section 124A of the Indian Penal Code and Section 152 of the BNS has been made, pointing out and contrasting the use of the word and its interpretations. It further details how the use of sedition laws becomes a tool against dissent- suppressing journalists and activists. The effects of such legislation on media freedom engender far- reaching self-censorship since people lose trust in government institutions. A critical look into how nationalism negates individual liberties and the simultaneous need to subject law to reform are considered necessities.

RESEARCH PROBLEM

The aim of this paper is to discuss the possible coexistence of India's sedition laws and the principles of freedom of speech and expression. It will address whether these laws unjustly restrict democratic values in the name of maintaining peace, or whether they strike a compromise between preserving individual liberties and maintaining social stability.

RESEARCH METHODOLOGY

This research uses a doctrinal approach as its research methodology. It will entail a comprehensive examination of both primary and secondary materials, such as laws, court rulings, official websites, academic publications, and articles. Descriptive study and consequences will be part of it.

INTRODUCTION

Evolution of Sedition Law in India

Indians are aware that their nation was a British colony that was ruled and dominated. Despite India's independence in 1947, the country's culture and current policies nevertheless bear strong British influences. The sedition law was first applied to quell anti-colonial uprisings during colonization. It dates back to the 1830s, when efforts were made to codify Indian law. The fact that Thomas Babington Macaulay's draft Indian Penal Code of 1837 already contained a section like to Section 124A, which stipulated life in prison as the penalty, is noteworthy in this respect.

However, it wasn't until 1870 that James Fitzjames Stephen, the legislation Member of the Governor-General's Council, presented this legislation of sedition as an amending act. Its contentious past has been discussed, and many believe that it needs to be reevaluated in light of democratic principles and the defense of free speech and expression in modern-day India. According to Section 124A of the Indian Penal Code, sedition is any act that uses words, signs, or visible representation to incite hatred, disdain, or disenchantment with the legally recognized government of India. The history of the colonial era is intimately related to this clause. Sir Thomas Macaulay first drafted it in 1837, but when it was adopted in 1860, it was not included in the IPC. The English Treason Felony Act of 1848 served as the basis for the 1870 revision that added this clause to the Indian Penal Code. Therefore, the law specifically addressed acts of rebellion, mutiny, and dissent. During the pre-independence era, the British once more

employed this against the Indian populace as a means of stifling dissent and criticism, which ultimately resulted in the prosecution of some well-known liberation fighters, such Bal Gangadhar Tilak.

India gained its independence from British colonial rule in 1947, marking an important turning point in its history. Across India, this was a time of great optimism and hope. However, new discussions and disputes arose in independent India at the same time. The Constituent Assembly was where the sedition debate started, and it took a lot of time and work. But after heated discussions, Section 124A was kept in the Indian Constitution. [1]For this, even though Article 19(1)(a) guarantees its citizens absolute freedom of speech and expression. [2]These two landmark Supreme Court judgments of 1950 prompted the government to pass India's first controversial constitutional amendment in 1951. The first case dealt with objectionable material in the RSS journal Organiser, and the second, Crossroads magazine, criticising the government. Again, in both cases, the Supreme Court turned down the government's contention, pointing out that public order could never qualify as an exception to the right of free speech. This had severe implications for the freedom of Indian citizens and hugely curtailed liberties. The first code that came out under this premise was that of sedition and began going back as early as the 1830s, in which codification of Indian law began. This codification included the impacts of common law and Indian customary laws. A Draft Indian Penal Code of 1837, written by Thomas Babington Macaulay, displayed a sedition section, Section 113 (then), which has now been incorporated into Section 124A of the IPC and provided punishment to be meted out with imprisonment for life. However, due to an "oversight," sedition was left out when the IPC was enacted in 1860. Section 124A, criminalising "disaffection towards the Government," was introduced much later in 1870 through an amendment by James Fitzjames Stephen.

The Tilak Trials and early judgments – Differing interpretations[3]

Bal Gangadhar Tilak, one of the leading nationalists and freedom fighters, had several sedition charges pending for writing and speaking in mobilising Indians on the cause of

[1] R. K. Misra, FREEDOM OF SPEECH AND THE LAW OF SEDITION IN INDIA, Journal of the Indian Law Institute, Vol. 8, No. 1 (JANUARY-MARCH 1966), pp. 117-131
[2] Internet Freedom Foundation, https://internetfreedom.in/sc-sedition-update-larger-bench/, (last visited Nov 1, 2024)
[3] Siddharth Narain, 'Disaffection' and the Law: The Chilling Effect of Sedition Laws in India, Economic and Political Weekly, Vol. 46, No. 8 (FEBRUARY 19-25, 2011), pp. 33-37

Indian independence. He was found guilty in 1897 by the Bombay High Court on account of an article in Kesari which called upon Maharashtrian leader Shivaji to encourage defiance against British rule, enlarging sedition to encompass "disloyalty." Convicted once more in 1908, Tilak's third trial was in 1916 under Section 108 of the Criminal Procedure Code, with Mohammed Ali Jinnah as his lawyer. The Court ruled here that his speeches demanding Swaraj must be read contextually and constitutionally, thereby upholding the decision the magistrate made annulling.

In Romesh Thapar v State of Madras (1950), the Supreme Court refused to prohibit the circulation of a heavily critical government journal. It held that free speech under Article 19(2) was banned only in security cases. In a judgment on similar lines, Brij Bhushan v State of Delhi overruled pre- censorship and the opinion that the freedom of the press is vital for democracy. Punjab High Court later declared Section 124A unconstitutional. However, the First Amendment in 1951 added "public order" to the list of restrictions on free speech. In [4]Kedar Nath v State of Bihar (1962), the Supreme Court upheld Section 124A, holding that criticism of government action is constitutionally protected but that the guarantee of free speech would not cover incitement to violence.

The Law Commission and "The most powerful Supreme Court in the World."

The Indian Penal Code's Section 124A, which punishes sedition, has been widely criticised of late as FIRs have been lodged against journalists, activists, students, intellectuals, and even artists lately. Against anti-nuclear protesters in Kudankulam, pro-reservation agitation groups like the Jats in Haryana and Patidars in Gujarat, anti-Citizenship (Amendment) Act protesters from all over the country, and pathalgadi protesters in Jharkhand, the controversial sedition law has been called into action. Anushka Singh comments that the law is highly politicised at the hands of the police, hence establishing a definite function beyond the issues related to national security concerns.

According to the data of the National Crime Records Bureau, 2019, there were 93 reported sedition cases, which jumped to as high as 165% from the cases in 2016. Still, with this rise, the conviction rate drastically declined from 33.3% in 2016 to a mere 3.3% in 2019, thus displaying the problems of the process and prosecution of sedition cases. Such a scenario

[4] Kedarnath Singh v. State of Bihar, AIR 1962 SC 955

reflects once more, as expressed earlier above, that it is the free speech of citizens that is killed under the garb of state security rather than state security in operating the law of sedition. Numerous petitions challenging Section 124A's unconstitutionality were filed in 2021. Journalists Kishore Wangkhemcha and Kanhaiya Lal Shukla petitioned the Supreme Court, arguing that the law violated their fundamental rights. According to the Editors' Guild of India, the IPC's Sections 124A and 505 infringe upon the right to free speech. S.G., a retired army general, is one of the petitioners. The Journalists Association of Assam, editor Patricia Mukhim, MP Mahua Moitra, former Minister Arun Shourie, and Vombatkere were among those calling for the repeal of the sedition law. The Attorney General reaffirmed during the hearing on the petitions in [5]Vombatkere v. Union of India (2022) that the Kedar Nath Singh v. State of Bihar (1962) ruling had stood up well and did not need any additional re-examination. However, the Additional Home Secretary accepted the civil liberty concerns tied to Section 124A on May 9, 2022, and announced that the government would review its provisions. On May 11, 2022, in response, the Supreme Court issued an interim order, advising restraint from both the state and the central government not to register FIRs under the provisions of Section 124A until it came out from the review it was put under. There, the sedition law, as it existed up until then, already profoundly ingrained in colonial English culture, was not suitable for the democratic Indian landscape of this modern age.

Historically, the Indian judiciary has had a very tortuous relationship with the sedition law. In the case of [6]Romesh Thapar v. State of Madras (1950), the Supreme Court struck down a government- imposed ban on a journal, holding that Article 19(2) only allows for speech restrictions threatening state security. The same year, in Brij Bhushan v. State of Delhi, a pre-censorship order on press publications was quashed. Section 124A was upheld by the Supreme Court in Kedar Nath Singh v. State of Bihar. Still, it qualified that its application came only where the speech incited acts of violence or public disorder- it distinguished between criticism of the government and calls for violent insurrection.

[7]It has been stated that the Supreme Court of India is "the most powerful" in a common-law jurisdiction. In such a case, where the holding is upon Section 124A on its pleasure, it is even more enjoyable. Section 124A of the Indian Penal Code is one of the most controversial

[5] Vombatkere v. Union of India, (2022) 7 SCC 433
[6] Romesh Thapar v State of Madras, 1950 AIR 124 1950 SCR 594
[7] The Hindu, https://www.thehindu.com/news/national/supreme-court-refers-challenge-to-the-validity-of-sedition-law-to-constitution-bench/article67298224.ece, (last visited Nov 5, 2024)

provisions, and it has been there since the colonial period till the present regime. In a way, the suspension of the sedition law mirrors an evolutionary judicial perception, where civil liberties are accorded due precedence in a democratic setup, and also an acknowledgement that the days of laws colonial and even of Commonwealth vintage were now no longer in step with India's constitutional values.

BNS Provision: Shifts in Language and Interpretation

BNS omits the term "sedition" and replaces it with a broader description targeting individuals who encourage secession, armed rebellion, or subversive activities against the state. The language includes terms like "encourages feelings of separatist activities" and "endangers sovereignty," which are broad and potentially vague. While Section 124-A clearly outlined elements of sedition, the BNS's Section 152 leaves room for subjective interpretation, potentially including even minor dissent or protest as acts of subversion. Terms like "subversive activities" lack precise definitions and could cover various expressions, potentially encompassing non-violent criticism.

[8]The IPC defines sedition as bringing or attempting to bring hatred, contempt, or exciting disaffection towards the government. The Supreme Court has put the offence of sedition on hold until a Constitution bench examines it. The BNS removes this offence. Instead, it introduces a provision that penalises: (i) exciting or attempting to excite secession, armed rebellion, or subversive activities, (ii) encouraging feelings of separatist activities, or (iii) endangering sovereignty or unity and integrity of India. These offences may involve exchanging words or signs, electronic communication, or using financial means. It can be argued that the new provision retains some elements of the offence of sedition and expands the list of acts that may be perceived as likely to affect India's unity and integrity. Terms such as 'subversive activities' are also undefined, and there is no notion of which activities will be classified as such.

In 1962, the Supreme Court restricted the application of sedition to acts that carry the intention or tendency to create public disorder or incite violence. Note that the BNSS refers to 'seditious matters' in BNS, despite the word sedition not appearing in BNS.

[8] Times of India, https://timesofindia.indiatimes.com/india/sedition-to-go-but-endangering-unity-and-integrity-of-india-could-result-in-life-term/articleshow/102661307.cms, (last visited Nov 9, 2024)

Section 124-A required a direct nexus between speech and public disorder. The BNS, however, does not necessarily specify a violent or public disorder component. This creates ambiguity about whether any criticism of the state could be considered criminal if deemed "encouraging separatist feelings." Although the BNS attempts to modernise the language, the lack of precision introduces new ambiguities that are absent in the IPC's sedition provision. The vague language could lead to arbitrary application, challenging distinguishing between unlawful acts and constitutionally protected expression.

[9]Constitutional Validity and Reasonableness Under Article 19(2)

Whereas Section 124-A has been immune from constitutional test because it is related to public order, which is a permitted limit by Article 19(2)-Section 152's vague expression, such as "encourages feelings" fails to fulfil the flavour of public order that Article 19(2) mandates. This makes the BNS section vulnerable to challenges as it is unconstitutional and potentially under Article 19(2). Precedents such as Kedarnath Singh and Balwant Singh outline that mere expressions of dissent, without encouragement to violence, should not be criminalised. The language in Section 152 about "encouragement of separatist activities" may well not meet that reasonable standard and thus cause an unconstitutional overreach.

Finally, whereas Section 124-A in the Indian Penal Code has a more structured approach to state security and public order, section 152 BNS tends to expand the criminalising scope towards a much more general scope of expressions that don't have the same judicial safeguards. This would negatively affect free speech and raise questions about the BNS and constitutional values under Article 19(2). It is necessary to remove the ambiguities with clear legislative guidelines or judicial interpretation so that they do not fall prey to malpractices but ensure proper equilibration between state security and freedom of expression.

[10]Media, Governance, and Public Perception: The Interplay of Censorship, Trust, and Narrative Control

In the last few years, Indian authorities have often accused journalists and online critics of

[9] ANUSHKA SINGH, Criminalising Dissent: Consequences of UAPA, Economic and Political Weekly, Vol. 47, No. 38 (SEPTEMBER 22, 2012), pp. 14-18

[10] Prof. Madabhushi Sridhar Acharyulu, Media and the Law, Directorate of Distance Education NALSAR University of Law, Hyderabad, https://nalsarpro.org/Portals/23/2_%20Media%20Law%20Paper%202_1.pdf, Last visited (Oct 28, 2024)

dissenting views on government policies at colossal cost, especially with sections of counterterrorism and sedition laws. The trend has raised significant questions about media freedom and democracy in India. The reports released by the Committee to Protect Journalists, Amnesty International, and other human rights organisations document these disturbing trends, especially on World Press Freedom Day. The high-profile harassment, arrests, and intimidation against journalists describe the climate for press freedom in India, which keeps on going from bad to worse. For instance, Rana Ayyub, a very well-known Muslim journalist, was denied permission to travel abroad, citing offences of money laundering and tax evasion, which she denies. This is not an isolated incident but part of a larger pattern of using legal instruments to silence critical voices. Similarly, [11]Siddique Kappan has been behind bars since 2020 on baseless charges of terrorism and sedition while trying to file his report on the infamous gang rape case. [12]These illustrations indicate how precarious journalists find themselves when they raise uncomfortable questions from the government's side. Not only are male journalists victimised, but women journalists, especially those belonging to minority communities, found the harassment experience incredibly taxing. [13]It is reported that at least 20 female Muslim journalists have been "auctioned" on fake "auction" apps that are supposed to intimidate and degrade them. Such impunity calls into question the safety of journalists in India. them by the authorities. This incident happens when the government and its supporters use social media to heighten propaganda and degrade journalists. The emerging "urban naxal" rhetoric evidences the fact that the web discourse is manipulated to demonise dissenters within a much larger, dangerous scheme against the nation. Along with all these challenges, journalists also suffer communication and safety issues due to government-backed internet shutdowns and regulations like the Information Technology Rules. These measures restrict access to vital reporting and suppress the free public discourse needed for a healthy democracy.

Conclusion

This paper looks at the tensions and continued controversy of India’s seditious laws especially Section 124A of the IPC and its interpretation under the BNS. Although Section

[11] India Today, https://www.indiatoday.in/india/story/846-days-timeline-of-siddique-kappans-case-as-he-walks-out-of-jail-2329454-2023-02-02, (last visited, October 31, 2024)
[12] Rajeev Dhavan, Journal of the Indian Law Institute, Vol. 26, No. 3 (JULY-SEPTEMBER 1984), pp. 288-332
[13] CHAPTER 2 Terrorism, Literature and Sedition in Colonial India, States of Emergency: Colonialism, Literature and Law, 2013, pp. 61-86

124A was first introduced to check rebellion in colonial India, the law has remained highly politically and socially sensitive in post-colonial India and has elicited much controversy with regard to its maintenance of state security vis-a-vis freedom of speech. This paper demonstrates that while a range of changes have been made to the law through key supreme court cases and through amending legislation, the law has been subjected to judicial tests and has been placed in contravention to democratic principles through the trials of both Lokmanya Tilak and Mahatma Gandhi.

[14]However, today Section 124A is being substantiated again, primarily along with BNS S.152 that broadens the description to terms like: "promoting feelings of separatist activities" and "jeopardizing sovereignty." Such a shift brings into the question the vagueness of the law, and its ability to stifle legitimate activism, due to the the nature of the law. Instead, what is at stake is such an interpretation of the law that may influence freedom of media when turning into a tool for journalists and activists – and thus undermine the trust of the general public and encourage self-censorship.

[14] SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4756720, (last visited Nov 2, 2024)