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A Critical Analysis of India's Evolving Sedition Laws (IPC 124A to BNS 150)

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ABSTRACT

This study presents a critical examination of India's sedition legislation, analysing its transformation from colonial-era suppression tactics to contemporary legal frameworks. The research investigates Section 124A of the Indian Penal Code (1860) and its successor, Section 150 of the Bhartiya Nyaya Sanhita (2023), through multiple analytical lenses.

The historical analysis reveals how British authorities originally crafted these provisions to quell India's independence movement, notably prosecuting prominent nationalists including Tilak, Gandhi, and Bhagat Singh. Post-independence, the legislation endured despite fundamental conflicts with constitutional guarantees of free expression, prompting ongoing judicial and political controversy.

Our comparative legal assessment demonstrates that while the BNS reform eliminates problematic terminology like "disaffection," it introduces new conceptual challenges through undefined parameters regarding separatist activities and national unity. The enhanced sentencing framework (7 years to life imprisonment) presents additional concerns regarding its potential chilling effect on legitimate dissent.

The paper evaluates landmark judicial interventions, particularly the Supreme Court's 2022 moratorium on sedition prosecutions, which highlighted systemic misuse against journalists, activists, and political opponents. Our findings suggest that despite procedural improvements in the BNS version, including intent requirements and digital-age applicability, substantive protections against arbitrary enforcement remain inadequate.

This research ultimately questions whether India's sedition law reforms represent meaningful progress toward reconciling state security imperatives with democratic freedoms, or merely constitute symbolic modifications to outdated colonial legislation. The study concludes with recommendations for judicial, legislative, and civil society measures to establish appropriate safeguards in this contested legal domain.

Keywords*: IPC 124A, BNS 150, Sedition.*

I. INTRODUCTION

Sedition laws in India have been present since the British colonial era, serving as a contentious

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legal instrument that continues to spark debate in contemporary times. Enacted in 1870, IPC Section 124A was conceived as an essential tool for colonial authorities to restrict opposition and weaken India's freedom struggle by prohibiting expressions viewed as promoting animosity toward the imperial administration. Over decades, it evolved into a potent weapon to silence prominent nationalist leaders such as Bal Gangadhar Tilak, Mahatma Gandhi, and Bhagat Singh, all of whom faced imprisonment under its sweeping and often ambiguous provisions. Despite India gaining independence in 1947, the law endured, becoming a focal point of legal and political discourse due to its perceived conflict with democratic principles and the constitutional guarantee of free expression as mentioned under Article 19(1)(a).

This persistent tension between state security and individual liberties has led to significant evolution in the law's interpretation and application, with courts gradually imposing limitations on its scope. The research paper seeks to undertake a comprehensive comparative analysis between Section 124A of the IPC and Section 150 of the newly introduced Bhartiya Nyaya Sanhita (BNS), which aims to replace the archaic colonial-era legislation. By examining the historical context, legal frameworks, documented misuse, key judicial precedents, and contemporary challenges, the study will critically assess whether the transition from IPC to BNS represents meaningful reform or merely a repackaging of old restrictions. Furthermore, it will explore how judicial interpretations of Section 124A, particularly landmark rulings that narrowed its scope, have influenced the drafting of Section 150 in the BNS.

Through this analysis, the paper aims to contribute to the broader discussion on whether India's legal framework is progressing toward a more balanced approach between safeguarding national security and upholding fundamental rights in a modern democracy.

II. ORIGIN

The origins of India's sedition law can be traced to Thomas Babington Macaulay, the British historian and politician who first drafted the provision in 1837 as part of the Indian Penal Code (IPC). Before the 1830s, India's legal system was fragmented, comprising a mix of parliamentary charters, East India Company regulations, English common law, Hindu and Muslim personal laws, and various customary legal traditions.

The draft of Indian Penal Code which was prepared in 1837 under efforts to codify and organise various laws, contained Section 113 which was the first time this concept was introduced. However, this provision was excluded when the IPC was formally enacted in 1860. It was only

in 1870, when through an amendment[3] it was introduced by Sir James Stephen (then Law Member of the Governor-General's Council), that Section 124A was incorporated into the IPC, criminalizing "disaffection towards the government established by law."

III. APPLICATION OF LAW PRE-INDEPENDENCE

The British used this law extensively as a tool to suppress any voice that went against the colonial rule. Twenty years after the law's passage, the first hearing on a sedition case was held at the Calcutta High Court in the case of Queen Empress v. Jogendra Chunder Bose, 1891. Bangobasi magazine's owner, editor, manager, and printer were all charged with sedition for printing an article that criticized the British government's decision to raise the legal age of consent for sexual activity. In 1897 and 1908, Bal Gangadhar Tilak was charged with sedition two times[4]. In his 1897 case, the Bombay High Court broadened the scope of sedition and included "disloyalty" as sedition too. He was accused of publishing an article that called for the British Raj to be overthrown. In the year 1908, he was once again held liable for the same.

M. K. Gandhi was also charged with sedition in 1922[5] for his comments expressed in the journal "Young India,". Here Gandhi ji emphasized suppressing the nature of this law and expressed that 'affection [towards the government] could not be manufactured.'[6]

Up until now, sedition under Section 124A of the IPC was vaguely defined and acted as a tool to muffle the voices of freedom movement activists and nationalists. But in the landmark 1942 case of N.D. Majumdar v. The King Emperor, the Federal Court of India, attempted to define what constitutes sedition. In its judicial interpretation, the court established that acts of resistance or lawlessness that result in "public disorder or the reasonable anticipation or likelihood of public disorder" would qualify as sedition under the law. This formulation sought to create a more objective standard for determining seditious acts by focusing on their actual or probable consequences regarding public peace and order. The court's reasoning suggested that mere criticism of government authorities would not suffice to constitute sedition unless it demonstrably led to or was likely to lead to tangible disruptions of public tranquillity. However, this relatively narrow interpretation was subsequently overturned by the Privy Council in 1947[7], just before India gained independence. The Privy Council's reversal reverted to a broader understanding of sedition that placed greater emphasis on protecting governmental authority,

[3] The Indian Penal Code Amendment Act, 1870. Act number 27 of 1870
[4] Emperor vs Bal Gangadhar Tilak 1897 and 1908
[5] Queen-Empress v. Bal Gangadhar Tilak & Others (Case No. 45 of 1922), (Commonly referred to as the "Great Trial of 1922" or "Gandhi's Sedition Trial")
[6] https://www.livemint.com/politics/news/republic-of-dissent-gandhi-s-sedition-trial-1548352744498.html
[7] King-Emperor v. Sadashiv Narayan Bhalerao (1947) AIR PC 82

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regardless of whether actual public disorder resulted. This judicial vacillation reflected the ongoing tension between colonial interests in maintaining absolute authority and emerging democratic principles that would later form the basis of India's constitutional framework regarding freedom of expression. The 1947 decision effectively restored the more expansive and subjective application of sedition laws that had previously enabled colonial authorities to suppress nationalist movements and political dissent.

IV. POST-INDEPENDENCE CONTINUITY AND CONSTITUTIONAL CHALLENGES

After India got independence in 1947, the debate on sedition laws and their compatibility with Article 19(1)(a) started. Sardar Vallabhbhai Patel, who was tasked with heading the fundamental rights subcommittee, proposed an exception for 'seditious' language. A rigorous debate[8] was held by the constituent assembly on this restriction of freedom of speech and expression; however, Sardar Vallabhbhai Patel was faced with refusal by the constituent assembly, reason being its colonial roots and a high potential for misuse. The judgment of Romesh Thappar v. State of Madras, 1950, also emphasized that the exclusion of "sedition" as an exception to freedom of speech and expression was specific. Here it was clearly established that the sedition law does not put a restriction on freedom of speech and expression. This meant the scope of sedition law was restricted, and it was done deliberately to avoid exploitation of the law to curb the freedom of people by governments. The Supreme Court in this case clearly stated that any law imposing the restrictions will not come under Article 19(2)'s jurisdiction unless any speech or expression clearly threatens the 'security of or tends to overthrow the State.'

V. JUDICIAL INTERPRETATION OF IPC 124A

Questions were raised on the constitutional validity of sedition laws for the first time in the case of Kedar Nath v. State of Bihar[9]. Here the constitution bench upheld the validity of the law. The judgment held that " 'Government established by law' is the visible symbol of the State. The very existence of the state will be in jeopardy if the government established by law is subverted. Hence, the continued existence of the government established by law is an essential condition of the stability of the state. That is why 'sedition,' as the offense in Section 124-A has been characterized, comes under Chapter VI relating to offenses against the State. Hence, any acts within the meaning of Section 124-A that have the effect of subverting the government by

[8] Constituent Assembly Debates, debated Draft Article 13 on 1st and 2nd of December 1948 and the 16th and 17th of October 1949

[9] 1962 AIR 955, 1962 SCR SUPL. (2) 769

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bringing that government into contempt or hatred or creating disaffection against it would be within the penal statute because the feeling of disloyalty to the government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement of violence."[10]

The court differentiated between 'the government established by law' and the individuals currently responsible for managing the administration.

Additionally, the Supreme Court also underlined the balance of free speech and expression and the power of the legislature of our nation to restrict such rights if need be. The court in its judgment also noted that legislation enacted with the intention of enforcing sanctions against crimes against the state is fundamentally guided by the state's security, which is contingent on the upkeep of law and order. On the one hand, freedom of speech and expression must be fully protected and guaranteed by legislation, which is non-negotiable for the democratic form of government put into power by the votes of the people as established by our Constitution. As the guardian and protector of citizens' fundamental rights, this court is obligated to overturn any law that significantly restricts the freedom of speech and expression at issue in this case. However, the freedom must be guarded against becoming a license for denigration and condemnation of the legally established government in terms that incite violence or tend to cause public disorder. As long as a person doesn't intend to cause public unrest or encourage others to use violence against the current government which is established by the law, he holds the right to say or write anything he wants to say about the government or its policies.

With this judgment it was made clear that the government symbolizes the state, and its stability is vital for national security. Sedition laws (Section 124A) penalize acts inciting hatred or disaffection against the government, which represents the state. This is the reason the section is placed under "CHAPTER VI of IPC, OFFENCES AGAINST THE STATE." While free speech is protected under democracy, it cannot extend to incitement of violence or threats to public order. Further, the sedition laws cannot be used to suppress the speech and expression that does not have the potential to incite violence against the state.

A two-judge bench of the Supreme court upheld the judgment of the Kedar Nath case in Balwant Singh v. State of Punjab, 1995[11].

However, despite many judgments emphasizing the same, attempts by government to misuse the law to suppress dissent have been very common. The Supreme Court (2022) noted its

[10] https://indiankanoon.org/doc/111867/
[11] Balwant Singh And Anr vs State Of Punjab on 1 March, 1995

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rampant misuse as a "tool for harassment," chilling free speech.

Many cases filed were dismissed, but only after prolonged inconvenience or legal harassment of the people. A major chunk of such cases are usually filed against journalists, activists, and critics.

This led the Supreme Court, in SG Vombatkere v. Union of India (2022)[12], to suspend all pending sedition trials, directing that no new FIRs be filed under Section 124A until the government re-examines the law. The court stressed upon the requirement of actual incitement to conduct violence, not just criticism of the government to convict someone of sedition charges. This interim order reflected growing judicial scepticism about the law's misuse to suppress dissent, while its constitutional validity remains under review.

VI. TEXTUAL COMPARISON: IPC SECTION 124A VS. BNS SECTION 150

IPC section 124A criminalizes sedition with the objective of protecting the sovereignty of the nation. It dealt with the attempt to bring contempt, hatred, or excitement of disaffection through communication, symbols, or observable depiction towards the government that is legally constituted in India. Classified as a non-bailable, cognizable offense, it carries a punishment ranging from three years to life imprisonment. Disloyalty and the feelings of enmity are also covered under disaffection.

Explanations 1 and 2 of the section clarify that actions done with the intention to not excite hatred, disaffection, or contempt but to bring out alteration in government policies via lawful means do not amount to a violation of this section. Bhartiya Nyaya Sanhita 2023, which replaces the Indian Penal Code of 1860, introduced Section 150, which is a replacement for Section 124A of the IPC. The word “sedition” is not mentioned in this new section, which is a major overhaul to section 124A of the IPC. Sec. 124A has a very broad scope and leaves a lot of room for interpretation via the use of very broad terms such as “hatred” and ”disaffection.” The terms used are subjective and lack clarity. The use of ambiguous language and no clear threshold for what amounts to "violence or public disorder" and its outdated nature when applied to digital space mean that it will be exploited and used as an instrument to suppress political dissent against activists, journalists, and students. Vagueness of the term “disaffection” means that anyone who criticizes the government technically can be said to cause disaffection and is vulnerable to legal harassment. Further, the lack of judicial safeguards, such as no requirement of the proof of intent to destabilize the state, means that the courts are dismissing frivolous cases

[12] S.G. Vombatkere v. Union of India (Writ Petition (Civil) No. 682 of 2021)

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and arbitrary arrests. BNS section 150, however, has marked a significant shift in our nation's legal approach towards the threats against the state. The law still maintains the fundamental intention of safeguarding the national integrity and security, but most importantly, the updated provision seeks to respond to ongoing criticisms of abuse while adjusting to modern security issues. Lawmakers have redefined the scope of BNS section 150 by replacing vague and subjective terms such as "disaffection towards the government established by law in India," which has been completely removed, with definitive and specific offenses. The term sedition has also been removed. Section 150 has a very limited scope when compared to 124A, which has resulted in the increment in the severity of crime and its punishments. Section 150 includes specific crimes such as secession or armed rebellion, separatist activities, and threats to the sovereignty of India. Section 150 explicitly covers modern threats like electronic communication and financial support to anti-national activities. This makes the section up to date with current challenges, which was not the case with the previous law. It also states an explicit requirement for intent by introducing "purposely or knowingly" as a threshold, aiming to prevent arbitrary arrests for casual criticism. The new act also adds crimes related to terrorism, organized crime, and criminal activities.

VII. PERSISTENT CHALLENGES

Section 150 of the BNS deals with many shortcomings of previous law and is touted as a progressive reform. However, its implementation, interpretation, and impact on civil liberties remain significant obstacles. Despite the new section mending the potential for exploitation to a large extent, there still remain challenges. Terms such as "separatist activities" can still be subjective and still raise questions. BNS Section 150 lacks precise definition, raising concerns that it could be misapplied to suppress legitimate political demands. The demands for greater autonomy by states and regional parties raising concerns related to people of their region could be labelled as separatist. Further, it is also not described in detail what constitutes "endangering the sovereignty, unity, and integrity of India." This gives law enforcement agencies the ability to decide at their own discretion what falls under the purview of this section. Everything covered in section 124A is also present in section 150 of the BNS. This leaves section 150 of the BNS open to the potential for continued misuse, political weaponization, and digital surveillance and overreach. This section also lacks safeguards against arbitrary arrests and leaves room for exploitation. On the international stage, the United Nations Human Rights Commission has put India's sedition laws under criticism for violating ICCPR Article 19[13].Many first-world

[13] https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

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democracies have already taken a step to abolish the sedition laws. The UK is the prime example, as it abolished sedition in 2009[14]. Other democracies, such as the USA, require imminent incitement to violence, making it very difficult for any person to be charged under sedition law. However, India, with its relatively stricter provisions, which include the offense being non-bailable and cognizable along with harsher punishments, has put India's stance in conflict with international human rights standards.

VIII. FUTURE TRAJECTORY

The transition from IPC Section 124A to BNS Section 150 brings democratic evolution out of the colonial, oppressive, and highly debated law. Section 150 will evolve and be shaped with time. The direction of its evolution will determine what reform it will bring with itself. Several factors will shape the evolution of this section. Judicial interpretation being the most important one here. The judgment of cases as they come by will elaborate the extent of this section. The discretionary application was a huge problem with section 124A, and it could still remain despite the narrowed scope of section 150 if judicial restraint prevails, allowing authorities to perpetuate the same patterns of exploitation and misuse, especially towards the legitimate critics and political activists raising voices for marginal communities. The political climate surrounding the national security discourse of the nation will also determine how this law is used. It could become a rarely used provision for very serious and threatening actions or something used often for dissent suppression and ideology propagation. The last few years have shown that accusations of sedition frequently rise with elections around the corner and times of social protests and unrest, indicating that the application of the law is still heavily influenced by political expediency rather than legal necessity. Another challenge and a new area for development and expansion of scope will be that India's public sphere is rapidly becoming more digital. Without providing equivalent protections for digital rights, the BNS's explicit coverage of electronic communication broadens the scope of the law to include online expression. Another area of concern is the overuse or exploitation of the law, which may result in inefficiency. This inefficiency comes with a hidden cost of rendering the law ineffective towards genuine threats to national unity and a potential for legal harassment, which will result in self-censorship by journalists, academics, and activists to avoid legal harassment. India is under more pressure to reform as a result of the growing emphasis against sedition laws, which is demonstrated by the fact that many democratic countries have repealed or heavily restricted such provisions.

[14] Coroners and Justice Act, 2009

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