VOLUME 4 | ISSUE 3

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

ELIMINATION OF SEDITION LAW AND PATHWAY TO FREEDOM OF SPEECH

- Aishwarya Patil, Anubhab Haldar & Aditya Porwal[1]

ABSTRACT

The ability of the people to voice contentment or displeasure with the laws or policies made by the government is one of a democracy's most essential characteristics. A country like India, where the population comes from many cultural, religious, linguistic, and communal origins, will have disagreements about issues. What may be wholly harmful to one segment of society but highly beneficial to another? One of India's most lauded and outstanding characteristics is its "unity in diversity," despite its wide diversity in culture, language, religion, and customs. The sovereign government of India continued to abide by a few laws and regulations that were only created to benefit the British administration, and these colonial laws are still in effect today, more than 75 years after India gained its independence. The applicability of the Sedition Law in an independent India is one of the laws that received a lot of attention and was the most controversial law. The Indian judiciary has participated actively in debates on the legality of this British-era law, and finally, this law was eliminated, giving rise to free speech.

Keywords- Democracy, India, British administration, Sedition, Judiciary

OBJECTIVE

The application of sedition laws by different Indian courts in the past few decades revealed how the Sedition law had become outdated for today's culture and society, and several recommendations were made for their application. Finally, after the passing of the Bharatiya Nyaya Sanhita in 2023, the law was replaced. In a democratic nation like India, everyone has the fundamental right to freedom of expression and speech. Although the law of sedition may be

[1]Students at Maharashtra National Law University

valid under reasonable restrictions on such rights, its application is a serious challenge. Charging somebody with sedition without cause is contrary to constitutionalism in our nation, where the rule of law is supreme. This paper attempts to bring together various debates and opinions regarding repealing this law and safeguarding the Indian Democracy.

INTRODUCTION

The Indian Parliament has now taken the decisive step of repealing the controversial clause on sedition after years of painstaking investigation, scrutiny, and unrelenting criticism. With this momentous achievement, India's legal system is about to transition away from antiquated legal concepts that have long been a source of discussion and disagreement.This occurs as a result of the Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS), and Bharatiya Sakshya Adhiniyam, 2023 (BSA) comprehensive criminal codes being enacted by the Parliament, which marks the beginning of a new era in legislation. With the incorporation of contemporary concepts of justice, equality, and individual rights, these codes signify a substantial revision to India's legal system, resolving problems with earlier legislation.

The old Indian Penal Code, 1860 (IPC), which has grown progressively outdated and is insufficient in addressing modern issues and concerns, has been replaced with the Bharatiya Nyaya Sanhita (BNS). The new code aims to simplify and codify criminal crimes to ensure clarity and consistency in the legal system and provide more efficient procedures for protecting individual rights and freedoms. Similarly, the Criminal Procedure Code, 1973 (CrPC) is replaced with the BharatiyaNagrik Suraksha Sanhita (BNSS), which offers a more streamlined and practical framework for investigating and prosecuting criminal offenses. To improve the effectiveness of law enforcement, the new code incorporates modern investigation methods and technology while highlighting the significance of due process and the right to a fair trial.Likewise, the Indian Evidence Act, 1872 (IEA) is replaced by the BharatiyaSakshyaAdhiniyam (BSA), which offers a more up-to-date and thorough framework for the admission and assessment of evidence in court cases. The new law aims to improve judicial transparency, reliability, and impartiality while protecting the rights of victims and witnesses.

However, amidst this wave of reform, it is clear that the charge of sedition has not beenentirely deleted but instead rebranded under the BNS Act as "***Endangering Sovereignty, Unity and Integrity of India***," as outlined in Section 152, which states:

"*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.*

The explanation for the section states that: Comments expressing disapprobation of the measures or administrative or other action of the Government with a view to obtaining their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offense under this section." [2]

WHAT DOES SEDITION MEAN?

The use of any seditious word or phrase, publishing a false statement that may be detrimental to a person's reputation, or any action used to further a seditious aim, whether done by conduct or through words said or written, might all be seen as examples of sedition. It is a crime subject to a fine and incarceration under common law.

Section 124A of the Indian Penal Code, 1860, used to deal with Sedition. The act stated that "*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*."[3]

HISTORY OF SEDITION LAW IN INDIA

Sedition has a long history in India, and understanding its background is fascinating. In 1860, during the colonial era, the IPC was passed. When the Sedition was brought up in the early 1870s, there was no explicit provision of the IPC when dealing with it. Sedition was covered by

[2]Section 152 of BNS, 2023

[3]Section 124A of IPC, Sedition https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&sectionId=45863&sectionno=124A&orderno=133#:~:text=%2D%2DWhoever%20by%20words%2C%20either,%5Bimprisonment%20for%20life%5D%2C%20to

section 124A of the Indian Penal Code. According to the clause, a person can be tried if they seek to incite hatred or disdain for the legally formed government by their words or other means or if they attempt to express their admiration for the Union government held in India under the sedition laws. What the words, a description of the Sedition in this place, where there are three further explanations to the provision declare that know what the dissatisfaction. In this context, " disaffection " refers to all forms of disloyalty, hatred, and criticism of the government made by the speaker without any overt display or attempt to convey disdain or disaffection. Sedition was a crime that could not be charged, was not subject to bail, and couldn't be compounded. It may result in a fine or life imprisonment. In 2023, the BJP-led NDA Government removed the sedition law in BNS 2023, and thus, criticizing the government is no longer a punishable offense.

THE SEDITION LAW AND ITS IMPLEMENTATION IN THE COLONIAL PERIOD

As stated in this article, the colonial era saw the first use of the Sedition legislation. Nationalists like Bal Gangadhar Tilak, Mahatma Gandhi, Bhagat Singh, Jawaharlal Nehru, and many more national heroes were accused of sedition and imprisoned to silence their voice and their cries for freedom. The punishment clause was created and placed into place to do this. Bal Gangadhar Tilak was the first to be found guilty of sedition in colonial India. The British administration accused him of inciting subversive behavior through an article he published in his newspaper "Kesari," alleging that it would encourage people to disrupt the government's attempts to fight the plague outbreak there. Due to this accusation, Bal Gangadhar Tilak was declared guilty by a jury of nine members, with six white members voting against him, and was given an 18-month term by the Bombay High Court in 1897 under the Sedition Law's Section 124A. Even when he received the support of three Indians, it did not make him any lighter. The Federal Court started operating in 1937, and the Privy Council, the highest court of appeals located in London, has interpreted Section 124A of the Sedition Act several times.[4]

There was a very dark history about the Sedition law in India. History also references the federal court ruling in the case of Niharendu Dutt Majumdar v. King-Emperor in 1942. It was mentioned that there was public disorder, and the reasonable anticipation of public disorder's

[4]Sedition Law in India: A Timeline; https://www.scobserver.in/journal/sedition-in-india-a-timeline/

chances is the offense's Central purpose. However, in King-Emperor vs Sadashiv Narayan Bhalerao[5], 1947, Its proposition was overturned by the privy council; the Privy Council here held that the law is established in Tilak's case, ruling that the incitement of violence was not required for the crime of sedition. It also said that the feelings of hostility towards the government were sufficient to establish and tell the person guilty under the law of sedition under Section 124A.

INDIAN INDEPENDENCE AND SEDITION LAW

The term 'Sedition' was eliminated from the Indian Constitution in 1948, the year of independence. The constituent assembly held several further talks, and as a result, this choice was adopted. In KM Munshi's opinion, adopting the term brought the Constitution into being and served as a foundation for restricting fundamental freedoms, including freedom of speech and expression. As the Indian constitution was being drafted, he advocated changing it. The Indian Constitution was ratified on November 26, 1949. The Indian Constitution was then ratified. Article 19(1)(a) of the Constitution gives us the right to free speech. This essay gave us complete freedom and an unrestricted voice. Sedition under Section 124A, however, is still covered under the IPC. Pandit Jawaharlal Nehru, our country's prime minister, presented the First Amendment to the Constitution in 1951. It curtailed the freedom under Article 19(1)(a) and gave the state the authority to place reasonable limitations on the right to free expression under Article 19. (2). The government enacted Section 124A, or sedition, a punishable offense under the direction of our previous prime minister, Indira Gandhi. For the first time in Indian history, this was held. In the 1973 New Criminal Procedure Code, it was deemed a cognizable offense, and now, after passing the BNS Bill in both houses, this law is no longer in existence. Taking into consideration Section 152 of BNS, there is a repealing of 'Sedition (Rajdroh),' and there is an implementation of 'Endangering Sovereignty, Unity and Integrity of India (Deshdroh),' which empowers the government and the executing body to take actions against the individuals who spread hatred against the country and not the Government. This Law removes the Colonial ideology of 'The King before the Nation', and now we can say that finally, this new law is set to implement the 'Nation first' policy.

[5]Criminal Appeal No. 363 of 1943

EXPLANATION OF LEGAL FLAWS IN SEDITION LAW

There are a lot of legal flaws regarding the sedition laws. A total of 25 sedition cases have recently been filed after demonstrations against the anti-Citizenship Amendment Act, 22 after the Hathras gang rape case[6], and 27 after the Pulwama event[7]. According to the data, there are more occurrences of sedition than ever before, and 96% of all cases that have been reported have occurred since 2014. According to National Crime Records Bureau statistics, the number of sedition cases has climbed from 47 in 2014 to 93 in 2019, a remarkable 160% increase. Despite an increase in the number of sedition cases filed, the case-to-conviction conversion rate is only 3.3%. This means that the relevant authorities, such as the police and state officials, have been exploiting the sedition statute, which eventually acts as a channel to induce fear or dread among the country's population while suppressing any criticism or condemnation of the government's system.

One of the fundamental faults of the sedition act, as seen by the instances above, is that it is poorly defined and vague. There were numerous interpretations due to its insufficient definition and comprehension, and many authorities have taken advantage of it. This was addressed by Justice D. Y. Chandrachud, who declared, "Everything cannot be seditious. It is past time to define what constitutes sedition and what does not," while prohibiting the Andhra Pradesh government from taking any further action against the two Telugu news stations accused under Section 124A of the Indian Penal Code.[8]

---

6 Hathras rape: Sedition case filed against Kerala journalist and others arrested for alleged PFI link; https://scroll.in/latest/975157/hathras-rape-sedition-case-filed-against-kerala-journalist-others-arrested-for-alleged-pfi-links

7 Post-Pulwama sedition cases: Road ahead for accused long, fraught with hurdles, say experts; https://timesofindia.indiatimes.com/city/meerut/post-pulwama-sedition-cases-road-ahead-for-accused-long-fraught-with-hurdles-say-experts/articleshow/68103119.cms

8 It's time to define limits of sedition, says SC; THE HINDU- https://www.thehindu.com/news/national/its-time-to-define-limits-of-sedition-says-sc/article34688053.ece

One notable example can be considered in the form of a PIL filed against the former Chief Minister of Jammu and Kashmir, Farooq Abdullah, now CJI D.Y Chandrachud remarked, "Expression of views which is dissent and different from the opinion of the Government cannot be treated as seditious." Similarly, the Delhi High Court said unequivocally in the case of Disha Ravi that the government does not have the jurisdiction to imprison persons just because they disagree with the government's philosophy or policies. The court even went so far as to suggest that using the sedition legislation cannot conceal the government's ineptitude. These recent judicial rulings and standing have starkly contrasted the executive's interpretation of the sedition laws and show how the law has been utilized arbitrarily.

A three-judge bench chaired by Chief Justice of India N.V Ramana issued a notice to the federal government to pay strict attention to Section 124A IPC in response to a petition brought by retired Army General S.G Vombatkere. Furthermore, the Chief Justice of India underlined the mismatch between the massive increase in reported cases and actual convictions. He expressed sorrow for those who suffered due to the government's flagrant violation of the law. Moreover, the Supreme Court said, "The use of sedition is like giving a saw to the carpenter to cut a piece of wood, and he uses it to cut the entire forest itself."

HOW WAS SECTION 124A OF IPC A THREAT TO FREEDOM OF SPEECH AND DEMOCRACY?

The foundation of liberty is personal autonomy. The most significant liberty in democracies is the freedom of speech and expression. You have a fundamental right to freedom of expression since you are a social being. A vibrant civil society and a healthy democracy depend on freedom of speech and expression. These rights do come with reasonable limitations and are not unrestricted. In India, for example, Article 19(1)(a) protects freedom of expression but is typically accompanied by Article 19(2), which explains the grounds for suitable constraints. The legislation of sedition, used to penalize government criticism, has a "chilling effect" on free speech, making it obsolete in modern democracies where freedom of expression and speech is regarded as an inherent right.

The sedition statute must only be applied in the rarest of circumstances. Still, regrettably, the administration has used it to sway public opinion due to the section's unfair limitation on people's ability to criticize the government constructively. The section's prohibition is unjust since it deprives people of their right to constructive criticism of the government. As evidenced by the arrests of NDTV journalist Vinod Dua for sharing criticism and dissatisfaction with the government's response to COVID-19 and Disha Ravi for tweeting in solidarity with the then-ongoing protests against the farm bills, the government has used the sedition statute to silence protesting voices to protect its interests. A democratic system has three pillars of government: legislative, executive, and judicial, with the press as the fourth. In a functioning democracy, it is equally crucial in the operation of the government. Such situations, in which journalists are barred from reporting, social activists are threatened for freely expressing their opinions, and so on, portend a bleak future for public opinion and free speech and expression in a country like India, as well as a fall in government accountability.

MISUSE OF THE LAW

In a democracy like India, where personal liberty, freedom of speech and expression, and the absence of the government exercising arbitrary authority are some of the essential elements, the rise in the number of incidences of abuse of power by the authorities and the government is a cause for considerable worry. For a democratic country to function smoothly and effectively, all of its citizens must be involved in expressing their ideas, outlining their requests, and expressing their displeasure with the government's policies that they deem inappropriate or need revision. One of the significant drawbacks of the sedition legislation is that if someone is charged with sedition, it may be very stressful and challenging to receive swift justice since the courts take their time making decisions, putting those who may be innocent at a disadvantage. This discourages individuals from expressing their thoughts and is one of the most significant drawbacks of the sedition law. The judiciary must take a proactive role by intervening and acting quickly to change this oppressive statute. It is essential to swiftly deliver justice and restitution to those who have suffered despite being innocent.

WHY WAS IT NECESSARY TO BREAK DOWN THE SEDITION LAW?

It was found in many instances that the ruling Government always misused the Colonial law of sedition and put the people in jail who dared to speak against them or their policies, or even for their political gains. According to the Union Government, the new provision does not criminalize criticism of the government but focuses instead on acts amounting to treason. By heading the focus from "Rajdroh" (sedition) to "Deshdroh" (treason), the government hopes to safeguard the principle of freedom of speech while also preserving the nation's interests. As articulated by a government spokesperson, "We are a free country now. Nobody will have to go to jail for criticizing individuals. But no one can speak against the country. I believe those who speak against the country should go to jail."

When comparing the old and new provisions, it becomes clear that Section 152 punishes secession and separatist activities, armed rebellion, subversive activities, and any other act that jeopardizes India's sovereignty, unity, and integrity rather than inciting feelings of disaffection towards the Government established by law in India. This seems to overlap with Section 13 of the Unlawful Activities (Prevention) Act, 1967 ("UAPA"), which penalizes "unlawful activity." The UAPA defines unlawful action as cession and secession activities, which are acts that, like Section 152 of BNS, disclaim, question, disrupt, or intend to disrupt India's sovereignty and territorial integrity, as well as cause or intend to foster disaffection against India.

The most exciting thing to notice is that Section 152 specifies "electronic communication" precisely and penalizes actions of secession, cession, and similar activities that are conducted via electronic communication. As defined in BNSS, electronic communication covers communications using mobile phones, telephones, laptops, etc. Combined with Section 20 of the Telecommunications Act of 2023, which allows for the interception of telecommunications equipment, this can lead to extensive and ongoing fishing and roving investigations into possible secession and separatist activities, even without concrete evidence.

However, if we look towards the grey areas, although the term "sedition" may not be used in the exact wording, the spirit of the section has been retained. It could be extended to a broader range of actions that are now undefined and unclear, which might impact the legitimacy of the section.

It should also be noted that Section 108 of the CrPC, which provides for obtaining security for good behavior from persons disseminating seditious matters, has been seemingly retained in Section 127 of the BNSS. Any publication punishable under Section 152, BNS is referred to as a

'seditious matter' in Section 127, BNSS. Consequently, the procedural law of the BNSS keeps references to "seditious matter," even if the term "sedition" has been eliminated from the definition of the offense in the BNS. It also implies that despite modifications to the wording of section 152, the crime of sedition has primarily remained there, and thus raises the question of whether section 152, BNS, will continue to be read about sedition.

Unlike the IPC, section 152 does not explain the words, meanings, or scopes. In the lack of a legal definition, for example, the expression "subversive activities" does not specify the kind of activity that falls under this category, the level of harm that must be done, or the purpose of the harm for it to be considered subversive. Oxford Languages defines 'subversive' as 'seeking or intended to subvert an established system or institution' and 'subvert' as '[to] undermine the power and authority of (an established system or institution).' Another definition of "subversive" is "trying to destroy or damage something, especially an established political system," according to the Cambridge Dictionary. Since the norm is intended to question the legitimacy and authority of the government's policies and acts, it is sufficiently broad to encompass lawful demonstrations and dissents against the government.

A significant departure in section 152 is the lack of a clearly defined object of protection similar to that specified in the IPC. While the IPC expresses inciting disaffection, hostility, or contempt against "the Government established by law in India," section 152 broadens this to include threatening India's sovereignty, unity, and integrity. This move extends the scope of potential violations since the idea of a nation is inherently abstract and lacks clarity when contrasted with a concrete political organization. As such, the phrase may refer to prominent people, the government, or even more general socioeconomic and community-based groups. This ambiguous and excessively comprehensive reference to the object of damage raises questions about the level of injury necessary for an act to qualify as sedition. The impact of such a divergence from the IPC can be understood or even limited by reviewing the judicially formed standards for defining who constitutes the 'Government' under section 124A, IPC, which has served as a safeguard against an overbroad implementation of the provision.

On October 26, 2021, Nafisa Attari, a teacher at a private school in Udaipur, Rajasthan, was arrested over her WhatsApp status "JeeeetGaye" (We won). It rapidly went viral on social media, and members of India's ruling Bharatiya Janata Party (BJP)'s student wing, the Akhil

Bharatiya Vidyarthi Parishad (ABVP), gathered outside the school grounds to demand Attari's removal. The school administration agreed, and Attari was sacked. Meanwhile, she was prosecuted under Indian Penal Code Section 153B for making "assertions prejudicial to national integration." She was arrested the next day and then released on bail. Attari is not alone in this. More than a dozen people, all Muslims, have been jailed for applauding and celebrating Pakistan's victory. Considering the above example, it was not a seditious act. Still, it was against the sovereignty and integrity of India, and thus, the above incident can now be treated under Section 152 of BNS. Around 67 Kashmiri students were imprisoned in Uttar Pradesh in 2014 after celebrating Pakistan's Asia Cup victory over India, with the charges of Sedition. Even when Pakistan beat India in 2017, 49 people were detained in Uttar Pradesh, Madhya Pradesh, Kerala, and Karnataka for alleged celebrations. In all of these situations, the charges were later dropped. This was not always true. In 1999, India and Pakistan played a test match in Chennai, southern India. It was the first test series between the two archrivals in nine years and the first on Indian soil since 1987.

So, did those who cheer Pakistan for winning the latest match act seditiously? "It is not sedition," former Supreme Court Justice Deepak Gupta told The Wire in an interview. Celebrating a Pakistani win over India may be considered insulting or improper, but it is illegal under the IPC. According to the law, "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" prison terms ranging from three years to life imprisonment, as well as fines.

The Supreme Court judgment in the Kedar Nath Singh v Union of India[9] case upheld the constitutional validity of the sedition law on the ground that the state required it to protect itself. However, the court added a caveat: "A person could be prosecuted for sedition only if his acts caused incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace." As a result, no matter how strong the criticism of the administration, it cannot be judged seditious unless it is accompanied by incitement to violence.

[9]Kedar Nath Singh v Union of IndiaAIR 1962 SC 955

In its decision in Shreya Singhal v Union of India[10], the Supreme Court distinguished between "advocacy" and "incitement," stating that only the latter was punishable as sedition.

CONCLUSION

Finally, these colonial laws, like the Sedition, are not in existence today. Today, in a way consistent with the democratic society of the modern world, it was essential to remove these laws. The nation's highest court has questioned the necessity of such a harsh rule. N.V. Ramana, the Chief Justice of India, asked the government as to why laws that were created by the British to further their goals and laws that were used to persecute Mahatma Gandhi and Bal Gangadhar Tilak and finally, after 75 years of Independence, are repealed. After an encouraging effort to preserve the country's democratic essence presented by the judiciary's constructive criticism and involvement, this Colonial law is no longer in existence. Earlier, the administration could dismiss its critics and accuse them of sedition due to the sedition laws, which used to reduce public accountability. Now, after the notable efforts of the current government, these laws have been given a farewell. It can be said that India is finally out of the Colonial mindset, and criticizing the Government is no longer a punishable offense until and unless it affects India's Sovereignty, Unity, and Integrity. It cannot be said that the present laws are perfect and cannot be misused. The misuse of statutes is subject to interpretation and application of the same as per the convenience, 'the presence of knife does not create any difference but how you use that may create the one.' Thus, the judiciary has to play a significant role in this regard.

[10]Shreya Singhal v. Union Of India, AIR 2015 SC 1523