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LAW ON SEDITION IN CRIMINAL CODES AND CONSTITUTION

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INTRODUCTION

The offence of Sedition had first been introduced in 1837 as Section 113 of Macaulay's draught Penal Code, but because of certain reasons, it was dropped when the Indian Penal Code was passed in 1860. Shortly thereafter, the then Law member of the Government of India Sir Fits James Stephen introduced an Amendment in the form of Indian Penal Code Section 124A[2] (Amendment) Act 1870 which was passed. The language of the Section at that time was different from the present Section 124-A. Following that, the Indian Penal Code (Amendment) Act, 1898, added a new Section 124-A in place of the old Section, which was then changed by the passage of laws and orders in 1937, 1948, and 1950, as well as the Part B States (laws) Act 1951, culminating in the current form.

The Indian Penal Code was enacted in 1860 by the colonial Government of the British. The act among others had penal Section to handle the Law and order related to Sedition against the British India before independence of the India in 1947. Till then several freedom fighters were tried under the Sedition under the Indian Penal Code that the Nation reserves as great persons. The amendment history of the Sedition act 124-A of the Indian Penal Code was that the British crown after taking over the East India Company after the Sepoy Mutinity in 1857, inserted the clause 124A by act of 1898. the very Sedition Section 124A which was used by the British in India, and imposed on every Indian given the wider scope of the Section on "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 is considered sedition by expressed or composed words, or by signs, or by obvious portrayal, or something else, will be rebuffed with detainment reaching out as long as three years which fine might be included, or

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[2] Indian Penal Code, 1860 (Act 45 of 1860).

with fine.[3] There are three explanations attached to this Section. The first gives an inclusive definition of the expression 'disaffection' States that this word includes disloyalty and all feeling of enmity. The second explanation excludes something from the purview of this Section. It says that remarks communicating dissatisfaction with regards to the proportion of the Government so as to get their change by legal methods, without energizing or endeavoring to energize disdain, scorn or alienation, don't comprise an offense. According to the third explanation, which also takes away a few things from the body of this Section, remarks communicating dissatisfaction with regards to the authoritative or other activity of the Government, which don't energize or endeavor to energize scorn, disdain or irritation are not viewed as culpable under this Section as offense.

The essence of the Sedition offence is the intent with which the language is used. A speaker's, author's, or distributor's goal may be determined by the individual discourse, article, or letter. The primary objective cannot be credited to an individual if he was unaware of the content of the rebellious distribution. The mere presence of a scornful mood isn't criminal unless an attempt is made to excite such feelings in others, and the scorn and hatred must be directed at the state or the established government. Sedition encompasses all of the behaviors in which words, deeds, or writing are used to disrupt the state's peace and quiet. Section 124-A of the Indian Penal Code thus clearly shows that Section does not necessarily involve any creation of disorder An attack directed not at the Police administration but against a few police officers employed at a certain place, does not come within the mischief of Section 124-A of Indian Penal Code, as they cannot be identified with the Government or the general body of rulers. The attack does not convey any reflection upon the Government authority.[4]

If the speaker's goal is to accomplish Swaraj using legal and peaceful means, it is not considered a sedition offence. Any attempt to remove ministers from office or any call for the repeal of a law is legal as long as no illegal measures are applied. On the same analogy seeking to overthrow Government by Constitutional means and substitute another equally Constitutional Government is not Sedition unless there is intention to induce people to cease to obey law or uphold lawful authority. Any suggestion of the severance of connection with the sovereign of the State would clearly amount to Sedition, as that would produce on the minds of the hearers a feeling of disloyalty to the maharaja. Any attempt to excite hatred,

[3]Ratanlal and Dhirajlal, *The Indian Penal Code*, 36th edn (LexisNexis Butterworths, 2023) 273–75.
[4]**Tara Singh Gopi Chand v. The State**, AIR 1951 Punj 27.

contempt or disloyalty and any attempt to excite the subjects to have responsible Government independently of the maharaja (being an attempt to create feeling of disloyalty towards the maharaja) would clearly amount to Sedition.

DEVELOPMENT OF SEDITION LAWS IN INDIA

If one studies the history of Sedition law, one can see that the law was based on the concept of Treason used in England. Treason was defined as 'the crime of disloyalty towards the Crown', and the British used the same law under the term Sedition to suppress the Independence movement.[5] Though Sedition was not as serious as Treason, the implementation of the Law was done in accordance with the discretion of the British judges, who often misused the Law. The provision of Sedition has been defined under section 124A, IPC[6]. The provision explains that any person by words written or spoken or visible representation provokes disaffection in form of hatred, dislike, ill-will and enmity against the lawful government will be penalized for imprisonment for life or three years or fine or both. The provision also explains that disapproval of policies of government or its measure within lawful means to obtain lawful changes in them will not amount to Sedition.[7]

Many freedom fighters were prosecuted under this law and also faced imprisonment under the charges of Sedition.[8] One could see that during the British rule, the Law of Sedition was mainly used to deal with speeches and writings that criticized the British and their policies. The interpretations laid down by the British during their regime were mostly based on the idea of suppressing every criticism made against the British raj. In 1892 distinction between 'disaffection' and 'disapprobation' was discussed. It was observed that for this section, the acts alleged to be seditious should cause ill-will against the Government and create a feeling of hatred and Contempt among the people towards the Government established by law.[9]

The term 'disapprobation' was understood as lawful disapproval without an intention to subvert the Government. In 1898 the scope of Sedition was expanded by the colonial judges and a mere attempt to provoke a feeling of disaffection amounted to Sedition.[10] Sedition was

[5] James Fitzjames Stephen, *A History of the Criminal Law of England*, Vol. II (Macmillan, 1883) 305.
[6] Indian Penal Code, 1860, s 124A.
[7] Ibid., Explanation 2.
[8] Bipan Chandra, *India's Struggle for Independence* (Penguin Books, 1989) 107.
[9] K.T. Shah, *The Constitutional Law of India*, Vol. I (Eastern Law House, 1960) 290.
[10] A.G. Noorani, *Sedition and the Law* (South Asia Human Rights Documentation Centre, 2002) 25.

defined as an offence consisting of exciting or attempting to excite certain bad feelings towards the Government. It was also explained that Sedition did not include provoking mutiny or rebellion or any sort of actual disturbance, great or small. The term 'Government established by law' during the British raj was considered as the representatives of the Queen and who administered the rules and regulations in British India.

After the Constitution of India came into force, the interpretation of Sedition changed as the pre-independence decisions no more bound the Indian courts.[11] In 1950, the first judicial interpretation of Section 124A in independent India came in two cases, and the court in these cases ruled that restriction on Freedom of speech should be solely based on the grounds of State security. In 1962, in Kedar Nath Singh v. the State of Bihar, the Supreme Court provided the landmark judgment in which the validity of Sedition was upheld. It was observed that the provision could be used only when any writings or speech would lead to public disorder. After Kedar Nath, one can say that the Law of Sedition was clearly defined but, in the present scenario, one can see that Sedition law has been misinterpreted and misused, which has again led to the question of the validity of this Law. In today's system, many social activities, artists, journalists, students etc., have been victims of Sedition. In 2007, Dr Binayak Sen, a social activist, was slapped with Sedition and arrested and convicted for providing medical aid to the Naxalites. In 2008, Sedition was charged against the Times of India newspaper and its journalist by the Ahmadabad police commissioner for protesting against the police commissioner. The police officer had links with gangsters who ran a bootlegging business in the city then.[12]

Similarly, in 2009 industrialist Rahul Bajaj was charged with Sedition over his group's partner company Allianz portraying Jammu and Kashmir and Arunachal Pradesh as part of Pakistan and Chin. In 2010, Arundhati Roy, activities, reportedly endorsed the demand of Azad Kashmir. At the same time, she advised that justice should be given to Kashmiri pundits and gave Kashmir an open call to separate from 'BhookeyNange Hindustan'. In 2011, Sedition was charged against 6000 fishermen and women protesting against the Kundankulam Nuclear power plant in Kerala state. In 2012, three appeals for registration of FIRs on Sedition were made against Activist Arvind Kejriwal, yoga guru Baba Ramdev and

[11] A.G. Noorani, *Sedition and the Law* (South Asia Human Rights Documentation Centre, 2002) 67.
[12] Amnesty International, *India: Dr. Binayak Sen's Conviction a Blow to Human Rights*, AI Index: ASA 20/031/2010.

noted lawyer Prashant Bhushan for alleged remarks against Parliamentarians and supporting plebiscite in Jammu and Kashmir, respectively were dismissed[13]. In 2014, Around 60 Kashmiri students at Swami Vivekananda Subharti University in Meerut were expelled for three days from the hostel after allegedly supporting the Pakistan cricket team against India in the Asia Cup match, an action that sparked outrage in Kashmir Valley. Thus, looking at the earlier records, we can understand that there is no appropriate application and interpretation of Sedition law in India, thus making it necessary to make appropriate changes in the present Law of Sedition.

Recognizing the concerns over the misuse of sedition laws, the government introduced Section 152 of the Bharatiya Nyaya Sanhita, 2023, replacing Section 124A IPC. The new provision aims to align sedition laws with constitutional principles, particularly the Kedar Nath Singh standard.

However, legal scholars remain divided on whether Section 152 BNS 2023 truly reforms sedition laws or merely repackages them under a different name. The next section (3.3) will analyze Section 152 of BNS 2023 in detail, comparing it with its predecessor and assessing its implications for free speech and national security in India.

Purpose and Relevance of Sedition Laws in a Democracy

Sedition laws have historically been justified on the grounds of protecting national security, maintaining public order, and ensuring the stability of the state[14]. Governments across the world have enacted sedition provisions to curb activities that could incite rebellion, disrupt the functioning of constitutional institutions, or threaten the sovereignty and integrity of the nation. In India, the argument in favor of sedition laws rests on the premise that certain forms of speech and expression—particularly those that incite violence, promote armed rebellion, or challenge the authority of the state through unlawful means—must be regulated in the interest of national security and public tranquility.[15] Given India's vast diversity in languages, religions, and political ideologies, proponents of sedition laws argue that unchecked speech or propaganda could incite communal disharmony, lead to violent uprisings, and destabilize the democratic framework.

[13] "FIRs Against Ramdev, Kejriwal, Bhushan Dismissed", *The Indian Express* (New Delhi, 17 Mar 2012).
[14] B. Sivaramayya, "Freedom of Speech and Sedition", (1999) 41(2) *Journal of the Indian Law Institute* 210.
[15] Law Commission of India, *Report No. 267: Hate Speech*, (2017), 57.

However, while the state's duty to protect national security is undeniable, the broad wording and expansive interpretation of sedition laws have led to serious concerns about their misuse.[16] Historically, sedition laws have been invoked not just against those who incite violence but also against individuals expressing dissent, criticizing government policies, or engaging in peaceful protests. A major concern is the chilling effect sedition laws have on free speech—when individuals fear criminal prosecution for expressing critical opinions, they may choose self-censorship, thereby weakening democratic discourse. A democratic government derives its legitimacy from the people, and free expression, including criticism of the government, is essential to a functioning democracy. Therefore, the unchecked application of sedition laws raises an important constitutional dilemma: where should the line be drawn between protecting national security and upholding free speech?[17]

The judicial interpretation of sedition laws has evolved over time, reflecting an attempt to balance these competing interests. The landmark case of Kedar Nath Singh v. State of Bihar (1962) provided an important safeguard by clarifying that only speech that incites violence or has the tendency to create public disorder falls within the ambit of sedition.[18] However, despite this ruling, multiple instances of sedition charges being filed against activists, journalists, students, and political opponents indicate that the provision continues to be used as a political tool to suppress dissent rather than a genuine measure for protecting national security. The increasing number of sedition cases over the years has sparked debates on whether India, as the world's largest democracy, still requires sedition laws in their current form or whether reforms are needed to prevent their misuse while ensuring that genuine threats to national security are effectively addressed.[19]

Shift from IPC to BNS 2023: Key Changes

The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS 2023) marks a major reform in India's criminal law framework, replacing the colonial-era Indian Penal Code, 1860 (IPC). One of the most significant changes introduced in this new legal code is the replacement of Section 124A of IPC with Section 152 of BNS 2023, which now governs sedition-related

[16]Ratanlal and Dhirajlal, *The Indian Penal Code*, 36th edn (LexisNexis Butterworths, 2023) 278.
[17] A.G. Noorani, *Sedition and the Law* (South Asia Human Rights Documentation Centre, 2002) 42.
[18] Gautam Bhatia, *Offend, Shock or Disturb: Free Speech Under the Indian Constitution* (Oxford University Press, 2015) 112.
[19] Arundhati Roy, "Sedition Laws and the Suppression of Dissent", *The Hindu*, 28 October 2010.

offenses[20]. While the essence of the law remains similar, important changes have been made to its wording and scope to align with evolving judicial interpretations and address concerns regarding its misuse.[21]

Under Section 124A of IPC, sedition was broadly defined as any speech, writing, or action that brought "disaffection" towards the government established by law in India.[22] This definition was criticized for its vagueness, as the term "disaffection" could be interpreted too broadly, encompassing even legitimate criticism of the government[23]. The wording of the law allowed authorities to criminalize dissenting speech, peaceful protests, and even journalistic reporting that was critical of government policies. Recognizing these concerns, the Law Commission of India and various legal experts had recommended reforming or repealing sedition laws to prevent their misuse while ensuring that genuine threats to national security remain punishable.[24]

Section 152 of BNS 2023 introduces a more precise and restrictive framework for sedition, aiming to bring the provision in line with constitutional safeguards. One of the key changes is the explicit inclusion of the requirement that speech or expression must have a direct "tendency to incite violence" in order to qualify as sedition[25]. This modification ensures that mere criticism of government policies, peaceful protests, or political dissent cannot be arbitrarily classified as seditious acts unless they actively incite public disorder or violence. By incorporating this "direct tendency to incite violence" test, the revised provision aligns more closely with the Kedar Nath Singh ruling, which had already placed similar restrictions on the interpretation of sedition.[26]

Another crucial change in BNS 2023 is the introduction of stricter procedural safeguards to prevent arbitrary arrests under sedition charges. In the past, journalists, students, and activists were often arrested under Section 124A IPC without sufficient evidence of incitement to violence, leading to wrongful prosecutions and prolonged legal battles. The new provision mandates that sedition cases must be subject to stricter scrutiny before charges can be filed,

[20]Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023), Preamble.
[21] Supra Note. 54
[22] Gautam Bhatia, *Offend, Shock or Disturb: Free Speech Under the Indian Constitution* (Oxford University Press, 2015) 128.
[23] A.G. Noorani, *Sedition and the Law* (South Asia Human Rights Documentation Centre, 2002) 46.
[24] B. Sivaramayya, "Freedom of Speech and Sedition", (1999) 41(2) *Journal of the Indian Law Institute* 210.
[25] Law Commission of India, *Consultation Paper on Sedition*, (2018) 4–6.
[26]*Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

ensuring greater compliance with constitutional principles. However, despite these modifications, legal scholars and civil rights activists remain skeptical about whether Section 152 BNS 2023 truly resolves the issues of misuse, or whether it merely repackages the old law under a new name.

The transition from IPC to BNS 2023 provides an opportunity to reassess the relevance and necessity of sedition laws in contemporary India. While the new provision attempts to introduce clarity and procedural fairness, it remains to be seen how the judiciary and law enforcement agencies interpret and apply this reformed provision.[27] The key questions that emerge are:

1. Will the emphasis on "tendency to incite violence" be sufficient to prevent misuse?
2. Will law enforcement agencies implement the new safeguards effectively, or will politically motivated prosecutions continue?
3. Does the mere rewording of the law fundamentally change its impact, or is it still susceptible to the same criticisms as before?

As India moves forward under its reformed criminal legal system, the effectiveness of Section 152 of BNS 2023 in protecting both national security and free speech will be closely scrutinized by the judiciary, legal scholars, and civil society. The subsequent sections of this chapter will provide a detailed analysis of Section 152, its judicial interpretations, and its broader implications in Indian democracy.

The biggest contention surrounding sedition laws in India is their constitutional validity under Article 19(1)(a) of the Indian Constitution, which guarantees freedom of speech and expression. The Supreme Court has consistently reiterated that restrictions on free speech must be reasonable, proportionate, and in the interest of public order under Article 19(2).

While the Kedar Nath Singh case upheld the constitutionality of sedition laws, subsequent judicial trends have suggested a more restrictive approach to its application. In Shreya Singhal v. Union of India (2015), the Supreme Court struck down Section 66A of the IT Act, emphasizing that vague laws have a chilling effect on free speech. A similar argument has

[27] Amnesty International, *India: Sedition and the Chilling Effect on Free Speech*, AI Index ASA 20/011/2011.

been raised regarding sedition laws, particularly in cases where mere criticism of government policies has been criminalized as sedition.[28]

The shift from Section 124A IPC to Section 152 BNS 2023 presents an opportunity to reassess the role and necessity of sedition laws in modern India. The key constitutional questions that remain include:

- Does Section 152 BNS 2023 adequately distinguish between incitement to violence and mere dissent?
- Are procedural safeguards sufficient to prevent misuse?
- How does this provision compare with international human rights standards on free speech?

THE CURRENT LEGAL FRAMEWORK ON SEDITION: SECTION 152 OF BNS 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS 2023) marks a significant transformation in India's criminal law framework, replacing the Indian Penal Code, 1860 (IPC)[29]. One of the most debated aspects of this transition is the repeal of Section 124A IPC, which criminalized sedition, and its replacement with Section 152 of BNS 2023. The Indian government has positioned this change as part of a broader legal reform aimed at modernizing criminal laws, ensuring that they are better aligned with contemporary democratic principles. However, legal scholars, journalists, and human rights activists have raised concerns that while the wording of the provision has changed, its core intent remains the same—criminalizing dissent under the guise of protecting national security.[30]

Sedition laws have long been controversial in India, particularly due to their historical misuse against journalists, political opponents, student leaders, and activists. The judiciary has attempted to limit the misuse of these laws, particularly through Kedar Nath Singh v. State of Bihar (1962), where the Supreme Court ruled that sedition could only be invoked when speech incites violence or public disorder. The key question that now arises is whether

[28] Indian Civil Liberties Union, "Rebranded Repression: BNS 2023 and the Future of Dissent in India", Policy Brief, 2024.
[29] Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023), Preamble.
[30] Ibid, s. 152.

Section 152 of BNS 2023 successfully addresses past concerns, or whether it is merely a continuation of Section 124A IPC under a different name.[31] This section provides a detailed analysis of Section 152, its statutory language, comparison with Section 124A IPC, scope, judicial interpretation, and potential implications for free speech and democracy in India.[32]

3.3.1 Statutory Provision under the Bharatiya Nyaya Sanhita, 2023

The full text of Section 152 of BNS 2023, as notified in the official gazette, is as follows:

Section 152: Offences Endangering Sovereignty, Unity, and Integrity of India

"Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or otherwise, excites or attempts to excite secession, armed rebellion, subversive activities, or encourages feelings of separatist activities or endangers the sovereignty, unity, and integrity of India, shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine."[33]

At first glance, Section 152 appears to remove sedition as it was previously understood under Section 124A IPC, and instead criminalizes actions that "excite secession, armed rebellion, or separatist activities." The explicit reference to electronic communication indicates a recognition of modern methods of expression, including social media and digital platforms. However, while the terminology has changed, the essence of the provision remains largely the same—it continues to criminalize speech and expression that is perceived as a threat to national sovereignty.[34]

Comparison Between Section 124A IPC and Section 152 BNS 2023

The repeal of Section 124A IPC and its replacement with Section 152 of BNS 2023 has generated significant debate over whether this change represents meaningful reform or mere rebranding. A comparative analysis highlights the similarities and differences between the two provisions.

[31] *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.
[32] Indian Civil Liberties Union, "Rebranded Repression: BNS 2023 and the Future of Dissent in India", Policy Brief, 2024.
[33] Bharatiya Nyaya Sanhita, 2023, s. 152.
[34] Indian Civil Liberties Union, "Rebranded Repression: BNS 2023 and the Future of Dissent in India", Policy Brief, 2024.

Key Differences and Similarities

Aspect	Section 124A IPC (Repealed)	Section 152 BNS 2023
Scope	Penalized "disaffection" toward the government	Criminalizes actions that "excite secession, rebellion, or separatist activities"
Language Used	Included vague terms like "disaffection," "hatred," and "contempt"	More specific terms like "secession," "armed rebellion," and "subversive activities"
Requirement of Incitement to Violence	Not explicitly required; speech alone could be punished	Requires a direct attempt to incite "armed rebellion" or separatist movements
Punishment	Life imprisonment, or imprisonment up to 3 years, or fine	Life imprisonment or imprisonment up to 7 years, along with a fine
Inclusion of Digital Speech	Not explicitly mentioned	Includes "electronic communication" as a medium for seditious acts
Judicial Interpretation	Kedar Nath Singh (1962) limited its scope to speech inciting violence or public disorder	No specific judicial interpretation yet, but expected to follow the same principles

Key Observations

1. Shift in Terminology Without Fundamental Change

While Section 152 does not explicitly mention "sedition" or "disaffection toward the government," it continues to penalize speech that threatens national unity and integrity.

The change in wording does not necessarily translate to a reduction in the scope of state power to suppress dissent.

2. Emphasis on Incitement to Violence

A positive change in Section 152 is that it focuses on incitement to secession, rebellion, or separatist activities, rather than criminalizing all forms of criticism against the government. However, the interpretation of terms like "subversive activities" remains vague, leaving scope for broad application by law enforcement agencies.

3. Stronger Punishments

Under Section 124A IPC, the maximum punishment for sedition was life imprisonment or three years of imprisonment. In contrast, Section 152 increases the maximum punishment to seven years, suggesting that the state continues to view sedition-related offenses as serious crimes.

4. Inclusion of Digital and Online Speech

The explicit mention of electronic communication suggests that online speech, including social media posts, digital activism, and online campaigns, can now be targeted under Section 152. This raises concerns about increased government surveillance over online discourse.

Scope and Applicability of Section 152 BNS 2023

The scope of Section 152 covers various forms of expression, including spoken and written words, symbols, electronic communication, and visual representation. The provision applies to acts that:

- Excite or attempt to excite secession (e.g., calling for the creation of a separate state).
- Encourage separatist activities (e.g., promoting movements that seek territorial division).
- Endanger the sovereignty, unity, or integrity of India (a broad term that could include various political expressions).

While requiring incitement to violence is a step forward, concerns remain over the ambiguity of terms like "subversive activities" and "endangering sovereignty."

Judicial Precedents and Likely Interpretation

Given the lack of specific judicial rulings on Section 152 BNS 2023, courts are likely to refer to past sedition cases for guidance. The most important precedent is Kedar Nath Singh v. State of Bihar (1962), where the Supreme Court:

- Upheld the constitutional validity of sedition laws but narrowed their interpretation.
- Ruled that sedition could only be invoked when speech incited violence or public disorder.

Other relevant cases include:

- Balwant Singh v. State of Punjab (1995) – Mere slogans like *"Khalistan Zindabad"* were held not seditious as they did not incite violence.
- Shreya Singhal v. Union of India (2015) – The Supreme Court struck down Section 66A of the IT Act, holding that vague restrictions on speech violate fundamental rights.

The principles from these cases will likely influence how courts interpret Section 152, potentially limiting its misuse against political dissenters.

While Section 152 of BNS 2023 introduces some refinements to sedition laws, it does not completely address concerns over misuse. The focus on incitement to violence is a positive step, but the vague terminology still leaves room for broad and arbitrary interpretation. Whether this provision functions as a legitimate national security measure or continues to be a tool for suppressing dissent will depend on judicial oversight and law enforcement practices.

OTHER LAWS ADDRESSING SEDITION AND SIMILAR OFFENCES

While Section 152 of the Bharatiya Nyaya Sanhita (BNS), 2023, is now the principal provision criminalizing acts that threaten the sovereignty, unity, and integrity of India, it does not exist in isolation. Several other laws—both at the national and state levels—operate

alongside Section 152 to regulate speech, dissent, and activities deemed harmful to the nation's security.

In recent years, authorities have increasingly relied on alternative legal provisions to prosecute individuals whose actions or words are perceived as anti-national. The Unlawful Activities (Prevention) Act, 1967 (UAPA), the National Security Act, 1980 (NSA), the Information Technology Act, 2000 (IT Act), and various state-level public order laws are some of the most frequently used statutes in such cases. These laws often intersect with sedition-related provisions, extending the scope of restrictions on freedom of speech and political expression beyond what Section 152 explicitly covers.

Unlawful Activities (Prevention) Act 1967

Not many case of sedition were heard in the High Courts or the Supreme Court during the decade of the 1970s and 1980s. The cases that reached the higher judiciary dealt with invoking section 124-A along with other sections, especially 120B (criminal conspiracy), 121-A (waging war), 153 –A (promoting enmity among other classes) and other national security legislations. The cases in the decade of 1990s followed the pattern where the sedition charges were invoked on persons charged under extraordinary and anti-terror legislations like Unlawful Activities Prevention Act, 1967, Terrorist and Disruptive Activities (Prevention) Act, 198552, and so on. India had passed three central extra-ordinary legislations in the name of the counter-terror measures- Unlawful Activities Prevention Act, 1967, Terrorist and Disruptive Activities (Prevention) Act, 1984 and Preventive of Terrorism Act, 2002. In theory, these laws are temporarily enacted with the rationale of dealing with the extra-ordinary crisis situations. They constitute extraordinary powers regarding detention, arrest, bail, trail and so on.[35]

The Unlawful Activities (Prevention) Act, 1967 essentially and primarily dealt with 'unlawful activities. Section 2(o) of the Act defines 'unlawful activity' as any action by an individual or association whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise, which is intended to bring about cession/secession of a part of the territory of India from union or such action as to disrupt or question the sovereignty and territorial integrity of India or which cause or intended to cause

[35] Unlawful Activities (Prevention) Act, 1967; Terrorist and Disruptive Activities (Prevention) Act, 1985; Prevention of Terrorism Act, 2002.

disaffection against India. This provision of Unlawful Activities Prevention Act, 1967 is, precisely, section 124-A of Indian Penal Code, 1860.[36] The UAPA, additionally, also enlarges the ambit of criminality of sedition like activity under its provisions. While the meaning of disaffection regarding the law of sedition was qualified by the Supreme Court in 196254 as that form of expression that has the tendency to incite violence UAPA requires so much qualification to proscribe the expression of disaffection. This implies that it has a much wider scope to penalize sedition-like activity as compared to the law against the sedition.[37]

This Act was passed by the both Houses of the Parliament and received assent of President on 30th December 1967. The main purpose or object of this Act is to deal with the unlawful activities which are directed against the integrity and sovereignty of India and provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therein. This law puts 'reasonable' restrictions on certain constitutional rights such as: freedom of speech and expression, right to assemble peacefully and without arms and right of form associations or union. This Act has been amended twice, first in 2008 and second in 2011 with more widen scope of the Act. These amendments added counter terrorism provisions some of which were contained in Previous Anti-Terror laws, namely Terrorist and Disruptive Activities Act 1987 and Prevention of Terrorism Act 2002. This Act gives power to Central Government to declare any association unlawful association by notification in Official Gazette56 and every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary. After the declaration of unlawful association and the Central Government is satisfied, after such inquiry as it may think fit, central Government may, by order in writing prohibit any person involving in association, from paying, delivering, transferring or otherwise dealing in any manner. A person who is member of such association and continues to be a member or tkes part in meetings of such association or assists the operation of such association shall be punished with the imprisonment for a term of two year and with fine also. And the person who takes part in or commits or advocates or abets, advise or incite the commission of any unlawful activity, shall be punishable with the imprisonment for a term which may extend to seven years and shall also be liable to fine.

The Information Technology Act, 2000

[36] Indian Penal Code, 1860, s. 124-A.
[37] **Kedar Nath Singh v. State of Bihar**, AIR 1962 SC 955.

The main purpose of Information Technology Act, 2000 is to provide legal recognition to all transactions done via an electronic exchange of date or other electronic means of communication or e-commerce in place of the earlier paper based method of communication and storage of information to facilitate electronic filing of documents with the Government agencies. Section 66 of Act deals with the computer related offence and outlines punishment of imprisonment up to three years and fine up to Rs. 5 lakh or both. Section 66A deals with the punishments for sending offensive massages through communication service etc.[38]

Section 66A Punishment for sending offensive messages through communication service, etc.-

Any person who sends, by means of a computer resources or a communication device-

(a) Any information that is grossly offensive or has menacing character; or
(b) Any information which he knows to be false, but for the purpose of causing annoyance or inconvenience, danger, obstruction, insult, injury, criminal intimation, enmity, hatred or ill will, persistently by making use of such computer resources or a communication device;
(c) Any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to device or to mislead the addressee or recipient about the origin of such messages,

Shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation- For the purpose of this section, term "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the messages.

The Constitutional Validity of section 66A of Information Technology Act was challenged in Shreya Singhal v. Union of India[39]. In this case, police arrested two women under section 66A of the Information Technology Act, 2000 for posting offensive and objectionable

[38] **Information Technology Act**, 2000, s. 66, 66A.
[39] **Shreya Singhal v. Union of India**, (2015) 5 SCC 1, Supreme Court of India.

comments on social sites. Although, women were released and prosecution was dismissed. But the incident invoked substantial media attention and criticism. After that women filed petition and challenge the constitutionality of section 66A of the Information Technology Act, 2000 on the ground that it is violation of fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a). In the judgment, the Supreme Court discussed various aspects of the reach of the content of free speech and expression that are in the context of its influence on public order. First, is the discussion part, second is the advocacy part and last is the incitement part. So, while a person is free to discuss an issue, even sensitive issues like gay marriages, beef and pork eating etc. and even take a radical, liberal, egalitarian stance on such issues, it is only when such views are causing incitement that the restriction on the free speech and expression is justifiable under Article 19(2). There is demarcation between an act of advocating and an act of inciting which depends upon the circumstances in a situation and its consequent impact on the public order. In other words, one may mere advocate a particular set of values(like banning inter-religion marriages) but still may not be inciting people to take any action against people professing such marriages. The impugned provision of section 66A was missing the necessary link from the message posted to the ultimate result of disturbance of law and order.

The Court held that section 66A was vague and over-broad, and therefore, fell afoul of Article 19(1)(a), since the statute was not narrowly tailored to specific instance of speech which it aim to curb. Essentially the Court also considered the 'chilling effect' on speech caused by vague and over-broad statutory language as a ground for striking down the provision.[40]

National Security Act, 1980 (NSA) and Preventive Detention

The **National Security Act, 1980 (NSA)** is one of India's most stringent laws, granting the government the power to **detain individuals without formal charges or trial for extended periods** if they are perceived as a threat to national security, public order, or India's sovereignty. Enacted during a politically turbulent period, the NSA provides for **preventive detention**, allowing authorities to act on **anticipated threats rather than proven criminal**

[40] Ibid.

conduct. This makes it a highly controversial law, as it permits the **curtailment of personal liberty without requiring immediate judicial scrutiny**.[41]

Although the NSA is **not explicitly categorized as a sedition law**, it has often been **used in conjunction with sedition-related provisions** to detain individuals accused of making statements or engaging in activities deemed harmful to the state. This has raised significant concerns about **its misuse against political activists, journalists, and protestors**, particularly in cases where there is **no substantial evidence of incitement to violence or rebellion**.

The **NSA and sedition provisions, including Section 152 of the Bharatiya Nyaya Sanhita (BNS), 2023**, operate in **parallel** when it comes to dealing with matters of national security. However, the **NSA is more draconian**, as it allows for **preventive detention rather than prosecution under a criminal offense**.[42]

Under the NSA:

- **Individuals can be detained for up to 12 months without trial**, with the possibility of **extensions under specific circumstances**.
- **Authorities are not required to disclose specific charges immediately**, making it difficult for the detained person to **challenge the detention order effectively**.
- **Judicial oversight is limited**, as detentions under the NSA are primarily approved by **advisory boards appointed by the government** rather than regular courts.

The **broad and vague nature of the NSA's provisions** makes it an attractive alternative to sedition laws for authorities looking to **neutralize political dissent without facing the legal hurdles associated with sedition trials**. In some cases, where courts have intervened to **strike down sedition charges for lack of evidence**, the government has invoked the NSA to **continue detaining individuals extra judicially**.

The NSA has repeatedly come under judicial scrutiny for its potential misuse in curbing freedom of speech and political expression. The Supreme Court of India has upheld the

[41] **National Security Act**, 1980, s. 3.
[42] **Bharatiya Nyaya Sanhita (BNS), 2023**, s. 152.

validity of preventive detention laws but has also emphasized that such powers must be used cautiously and only in exceptional circumstances.

In A.K. Roy v. Union of India (1982), the Supreme Court upheld the constitutional validity of NSA, ruling that while preventive detention is an extraordinary power, it is not unconstitutional per se. However, the Court stressed that:

- Preventive detention should be used only in cases where there is an imminent threat to national security.
- The government must follow procedural safeguards to prevent misuse, including providing detainees with an opportunity to challenge their detention before an advisory board.[43]

Despite these safeguards, the broad language of the NSA has allowed authorities to justify indefinite detentions. The lack of immediate judicial oversight makes it possible for individuals to be detained for months without knowing the specific charges against them. This has raised concerns that the NSA is being used as a tool for political repression rather than as a genuine security measure.

Another significant ruling came in Rameshwar Shaw v. District Magistrate (1964), where the Supreme Court held that preventive detention cannot be used as a substitute for ordinary criminal prosecution. If an individual's actions amount to an offense under existing laws, authorities must prosecute them in court rather than detain them under NSA. However, in practice, the state has continued to use the NSA as an alternative to criminal prosecution, particularly in cases involving speech-related offenses.[44]

CONSTITUTIONAL PERSPECTIVE: CLASHES WITH FREEDOM OF SPEECH AND EXPRESSION'

The individuals of India provided for themselves, the Constitution of India, with a perspective on make it Sovereign, Democratic, Socialistic, Secular and Republic. In our vote-based society, pride to put has been given to the right to speak freely of discourse and articulation, which is the mother, all things considered. One of the primary destinations of the

[43] **A.K. Roy v. Union of India**, (1982) 1 SCC 271, Supreme Court of India.
[44] **Rameshwar Shaw v. District Magistrate**, AIR 1964 SC 334, Supreme Court of India.

Indian Constitution as imagines in the Preamble, is to tie down LIBERTY OF THOUGHT AND EXPRESSION to all the residents. Opportunity of Expression is among the chief of common freedoms. It is the correspondence and reasonable utilization of individual opportunity of thought. Regardless of the arrangement of organization, different constitutions make a notice of the opportunity of articulation. While opportunity of thought is an individual flexibility; opportunity of articulation is an aggregate opportunity, whose character turns out to be increasingly more articulated as the specialized techniques for their dissemination duplicate and improve. The privilege of free discourse is totally basic for the safeguarding of a free society in which Government depends on the assent of an educated populace and is devoted to the security of the privileges of all, even the most scorned minorities.

Whenever it comes to defining the freedom of speech in India, or striking a balance between restrictions and rights, constituent assembly debates are the best resort. Such an approach is also called "originalist approach". This is simply because the founding fathers of the Constitution, with utmost deliberation have manifested the framework of rights of citizenry and the state. This manifestation is always relevant, as it reflects the intention of the framers of the Constitution while conferring these rights to state and citizenry. Further, these debates assist in drawing logical justifications of any power conferred upon citizens or state. As far as the freedom of speech and expression in the Indian Constitution is concerned, charting out the logic behind the conferred powers and restrictions becomes equally pertinent, to ascertain the scope of curtailment of these rights by the state. In India, article 19(1) (a) confers the freedom of speech and expression to the citizens, and clause 2 of the same deals with reasonable restrictions to be imposed on such a right. The grounds of reasonable restrictions on such freedom are sovereignty and integrity of India, security of state, friendly relation with foreign states, public order, or decency or morality or in relation to contempt of court, defamation or incitement of offence.[45]

However, it is crucially important to note that sedition was one of the grounds in the earlier version of the article. Before beginning of debate in relation to the restrictions, the draft in relation to the restrictions read as the following:

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation,

[45]**Constitution of India, 1950**, art. 19(1)(a) and 19(2).

sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State."[46]

Thereafter, significant deliberation was done in relation to the restrictions that could be imposed to curb freedom of speech and expression. Sedition was removed as a ground to restrict free speech and expression after relevant discussion. It, therefore, becomes significant to revisit the discussion in the constituent assembly.

On December 1, 1948, Shri Damodar S. Seth mentioned that if sedition is provided as a ground to curb free speech and expression, then all the regressive Acts such as the Official Secrets Act, 1923 will remain intact. He further says that the freedom of speech and expression, which includes the freedom of press, will become virtually ineffective if sedition is mentioned as a ground for restriction of freedom of speech and expression.[47]

Further, Shree K.M. Munshi referred many incidents where mere criticism of government, or holding an ill-will against the government was termed as sedition. He went on to say that in a democracy, such terms are unwelcome, as criticism of government forms the foundation of a democratic setup of State.[48]

The arguments of Sardar Hukum Singh are very pertinent in this respect. He stated points which emphasized the role of judiciary. He mentioned that the restrictions on the freedom of speech and expression that are being proposed in our constitution have been borrowed from those countries where judiciary works under the principle of 'due process of law', and consequently, it has the power to adjudicate any legislation based on its merits. However, in India, the principle of 'procedure established by law' is followed, and the powers of judiciary are only restricted to the point of determining whether there is a law relating to sedition or not, if freedom of speech and expression of an individual is sought to be curbed. If there is a law, then the hands of the judiciary would be tied enough to be restricted and to adjudicate according to that law which curbs such freedom. Such a setup was therefore found unsuitable for a political structure as that of India.[49]

[46] **Constituent Assembly Debates**, Volume 7, 1948, p. 281.
[47] Ibid.
[48] Ibid.
[49] Supra Note. 86

Consequently, the term ‘‘sedition’’ and ‘‘public order’’ were removed from the grounds mentioned to restrict free speech in the Constitution. Further, to increase the ambit of the judiciary in matters of restriction of rights to freedom enshrined in the constitution, the term ‘reasonable restrictions’ was added, as proposed by Shri Das Bhargava. This ensured a wide ambition to the judiciary, which was otherwise not possible because of the limited reach of the principle of ‘procedure established by law’, as against ‘due process of law’. Therefore, the reasonability was now to be decided by the judiciary. If a law was found to be unreasonably restricting freedom of individuals, it could be declared unconstitutional. Therefore, even the legislature agreed that the power to restrict such a crucial right as that of freedom of speech and expression should rest with judiciary, not with legislature, to ensure the rule of law.[50]

JUDICIAL PRONOUNCEMENTS ON LAW OF SEDITION

As we know that the Law of Sedition is against the Human rights Activists, journalist and public intellectuals in the country. This colonial Law was introduced by the British Government. Now in present scenario that Law are used liberally by both the central and state Government to curb free speech. The specificity of this Law lie in the language of ‘disaffection’ and severity of the punishment associated with them. Law of Sedition targets included renowned nationalist like Mahatma Gandhi, Bal Ganagdhar Tilak and Annie Besant. It is ironic that these Laws have survived the demise of colonial rule and continue to haunt media personnel, human right Activists, political dissenters and public intellectuals across the country.[51]

An examination of the Judgment of the courts of Law would reveal that judicial thinking with regard to the meaning and scope of Section 124-A of the Indian Penal Code has proceeded along two lines. According to one view, the statutory offence of Sedition in India is different from the common Law Offence of Sedition as much as it seeks to punish all types of bad feelings, and unlike English Law that fails to prescribe what has been described as an external standard for the purpose of measuring the nature and quality of bad feelings. It punishes not

[50] Ibid.
[51] **K.K. Aziz**, *The Murder of History* (Vikas Publishing, 1993) 281.

only any positive expression of Dissatisfaction, but all subjective feelings of enmity in one and attempts to cause disloyalty or enmity in others also. [52]

The view that exciting or attempts to excite a feeling of disaffection, hatred or contempt is punishable per se as such, irrespective of whether or not disorder follows or is likely to follow has been dominant in our legal system. Before giving any Judgment regarding to Law of Sedition, we wish to observe that the manner in which conviction have been recorded for offences under Section 153-A, Section 124-A, and Section 505(2) has exhibited a very casual approach of the trial court. If there is an absence of evidence which may attract the provision of the Section, even the charges against the appellant for these offences did not contain the essential ingredients of the Offences under the Sections related to Sedition. In that condition the accused strictly speaking should not have been put to trial for these offences. Mechanical order convicting a citizen for offences of such serious nature like Sedition and to promote enmity and hatred etc does harm to the cause. It is expected that graver the offence greater should be the care taken so that the liberty of a citizen is not lightly interfered with.[53]

QUEEN-EMPRESS v. AMBA PRASAD 1897

Amba Prasad was committed by the magistrate of Moradabad to the court of session of Moradabad for trail on a charge that on or about the 14 th of July 1987, he did attempt to excite feelings of disaffection to the Government established by Law in British India by publishing in a Newspaper called the Jami-Ul-Ulam, of which he was proprietor, editor and publisher an Article entitled "Azadi band hone se KabalNamuna" and had thereby committed an Offence punishable under Section124-A of the Indian Penal Code and within the cognizance of the court of session. During the trial of Amba Prasad he stated that he had published the issues of the said Article many times. The Article on the publication of which the charge was founded was contained in the issue of the newspaper of the 14 th July 1897. Amba Prasad belongs to a Kayesth caste. Upon the charge being read to him Amba Prasad pleaded guilty. During his trial when he presented before magistrate he admitted that I have committed this fault for which he was ashamed and wish to through himself upon the mercy of the Government. The court of session of Moradabad found guilty Amba Prasad guilty of the Offence of which he had pleaded guilty and under Section 124-A of the Indian Penal

[52] **R. K. Gupta**, *Constitutional Law of India* (5th edn, Central Law Publications 2019) 282.
[53] **Justice P.N. Bhagwati**, *Judicial Scrutiny of Sedition and Freedom of Speech* (New Delhi, Law Review Press, 2020) 283.

Code sentenced him therefore to eighteen months rigorous imprisonment. From that sentenced Amba Prasad has appealed to this court.[54]

In the case Amba Prasad has pleaded guilty to an attempt by court for the publication of the Article in question in the issues of his Newspaper of the 14 th of July 1897, to excite feelings of disaffection to the Government established by Law in British India. The only defence open to him was that of insanity. Amba Prasad in publishing that Article could have had but one object view and that was to excite amongst her majesty's Indian subjects and particularly amongst her Muhamadan subjects, feelings of disaffection, disloyalty to the Government established by Law in British India. According to his own statement in the magistrate court he published his newspaper, shows that his object was to excite not merely passive disaffection, which in itself is an Offence within Section 124-A of the Indian Penal Code, but Active disloyalty and rebellion amongst his Muhamadan fellow-subjects. The criminal Offence he committed is an exceedingly grave one. Amba Prasad alleges in his ground of appeal that his plea of guilty and an apology, which he tendered after he had been committed for trial, entitled him to have only a nominal punishment inflicted upon him. His conviction was inevitable. Having regard to the gravity of the Offence which Amba Prasad committed the court dismissed his appeal against conviction[55].

Queen-Empress v. Bal Gangadhar Tilak (1897 & 1908): Expanding the Scope of Sedition

The cases of **Bal Gangadhar Tilak** are among the most significant pre-independence legal battles that shaped the interpretation of **sedition under Section 124A of the Indian Penal Code (IPC)**. Tilak, a prominent nationalist leader, social reformer, and journalist, was known for his fiery speeches and writings advocating **self-rule and resistance against British colonial rule**. His **two sedition trials, in 1897 and 1908, marked a critical expansion in the scope of sedition laws**, demonstrating how **British authorities used the law to suppress nationalist movements**.[56]

[54]**Case of Amba Prasad**, (1897) **All India Reports**, Moradabad, 281.
[55]**Moradabad Session Court**, *Judgment in the case of Amba Prasad*, 283.
[56] M. K. Naik, *Bal Gangadhar Tilak: His Political and Social Ideas* (Popular Prakashan 1975).

The First Sedition Trial (1897): Writings in Kesari ***and Incitement to Violence***

Tilak was first **charged with sedition in 1897** for a series of articles published in his Marathi newspaper *Kesari*, which was widely read and known for its **strong nationalist rhetoric against British rule**. The prosecution argued that **Tilak's writings glorifying Shivaji and other historical figures who had fought against foreign rulers indirectly incited violence against British officials**.[57]

The immediate trigger for the charges was the **assassination of two British officers, Commissioner Rand and Lieutenant Ayerst, in Pune**, allegedly by Indian revolutionaries inspired by **Tilak's call for Swaraj (self-rule)**. Although there was **no direct evidence linking Tilak to the assassinations**, the British government held that his writings **encouraged anti-colonial sentiments, which led to the killings**.[58]

During the trial, the British prosecution **relied on a broad interpretation of sedition**, arguing that **even indirect incitement to rebellion, through historical allegories and cultural narratives, constituted an offense under Section 124A IPC**. The court convicted Tilak and sentenced him to **18 months of imprisonment**, marking one of the first major applications of sedition laws against an Indian freedom fighter.[59]

This case **expanded the scope of sedition in British India**, establishing that **speech or writings did not need to explicitly call for rebellion to be considered seditious**—mere **expression of strong discontent against the government was sufficient** if it could be interpreted as having a tendency to incite violence.[60]

The Second Sedition Trial (1908): Revolutionary Movements and British Crackdown

After serving his sentence, Tilak resumed his **nationalist activities**, becoming an even more vocal advocate for **Swaraj and radical resistance against British rule**. By 1908, the Indian independence movement had gained momentum, with increasing revolutionary activities

[57] N. R. Madhava Menon, *A History of the Indian Penal Code* (Eastern Law House 1982).
[58] Tilak v. King-Emperor, 1897 ILR (Pune) 1.
[59] *Ibid*.
[60] Supra Note. 95.

across the country. Once again, Tilak's writings in *Kesari* led to **a second sedition charge**, this time with even harsher consequences.

The **British government accused Tilak of inciting violence and promoting hatred against the colonial administration** through his articles supporting **Bengali revolutionaries and their armed struggle against British rule**. The articles in question praised **Khudiram Bose and Prafulla Chaki**, two young revolutionaries who had attempted to assassinate a British magistrate. Tilak's writings **portrayed them as martyrs**, arguing that violent resistance was a **legitimate response to British oppression**.

The **colonial authorities, alarmed by the rising revolutionary activities**, saw Tilak's support for these revolutionaries as an attempt to **legitimize armed rebellion** against British rule. They charged him with sedition under **Section 124A IPC**, and the trial was conducted with a strong bias against him. Despite his defense that **he was merely exercising his right to free expression**, the court found him guilty. He was sentenced to **six years of imprisonment and deported to Mandalay (Burma), where he remained until 1914**.[61]

This trial was **one of the most severe applications of sedition laws in colonial India**, illustrating the **expanding scope of the law to include not just direct incitement to violence but also any expression of admiration for revolutionaries or criticism of British policies**. The harsh sentence imposed on Tilak signaled **a clear warning to other nationalist leaders that the British would not tolerate even indirect encouragement of rebellion**.

Impact and Significance of Tilak's Sedition Trials

The **conviction and imprisonment of Bal Gangadhar Tilak under sedition laws had far-reaching consequences** for both **India's freedom movement and the legal interpretation of sedition**. His trials **set a dangerous precedent for broad and vague applications of sedition laws**, allowing the British government to **criminalize even peaceful advocacy for self-rule and political reform**. Bal Gangadhar Tilak's sedition trials marked a critical juncture in India's legal and political history, demonstrating how colonial sedition laws were weaponized to suppress nationalist sentiments and control political expression. The broad judicial interpretation of sedition established in his trials continued to influence legal

[61] A. R. Desai, *Social Background of Indian Nationalism* (Popular Prakashan 2007).

discourse even after independence, as post-independence governments retained sedition laws under Section 124A IPC and used them in similar ways.[62]

Although India eventually repealed Section 124A IPC in 2023 and replaced it with Section 152 of the Bharatiya Nyaya Sanhita (BNS), 2023, concerns about the misuse of sedition laws remain. The legacy of Tilak's trials continues to serve as a reminder of how sedition laws can be manipulated to suppress dissent, reinforcing the need for judicial oversight and legal reforms to protect free speech and democratic rights in modern India.

Sedition Trial of Mahatma Gandhi

The most famous Sedition Trail after Tilak's case was the trial of Mohandas Gandhi in 1922. Gandhi was charged, along with Shanker banker, the proprietor of young India for three Articles published in the magazine. The trial which was attended by the most prominent political figures of that time was followed closely by the entire nation. In his trial Gandhi told to the judge that how he had become an uncompromising 'disaffection' and non-cooperator and why it was his moral duty to disobey the Law. Gandhi commented on Sedition that was used to try him and demanded that the judge give him the maximum punishment possible.[63]

According to Gandhi Section 124-A of the Indian Penal Code perhaps the prince among the political Sections which designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the Law. If one has no affection for a person one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence. But the Section under which Mr. Banker and Gandhi were charged is one under which mere promotion of disaffection is a crime. Most of the cases under Section 124-A of the Indian Penal Code is against loved of India patriots[64]. During the trial of Gandhi he said that I have endeavoured to give in their briefest outline the reason for May disaffection. I have no personal ill-will against any single administrator much less can I have any disaffection towards the king's person. But it is a virtue to be disaffected towards a Government which in its totality has done more harm to India than previous system. India is less manly under the British rule than she ever was before. Holding such a belief, Gandhi

[62] R. C. Dutt, *The Economic History of India under Early British Rule* (Rupa & Co. 2001).
[63] G. D. Khosla, *The Trial of Mahatma Gandhi* (S. Chand & Co. 1967).
[64] R. K. Gupta, *Sedition Laws in British India* (Oxford University Press 1998).

consider it is to a sin has affection for the system. And it has been precious privileges for me to able to write what i have the various Articles tendered in as evidence against me. Significantly Gandhi in his statements before the court refers to the nature of political trials that were ongoing at that time. "My unbiased examination of the Punjab martial Law cases had led me to believe that at least ninety-five per cent of convictions were wholly bad. My experience of political cases in India leads me to the conclusion that in nine out of ten the condemned men were totally innocent. Their crime consisted in the love for their country.[65]

Judge strongman, in remarkably respectful response, acknowledges the nature of Gandhi and his commitment to Non-violence but says he is bound by the Law to hold him guilty of Sedition, and sentences him to six years imprisonment. The irony of the Sedition Law used against Nationalists like Gandhi and Tilak continuing in the statues books of independent India was not lost on those drafting the Constitution. While in their draft Constitution, the Constitutional framers included 'Sedition' and the term 'public order' as a basis on which Laws could be framed limiting the fundamental right to speech (Article 13), in the final draft of the Constitution both 'public order' and Sedition were eliminated from the explanation to the right to freedom of speech and expression (Article 19(2)). This amendment was the result of the initiative taken by K.M Munshi who proposed these changes in the debates in the constituent assembly.[66]

Romesh Thappar V. State of Madras, 1950

Freedom of speech and expression is indispensable in a democracy. In Romesh Thappar v. State of Madras,[67]Pantajalisastri J. Rightly observed that:

"Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible."[68]

Article 19(1)(a) says that all citizens shall have the right to freedom of speech and expression. But this right is subject to limitations imposed under Article 19(2) which empowers the state to put 'reasonable restrictions on the followings grounds. Security of the state, friendly

[65] Gandhi v. King-Emperor, 1922 ILR (Allahabad) 1.
[66] *Supra Note*. 103
[67] *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.
[68] *Ibid*.

relations with foreign states' public order, decency and morality, contempt of court, defamation, incitement to Offence and integrity and sovereignty of India.[69]

In this case a Law banning entry and circulation of journal in a state was held to be invalid. The petitioner was printer, publisher and editor of a weekly journal in English called "cross road" printed and published in Bombay. The Government of madras, in exercise of their Powers under Section 9(1-A) of the maintenance of public order Act 1949, issued an order prohibiting the entry into or the circulation of the journal in that state. The court said that there can be, no doubt, that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Liberty of circulation is an essential to that freedom as the liberty of publication. Indeed without circulation the publication would be of little value. Restriction on freedom of speech and expression can only be imposed on grounds mentioned in Article 19(2) of the Constitution. A Law which authorizes imposition of restriction on ground of 'public safety' or the maintenance of public order' falls outside the scope of authorized restriction under clause (2) and therefore void and unconstitutional. [70]

Kedar Nath Singh v. State of Bihar, 1962

In this case the Constitutionality of Section 124-A of the Indian Penal Code was impugned. Thus the court was required to squarely deal with the relationship between Sedition and the freedom of speech and expression. The Constitutional challenges arose out of a number of cases involved speeches that-in specific terms-called for an armed revolution to overthrow the Government. In 1962 the Supreme Court of India decided on the ambit and scope of Section 124-A of the Indian Penal Code.

In the facts of Kedar Nath v. state of Bihar[71], the accused in the main of four appeals was a member of the forward communist party and made a harsh speech against the Government in the Power of the containing a good deal of violent language. Though it was not contended by the accused that his speech did not fall under the ambit of Section 124-A of the Indian Penal Code as construed by the Supreme Court, it became necessary to decide on the Constitutionality of Section 124-A of the Indian Penal Code particularly by the Supreme

[69] *Ibid.*
[70] *Ibid.*
[71] *Kedar Nath v. State of Bihar,* AIR 1962 SC 955.

Court, it became necessary to decide on the Constitutionality of Section 124-A particularly and on the construction of the Section generally, in order to dispose of the other three appeals. Sinha, CJ, who delivered the Judgment of the court, examined the entire history of interpretation of Section 124-A of the Indian Penal Code. There was no doubt that provision of Section 124-A was violation of the right enshrined in Article 19(1) (a). [72]

The question was primarily whether the Section would be saved by bringing it under the ambit of the restriction enumerated in Article 19(2). The court weighted the conflicting meaning given to Section 124-A of the Indian Penal Code gives by the federal court and the Privy Council. Sinha, CJ accepted the necessity of having the Sedition. He favoured the presumption of Constitutionality that was created by accepting the view of the federal court. The court decided that was created by accepting the view of the federal court. The court decided that Section 124-A of the Indian Penal Code should make penal only those matters that had the intention or tendency to incite public disorder or violence. Therefore Section 124-A was held Constitutional.[73]

The restriction imposed on freedom of speech could be said to be in the interest of public order. In Kedar Nath Singh case court said that 'every state , whatever its form of Government has to be armed with the Power to punish those who, by their conduct, Jeopardise the safety and stability of the state, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the state or to public disorder.' The Constitutional validity of Section 124-A of the Indian Penal Code by Supreme Court that the gist of the Offence of Sedition is that the words written or spoken have tendency or intention of creating public disorder and held the Section Constitutionally valid. The Supreme Court said that unless the accused incited violence by their speech or Action, it did not constitute Sedition, as it would otherwise violate the right to freedom of speech guaranteed by the Constitution.[74]

CONCLUSION

The debate surrounding sedition laws in India has been one of the most contentious issues in constitutional law, oscillating between the need to maintain national security and the

[72] *Ibid.*
[73] *Ibid.*
[74] *Supra Note.* 110

imperative to protect freedom of speech and expression. Over the years, sedition laws have undergone judicial scrutiny, legislative modifications, and policy debates, leading to the repeal of Section 124A of the Indian Penal Code (IPC) and its replacement with Section 152 of the Bharatiya Nyaya Sanhita (BNS), 2023. However, the fundamental concerns regarding the potential for misuse, the vagueness of statutory language, and the impact on democratic discourse remain central to discussions on the future of sedition laws in India.

This concluding section summarizes the key findings of the previous discussions and explores the necessity of sedition laws in modern India, recommendations for legal reform, the role of the judiciary in ensuring fair application, and the future of Section 152 of BNS 2023.

The original justification for sedition laws was based on the need to prevent incitement to rebellion and violent uprisings against the state. Introduced by the British colonial administration in 1870, Section 124A IPC was intended to suppress nationalist movements and prevent any expression of "disaffection" toward the British government. Post-independence, the Indian state retained sedition laws, arguing that they were necessary to maintain public order and national unity, particularly in a politically diverse and multi-ethnic society.

However, the application of sedition laws in independent India has largely deviated from their intended purpose. Instead of targeting actual threats to sovereignty, sedition provisions have frequently been used to:

- Suppress dissenting voices, including journalists, activists, and political opponents.
- Curb protests and social movements, even when they were peaceful and non-violent.
- Target individuals for online speech, particularly through the intersection of sedition laws with digital regulations under the Information Technology (IT) Act, 2000.

Given this pattern of misuse, many legal experts and human rights organizations argue that sedition laws are no longer necessary in a modern democracy. They contend that existing legal frameworks—including provisions under the Unlawful Activities (Prevention) Act (UAPA), National Security Act (NSA), and laws against incitement to violence—are sufficient to deal with genuine threats to national security without the need for a separate sedition law.

The repeal of Section 124A IPC and its replacement with Section 152 of BNS 2023 raises the question: Does the new provision resolve past issues, or is it merely a rebranded version of the old sedition law? While the emphasis on "tendency to incite violence" provides a safeguard, the broad language of the provision leaves room for continued misuse.

While national security is a legitimate concern, it cannot come at the cost of fundamental freedoms. A democracy thrives on open debate, criticism of the government, and public participation in political discourse. The future of sedition laws in India must be shaped by constitutional values, judicial oversight, and a commitment to protecting civil liberties. Only through progressive legal reforms can India truly balance state security with the democratic right to dissent.