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BEYOND THE COLONIAL SHADOW: SEDITION LAWS AND THE RIGHT TO DISSENT

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¹ First year student at RTMNU's Dr. Babasaheb Ambedkar College of Law, Nagpur, Maharashtra., (2024-2025)

C. ABBREVIATIONS USED

BNS - Bharatiya Nyaya Sanhita
IPC - Indian Penal Code
FIR - First Information Report
PM - Prime Minister
BC - British Colonial (contextual usage)
NCT - National Capital Territory
AIR - All India Reporter
i.e. - That is
Vis-a-vis - in relation with
SCC - Supreme Court Case
UN - United Nations

D. ABSTRACT

Sedition laws, inherited from India's colonial past, remain one of the most controversial and enduring legal tools, often weaponized to suppress free speech. Despite judicial interpretations, including the landmark Kedar Nath Singh v. State of Bihar case, which sought to impose limits, the law continues to be vague and arbitrarily applied. Its origins in a colonial system designed to crush dissent clash with the values of a modern democracy that champions free expression. Contemporary governments have repurposed sedition laws in ways reminiscent of colonial rulers, stifling opposition rather than addressing genuine public order concerns. With other laws effectively handling public order and national security, sedition has become redundant. Recent cases reveal its diminishing relevance and incompatibility with modern legal standards of clarity and fairness, making a strong case for its abolition.

Keywords: National Integrity, Dissent, Civil Liberties, Democracy, Constitutional Rights, Human Rights

1. Introduction

The landscape of legal discourse in India is intricately shaped by the phenomenon of sedition laws, which serve as a dual-edged sword; they safeguard national integrity while simultaneously posing a significant threat to the fundamental right to freedom of speech and expression. Enshrined in Section 152 of Bharatiya Nyaya Sanhita (Previously : 124A of IPC), these laws trace their origins to the colonial era, marked by the British administration's profound mistrust of dissent. Today, the implications of sedition laws resonate throughout Indian society, affecting activists, intellectuals, and citizens who dare to voice criticism against the state.

The origins of sedition laws extend beyond India, reflecting a longstanding historical struggle against repression. The Magna Carta of 1215² is a critical juncture in this lineage, as it laid the groundwork for individual rights by limiting the monarch's power, albeit indirectly safeguarding the principles of free expression. The principle of freedom of speech can be traced back to the fifth or sixth century BC in Athens³. This trajectory continued with historic figures such as Socrates, who faced persecution in 399 BC for challenging the status quo, and Galileo Galilei, who endured house arrest for advocating heliocentrism during the Renaissance⁴.

In the Indian context, these laws were first instituted during British colonial rule as a means of suppressing political opposition. The infamous case of Bal Gangadhar Tilak in 1908⁵ exemplifies their use to silence nationalist sentiments, as the British sought to quell dissent viewed as a challenge to their authority. Following India's independence, the retention of sedition laws has raised critical questions regarding their relevance in a democratic society that promises to uphold individual rights. This historical trajectory illustrates the evolution of sedition laws not only in India but across the globe, highlighting their continued impact on civil liberties and political discourse in contemporary times.

At the heart of this inquiry lies a profound assertion: individuals convicted under sedition laws

2 Doris Mary Stenton, Magna Carta, ENCYCLOPEDIA BRITANNICA ONLINE available at: <https://www.britannica.com/topic/Magna-Carta>

3 Richard Kraut, The Athenian Ideal of Free Speech, ENCYCLOPEDIA BRITANNICA ONLINE available at: <http://www.britannica.com/EBchecked/topic/551948/Socrates/233637/TheAthenian-ideal-of-free-speech>

4 Josiah Ober, Kurt Raaflaub, and Robert Wallace, ORIGINS OF DEMOCRACY IN ANCIENT GREECE (2007).

5 The Trial of the Colonial Legal Order: The Tilak Trial 1908 and the Colonial Fiat (<https://ijlmh.com/paper/the-trial-of-the-colonial-legal-order-the-tilak-trial-1908-and-the-colonial-fiat/>)

are not mere adversaries of the state; rather, they are defenders of dissent, embodying the very essence of democratic discourse. This argument hinges on the belief that robust democracies thrive on the free exchange of ideas, allowing for constructive criticism and debate. When dissent is criminalised, the foundations of democracy itself are undermined. Through this research, the aim is to clarify how the label of "seditionist" is often a misnomer, obscuring the essential role that dissenters play in safeguarding the democratic ethos. Thus, it becomes imperative to reframe our understanding of these individuals—not as threats to national stability, but as vital contributors to the ongoing discourse of democracy and justice in India.

1.1 Research Methodology:

1.1.1 Statement of problem.

This study was prompted by the recent introduction of Section 152 in the Bharatiya Nyaya Sanhita, which has reignited debates surrounding the role of sedition laws in a democratic society. The paper begins by tracing the colonial-era origins of sedition laws in India, followed by an in-depth look at landmark judicial decisions that have shaped the interpretation and application of these laws over time. This includes a detailed analysis of cases such as Kedar Nath Singh v. State of Bihar, Vinod Dua v. Union of India, and S.G. Vombatkere vs Union of India. The paper then compares India's sedition framework with the approaches taken by other democracies like the UK, US, and Australia, highlighting the divergence between India's continued reliance on sedition laws and the global trend towards their abolition or reform to protect democratic freedoms.

1.1.2. Research Objectives:

1. To examine the Historical context of sedition tracing to the colonial roots and implications for contemporary legal frameworks.
2. To assess the impact(s) of sedition laws on civil liberties, particularly examining section 152 of the Bharatiya Nyaya Sanhita.
3. To evaluate judicial interpretations including review of Landmark judicial cases that have shaped the understanding and application of sedition laws, focusing on their role in protecting or undermining democratic discourse.
4. To conduct a comparative analysis of sedition laws in India with those in other democracies, highlighting trends towards reform or repeal in response to civil liberties concerns.

5. To propose legal reforms by identifying potential reforms to sedition laws that could better align them with democratic principles and protect dissent as a vital component of political discourse.

1.1.3. Research questions

1. What is the historical context and evolution of sedition laws in India?
2. How have landmark judicial decisions redefined and reshaped the boundaries of sedition laws in India, particularly in balancing state sovereignty with the fundamental right to dissent?
3. How does the Bharatiya Nyaya Sanhita (BNS), particularly Section 152, reshape the landscape of sedition laws, and what deeper implications does it hold for freedom of expression and dissent in India?
4. In what ways do India's sedition statutes diverge from or mirror those upheld by other democracies worldwide, and to what extent do they reflect the democratic ideals these nations purport to uphold?
5. How do sedition laws, with their colonial undertones, profoundly reshape the essence of fundamental rights and the very fabric of democratic discourse in India?

1.1.4. Research Hypothesis

Sedition laws in India, and particularly as enunciated in Section 152 of the Bharatiya Nyaya Sanhita, vitiate the very basic right to freedom of speech and expression. This legal architecture reclassifies dissent as a criminal act and consequently threatens the democratic principles which are essential for a vibrant democracy.

2. Evolution of Sedition laws in India

The term "Sedition" traces its roots to the French word 'Seditio', which signifies "separation" or "going apart." Sedition encompasses any expression or action that incites insurrection, disorder, or any disturbance to public tranquillity. A seditionist is an individual who participates in or promotes such disruptive undertakings. The notion of sedition was embedded within Indian law during the colonial era, primarily as a mechanism of repression aimed at stifling the voices of freedom fighters, notably figures like Lal Bal Pal⁶, who were central to the independence movement.

⁶ The trio of Bal Gangadhar Tilak, Lala Lajpat Rai and Bipin Chandra Pal. Refer to <https://www.civildaily.com/news/the-spirit-of-lal-bal-pal-in-indian-history/>

2.1. Historical Background

Origin of sedition in colonial India - The offence of sedition was first introduced in colonial India through Clause 113 of Thomas Babington Macaulay's Draft Indian Penal Code in 1837⁷. However, when the Indian Penal Code was enacted in 1860, this section was inexplicably omitted. Sir James Fitzjames Stephen attributed this to an "unaccountable mistake,"⁸ though various theories emerged. Some believed the British government preferred alternative strategies, such as a deposit forfeiture system to regulate the press⁹. Others posited that existing provisions, such as Sections 147 and 148 of the BNS¹⁰, already covered seditious actions.

The necessity for formal sedition laws became apparent following heightened Wahabi activities¹¹ and mutiny against British rule leading up to 1870. Recognizing rising nationalism, the British finally passed Section 124A, incorporating sedition into the IPC on November 25, 1870 but modifying it till 1898¹², modelled after the English Treason Felony Act¹³. Over the next 27 years, the British strengthened this law through additional measures like the Dramatic Performances Act¹⁴ and the Vernacular Press Act¹⁵, aimed at suppressing dissent. Since its inception, sedition has been wielded to stifle criticism of the government. Its subjective nature complicates legal interpretations, often allowing repressive tactics that challenge the guarantee of free speech¹⁶. Sentences for sedition are severe, with potential prison terms of up to seven years, and bail is notoriously difficult to obtain¹⁷.

7 Arvind Ganachari, Evolution of the Law of "Sedition" in the Context of the Indian Freedom Struggle in Nationalism And Social Reform In A Colonial Situation 54 (2005)

8 Walter Russel Donogh, A treatise on the law of sedition and cognate offences in British India,

available at <http://archive.org/stream/onlawofsedition00dono#page/n23/mode/2up>

9 3 R. Dhavan, Only The Good News: On the Law Of the Press in India 285-87 (1987)

10 These sections dealt with "waging war against the government" and "abetting to wage a war" t <http://archive.org/stream/policecrimeind00coxerich#page/86/mode/2up>

11 The Wahabis have been described as an extensive network of rebels who principally participated in the First War of Indian Independence in 1857. They followed a well-organised model of mass preaching, mostly concentrating on political and religious issues to win the support of the people (Refer to Narahari Kaviraj.)

12 "Whosoever, by words, either spoken or intended to be read or by signs or by visible representations or otherwise excite or attempts to excite feelings of disaffection to the Government established by Law in British India, shall be punishable with transportation of life ... to three years to which fine may be added." - IPC/1898/Sec- 121A

13 Refer to : <https://www.legislation.gov.uk/ukpga/Vict/11-12/12>

14 Dramatic performances act 1876 which had the power to prohibit certain dramatic performances; The Provincial Government may prohibit any public performance if it deems it scandalous, defamatory, likely to incite disaffection towards the government, or likely to corrupt the audience. (Refer to : https://www.caluniv.ac.in/global-media-journal/DOCUMENTS%20-DEC%202013/Document_1_The_Dramatic_Performances_Control_Act_1876.pdf)

15 The Vernacular Press Act (1878) curtailed Indian-language press freedom in British India, aiming to prevent criticism of British policies, especially during the Second Anglo-Afghan War. Repealed in 1881, it fueled India's independence movement.

(Refer to : <https://latestlaws.com/bare-acts/central-acts-rules/media-laws/vernacular-press-act1878>)

16 Eric Barendt, Interests in Freedom of Speech: Theory and Practice in Legal Explorations: Essays in Honour of Professor Michael Chesterman 175 (Kam Fan Sin, 2003)

17 The Code of Criminal Procedure, 1973, Schedule I.

2.2 Key Cases that shaped sedition -

The concept of sedition in India has evolved through landmark cases that defined its scope and limitations. Initially, in *Queen Empress v. Bal Gangadhar Tilak* (1897)¹⁸, sedition was expansively interpreted to stifle freedom fighters. Later, *Kedar Nath Singh v. State of Bihar* (1962)¹⁹ set a narrower precedent, affirming sedition's applicability only to acts inciting violence or public disorder. The *Vinod Dua v. Union of India* (2021)²⁰ case reinforced this, protecting journalistic critique under free speech. More recently, *SG Vombatkere v. Union of India* (2022)²¹ led the Supreme Court to pause sedition applications, questioning its relevance in a democratic society.

2.2.1. *Kedar Nath Singh v. State of Bihar* (1962) - In a landmark ruling, the Supreme Court upheld the constitutionality of Section 124A, defining its boundaries. Kedar Nath Singh was convicted for criticising the government; however, the Supreme Court distinguished between constructive criticism and incitement to violence, establishing guidelines that clarified what constitutes sedition the court explicitly held that 'actual violence or incitement to violence' and 'intent or tendency to cause disorder' were necessary to construe the offence of sedition. The test of 'clear and present danger' and 'bad intentions were laid down in this case.'²²

2.2.2. *Vinod Dua v. Union of India* (2021) - In *Vinod Dua v. Union of India*, 2021, the Supreme Court quashed an FIR filed in Shimla against the senior journalist Vinod Dua²³, accused of a local BJP leader²⁴ who alleged that he had made critical comments in his YouTube show about PM Narendra Modi and the centre²⁵. Significantly, it was after post-hearing arguments by Dua, the Himachal Pradesh government, and the complainant in October 2020²⁶. The Court derives strength from *Kedar Nath Singh v. State of Bihar* (1962), which had restored the proposition that Section 124A IPC speaks only to speech inciting public disorder or immediate violence. Thus, the Court held that Dua's critical remarks do not threaten public order and protect

¹⁸ Refer to the original case file: <https://indianhistorycollective.com/wp-content/uploads/2020/04/ILR189822BOM112.pdf>

¹⁹ *Kedar Nath Singh v. State of Bihar*, 1962 AIR 955

²⁰ *Vinod Dua v. Union of India* 2021 SCC OnLine SC 414

²¹ *S.G. Vombatkere vs. Union of India* (2022) 7 SCC 433 ;11 May 2022; Writ Petition(C) No. 682 of 2021

²² Refer to judgement <https://indiankanoon.org/doc/1537928/>

²³ FIR Against Journalist Vinod Dua in Himachal, Summoned For Questioning in Shimla (Refer: <https://www.news18.com/news/india/fir-against-journalist-vinod-dua-in-himachal-summoned-for-questioning-in-shimla-2667153.html>)

²⁴ BJP leader Ajay Shyam

²⁵ The Vinod Dua show episode 255 https://www.youtube.com/watch?v=vjjFD_tgvv8

²⁶ Case analysis: *Vinod Dua vs Union Of India* on 3 June, 2021 (Writ petition) Refer to : <https://blog.ipleaders.in/case-analysis-vinod-dua-vs-union-of-india-on-3-june-2021-writ-petition/>

journalistic freedom. It stated journalists were within the shelter of Kedar Nath Singh safeguards and hence press rights stood as essentials to democracy as sedition misuses against dissent could no longer prevail. The judgement not only boosted public confidence but also served as a timeless tool for challenging state hegemony without facing sedition charges²⁷.

2.2.3. State (NCT of Delhi) and ors v. Disha A. Ravi (2021)²⁸ - In 2021, the Patiala House Court in New Delhi granted bail to climate activist Disha Ravi, accused of sedition and conspiracy linked to a "toolkit"²⁹ circulated to support farmers protesting newly introduced agricultural laws. The Court, in its interim judgement, underscored that sedition could not be wielded to stifle dissent or "minister to the wounded vanity of governments."³⁰ It highlighted that freedom of speech includes the right to express dissent and communicate globally without geographical limits. This ruling reinforced democratic protections of free speech, asserting that divergent views are essential to democracy. The decision had significant implications, limiting the indiscriminate use of sedition charges, thus safeguarding citizens' rights and reshaping the application of sedition laws in India.

2.2.4. JNU sedition row (2016) - The sedition case at Jawaharlal Nehru University in 2016, which included key figures such as Umar Khalid, Anirban Bhattacharya and Kanhaiya Kumar³¹, has significantly influenced India's legal and political discourse surrounding the concept of sedition. Although the case was primarily aimed at purportedly anti-national slogans³² and actions that had occurred within the university³³, it provoked vigorous public³⁴

²⁷ Shuvro Prokash Lahiri, Case Comment on the Supreme Court Of India Judgment: Vinod Dua Versus Union Of India & Others, volume 2 issue 1,6-7 (2021).

²⁸ Disha A. Ravi vs State (Nct Of Delhi) & Ors.; Delhi High Court; AIRONLINE 2021 DEL 159 (2021)

²⁹ The toolkit was tweeted by Swedish environment activist Greta Thunberg on February 3, 2021. Refer to : <https://www.indiatoday.in/india/story/disha-ravi-case-what-is-a-toolkit-that-has-brought-activists-under-the-lens-1769523-2021-02-15>

³⁰ Refer to judgement <https://indiankanoon.org/doc/108912186/?type=print>

³¹ Kanhaiya Kumar was the then President of JNUSU (JNU Student's Union) while Umar Khalid and Anirban Bhattacharya- (<https://indianexpress.com/article/opinion/columns/my-phd-student-umar-khalid-anirban-bhattacharya-jnu-jnu-row/>) were the former members of Democratic Students Union (DSU)

³² During the "fracas" that ensued, a small group of people consisting of the people convicted, raised slogans that were generally described as "anti-India" slogans. They included phrases like "Kashmir ki azadi tak jung chalegi, Bharat ki barbadi tak jung chalegi" ("War will continue till Kashmir's freedom, war will continue till India's demolition") to protest execution of Afzal Guru and Maqbool Bhat and in the support of "the struggle of Kashmiri people for their democratic right to self-determination".

³³ Student Describes What Actually Happened At The Jawaharlal Nehru University On Feb 9 Refer to https://www.huffpost.com/archive/in/entry/student-describes-what-actually-happened-at-the-jawaharlal-nehru_n_9233910

³⁴ While people like Gulzar supported the protests by JNU students, Refer to I feel both me and my country are safe: Gulzar supports JNU students' voice of dissent

There were people like Prof Mohandas Pai who were extremely critical Refer to: Dear JNU Students, We Fund Your Studies, Not Your Politics

and academic discussions³⁵ concerning the validity and interpretation of Section 124A of the Indian Penal Code, the provision that delineates sedition. By involving students and academic activists, the case highlighted the uncertainty and possible broad interpretation of sedition law, intensifying apprehensions regarding its application against opposition in democratic contexts. The scrutiny that came with this case called for a review of sedition charges in India, raising apprehensions of silencing the rightful criticism by labelling it under the rubric of national security. The judicial responses and political debates that were sparked off by this case have influenced subsequent sedition cases, and legislative efforts as well as public opinion toward the reformation of colonial era sedition laws to ensure the protection of democratic speech in India.

2.2.5. S.G. Vombatkere vs Union of India (2022)³⁶ - The case of S.G. Vombatkere v. Union of India, 2022, involves the constitutionality question posed by Section 124A of the Indian Penal Code-the law on sedition. The lawyers behind the case are journalists Kishore Wangkhemcha³⁷ and Kanhaiya Lal Shukla³⁸, who have attacked the law on grounds that it infringes upon freedom of speech as promised within Article 19(1) of the Indian Constitution as being vague enough to present avenues for arbitrary enforcement into dissent and critical commentary from the government.

On May 11, 2022, the Supreme Court, headed by Chief Justice N.V. Ramana, delivered a judgement postponing the operation of sedition law, emphasising, on the other hand, that democratic principles cannot be relinquished. The Court has directed that no further Section 124A cases must be filed, and cases pending must be stayed³⁹. This judgement is important as it points to the clash between national security and personal freedoms, marking an ever growing awareness of the need to preserve freedom of expression within a democratic framework. The verdict has garnered substantial praise from civil society and marks a

³⁵ JNU students' protests get support from universities across India Refer to: <https://www.hindustantimes.com/india/jnu-students-protests-get-support-from-universities-across-india/story-ZyAPUXcr3H7wzgMmhyxWsK.html>

³⁶ S.G. Vombatkere vs. Union of India (2022) 7 SCC 433 Writ Petition(C) No. 682 of 2021

³⁷ The Chief Minister was referred to as a "puppet of Hindutva" in a video that Mr. Wangkhemcha, a journalist based in Manipur and anchor for local news channel ISTV, posted on social media. Mr. Wangkhemcha was arrested for his criticism of the Manipur government and its relationship with the current NDA government.

³⁸ Kanhaiya Lal Shukla, a journalist from Chattisgarh, took part in an alternative type of political commentary by publishing cartoons on social media that parodied the phoney encounters that the Gujarat police are said to have staged between 2002 and 2006.

³⁹ "All pending trials, appeals and proceedings with respect to the charge framed under Section 124-A IPC be kept in abeyance. Adjudication with respect to other sections, if any, could proceed if the courts are of the opinion that no prejudice would be caused to the accused." -

significant milestone in the discourse over sedition law in India.

2.3 Recent developments

New developments in sedition law sound many changes, as the Supreme Court has sent the matter on the larger bench while Parliament brings in new Penal Codes. What is crucial to note is that Section 150⁴⁰, replacing sedition, has been criticised for aggravating punitive steps by including separatist activities, anti-State activities, and financial support for dissent. Offences are defined as acts against "India" and not individual governments, which positions this argument as per Section 152 of the Bharatiya Nyaya Sanhita.

2.3.1 Introduction of New Regulations

The Bharatiya Nyaya Sanhita 2023 proposes comprehensive changes to existing sedition laws⁴¹, aiming to replace the colonial-era Section 124A of the Indian Penal Code (IPC). This change is particularly notable in the context of ongoing debates regarding the legitimacy and application of sedition in a democratic society. The BNS explicitly redefines the scope of sedition, narrowing its applicability and establishing stricter standards for what may be considered seditious speech. It emphasises the need for actual incitement to violence or public disorder, distancing itself from the often vague and overbroad definitions that have historically allowed for misuse.

2.3.2 Amendments Reflecting the State's Evolving Stance on Dissent

The amendments signify a shift toward protecting civil liberties, addressing public outcry against arbitrary sedition arrests, and promoting constructive critique within a democratic society, contrasting previous oppressive applications of sedition laws historically used against political dissenters.

2.3.4 Ongoing Cases and Impact on Freedom of Speech

Ongoing legal battles, such as those involving Kanhaiya Kumar⁴² and Amulya Leona⁴³,

⁴⁰ Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Government of India, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

⁴¹ BNSS refers to clauses 150, 195, 297 as 'seditious matter' even though the word sedition doesn't appear directly.

⁴² Kainat Sarfaraz, JNU row: What is the outrage all about, HINDUSTAN TIMES (2019), available at:

<https://www.hindustantimes.com/india-news/jnu-row-what-is-the-outrage-all-about/story-3OglXKhZB3RCFsEgjIOIZP.html>

⁴³ After 110 Days in Jail for Saying "Pakistan Zindabad," 19-Year-Old Activist Gets "Default Bail," THE WIRE, available at: <https://thewire.in/rights/amulya-leona-bail-bengaluru>

illustrate the persistent tension between sedition laws and free speech, raising questions about the applicability and enforcement of the new regulations in politically sensitive contexts.

3. Offences Against the State: A Comparative Overview

Sections 121 to 130 of the IPC and Sections 147 to 158 of the Bharatiya Nyaya Sanhita pertain to crimes against the sovereignty of the state, frequently exploited to curb dissent and inhibit free expression. Historically, Section 124A of the IPC has effectively suppressed political commentary, while Section 152 of the BNS continues this pattern by invoking national security, with ambiguous definitions that enable the state to suppress opposition and critics, thereby highlighting persistent democratic challenges in India.

3.1 Indian Penal Code (IPC) Provisions

Sections 121 to 130 of the Indian Penal Code (IPC) delineated offences related to waging war against the government, conspiracy to wage war, and acts promoting insurrection.⁴⁴ These provisions were designed not only to protect national integrity but also to suppress dissent that challenges state authority. Historically, these sections have been wielded as tools of oppression, stifling free speech and dissenting voices, to quash nationalist movements and silence critics like Bal Gangadhar Tilak⁴⁵.

However, in recent times accusations under these sections have been directed at activists and political dissenters, reflecting an enduring trend of employing legal frameworks to suppress dissent under the legal backdrop of legitimate criticisms against the government.

Section 124A of the Indian Penal Code, enacted during British colonial rule to suppress rebellion, continues to stifle political dissent in modern India. High-profile cases such as Umar Khalid⁴⁶, Sharjeel Imam⁴⁷, Kanhaiya Kumar⁴⁸, and Amulya Leona⁴⁹ have faced sedition charges for allegedly anti-national speeches, with Khalid still in jail without bail. In *SG Vombatkere v Union of India (2022)*⁵⁰, the Supreme Court temporarily halted the enforcement

44 Refer : https://devgan.in/ipc/chapter_06.php and 42.

45 Bombay High Court, *Emperor vs Bal Gangadhar Tilak* on 22 July, 1908 (Refer : <https://indiankanoon.org/doc/1430706/>)

46 Delhi High Court, *Umar Khalid vs State Of National Capital Territory Of Delhi* on 18 October, 2022

47 Delhi High Court, *Sharjeel Imam vs State Of Nct Of Delhi* on 10 July, 2020

48 Delhi High Court, *Mr. Kanhaiya Kumar vs Union Of India & Ors* on 20 May, 2024

49 Karnataka High Court, *Amulya Leona vs State Of Karnataka* on 22 May, 2020

50 The legal quorum: *S.G. VOMBATKERE VS. UNION OF INDIA* by Nandini K.T

of Section 124A⁵¹, initiating a review of its constitutionality amid concerns that it is misused to suppress dissent rather than protect public order.

This colonial-era law, broadly applied in cases like those of Arundhati Roy⁵² and Aseem Trivedi⁵³, is seen as vague and prone to abuse. The petitioners in SG Vombatkere, journalists Kishore Wangkhemcha⁵⁴ and Kanhaiya Lal Shukla⁵⁵, were charged with sedition for social media content, underscoring the law's outdated nature in the digital age⁵⁶. While the 1962 Kedar Nath v Union of India precedent limits sedition to cases involving incitement to violence⁵⁷, its misuse persisted under Prime Minister Modi's government, particularly against protestors, creatives, and journalists. The case offered a chance to repeal or amend the law and curb India's democratic backsliding.

3.2 Bhartiya Nyaya Sanhita (BNS) Provisions

Sections 147 to 158 of the Bharatiya Nagarik Suraksha Sanhita (BNS) encapsulate India's legal framework concerning offences that threaten the state's sovereignty and security. Section 147⁵⁸ criminalises waging or attempting to wage war against the government, aligning with the state's duty to safeguard its integrity. Section 148⁵⁹ extends this by penalising conspiracies to commit such offences. These sections mirror the gravity of waging war, focusing on preparatory acts like the collection of arms (Section 149⁶⁰) and concealment of such plans (Section 150⁶¹). This legislation directly targets individuals undermining the state, reinforcing India's commitment to national security and deterring acts against the government.

51 124(A)- [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, a 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.]

52 Supreme Court of India : In Re:Arundhati Roy.... Contemner vs --- on 6 March, 2002

53 Bombay High Court: Sanskar Marathe vs The State Of Maharashtra And Anr on 17 March, 2015

54 The Chief Minister was referred to as a "puppet of Hindutva" in a video that Mr. Wangkhemcha, a journalist based in Manipur and anchor for local news channel ISTV, posted on social media. He was arrested in August 2021 under the grounds of sedition

55 Kanhaiya Lal Shukla, a journalist from Chattisgarh, took part in an alternative type of political commentary by publishing cartoons on social media that parodied the phoney encounters that the Gujarat police are said to have staged between 2002 and 2006. He was arrested in April 2021.

56 Direction (d) - "All pending trials, appeals and proceedings with respect to the charge framed under Section 124-A IPC be kept in abeyance. Adjudication with respect to other sections, if any, could proceed if the courts are of the opinion that no prejudice would be caused to the accused."

57 Sedition Law in India: A Critical study by Umesh Kumar and Dr, MP Verma

58 Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.

59 Whoever within or without and beyond India conspires to commit any of the offences punishable by section 147, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

60 Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

61 Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Government of India, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Sections 151 to 158 further expand this framework by protecting India's political leadership and its territorial unity. Section 151⁶² penalises assaults on the President or Governor intended to influence their lawful duties, underscoring the inviolability of state leadership. Meanwhile, Section 152⁶³ addresses acts that endanger the sovereignty or integrity of the nation. Sections 153 to 158 address waging war against foreign states, aiding war efforts, and assisting in the escape of war prisoners. These provisions reflect a robust legal mechanism aimed at preserving national security from both domestic and international threats, ensuring that any such acts are met with strict punitive measures.

3.3 Comparison between Section 152 of BNS with Section 124A of IPC.

Section 152 of the Bharatiya Nyaya Sanhita (BNS), despite the veneer of reform, is nothing more than a repackaged, insidious form of the colonial-era sedition law under Section 124A of the IPC⁶⁴. Both provisions, while dressed in the language of safeguarding national unity, provide an overbroad mandate to the government to suppress dissent. The fundamental issue with Section 152, much like its predecessor, lies in its vague and expansive terms. Expressions like "subversive activities" or "encouraging feelings of separatist activities" are alarmingly subjective, allowing the state to interpret any form of political criticism or dissent as a threat to sovereignty or unity.

Section 124A allowed the government to silence disaffection towards it, but the BNS widens the scope by criminalising not just disaffection but any act that "endangers sovereignty" or even "encourages separatism." The inclusion of modern tools like electronic communication

62 Whoever, with the intention of inducing or compelling the President of India, or Governor of any State, to exercise or refrain from exercising in any manner any of the lawful powers of such President or Governor, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such President or Governor, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

63 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.

Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.

64 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, a 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.

Explanations: 1.The expression "disaffection" includes disloyalty and all feelings of enmity.Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

2.Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

3.Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

and financial means only deepens the state's reach. While the punishment is scaled differently, the core issue persists—citizens, activists, or political critics, under the guise of “secession” or “subversion,” can be branded as enemies of the state and face life imprisonment.

Crucially, this provision, like Section 124A, offers a chilling effect on free speech by empowering the government to define dissent on its terms. Whether it is protest movements, regional autonomy demands, or critiques of government policy, Section 152 remains a weapon that can be wielded to stifle opposition. The Indian judiciary may attempt to narrow its application, but as seen in *Kedar Nath*, such judicial interventions offer only superficial safeguards. The state's tools to curb speech remain intact, rendering the transition from IPC to BNS nothing more than a cosmetic overhaul designed to retain the same oppressive grip on dissent.

4. Section 152 of BNS vis a vis fundamental rights.

The contentious nature of sedition laws in India has prompted significant scrutiny, particularly regarding Section 152 of The BNS. Despite the Law Commission's recommendation to retain sedition provisions, this section employs ambiguous terminology that undermines the clarity established in Section 124-A of the IPC. While aiming to protect national integrity, it inadvertently encroaches upon the fundamental right to freedom of speech under Article 19(1)(a)⁶⁵, raising concerns about arbitrary enforcement and potential violations of Article 14⁶⁶.

4.1 Shifts in Law blurring the lines Between Dissent and Treason

Section 152 of the Bharatiya Nyaya Sanhita (BNS) introduces a new offence criminalising acts that threaten the sovereignty, unity, and integrity of India, replacing the sedition law under Section 124A of the Indian Penal Code (IPC). Unlike Section 124A, which focused on exciting "hatred, contempt or disaffection" against the government, Section 152 penalises speech or actions—whether through words, signs, or electronic means—that excite secession, armed rebellion, or "subversive" activities, or encourage separatist sentiments. This shift from penalising actions against the government to those against the state itself broadens the scope of the law, allowing more expansive state intervention. Yet, the vague terminology of

⁶⁵ All citizens shall have the right to freedom of speech and expression;

⁶⁶ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

"subversive" and "separatist" activities remains undefined, rendering the provision susceptible to abuse, much like its predecessor.

The historical misuse of sedition laws has been well-documented, with reports⁶⁷ revealing that over 13,000 people were implicated under Section 124A between 2011 and 2021, with an abysmally low conviction rate of 0.1%. Despite the Supreme Court's interim orders in May 2022⁶⁸ halting sedition trials due to widespread misuse, the BNS reintroduces similar provisions in Section 152, merely rebranding sedition as treason without clarifying its key terms. This ambiguity poses a risk to democratic freedoms, especially in a country as diverse as India, where legitimate grievances raised by marginalised communities could be construed as separatist or subversive. Notably, the BNS expands the scope of punishment, enhancing imprisonment from three years (under Section 124A) to a term of seven years or life imprisonment under Section 152, amplifying the state's power to curtail dissent.

The enhancement of police powers under Section 152, through its expansive language and punitive measures, reflects a continuity of the colonial mindset of state supremacy over individual rights. This broad, imprecise provision deepens the imbalance between state authority and civil liberties, allowing the criminalization of lawful expressions of dissent, protests, or grievances that might be framed as threats to national integrity. By creating an opaque standard for what constitutes endangerment to sovereignty or unity, the law risks being weaponized against democratic movements, further perpetuating the problematic legacy of colonial-era laws aimed at suppressing dissent.

4.2 Impact of Section 152 on Freedom of Speech and Expression in a Democratic India : Fundamental Rights under siege

Section 152 of the Indian Penal Code (IPC) serves as a modern manifestation of state repression, effectively rephrasing the oppressive essence of Section 124A (sedition). By criminalising actions that allegedly excite secession or rebellion, this vague statute poses a significant threat to Article 19(1)(a) of the Indian Constitution, which safeguards the freedom of speech and expression⁶⁹. The broad language of Section 152 allows for arbitrary interpretation, enabling authorities to wield it as a tool against dissent and criticism of

⁶⁷ A Decade of Darkness : The story of sedition in India.(Refer : <https://sedition.article-14.com/>)

⁶⁸ Supreme Court - Daily Orders

S.G. Vombatkere vs Union Of India on 11 May, 2022

⁶⁹ (Constitution of India, 1950)

government policies. This creates an environment conducive to self-censorship among journalists, activists, and ordinary citizens, who may fear prosecution under such draconian provisions.

The potential for misuse of Section 152 is evident when viewed through the lens of historical abuses associated with Section 124A. A particularly salient example is the case of *Vinod Dua v. Union of India*, where the prominent journalist faced sedition charges for critiquing the government's handling of the COVID-19 pandemic. The Supreme Court's intervention in this case emphasised the precarious nature of free expression amidst state overreach, asserting that legitimate critique should not be conflated with sedition. This case exemplifies a broader trend wherein state authorities exploit legal ambiguities to suppress dissent, reflecting historical precedents where national security was used as a pretext to silence critical voices.

Further complicating this landscape is the 1951 amendment to Article 19(1)(a), which sought to regulate what the government labelled as the "abuse of freedom of speech." This amendment followed public backlash against government actions during crises, such as the West Bengal refugee situation. However, rather than protecting citizens, this regulatory approach has resulted in the disproportionate application of laws against dissenters, fostering a climate of fear that undermines open discourse. Legal scholars have consistently warned that these laws set a perilous precedent, permitting the state to categorise dissent as a threat to national integrity, thereby eroding the fundamental democratic values that underpin Indian society.

In this context, Section 152 stands out as a contemporary instrument for the government to enforce compliance and silence dissent under the guise of protecting national unity and integrity⁷⁰. The implications of such legal frameworks are far-reaching, affecting not only the individuals prosecuted but also the broader democratic fabric of the nation. The systemic use of these laws fundamentally undermines the essential right to dissent, which is crucial for fostering a vibrant democracy.

As the Indian state increasingly resorts to laws like Section 152 to target dissenters, it becomes imperative to recognize and challenge the erosion of civil liberties. The intersection of legal provisions and political power in this context poses serious questions about the future of free

⁷⁰ Surya Kanta Mishra's recorded speech on State Repression and Freedom of Expression

expression in India, necessitating urgent legal reforms to safeguard the fundamental rights enshrined in the Constitution. Without such reforms, the trajectory of dissent in India may be irrevocably altered, leading to a diminished democratic space and the stifling of critical voices.

5 India v The world: A Global perspective

The law of sedition, though varying across different nations, reflects a common theme: suppression of dissent and restriction of free speech, often to the detriment of democratic values. In democracies such as the United Kingdom, New Zealand, and the United States, sedition laws have been either repealed or significantly curtailed, recognizing their conflict with modern democratic principles. For instance, the UK abolished its sedition laws in 2009, acknowledging them as antiquated and at odds with freedom of expression⁷¹. Similarly, New Zealand repealed its sedition laws in 2008⁷² after public outcry over the prosecution of a political activist, Tim Selwyn⁷³, demonstrating the global shift towards protecting freedom of speech (New Zealand Law Commission). These countries realised that sedition laws are tools of authoritarianism, stifling legitimate political discourse under the guise of national security.

In stark contrast, India's sedition law, embedded in Section 152 of BNS (Prev, 124A of IPC), remains a relic of colonial rule. It is often wielded to silence dissent against the government, targeting activists, journalists, and critics. India's sedition law was imposed by the British colonial regime to quell uprisings, and its continuation today signifies a failure to evolve in tandem with modern democratic norms. Whereas the UK and other former colonies have recognized the regressive nature of such laws and abolished them, India clings to this draconian legislation, leading to widespread abuse⁷⁴. A landmark judgement in 1962 (*Kedar Nath Singh v. State of Bihar*) sought to limit the misuse of sedition, but in practice, the law has been used arbitrarily to suppress political dissent, proving that mere judicial guidance is insufficient without legislative reform. India's refusal to repeal this colonial law reflects a broader, systemic disregard for freedom of speech, making its laws far more regressive compared to other democracies.

⁷¹ A. G. Noorani, How a Supreme Court judgement brought back the sedition law in India Refer: <https://frontline.thehindu.com/cover-story/sedition-in-freedom-struggle/article35786523.ece>

⁷² REFORMING THE LAW OF SEDITION, (New Zealand & New Zealand eds., 2007)

⁷³ Refer to : The road to Sedition : <https://medium.com/westside-stories/the-road-to-sedition-e0b0f18ed4c7>

⁷⁴ Sedition in England: The Abolition of a Law From a Bygone Era | In Custodia Legis: Law Librarians of Congress, <https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/>

The United States, though still retaining certain forms of sedition laws such as the Smith Act, has seen a marked decline in their use since the mid-20th century. The prosecution of sedition in the U.S. peaked during the Red Scare, but cases like *Dennis v. United States* (1951) eventually led to an acknowledgment of the constitutional challenges such laws posed, particularly to the First Amendment⁷⁵. In comparison, India's sedition law continues to be a potent weapon against free speech, with several high-profile cases of its misuse in recent years, such as the arrests of student leader Kanhaiya Kumar in 2016 and environmental activists during anti-government protests⁷⁶. Where the U.S. has moved towards limiting the use of sedition to prevent its infringement on constitutional rights, India has expanded its application, especially in politically charged situations, highlighting the growing chasm between the democratic ideals espoused by both nations.

Malaysia and Indonesia also offer crucial parallels. Both countries, despite operating under different political systems, have wielded sedition laws to silence opposition. Malaysia's Sedition Act has been criticised internationally for being used to stifle dissent, particularly under the previous regimes⁷⁷. While the current government pledged to repeal the law, it remains in force, mirroring India's empty promises of reform. In Indonesia, the sedition law, a colonial-era remnant, was used to crush movements in West Papua until its unconstitutional status was declared in 2007, marking a significant step forward⁷⁸. Yet, India has not made similar strides, despite mounting evidence that its sedition law is regularly weaponized against activists and critics. Unlike Indonesia, where constitutional reforms have fostered greater freedom of speech, India's legal framework remains trapped in colonial authoritarianism, undermining its claims to be the world's largest democracy.

Australia's experience further underscores the backwardness of India's sedition law. Australia began reforming its sedition laws as early as the 1980s, recognizing that such laws were incompatible with modern democratic discourse⁷⁹. By 2010, Australia had removed the term

⁷⁵ *Schenck v. United States*, OYEZ, <https://www.oyez.org/cases/1900-1940/249us47>

⁷⁶ Prabhat Singh, A quick history of sedition law and why it can't apply to JNU's Kanhaiya Kumar, NEWSLAUNDRY (Feb 16, 2016) <https://www.newslaundry.com/2016/02/16/a-quickhistory-of-sedition-law-and-why-it-cant-apply-to-jnus-kanhaiya-kumar>

⁷⁷ Richard C. Paddock, Malaysia to Repeal Death Penalty and Sedition Law, THE NEW YORK TIMES, (October 11, 2018) <https://www.nytimes.com/2018/10/11/world/asia/malaysiadeath-penalty-repeal.html>

⁷⁸ Indonesia: Bold Court Decision Good for Free Expression, HUMAN RIGHTS WATCH (2007), <https://www.hrw.org/news/2007/07/19/indonesia-bold-court-decision-good-freeexpression>

⁷⁹ Roy Jordan, In Good Faith: Sedition Law in Australia, Parliament of Australia, Parliament of Australia (Aug. 23, 2010) available at: https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Libr

“sedition” from its laws, acknowledging its archaic nature, and replaced it with provisions that more clearly delineate actual threats to national security from legitimate political speech. This nuanced approach contrasts sharply with India, where vague definitions of “seditious activity” have resulted in a chilling effect on free speech. India’s unwillingness to modernise its sedition law reflects a deep-seated fear of criticism and opposition, traits more commonly associated with authoritarian regimes than functioning democracies.

While countries like the UK, New Zealand, the U.S., Indonesia, and Australia have recognized the need to either abolish or reform sedition laws to protect democratic freedoms, India remains shackled by its colonial past. The misuse of sedition to suppress dissent not only curtails free speech but also marks a significant regression from the democratic ideals enshrined in the Indian Constitution. India’s refusal to join the global movement towards repealing these archaic laws reveals a disturbing trend of authoritarianism, with dire consequences for the future of its democracy.

6. Conclusion

From the dimly lit corridors of the Star Chamber in England to the bustling streets of modern India, the law of sedition has always been a shadow lurking behind the free expression of dissent. Born in an era of monarchs and feudal control, this law, designed to quell opposition and silence critics, has evolved into a powerful tool that, even today, serves to suppress voices that challenge the state. Across centuries, it has persisted, not because of its necessity, but because of the deliberate vagueness that allows those in power to wield it without restraint. What began as a measure to protect the monarchy’s fragile hold on power now festers as a relic of colonialism, used to stifle the democratic pulse of India.

This misuse is reflected in the wide array of cases where individuals have been charged with sedition for reasons that stretch the bounds of logic and legality. Instances include liking a Facebook page⁸⁰, criticizing some yoga expert⁸¹, cheering for the Pakistani cricket team during

ary/Publications_Archive/archive/sedition.

⁸⁰ Times News Network, Facebook “like” case: No evidence of sedition, govt tells HC, January 30, 2013, available at http://articles.timesofindia.indiatimes.com/2013-01-30/kochi/36635179_1_national-flag-facebook-post-sedition

⁸¹The Indian Express, Sedition charge against Digvijay over remark against Ramdev, June 6, 2011, available at <http://www.indianexpress.com/news/sedition-charge-against-digvijay-overremark-against-ramdev/799912>

a match against India⁸², or posing provocative questions in a university exam about whether stone-pelters in Jammu and Kashmir were the true heroes⁸³. There have even been cases where people have been booked for drawing cartoons that allegedly incite violence, or for delivering speeches at conferences that shed light on atrocities committed by the armed forces. These examples starkly reveal how sedition laws, originally intended to protect the state from genuine threats, have been warped into tools for stifling free speech and dissent.

The Kedar Nath judgement itself reveals several flaws in how sedition is understood and applied today. The court sought to restrict the scope of sedition to acts that incite violence or threaten the security of the state, yet the definition of "security of the state" has shifted over time. In today's context, where the public is far less likely to be incited to violence by mere words⁸⁴, the rationale for such laws has weakened. Moreover, the notion of "public order" that once justified the existence of sedition laws is now better addressed by other, more specific statutes designed to handle local law and order issues. These changes reflect a broader evolution in society's understanding of security, freedom of expression, and the relationship between the state and its citizens.

Section 152 of the Bharatiya Nyaya Sanhita (BNS) continues this problematic tradition, perpetuating the same vagueness that has historically plagued sedition laws. Although the BNS was supposed to modernise and streamline India's legal framework, Section 152 still allows for the suppression of dissent under the guise of protecting state security and public order. This new provision, like its colonial predecessor, is ripe for misuse, granting authorities the ability to interpret dissent as sedition without clear guidelines. In keeping the language broad and open-ended, the law provides the government with a convenient tool to target individuals who question its actions, thus curbing the very essence of democratic engagement. This echoes the earlier misuse of sedition laws to punish trivial acts of criticism, reinforcing the perception that Section 152 is less about maintaining public order and more about silencing opposition.

⁸² NDTV, Outrage over Sedition Charges against Students who cheered Pakistan, March 6, 2014, available at <http://www.ndtv.com/article/india/outrage-over-sedition-charges-againststudents-who-cheered-pakistan-492250>

⁸³ 5 India Today, Kashmir University lecturer released, January 2, 2011, available at <http://indiatoday.intoday.in/story/kashmir-university-lecturer-released/1/125303.html>

⁸⁴ Press Trust of India, Sedition case registered against Arundhati Roy, Geelani, November 29, 2010, available at <http://www.ndtv.com/article/india/sedition-case-registered-against-arundhati-roy-geelani-69431>

The repeal of sedition laws in England serves as a poignant reminder that such laws belong to a bygone era. In a democratic society, the right to dissent is fundamental, and there are plenty of other laws that address public order and safety without encroaching on the right to free speech. India must reconsider the continued existence of these outdated provisions, particularly Section 152 of the BNS, which stands as a remnant of colonial oppression. As long as such laws remain in place, they will be used to undermine the democratic rights of citizens to question, protest, and criticise the government, rights that are vital for the health of any democracy.

In a country that prides itself on its democratic foundations, clinging to these archaic sedition laws is both contradictory and damaging. It is time for the Indian legislature and judiciary to review and, ultimately, remove these vestiges of colonial control. Only by doing so can we ensure that the spirit of democracy, where dissent is not a crime but a cornerstone of freedom, continues to flourish.

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