

“The Persistence of Sedition Law in India: A Critical Analysis of Section 124-A, Its Reincarnation in the Bhartiya Nyaya Sanhita (Section-152) and Impact on Free Speech”

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Abstract: -

India's sedition law, rooted in the British era sedition Section 124-A of the Indian Penal Code has been a persistent tool of state control, made to suppress dissent and save government's authority. Despite its temporary suspension by the Supreme Court in 2022 and promises of repeal, the law has been reincarnated as Section 152 of the BNS 2023, along broader scope, strict penalties, and ambiguous terminology that perpetuates its potential for misuse. This article provides an exhaustive analysis of the evolution of Section 124-A, its transformation into Section 152 and the profound implications for free speech under Article 19(1)(a) given in the Constitution of India. Through an in depth examination of judicial precedents, legislative developments, statistical data, socio-political contexts, and global trends, it argues that Section 152 fails to address the systemic abuse of sedition laws, threatening India's democratic fabric. The article proposes a multi-pronged approach—judicial oversight, legislative clarity, civil society advocacy, and alignment with global best practices—to safeguard free expression while addressing legitimate national security concerns.

Keywords: - Sedition, Section 124A, Bhartiya Nyaya Sanhita, Section 152, Free Speech, Dissent, Indian Constitution, Colonial Legacy, National Security, Democracy, Chilling Effect, Judicial Oversight, Subversive Activities, Article 19

Introduction-

The law of sedition in India, enshrined in Section 124-A of the Indian Penal Code since 1870, is a colonial relic designed to protect British rule by criminalizing expressions of “disaffection” toward the government. Its retention in post-independence India has sparked on going debates about its synchronization with the fundamental right to free speech under Article 19(1) (a) is guaranteed by the Constitution of India. The law's vague and expansive language has enabled its misuse against journalists, activists, students and ordinary citizens, creating a suppressing effect on dissent and undermining democratic discourse. In May 2022, the apex court of India interim order in “S.G. Vombatkere v.ion of India” suspended all proceedings under Section 124A, signaling a potential shift toward reform. However, the introduction of the BNS in 2023, which replaced the IPC, reintroduced sedition-like provisions under Section 152, raising concerns about the persistence of colonial-era restrictions in a modern democracy.

This article provides a complete analysis of the sedition law's historical trajectory, its reincarnation in the BNS, and its impact for free speech in India. It traces the British origins of Section 124A, examines judicial efforts to limit its scope, and critiques the legislative intent behind Section 152. Drawing on case law, statistical data, socio-political contexts, and global perspectives, the article argues that Section 152 perpetuates the systemic abuse of its predecessor, threatening the democratic principle that dissent is essential for accountability. It concludes with detailed recommendations for judicial, legislative, and societal reforms to protect free expression while addressing legitimate security concerns, ensuring that India's legal framework synchronize with its democratic aspirations.

Historical Context and Purpose:-

The sedition law under Section 124A was introduced by the British colonial government in 1870 as part of the IPC, drafted by Macaulay. Its primary purpose was to suppress the growing Indian independence movement by criminalizing any act—through words or visible representations—that attempted to bring “hatred or contempt” or “disaffection” toward the government. The punishment was harsh: life imprisonment or imprisonment up to three years, with or without fine. The term “disaffection,” undefined in the statute, was deliberately vague, granting colonial authorities' wide discretion to target political opponents.

The law's application during the British era was emblematic of its repressive intent. Bal Gangadhar Tilak, a prominent nationalist, was prosecuted twice under Section 124A—in 1897 for his articles in “Kesari” and in 1908 for his writings supporting revolutionary activities (Queen-Empress v. Bal Gangadhar Tilak, ILR 22 Bom 112). Mahatma Gandhi faced trial in 1922 for his articles in “Young India”, describing Section 124-A as the “prince among the political sections of the IPC designed to suppress the liberty of the citizen” (Gandhi, 1922). Annie Besant, prosecuted in 1917 for her writings in “New India”, also faced the law's wrath for advocating Home Rule (King-Emperor v. Annie Besant, 1917). These cases

illustrate how Section 124A was used to silence voices challenging colonial authority, targeting not just violent acts but critical speech and writings.

Post-Independence Retention: -

Post-independence, the continuation of Section 124A in the IPC sparked significant debate. During the Constituent Assembly debates of 1948–49, leaders like K.M. Munshi and Sardar Patel grappled with the law's place in a democratic India. Munshi argued that sedition, as a barrier on free speech, was incompatible with the democratic ethos, advocating for its removal from the Constitution's reasonable barrier under Article 19(2) (Constituent Assembly Debates, Vol. VII, 1948). However, the very First Amendment to the Constitution in 1951 added "public order" and "security of the state" as grounds for restricting free speech, implicitly justifying the continuation of Section 124A.

The decision of continuation the law was influenced by concerns about national security, particularly in the context of post-partition communal tensions and separatist movements. However, its colonial roots—designed to protect an unelected regime—clashed with the democratic principle that criticism of the government is distinct from disloyalty to the state. The law's vague wording, particularly terms like "disaffection" and "hatred," continued to enable selective enforcement, targeting voices critical of government policies. This tension between power of state and liberty of individual set the stage for decades of judicial and societal contestation.

Judicial Efforts to Restrain Sedition: -

Landmark Precedents: - The judiciary of India has played a important role in balancing Section 124A with the constitutional guarantee of free speech under Article 19(1)(a). The historical case of "Kedar Nath Singh v. State of Bihar" (1962) addressed the legality of Section 124A, upholding it but imposing significant restrictions. The Supreme Court ruled that only speech or actions provoking violence or public disorder could be deemed seditious, emphasizing that "criticism of public measures or comment on Government action, however strongly worded," is permissible unless it directly incites violence (AIR 1962 SC 955). The Court distinguished between legitimate dissent and acts aimed at overthrowing the state, affirming that dissent is a cornerstone of democracy.

Subsequent rulings reinforced this principle. In "Balwant Singh v. State of Punjab" (1995), the Supreme Court quashed sedition charges against individuals shouting pro-Khalistan slogans, finding no evidence of incitement to violence or public disorder (AIR 1995 SC 1785). The Court noted that casual expressions of dissent, absent a direct threat, do not made sedition. Similarly, in "Vinod Dua v. Union of India" (2021), the Court dismissed charges against a journalist for criticizing government policies during the COVID-19 pandemic, reiterating that dissent and criticism are democratic rights (2021 SCC On-line SC 414). These judgments sought to protect free expression by requiring a clear connection between speech and violence.

Inconsistent Application and Misuse: -

Even with these judicial safeguards, the application of Section 124A has been inconsistent and prone to abuse. Data from the National Crime Records Bureau (NCRB) shows a 28% increase in sedition cases between 2014 and 2020, with 93 cases registered in 2019 but only a 3.3% conviction rate (NCRB, 2019). This low true conviction rate reflect that the law is often used as a mechanism of harassment instead prosecution. High-profile cases illustrate this trend:

Kanhaiya Kumar (2016): The former JNU student was charged with sedition for allegedly raising anti-India slogans, though no evidence of incitement to violence was found. The case, widely publicized, highlighted the law's use to target student activism (The Hindu, February 12, 2016).

Arundhati Roy (2010): The author faced sedition charges for her remarks on Kashmir, despite no direct incitement to violence, underscoring the law's use to silence intellectual dissent (The Times of India, November 29, 2010).

Aseem Trivedi (2012): The cartoonist was arrested for his satirical cartoons criticizing corruption, illustrating the law's application to artistic expression (India Today, September 10, 2012).

These cases demonstrate how Section 124-A has been weaponized to target dissenters, creating a silence effect on free speech. The low conviction rate, coupled with prolonged legal battles, imposes significant personal and financial costs on the accused, discouraging critical expression.

Supreme Court's 2022 Intervention: -

In May 2022, the SCI in case of "S.G. Vombatkere v. Union of India" issued a landmark interim order, directing all state and central governments to suspend proceedings under Section 124A until the law's constitutionality could be re-examined (2022 SCC On Line SC 609). The Court acknowledged the law's colonial origins and history of misuse, noting its incompatibility with modern democratic values. The order also instructed that no new FIRs will be registered under Section 124-A and allowed accused individuals to seek bail. This decision was hailed as a victory for free speech advocates, raising hopes for the law's amendments or reform.

Bharatiya Nyaya Sanhita and Section 152: A Rebranded Sedition?

Legislative Context: - In August 2023, the Indian government introduced BNS Bill to replace the IPC, along with the Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam, as part of a broader overhaul of British-era laws. Home Minister Amit Shah announced the repeal of Section 124-A, citing its colonial origins and misuse as a tool to suppress dissent (Lok Sabha Debates, August 11, 2023). The move was framed as a step toward decolonizing India's legal framework and aligning it with democratic principles.

However, Section 152 of the BNS, come in effect from July 1, 2024, has emerged as a rebranded version of sedition, raising doubts about the government's reformist intent. The provision reads:

“Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or through electronic communication or by use of financial means, 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.”

Key Features and Concerns: -

Section 152 introduces several changes compared to Section 124A:-

1. **Broader Scope:**- Section 124-A, which focused on “disaffection” toward the government, Section 152 targets acts that are against “sovereignty, unity, and integrity of India.” This change aligns with the rhetoric of national security but expands the law's ambit to include vague terms like “subversive activities” and “feelings of separatist activities,” which lack clear definitions.
2. **Harsher Penalties:** - The maximum punishment has been increased from three years under Section 124-A to seven years under Section 152, with a mandatory fine. The non-bailable nature of the offense and additional requirements, such as passport surrender, amplify its punitive impact.
3. **Digital and Financial Dimensions:** -The inclusion of “Digital communication” and “use of financial means” reflects an attempt to address modern threats like cyberterrorism and terror financing. However, it also increases the risk of targeting online dissent, particularly on platforms like X, where critical posts can be misconstrued as subversive.
4. **Lowered Threshold:** - The use of “knowingly” alongside “purposely” lowers the threshold for prosecution, potentially criminalizing unintentional acts, such as sharing social media content deemed provocative.

As per the Rajasthan High Court's 2024 ruling in case of “Tejender Pal Singh v. State of Rajasthan” addressed early concerns about Section 152, cautioning against its misuse to suppress legitimate dissent. The court emphasized that only intended acts with provocative intent should be prosecuted, drawing parallels with “Kedar Nath Singh” (2024 SCC OnLine Raj 1123). However, the provision's ambiguous language and expansive scope leave significant room for subjective interpretation and abuse.

Legislative Intent and Critique: -

The government's rationale for Section 152, as articulated in the 22nd Law Commission 279th Report (2023), centers on national security threats, including terrorism, separatism, and external threats. The report recommended retaining Section 124A with amendments to clarify intent and enhance penalties, arguing that sedition laws are necessary to protect the state in a volatile geopolitical context (Law Commission, 2023). This stance is reflected in Section 152's focus on sovereignty and unity, which aligns with the government's broader narrative of safeguarding national integrity. However, critics argue that Section 152 fails to address the systemic issues of its predecessor. The vague terminology perpetuates the chilling effect on free speech, while the harsher penalties and non-bailable provisions intensify the law's punitive impact. The shift from “disaffection” to “subversive activities” does little to distinguish between legitimate criticism and anti-national acts, perpetuating the colonial logic of conflating dissent with disloyalty. The Internet Freedom Foundation (IFF) noted in its 2023 report that vague laws like Section 152 exacerbate the risks of digital surveillance and censorship, particularly for marginalized communities and activists (IFF, 2023).

Effects on Free Speech:-

The continuation of sedition-like provisions in Section 152 has profound implications for free speech in India, violating the democratic principles provided in the Constitution:

1. Chilling Effect on Expression:-

The complex and sophisticating language of Section 152—terms like “subversive activities” and “endangering sovereignty”—allows law enforcement to interpret the law broadly, targeting journalists, activists, and ordinary citizens. This ambiguity conflicts with Article 19(1)(a), which guarantees free speech subject only to valid restrictions under Article 19(2), such as public authority order or national security. The fear of prosecution, even without conviction, discourages critical expression, as seen in cases like the 2019 sedition charges against 49 intellectuals for writing an open letter to the Prime Minister (The Hindu, October 4, 2019).

2. Harsher Punitive Measures:-

The increase in penalties from three years under Section 124A to seven years under Section 152, coupled with mandatory fines and non-bailable provisions, heightens the stakes for those accused. The requirement to surrender passports or appear in court repeatedly imposes significant personal and financial costs, deterring dissent. A 2024 Amnesty International report highlighted how such punitive measures disproportionately affect marginalized groups, including students and activists from minority communities (Amnesty International, 2024).

3. Conflation of Dissent and Anti-Nationalism:-

Section 152's focus on national integrity perpetuates the colonial logic of equating government criticism with disloyalty to the state. In a democracy, the government and the state are two separate entities, and dissent is a fundamental right. The Supreme Court's 2022 stay on Section 124-A in the case of *S.G. Vombatkere v. Union of India* recognized this distinction, yet Section 152 risks undermining it by broadening the scope of prosecutable acts (2022 SCC OnLine SC 609).

4. Digital Era Challenges:-

The inclusion of electronic communication in Section 152 reflects the government's intent to address modern threats like cyberterrorism. However, it also increases the risk of targeting online dissent, particularly on platforms like X, where critical posts can be misconstrued as threats to national unity. The IFF reported a 30% rise in arrests for social media posts under vague laws between 2020 and 2023, a trend likely to intensify under Section 152 (IFF, 2023).

5. Impact on Marginalized Communities:-

Sedition law has been used multiple times in past to target marginalized groups, including religious minorities, Dalits, and indigenous communities. Section 152's broad scope risks exacerbating this trend, particularly in conflict-prone regions like Jammu and Kashmir, where dissent is often labeled as anti-national. A 2023 Human Rights Watch report documented how sedition charges are disproportionately applied to activists advocating for minority rights (Human Rights Watch, 2023).

6. Erosion of Democratic Accountability :-

By criminalizing dissent, Section 152 undermines the democratic principle that masses have the right to make the government accountable. The law's misuse to silence criticism of policies—such as economic reforms, environmental decisions, or human rights issues—weakens public discourse and accountability, essential components of a functioning democracy.

Global Context and Comparative Analysis:-

Globally, sedition laws have been removed or reformed in many democracies due to their incompatibility with fundamental rights. The United Kingdom abolished sedition in 2009 under the Coroners and Justice Act, recognizing its obsolescence in a democratic society where dissent is a protected right (Coroners and Justice Act, 2009). New Zealand repealed its sedition laws in 2007, replacing them with narrower provisions targeting incitement to violence (Crimes Act Amendment, 2007). Canada's Criminal Code addresses specific acts like treason or incitement without relying on broad sedition laws, balancing security and free speech (Criminal Code of Canada, 1985).

In contrast, countries with authoritarian tendencies, such as Singapore and Malaysia, retain sedition laws to suppress dissent, often targeting journalists and opposition leaders (Singapore Sedition Act, 1948; Malaysia Sedition Act, 1948). India's retention of sedition-like provisions under Section 152 places it closer to this model than to liberal democracies, raising questions about its commitment to democratic values.

The United Nations Human Rights Committee has repeatedly criticized sedition laws for their chilling effect on free speech, urging states to align with Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which protects freedom of expression (UNHRC, 2011). India, as a signatory to the ICCPR, is obligated to ensure that free speech are protected and promoted but Section 152 arguably fails to meet that.

The Path Forward: Recommendations for Reform:-

To safeguard free speech and synchronize India's legal framework with democratic principles, a multi-pronged approach is necessary:

1. Judicial Oversight and Guidelines:-

A)- Courts must enforce strict guidelines for Section 152, limiting its application to acts with a direct and certain threat to public order or national security, as established in "*Kedar Nath Singh*". Regular judicial review of cases can prevent misuse and ensure compliance with standards of constitution.

B)- The Supreme Court of India should expedite its final ruling on the constitutionality of sedition laws, building on the 2022 interim order in "*S.G. Vombatkere*". A definitive judgment striking down or significantly narrowing Section 152 would set a precedent for protecting free speech.

2. Legislative Clarity and Reform:

A)- The legislature should amend Section 152 to define ambiguous terms like “subversive activities” and “endangering sovereignty” with precision, requiring proof of intent and incitement to violence. This would reduce subjective enforcement and align the law with Article 19(2).

B) - Consideration should be given to repealing Section 152 entirely, replacing it with narrower provisions targeting specific threats like terrorism or incitement, as seen in Canada’s Criminal Code.

3. Civil Society & Public Advocacy: -

Civil society organizations, legal scholars and social activists must continue challenging the constitutionality of Section 152, building on the momentum of “S.G. Vombatkere”. Public awareness campaigns can highlight the law’s impact on free speech, pressuring lawmakers for reform.

Like, public movements, such as those led by organizations like the People’s Union for Civil Liberties (PUCL), can mobilize public opinion and advocate for legislative reforms.

4. Best Global Practices:-

A - India should draw on international models, such as the UK’s repeal of sedition or Canada’s narrow approach to criminalizing specific acts. Aligning with these frameworks would balance security and free expression, enhancing India’s global democratic standing.

B- Engagement with international bodies like the UNHRC can provide guidance on reforming sedition laws to comply with ICCPR obligations.

5. Digital Safeguards: -

A - Given Section 152’s inclusion of electronic communication, safeguards must be introduced to protect online expression. This includes clear guidelines for law enforcement on distinguishing between dissent and cyberterrorism, as well as mechanisms to prevent arbitrary arrests for social media posts.

6. Training and Accountability for Law Enforcement: -

Law enforcement agencies must be trained on the constitutional limits of Section 152, emphasizing the in the case “Kedar Nath Singh” standard of provocation of violence. Accountability mechanisms, such as mandatory reporting of sedition cases, can deter misuse.

Conclusion: -

The transformation from Section 124-A of the IPC to Section 152 of the BNS represents a superficial attempt at reform, retaining the core elements of sedition under a new guise. While framed as a step toward decolonizing India’s legal system, Section 152’s vague terminology, harsher penalties and expansive scope perpetuate the silence effect on free speech, undermining the democratic principle that dissent is essential for accountability. The law’s colonial legacy, rooted in suppressing dissent, continues to clash with India’s constitutional provision of free expression under Article 19(1)(a). To truly decolonize its legal framework, India must move beyond rebranding and adopt precise, narrowly tailored laws that protect national security without sacrificing democratic rights. The judiciary must enforce strict oversight, the legislature must clarify ambiguous provisions and civil society must advocate for reform. By aligning with global best practices and prioritizing free Faceless User free speech, India can strengthen its democratic fabric and ensure that laws like Section 152 do not silence the voices that democracy seeks to amplify.

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