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SEDITION REIMAGINED UNDER THE BHARATIYA NYAYA SANHITA: REFORM OR MERE REPACKAGING?

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Abstract

In India sedition laws have always been a matter of controversy, largely due to their colonial origins and misuse against political dissent. Section 124A of the Indian Penal Code (IPC), introduced by the British in 1870, criminalized speech or expression that brought "disaffection" against the government. Over the years, this provision was widely criticized for curbing free speech and being misapplied against journalists, activists, and citizens who merely questioned those in power. The Supreme Court, while upholding its constitutionality in *Kedarnath Singh v. State of Bihar (1962)*, limited its application to acts inciting violence or public disorder. Yet, its misuse persisted.

With the introduction of the **Bharatiya Nyaya Sanhita (BNS), 2023**, the government repealed Section 124A, signaling the apparent end of sedition law. However, its replacement, **Section 152 of the BNS**, has raised concerns of being "old wine in a new bottle." This section penalizes acts that endanger the sovereignty, unity, and integrity of India, including subversive speech. Critics argue that the language remains vague, retaining potential for misuse similar to the colonial law. While the government claims it provides stronger safeguards and focuses on threats to national security, skeptics fear it could still target dissent under the guise of protecting integrity.

Thus, while the terminology has shifted, the essence of sedition survives. Unless clearly distinguished from legitimate criticism of the government, the BNS risks continuing the legacy of colonial suppression, making the promise of reform appear cosmetic rather than substantive.

Keywords: ***Sedition, BNS 2023, Free Speech, National Security, Legal Reform***

Introduction

Section 124 A of the Indian Penal Code , known as the sedition law, is set to be abolished. In its place, a new offense involving actions that threaten India's sovereignty, unity, and integrity has been introduced under Section 150 of the Bharatiya Nyaya Sanhita (Bill), 2023. Originally implemented by the British in 1870 to quell the Indian independence movement, the sedition law has become contentious due to its alleged misuse against activists, journalists, and social media influencers in recent times. Is this merely a case of old wine in a new bottle, or is there more to it? Let's explore.

Freedom of speech and expression is the lifeblood of a democracy. All democracies, however, prize this freedom highly. Lack of it hampers the process of logical and critical thinking in people, which is vitally important for the working of a democratic government. Freedom of speech and expression includes the right to express one's thoughts by way of words

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or writings (other than as intended to cause a breach of the peace) and also to carry the thought to the doorsteps of so as to reach the state of frustrated audience not to say the indifferent audience. Freedom of speech — including the freedom of the press and political speech — is a basic right every citizen enjoys. But it differs from the Indian Penal Code's section 124A[969] on sedition, which criminalises words, spoken or written or visual representations, that bring or attempt to bring hatred or contempt, or excite or attempt to excite disaffection towards the government, if read in their "militant" context. Is freedom of speech to be sacrificed at the altar of the Authority? Isn't this against the democracy? It is an exaggeration to say that power limits the rule or moderate criticism of the rulers in a moving democracy; rather, the government fears an aggravating ambiance. When Anna moved, Aseem Trivedi made a Cartoon and burnt Parliament House. It was an image that seemed to disdain democratic values and an exhortation to the public to attack Parliament. Therefore, the government detained Aseem Trivedi so that there was no chaos in society and there was booking under sedition for inflaming the sentiment of society. Equally, Arundhati Roy too courted another kind of controversy when she said of the Kashmir issue, ***"Kashmir has never been a part of India and after independence, India's character has also become colonial."***

This was a statement on the Kashmir issue completely contrary to the official statement of the Indian government and it smacked of instigating unrest by sabotaging India's position. And Hardik Patel, who created the furore of agitations on the issue of quota for the Patels, also delivered a lecture on how leaders should be shot dead. Accordingly, the sedition charges in these cases did not come simply because the government or any of its leaders were merely being criticised; they came because of the potential for widespread agitation and violence. The Supreme Court is the primary protector of human rights in India. Democracy and Freedoms go together as if it's two heads of a coin: spun by the spirit of the people. Free spaces are essential for a real democracy. But an exception to these freedoms is sedition laws. The most critical question is does 'Sedition' deserve to be seen as 'reasonable restriction'[970] on our constitutional liberties? Before discussing this question, it's necessary to look at the history of India's sedition laws. Post independence, India found it difficult to strike a balance between the seditious in nature and freedom of speech and expression. The First Amendment to the Indian Constitution brought 'public order' and 'relations with friendly states' under exceptions to the freedom of speech and expression and inserted the word 'reasonable' before 'restrictions'. Indeed, the Supreme Court in preferring the Federal Court's interpretation of section 124-A, appears to have taken for granted without thorough consideration, that the fetters imposed by this section on freedom of speech and expression are circumscribed by the acceptable limits of article 19(2). This is no doubt true, but this does not mean that every limitation on the freedom of speech and expression is constitutional if related to public order. As was observed by Mr. Justice Subba Rao in Lohia's case, there has to be something further ***"an intimate connection between the Act and the public order sought to be maintained by the Act."*** and the restriction, in order to be held reasonable restriction, should be one ***"which has a proximate connection or nexus with public order but not one far-fetched, hypothetical or problematic or too***

[969] Section 124A of the Indian Penal Code (IPC) defines the offense of sedition, which punishes anyone who, through words, signs, or representations, attempts to bring hatred, contempt, or disaffection towards the government established by law in India. The punishment for this offense can be life imprisonment or imprisonment for up to three years, along with a fine.

[970] Reasonable restrictions" on constitutional liberties are legitimate, necessary, and proportionate limitations on fundamental rights, such as freedom of speech or assembly, imposed by the State to safeguard public interests like national security, public order, public morality, and friendly relations with foreign nations. These restrictions are not arbitrary but must have a statutory basis, be reasonable, and are subject to judicial review to ensure they don't exceed the intended scope or infringe upon the core purpose of the right.

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remote in the chain of its relationship with the public order."

The only reason given by Chief Justice Sinha on the point was that the words, ***"in the interest of public order used in clause (2) are words of great amplitude and are much more comprehensive than the expression "for the maintenance of."***

The decision in Kedar Nath Case[971] fails to forge such a link even on the assumption that section 124-A is aimed at speeches which incite disorder or violence. Apart from the necessity of proximity to public order it must also be necessary for maintaining the validity of section 124A that the restriction placed on the freedom of the speech and expression by that section should be reasonable. 'The judicially established criteria of reasonableness bring us to an opposite result. The Supreme Court in Chintaman Rao v. The State of Madhya Pradesh[972] has expounded that the word reasonable implies intelligent care and judiciousness which requires that choice of the course of action should not be arbitrary, fanciful or capricious but should be informed by logic and reason. They can be tested by they can actually be tested just by by the ultimate test of reasonableness is that, ***"The limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive character, beyond what is required in the interest of the public. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness"***

It is hard to argue that a paper like section 124-A adequately balances the principle of free speech and the principle of a social control. And it further is unrelated to the goal the legislature aims to achieve and is not more restrictive than is necessary to achieve that goal. Just a few aspects of the definition of the offense contained in the provision need be mentioned to expose the extent of the undue limitation that it inflicts. The provision not only criminalizes the incitement of defined attitudes or feelings, but also an attempt to do so, even if the likelihood of success is remote. "Izzat or gaurav" The highly inflammatory words, signs or representations come within the prohibitions of the section even if directed at a person who may not be a threat to public order. The mere use of words like disaffection, disloyalty and enmity to define the offence, also penalises people for their attitude or the way of thinking. Both Explanation 2 and Explanation 3, by permitting criticism of government acts and operations, seek to draw an artificial distinction between criticism of acts done in persons and criticism of government itself, which in reality may be difficult to sustain. In a young country, where the democratic culture remains embryonic, the right to open discussion needs to be respected.

Meaning of Sedition Law

Sedition: Sedition is publicly making inflammatory statements that undermine the status quo. It is usually the subversion of a constitution and undermines a government and often leads to rebellion against authority. Sedition takes in any 'disturbance', which though not directly assaulting the laws with violence, is, when viewed in all its relations, a hindrance to their being properly executed. Seditious speech is called seditious libel. A seditionist is one who engages or promotes sedition. Sedition is itself open, so the act itself is not always considered as criminal and overt acts that might be applicable to sedition laws vary.

Sedition Law: Definition of the Sedition Law according to Indian Penal Code, Section 124 (A) reads as: ***"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***

[971] In the 1962 Kedar Nath Singh case, the SC upheld the constitutional validity of the sedition law. It also attempted to restrict its scope for misuse. So, unless accompanied by an incitement or call for violence, criticism of the government cannot be labeled 'sedition'.

[972] In Chintaman Rao v State of MP (1951) The Supreme Court held that the prohibition imposed by the Act was excessive and arbitrary. The Court ruled that the State could regulate professions in the public interest, a blanket ban on bidi manufacturing was not a proportionate measure.

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excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."

In that sense, every thing under the names of Disloyalty and Enmity, belongs to Disaffection. But comments that complain the government's administrative, etc., matter by using legal procedures, not for hatred, contempt, or a riot are not considered to be a crime. Although under this section, challenging the government is not illegal, the law that can be used to do so is not pointed out. The Sedition Laws also include the followings:

- Section 95, The Code of Criminal Procedure, 1973
- The Seditious Meetings Act, 1911
- Section 2(o)(iii) of The Unlawful Activities (Prevention) Act (UAPA)
- Some clauses of the Armed Forces Special Powers Act (AFSPA).

A short history of how sedition law has evolved:

Section 124A is a relic from our colonial past, what the British brought to India. In the initial draft of IPC in 1837, Thomas Macaulay did not include the sedition clause, but in the 1860 version he incorporated the clause in Section 124A under Chapter VI with the heading "Of Offences Against the Public Tranquillity"[973]. The sedition law was introduced in India under the IPC in the year 1870 as an addition to the main code bundle in the backdrop of Wahabi movement[974] in India. Though there is no mention of the word "sedition" in the section, it meets certain conditions to apply it since it finds itself in the marginal note which says one who by words spoken or written or otherwise brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law can be punished for sedition. Conviction could carry a prison term of up to 3 years or life imprisonment, along with a fine. Several journalist nationalists and poets wrote articles, writings, newspapers to aware and educate the people and suggested that every one has to unite in the struggle of freedom of India. The British soon discovered that if the Indians continued such an educational war, their rule in India would be under threat., and so they criminalized the freedom of speech and expression. The sedition law was then included in the Indian Penal Code to stifle the growth of national consciousness and to suppress the voices of Indians. Bal Gangadhar Tilak, Maulana Abul Kalam Azad, and Gandhiji had faced charges of sedition. When Mahatma Gandhi was accused of sedition in response to the non-cooperation movement, his "plea to the court was: ***"This government is cruel and for every right-thinking individual it is the duty to promote disaffection against that cruel government."***

Section 124A of the Indian Penal Code under which the petitioner has been booked is anachronistic, outmoded, and dilatory, and the terms sedition which it uses are nebulous and make it akin to various legislation from the colonial era, where there is a marked impulse on sedition as well as expression in the wake of independence the petition states. Speaking out against government is punishable in any system monarchy, colony and federation. This institution also prevailed in some of the ancient and medieval societies in India. Many British lawmakers saw this as a dangerous development and thought the press had to be

[973] Offences against public tranquility are crimes that disrupt social order and peace, punishable under law, such as Unlawful Assembly, Rioting, Affray, and Promoting Enmity between groups, which involve collective acts of violence, intimidation, or disharmony that pose a threat to society. Examples include forming a group with an illegal purpose, using force during such an assembly, or engaging in public disturbances that create fear and disrupt peace.

[974] The Wahabi Movement was a socio-religious reform and revivalist movement, originating in 18th-century Arabia with Muhammad ibn Abd al-Wahhab, and then spreading to India in the 19th century under Sayyid Ahmad, to restore Islam to what its followers considered its original form. In India, the movement fought against perceived corruption in Muslim society and, later, aimed to establish a Muslim rule, eventually evolving into an armed resistance against British rule.

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restrained by laws to avoid spreading anticolonialism. In 1870, British apprehensions over Wahabism and Wahabi trends in the region necessitated the incorporation of sedition under Section 124A of the IPC. Under the influence of First Law Commission headed by Thomas Babington Macaulay part two of the draft law was attached that related to offences against the State - illegal activities such as waging war against the government, punishable by death as if it were still high treason (punishable by death), or by life imprisonment, seditious activities etc., Modelled after the British colonial law first established by the Offences against the Person Act 1861 (24 & 25 Vict.) c. 100 (sect. (*) 57 & 98)In 1860, as a result of the Indian Rebellion of 1857, the then British colonial government brought that law into law in the Indian Subcontinent, which still continues to the present, albeit with subsequent amendments) (draft law of 1835 weighed about one hundred and fiftieth of vast Indian Penal Code in when discrepancy is removed, in the course of 3rd British Parliamentary Act of 9 March 1920, with that draft law amended to fit its colonial application, which however continuous to do Since it came into effect on 11th May 1860) and included provisions related to sedition in Section 113. But in 1860, when the Indian Penal Code was enacted, the Sections 113 subsided, giving rise to Section 124A. Post the War of Independence of 1857, the British government felt the need for stronger sedition laws with severe punishment. This portion was heavily utilized to quash the rebellious Wahabi Movement. (These pages are from Volume 48 of the 1897 editions of the Statutes, amended by an 1898 act.) Section 124A, along with other temporary legislations that curtailed freedom of speech – the Vernacular Press Act of 1878 (repealed in 1881), the Newspapers (Incitement of Offences) Act of 1908, the Indian Press Act of 1910 (repealed in 1921) – served as a legal tool in the hands of the State to suppress dissenting voices. These repressive colonial laws were enacted to protect the British Empire and its rule, and it was a crime to criticise or question British rule through the press, spoken words or pictures.

Risky as it was, the patriotic townspeople bravely defied British rule. Figures like Bal Gangadhar Tilak in 1897 and Mahatma Gandhi in 1922 were accused of sedition. The question Tilak asked before the court is still a relevant inquiry with respect to section 124A even in present times. Tilak inquired, ***"Whether this is sedition (rajdroha) of the people against the British Indian government or treason (deshdroha) of the government against the Indian people?"***

Resistance against the British Indian government was synonymous with patriotism in the days of colonial rule. To the revolutionary activities and protests against the colonial, attempts were made to defeat anti-colonial activities of the Indians. A law like Section 124A was also passed by the British government to muzzle patriots. There are overwhelming reasons to ask whether sedition laws apply in democratic India of today. For one, these laws were enacted by colonial rulers in order to control the dissent of the governed because India is a democratic republic and the power is vested in citizens now. Second, despite the Supreme Court having given this section a restricted interpretation at best, there is there is seemingly little political reluctance to apply it to imprison those who oppose in different ways. Finally, there is no need for the new bill since existing laws in section 124A of the IPC are sufficient to address every kind of threat to violence and public order.

Sedition Laws in Colonial India

The year 1892 saw the "first recorded state trial for sedition" in **Queen Empress v. Jogendra Chunder Bose**[975]**.** The judgment "laid down a distinction between 'disaffection' and 'disapprobation', and observed":***"It is sufficient for the purposes of the section that the words***

[975] Queen Empress v. Jogendra Chunder Bose in 1891, brought forth this tension and also tested the limits of the sedition law. In this case, the editor and publishers of the Bengali newspaper Bangobashi were tried for their articles denouncing the Age of Consent Act.

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used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people, and that they were used with an intention to create such feeling." **Queen Empress v. Jogendra Chunder Bose** was the first ever case brought about on the grounds of sedition.

In 1898, in the case of **Queen Empress v. Bal Gangadhar Tilak**[976]**,** the scope of the offence was expanded by the colonial courts and mere attempts to incite feelings of disaffection could be seen as sedition. The Tilak case defined sedition law under Section 124A for the first time as follows:***"The offence consists in exciting or attempting to excite in others certain bad feelings towards the government. It is not the exciting or attempting to excite mutiny or rebellion or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial."***(Cited in Achary, 2015). This landmark trial is significant due to the two rulings issued by the Federal Court and the Privy Council, which serve as standards in sedition cases. The former court narrowed the interpretation of the section, while the latter later confirmed Tilak's conviction. Legal history indicates that the interpretation of sedition is largely subjective.

Indian Constitutional Assembly Debates On Sedition Law:

Several freedom fighters were charged with sedition before Independence to curb the independence movement and to restrict their freedom of speech and expression. The victims leading this list included Mahatma Gandhi, Bal Gangadhar Tilak and Annie Besant. With our recent patter that our greatest freedom fighters, basically those who fought for our independence, being tried and locked away under this piece of law, it is no wonder that the framers of our constitution were not keen to include sedition in our constitution. The debate inside the constituent assembly on freedom of speech and expression and judicial evolution of free speech and reasonable restrictions have restricted enormously the ambit of sedition. It doesn't help that the mere fact that so many people get arrested, and yet so few are convicted, undermines the logic of the laws, which can only function as a nuisance for citizens who want to exercise their rights of free speech and expression. Finally, the term sedition was dropped from the enumeration of exceptions under Article 19(2) in the final draft mainly on account of the fight put up by the eminent lawyer and freedom fighter K.M. Munshi who categorically argued for the deletion of the word "sedition" and stated: "***The public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of the Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore, the word sedition has been omitted. As a matter of fact, the essence of democracy is a criticism of Government".*** Deletion of the word "sedition" was also necessary, Mr. Munshi added,***"otherwise, an erroneous impression would be created that we want to perpetuate 124-A of the I. P.C." The move was unequivocally welcomed by all the sections of opinion in the Assembly"***

Despite the fervent belief among post-independence Indians that there would be a transformation in the realm of freedom of speech and expression, the Government of India introduced the first amendment to modify Article 19 of the Constitution of India just 15 months after the Constitution was enacted.

Post Indian post all round perspectival formation on Sedition Law

To balance sedition as a crime with the freedom of speech and expression was not easy in the post-independence India. The Indian

[976] The "Queen Empress" in this context refers to the British Crown, specifically Queen Victoria, in her capacity as the Empress of India. Bal Gangadhar Tilak was a prominent Indian nationalist leader who clashed with the British authorities, including being prosecuted under the charge of sedition, which was brought by the "Queen Empress". The conflict stemmed from Tilak's nationalist writings and speeches, which the British viewed as seditious and a threat to their rule.

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Constitution's First Amendment added "public order" and "relations with friendly states" as a free speech exceptions, and put the word "reasonable" in front of the word "restrictions."[977] But there is quite simply no one anywhere who believes that's what amendment was meant to do... and that's not what Parliament was attempting to do at the time. In India though these laws were abused even after independence and infact there are plenty of examples to show that there is still misuse going on. The Section 124A of the Indian Penal Code which could be term unconstitutional as well as constitutional has been backed up by various landmark judgements from the High Courts as well as from the SC. Section 124A was challenged under the Constitution on constitutional validity in the case of Ram Nandan. Later, it was inserted in Article 19(2) from outside to cover 'public order' with the purpose of overruling the pronouncement of the Allahabad High Court which had earlier struck down sedition as unconstitutional. The Supreme Court subsequently struck down this judgment in Kedar Nath's case and declared it as constitutional. Sedition has survived several attempts to remove it on its head, most notably because it is included in Article 19(2). Ironically, the world's most populous democracy is left with the laws that had impeded its own struggle for freedom. Up until independence, when the new constitution was being drafted, a committee on fundamental rights headed by Sardar Patel listed sedition as among the grounds to restrict freedom of speech and expression under Article 19(1)(a). That is, while the constitution guaranteed free speech and expression, it was not an unfettered right and could be restricted under reasonable restrictions, including sedition. But while sedition was proposed as a limitation in the draft of constitution, there was acute opposition inside the Constituent Assembly. As a result, sedition was dropped as a ground for limiting freedom of speech and expression, though it remains in force under Section 124-A of the Indian Penal Code. After independence in 1947 it came under heavy criticism as a colonial imposition on the people of India and as an impediment to free speech. This point was also touched upon by the then Prime Minister, Jawaharlal Nehru, in Parliament, when he was moving the Constitution (First Amendment) Act, 1951 (Reported in (1951) SCR 548) ***"Now so far as I am concerned that particular Section 124A IPC is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in variety of ways and apart from the logic of the situation, our urges are against it."***

According to Article 13 of the Constitution of India, no law, pre- or post-Independence, is valid if it is inconsistent with Part Three of the Constitution which deals with fundamental rights. But, if such a statute interferes with those fundamental rights, it will be ruled as void. This question was raised before the court in the landmark case of Kedar Nath Singh vs State of Bihar, challenging the constitutionality of sedition law. The Supreme Court upheld the constitutionality of the sedition law defined by the Indian Penal Code but with limited explanation. The court said sedition and freedom of speech and expression cannot go together. Tossing freedom of speech and expression at the very top, the court's judgment says that if one were to use this freedom to incite violence, they could be tried for sedition, be liable to three years in prison or even face the prospect of life in prison. Incitement to violence is a disturbance of the public order, which is a legitimate restriction under Article 19,

[977] The First Amendment to the Indian Constitution, enacted in 1951, added "public order" and "relations with friendly states" to the grounds for reasonable restrictions on free speech under Article 19(2), and the word "reasonable" was indeed placed before the word "restrictions" in this clause. These changes were intended to clarify and protect the right to freedom of speech and expression from arbitrary limitations by the legislature, allowing for judicial review to ensure restrictions are not excessive.

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Clause 2 and can be held as a ground of reasonable restriction on freedom of speech and expression. Accordingly, a distinction was made in defining sedition, which allowed 'not to agree' since expressing one's views should not be a punishable offence, unless they give rise to, or result in incitement to violence.

Sedition related famous cases in post-independence era

Aseem Trivedi vs. the State of Maharashtra

Aseem Trivedi, a political cartoonist and activist known for his anti-corruption initiative "Cartoons Against Corruption," was detained in 2010 on sedition charges. Many of his peers believed these charges were linked to his anti-corruption efforts.

This perspective is supported by Supreme Court rulings in cases like **Romesh Thapar v. the State of Madras** and **Central Jail, Fatehgarh v. Ram Manohar Lohia**. Therefore, Section 124A of the Indian Penal Code does not seem entirely at odds with Article 19(1)(a) of the Indian Constitution. The constitution itself allows for restrictions on freedom of speech and expression when state security, public order, and national unity and integrity are at risk. However, the inclusion of lawful criticism under treason provisions and the potential for violence and life imprisonment necessitates further consideration. In the 1980s, following the assassination of Indira Gandhi by her Sikh bodyguards, Operation Blue Star was initiated. During this period, slogans like 'Raj Karega Khalsa' and 'Khalistan Zindabad' were chanted by a segment of the Sikh community in Punjab advocating for an independent nation called Khalistan. Those who voiced these slogans were also arrested and charged with sedition for inciting disaffection against the legally established government, leading to court proceedings.

In the pivotal case of **Shreya Singhal versus Union of India**, the Supreme Court for the first time clarified what constitutes sedition in terms of speech. The ruling stated that individuals are free to express or advocate any idea through spoken or written words, as long as they do not incite violence. This means that while advocating any idea falls under the freedom of speech and expression, inciting violence disrupts public order and peace, and only then can someone be charged with sedition. The law and Supreme Court rulings are explicit: no matter how distasteful the speeches or slogans, such as 'Bharat ki barbadi tak jhang rahegi,' they do not amount to sedition unless they provoke violence. Despite this clarity, the sedition law has been misused by authorities, as seen in the arrests of student activists at JNU and protesters in Assam against the citizenship amendment bill. Figures like Arundhati Roy and Hardik Patel have also faced sedition charges. This misuse prompted the Law Commission in its 42nd report to suggest a reevaluation of the sedition law. Many now argue that this law is a colonial relic that should be abolished to preserve democracy and ensure freedom for the people.

Indian Recent Cases on Sedition Law

Having set out the Kedarnath rationale, let's fast forward to the early 2000s. India seems to have woken up to a generation that seeks highest level of freedoms from its constitution. This generation has said no to intolerable company laws with reasonable sounding restrictions, imposed with brutal measures, no to a taking over of their independence by an abuse of an archaic law. Today's India is young, daring and ready to stand up to anything that might make the mistake of trying to teach lessons about democracy, of which India is well informed. Every country's laws should reflect the society they represent. This brings us to an important question in the present context: how is Section 124A – which has colonial-era origins – seen in present times?

The sedition law has come under heavy criticism of late. The principles in Kedarnath, content of which represent the primary factors to determine the sedition offences, however, challenges through the newspapers of the

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country through new convicts under Section 124A. 79 Yet, when trials regarding these cases have occurred in the courtrooms, many of these people have been acquitted. But this doesn't compensate for the number of times they have been taken to court (they and their families, indicating the role of both the accused and their family members in waging this war against the wagers of war), the legal costs that the accused have to shell out for, the police remand that they have to undergo, the trauma that they go through, and the sheer mental agony that is caused to them for the mere charges of waging war against the State.

Binayak Sen v. State of Chattisgarh: In a notorious recent case of Sedition, the Chhattisgarh High Court made headlines for several controversial reasons. The court convicted the accused of Sedition, a decision that has faced significant criticism. The accused, who possessed and distributed letters detailing police brutality and Naxal literature, was found guilty of Sedition in light of the extensive Naxalite violence against the State. Ignoring the established principle of direct "incitement to violence" from the Kedarnath case, the High Court declined to apply the often-abused legal provision objectively, linking the accused to the Naxals and their crimes. However, in a surprising development, the Supreme Court granted Dr. Sen bail on appeal, emphasizing the need to protect the fundamental right to free speech and expression while acknowledging the concept of "Guilt by Association."[978]

Gurjatinder Pal Singh v. State of Punjab: In this instance, the accused delivered a "Pro Khalistan" speech at a religious event, criticizing the Constitution, which was followed by sword-waving and offensive slogans. The Chandigarh High Court, following the precedent set by the Supreme Court in Balwant Singh v. State of Punjab, which had similar facts, ruled that casually raising slogans could not be considered seditious as it did not directly incite violence or public disorder. Consequently, the accused was acquitted of charges under Section 124A.

P.J. Manuel v. State of Kerala: This case, decided by the Kerala High Court, involved a poster urging people to boycott the Legislative Assembly elections of "masters who have become swollen exploiting the people." The poster's distribution led to charges under Section 124A against the accused. The court noted that even Section 124A should be interpreted in line with the Constitution's intent and spirit, not the colonial mindset of the past. It further recognized the crucial element of "incitement to violence"[979] and the modern understanding of "disaffection against the government,"[980] leading to the accused's acquittal.

Interestingly, the court also applied Section 196 of the Cr. Pc, which stipulates that a court can only consider a complaint involving an offense against the State if the government has expressly authorized such a complaint.

In the case of **Sanskar Marathe v. State of Maharashtra**, the Bombay High Court reached a similar conclusion as in the previously mentioned case, acquitting cartoonist Aseem Trivedi of charges under Section 124A. Additionally, the court issued a set of guidelines for the Maharashtra Police to follow before charging someone with sedition. Following these guidelines, the Maharashtra government issued a circular outlining the conditions for

[978] "Guilty by association" is the logical fallacy of assigning guilt, blame, or fault to an individual because of their connection to a person or group that is perceived as guilty or negative, rather than based on that individual's own actions or merits. This flawed reasoning is sometimes called the "association fallacy" and can manifest in various contexts, from social and political issues to legal settings, often stemming from implicit biases and leading to unfair criticism or backlash.

[979] Incitement of violence is the act of provoking or encouraging others to commit violent acts, whether through speech, writing, or other conduct, with the intent to cause harm. It often involves the use of rhetoric that is inflammatory, or calls for action that leads to physical harm, death, or injury. Laws against incitement vary by country and context but generally aim to punish those who use their words or actions to rally others to violence.

[980] Disaffection against a government refers to feelings of hostility, disloyalty, and enmity towards it, often expressed through words, signs, or visible representations that attempt to incite hatred or contempt for the lawfully established government. In India, this concept is central to the offense of sedition, defined under Section 124A of the Indian Penal Code, though a Supreme Court ruling from 1962 clarified that disaffection becomes seditious only when it is intended to incite violence or public disorder, thereby narrowing the scope of pure criticism of government policy.

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invoking Section 124A, which was later retracted after a High Court case challenged its constitutionality. One might expect that with the evolution of legal precedents clearly defining the limits of sedition law in India, the indiscriminate use of Section 124A against unsuspecting individuals would decrease. However, this has not been the case, as recent times have seen numerous peculiar instances of alleged "sedition." Notable examples include the March 2014 incident where approximately 67 Kashmiri students from Swami Vivekanand Subharti University in Meerut were charged under Section 124A for cheering for Pakistan during an Asia Cup match against India. The charges were eventually dropped after significant criticism and political intervention. Another well-known and ironically amusing case involved Bollywood actor and filmmaker Aamir Khan, who faced sedition charges for his remarks on "intolerance" in the country. The most recent example of what can only be described as a misuse of the law occurred in January 2016, when a man from Kerala was charged with sedition over a derogatory Facebook post about Lt. Col. E K Niranjan, who died in the Pathankot Air Force base terror attack. All these incidents lack the fundamental elements of sedition as defined by Indian courts. At most, these cases share a commonality in the form of expression

– made within the apparently secure confines of fundamental freedom.

Differences between the former sedition law and the new Bharatiya Nyaya Sanhita (Bill), 2023

1. The new Bill's Section 150 criminalizes "acts endangering the sovereignty, unity, and integrity of India."

2. A significant alteration in draft Section 150 is the removal of a previous provision allowing those convicted of sedition to escape with just a fine. The new bill mandates life imprisonment or a prison term of up to seven years, along with a fine, thus intensifying the punishment.

3. The term sedition law will be replaced by Bharatiya Nyaya Sanhita (Bill), 2023, with Section 124 A being substituted by Section 150.

4. The phrase "disaffection towards the Government established by law in India" has been omitted from the old Section 124A of the IPC.

5. The focus is now directly on secessionism, separatism, and calls for armed rebellion, with terms like "contempt" or "hatred" against the Government of India being removed.

6. The new law also encompasses "electronic communication" and "use of financial means" as methods for committing acts that "endanger the sovereignty, unity, and integrity of India."

7. Previously, the sedition law required extremely harsh words and actions, such as an uprising against the nation. Under Section 150, mere words alone can lead to charges of participating in anti-national activities.

8. The new Act includes offenses related to terrorism, organized crime, and criminal activities.

The exact words of the New Bharatiya Nyaya Sanhita (Bill), 2023

It reads, "*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 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.*"

A terrorist is defined as an individual who carries out actions either within India or abroad with the aim of threatening India's unity, integrity, and security, instilling fear among the public or a portion of it, or disrupting public order. The law also includes a clause for seizing the terrorist's assets. It outlines offenses such as armed

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rebellion, subversive activities, separatism, and actions that challenge India's unity, sovereignty, and integrity.

Conclusion:

"I disapprove of what you say, but I will defend to the death your right to say it"

-Voltaire

Gaps in the New Legislation – Rather than requiring incitement to violence or disturbance of public order as a prerequisite for charges, the proposed Section 150 still criminalizes any action that "stimulates or tries to stimulate" secessionist activities or "promotes feelings of separatist activities." – It penalizes individuals who "engage in or perform any such act," granting law enforcement agencies increased discretion to determine what constitutes an act "threatening the sovereignty, unity, and integrity of India" for the purpose of imposing charges. – Section 150 encompasses nearly everything, including speeches, newspaper articles, books, and dramas—essentially all that Section 124A of the IPC currently punishes as sedition.

The government and the people, in general, have opposing views on the sedition law and on the right to free speech, with the former most often on the other side when it comes to debate. Human rights advocates say laws like sedition are outdated, even in modern democracies. The Power at this stage means maintaining the unity, integrity, internal security and law and order in the nation. The nub of the issue is what restrictions on freedom are defensible, and what are not. A convincing response to this cannot be found in the analytics world, but can be found in 'On Liberty' by the famous British political philosopher of the 19th century, John Stuart Mill, through his invention of the 'Harm Principle'[981]. This doctrine would allow for limitations to prevent harm to others. It is in this perspective that the application of the sedition law seems justified provided it is exercised in good faith. This is more apt for India which is a still-evolving nation and is a flourishing democracy, but is plagued by terrorism, extremism, separatism and Maoism. Hence the need to retain the sedition law. As for the potential for misuse, not just the sedition law, but every law can be misused. It therefore should not be abandoned over its potential for misuse. Sedition has been removed from the statute books of many democracies and it is an archaic law, promulgated by colonial regimes to suppress free speech, that has no place in a democracy. Now that the world is less tolerant of constraints on fundamental freedoms this law appears increasingly a relic.

For too long in this country, laws have been deployed as instruments to subvert fundamental principles of democracy. It is important to recall that this is not a petition for abolishing Section 124A. What it does, instead, is topic if the law of 124A should be kept as it is or if the freedom of speech and thought should get more 'reasonable' restrictions. This, it would appear, is the inexorable destination for any modern democracy - terrorism laws that make it unlawful to be seditious. What matters, rather, is the path that democracy follows to end up at this point. Amnesties around the world are calling for these sedition laws to be immediately abolished, but is it the right time for these countries to operate without them? Where there is intense religious enthusiasm, great suspicion, and doubtful communities, the responsibility of maintaining peace will not be discharged by the State, as an overseer, closing its eyes and permitting internal strife to rage. For this, one does need some seditious laws. By contrast when cartoonists get thrown in jail, newspaper editors get charged just for speaking out against the Government, THAT, is when the Government ceased to function as a democracy and started comporting itself as an autocracy. Let me end by briefly discussing the most fundamental issue with regard to the

[981] The Harm Principle is a philosophical and political idea, notably articulated by John Stuart Mill, which states that an individual's freedom should not be limited by society or the government unless their actions cause harm to others. It asserts that the only justification for interfering with a person's liberty is to prevent harm to other members of the community, while actions that only affect the individual themselves should remain free from external restraint.

Sedition, namely, whether we should even have a Sedition offence. In India we have extensive penal code which especially covers the laws against rioting, affray etc, and to serve the purpose of maintenance of peace and tranquility. But I still hold that taking the sedition law out of the statute book is not a way out. The sedition law was enacted during the colonial times precisely to prop up and perpetuate colonial rule. Earlier chapters have discussed different dimensions of sedition – constitutional validity, offering a reading of 124A under the Indian Penal Code, 1860, and judicial response in the last 18 years.

Despite the dilution of the sedition provision the abuse continues as it is not in the power of either state or centre to stop it. It is not the words in which we have written and elaborated sedition that prevents its abuse. There are political reasons for this continuing abuse. Seditions as 'Prince of the political sections' Mahatma Gandhi alludes to sedition as the "Prince of the political sections", and fundamentally that ignites the political motives in use. The U.K.'s sedition law was already repealed in 2009 in English law. In the short term, it could make sense to ameliorate the severity of the sedition penalties and to create an independent watchdog or special tribunal to guard against the law being used for political purposes. Great, so in the end, there should be the abolition of all sedition laws, and a plan to get us there. A democracy must be able to evolve and respond to international humanitarian concerns. At present, any one standing against the State can be charged with sedition. Arundhati Roy was charged with sedition for speeches that resulted in no violence, and political cartoonist Aseem Trivedi was arrested for a cartoon which also didn't lead to violence. India cannot afford to be viewed as backwardist, and recent steps towards its own population have been criticised across the globe. Correct implementation of sedition laws can help India change its image. It's simple: Current laws must be altered to limit the definition of criminal behavior, and a committee must be established to explore the road to full abolition. Change is slow, even in a modern democracy like India but it is coming and we need to plan for our future.