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A Critical Analysis of Sec-152 BNS: A Step towards Free Speech or a Mere Rebranding of Sec-124A of IPC?

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ABSTRACT

Sedition revolves around actions or conduct that incite rebellion against the ruling power. In India, sedition laws have their origin in the British colonial period, when they were employed to suppress any dissent against the colonial rule. And that's Section 124A of the Indian Penal Code (IPC) that went after who had the temerity to speak out or protest against British rule. The sedition law hung on in India, even after the country gained independence, as more and more quarters began to fear it could be misused. The United Nations Human Rights Committee has voiced its concerns, calling for the repeal of these laws in India to better align with global human rights standards. This issue came to the forefront during protests like those against the Citizenship Amendment Act in 2019, where many saw sedition charges as a way to stifle dissent. Fast forward to December 2023, and the Indian government introduced a new act that replaced the IPC with a fresh code, the BNS. This update brought about major changes to sedition laws, including broader definitions and harsher penalties. Critics point out that although the law aims to protect national security and unity, it also raises concerns about possible misuse, particularly regarding the restriction of free expression.

Terms like "subversive activities" are still rather broad, which keep debates alive and pushes for clearer guidelines on how the law should be applied. As it is now, the law keeps facing criticism for allowing it to stifle legitimate dissent under the guise of national security.

Keywords : Sedition , legitimate dissent , britishers , misused , subversive activities , vagueness, national security , free speech , expression

INTRODUCTION

Sedition can be defined as the instigative conduct or speech toward rebelling against the state's authority; this may involve the monarch, government, or any supreme ruling body. It is an essential element within the jurisprudence of several countries and India is no exception. The present paper is an attempt to trace and understand the evolution as well as the impact of sedition laws in India with special reference to two major legal reforms- Section 124A of Indian Penal Code and Section 152 of Bharatiya Nyaya Sanhita. IPC was originally enacted in 1870 and almost had about 75 amendments before it finally got repealed.

The Bharatiya Nyaya Sanhita marks a substantial alteration in the perception of sedition under Indian law. Section 124A of IPC was imposed by the British through their laws merely to quench the voices of Indian freedom fighters and patriotic individuals who contested against them.

This law was often applied against the leaders and activists who dared to question British policies, thus leading to some famous legal battles, including cases like *Queen Empress v. Jogendra Chunder Bose*, *Ram Nandan v. State of Uttar Pradesh*, and *Kedar Nath Singh v. State of Bihar*, etc. This law continued its controversy by being involved in the matter of *Balwant Singh v. The State of Punjab* where it was applied in relation to Khalistan movement. Section 124A raised a number of concerns over its misuse by various governments and hence a new law was contemplated by the government. In 2024, Bharatiya Nyaya Sanhita came into existence with major changes in sedition laws of India. Section 152 BNS replaces 124A with tougher punishments for offenses compromising security as well as unity and integrity of the nation. This new law reflects a change in the treatment of sedition by the government; it leans toward more punitive measures while still attempting to strike a balance between national security and individual rights. The Supreme Court, in its 2022 decision, promised to keep Section 124A in abeyance until the reformulation of a more balanced framework underscores the urgent necessity for actualizing reforms that would address the evolving issues relating to sedition in India. This paper shall discuss these crucial legal modifications and their implications on the nation's legal-political landscape.

INTENTION BEHIND REPLACING SEC-124A WITH SEC-152 BNS

124A faces criticism for numerous reasons: it is termed as a dinosaur of colonialism since it was first enacted by the colonizers in 1870 and is widely published as inculcation tools against Journalists, activists, etc. Its vague and overbroad language will bring it to bear against conduct manifesting only tranquil, peaceable criticism of the government. Finally, after the Law remained in abeyance through an order of the Supreme Court in the year 2022, the Government has decided to refer it to the Law Commission for an overall examination and recommendations with regard to its utility prospectively. This

time the task of re-examining the Sedition Law especially Section 124A of Indian Penal Code of 1860 was assigned to the Twenty-Second Law Commission of India. The objectives given in the 279th Report of the Twenty-Second Law Commission of India are:

1. To Assess Whether the Sedition Law is Still Needed in India

Evaluating whether the sedition law is still relevant in modern, democratic India was the Commission's main goal. They came to the conclusion that there are still a number of reasons why such a law is required, including the phenomenon of cross-border terrorism; Propaganda from extremists; false information on social media; and attempts to incite hatred or violence against the government. They therefore recommended repealing the law.

2. To Prevent the Misuse of Sedition Law

Highlighting the continued abuse of sedition laws against nonviolent demonstrators, opponents, and opposition leaders—particularly when there is no call for violence but only vehement criticism of governmental policies—was one of the main objectives. The report emphasizes how crucial it is to put safeguards in place rather than mindlessly repealing these laws. In essence, the law shouldn't be used to silence dissenting opinions; rather, it should only be applied in grave, legal situations.

3. To Harmonize Sedition Law with Free Speech (Article 19 of Constitution)

The Commission carefully examined whether sedition violates Article 19(1)(a), which guarantees the fundamental right to freedom of speech and expression. The Supreme Court's decision in *Kedar Nath Singh* (1962), which held that sedition only applies in cases where there is an obvious incitement to violence or public disorder, was cited by them. As a result, the Commission recommended that the law be kept in effect but with a more precise definition. Only acts that incite violence or disturb the peace should be targeted. Sedition shouldn't be applied to nonviolent demonstrations or criticism of the government.

4. To Provide a Clear Legislative Framework

Giving Parliament and the government precise instructions on how to possibly amend the sedition law was one of the report's main objectives. They put forth two primary options: either retain Section 124A with some modifications, or replace it completely with a new clause that contains precise definitions and protections. Section 152 of the *Bharatiya Nyaya Sanhita* (BNS), 2023, which updated the sedition law, was finally created as a result of this discussion. The report sought to maintain the democratic right to free speech while simultaneously preserving India's unity and sovereignty. Reforming the sedition law was intended to guard against abuse, set precise legal guidelines, and make sure it complies with constitutional principles. Essentially, the change

PROBLEMS WITH SEC-152 BNS, 2023

1. Concerns About the Proxy for Sedition Law

Many people think that Section 152 still has the same legal force as the previous sedition law, despite the removal of the word "sedition." Concerns have been raised that this clause might serve as a proxy for sedition, possibly targeting anyone who dared to express disapproval or criticism of the government.

The recent ruling in *Tejender Pal Singh v. State of Rajasthan* (2024) by the Rajasthan High Court has sparked grave concerns about Section 152 of the *Bharatiya Nyaya Sanhita* (BNS), 2023, and its potential abuse as a substitute for sedition laws. Although sedition isn't specifically mentioned in the BNS, Section 152's vague language and broad application could easily make legitimate dissent and criticism illegal, much like the previous Section 124A of the

2. Vague and Broad Terminology

The lack of precise definitions allows authorities to interpret them broadly, which may result in the criminalization of speech that expresses controversial opinions or criticizes historical events or political figures. Although the term sedition has been eliminated, the definition of "disaffection" is still ambiguous. This ambiguity gives authorities a great deal of power, which could lead to irregular enforcement and possible rights violations. Critics point out that Section 152 lacks precise definitions for terms like "subversive activities" and "endangers the sovereignty, unity, and integrity of India." This ambiguity is similar to the issues with the previous sedition law, which may result in misunderstandings and abuse.

The Court determined that Section 66A of the IT Act, 2000 was unconstitutional in the *Shreya Singhal v. Union of India* (2015) case because it contained ambiguous terms that were easy for those in positions of authority to abuse, such as "grossly offensive or of menacing character," "annoyance," "inconvenience," "danger," "enmity," "hatred," and "ill will." In a similar vein, there are numerous ambiguities and inconsistencies in this clause concerning the accuracy of the terminology it uses.

3. Potential to Stifle Free Speech

There are significant worries regarding Section 152's impact on free speech due to its expansive nature. This law runs the risk of being used to stifle criticism and dissenting opinions, which would have a chilling effect on free speech if there are no clear guidelines to distinguish between genuine threats and acceptable dissent. The effect of the provision is said to be "encouraging feelings." Sedition and its interpretation have been the subject of many cases, but the Court has not defined what it means to incite feelings. Furthermore, the severity of public order and merely positive sentiments are very different. As a result, this law's limitations may cause issues.

4. Potential for Abuse

The 279th Law Commission report aims to prevent the abuse of the sedition law while striking a balance between upholding individual liberties and safeguarding the integrity of the country. Section 152 of the BNS does not, however, offer sufficient protections against abuse in spite of its recommendations. Law enforcement may use Section 152 to target people with political motivations if there are unclear guidelines. Like its predecessor, Section 124A of the IPC, Section 152 may have a disproportionately negative effect on journalists, activists, and marginalized communities who dare to criticize the government or promote social justice. Without adequate safeguards or fair trial procedures, this clause could be used as a weapon against vulnerable groups.

5. Chilling Effect on Media and Academia

When laws like Section 152 BNS are abused, they can stifle dissent and induce self-censorship, which can chill public discourse. It weakens the fundamental basis of democratic engagement by making it difficult for citizens, journalists, and activists to express their views without worrying about the repercussions of their actions.

6. Scope for Pre-Trial Harassment

The protracted legal process may serve as a kind of punishment even in cases under Section 152 that do not lead to convictions. Long trials, financial hardship, and social disgrace may befall those charged under this section, highlighting the critical need for safeguards against baseless accusations. Because of its ambiguous wording and the manner in which it is applied, Section 152 of the Bharatiya Nyaya Sanhita (BNS) has drawn criticism for having the potential to permit pre-trial harassment. Although the section makes it illegal to do anything that jeopardizes India's integrity, unity, or sovereignty, its vague wording has sparked concerns about potential abuse.

Critics argue that Section 152's cognizable and non-bailable offenses allow law enforcement to make arrests without a warrant, potentially resulting in pre-trial harassment. Because of this section's broad scope, people may be arrested and subject to legal action before a trial even establishes their guilt, which could stifle legitimate dissent and criticism.

7. "Knowingly" Makes the Law Overbroad

Section 152's use of the word "knowingly" significantly broadens the definition of what constitutes an offense, particularly in relation to social media. If someone shares a post knowing that it may reach a larger audience and potentially incite those sentiments or actions, they could still face severe consequences even if they have no intention of causing trouble or inciting illegal sentiments under Section 152. Their arrest and prosecution under Section 152, a serious charge that is cognizable and not subject to bail, could follow from this alone. Like its predecessor, Section 152 is vulnerable to abuse because there is no legal requirement to demonstrate a clear and direct connection between the speech and its actual consequences before someone's freedom is taken away. This might actually

The term "knowingly" casts a broader net than "intentionally" or "deliberately," which were key in earlier court interpretations of sedition laws, like in the Kedar Nath Singh case. This implies that even if someone didn't mean to provoke violence, they could still be punished if authorities think they were "aware" that their actions might do so.

Consider a journalist who writes a piece that criticizes government policies, knowing full well that it may cause some people to take offense. As demonstrated in the Kedar Nath Singh case, merely criticizing without inciting violence was not considered sedition under Section 124A IPC (Sedition). Authorities could contend, however, that the journalist "knowingly" wrote the piece in a way that might compromise national integrity in accordance with Section 152 BNS, which could result in criminal liability.

8. A Legislative Failure in Repealing Sedition

A legislative error occurred in 2023 when Section 124A IPC, which dealt with sedition, was repealed and replaced by Section 152 of the Bharatiya Nyaya Sanhita (BNS). The government only changed the name of sedition laws while leaving the same provisions in place, rather than completely abolishing them.

The sedition law (Section 124A IPC) was declared repealed by the government, but Section 152 BNS retains the same spirit, albeit with slightly different language. Speech or acts that "threaten the sovereignty, unity, and integrity of India" are still illegal. Therefore, the repeal of Section 124A IPC is more of a symbolic act than a real change because the government still has the authority to punish dissent under a different name.

For instance, in the case of *Tejender Pal Singh v. State of Rajasthan* (2024), the Rajasthan High Court was forced to step in and rule against the abuse of Section 152 BNS, pointing out that even after the purported repeal, authorities were still bringing charges that sounded like sedition.

Promoting free speech and preventing its abuse were the initial objectives of the sedition law's repeal. Section 152 BNS, however, essentially reintroduces sedition under a different name, with the same potential for abuse and repression. In the end, this makes the repeal of Section 124A IPC a failure in terms of legislative intent because it only covered up the problem with a different name rather than actually resolving it.

9. Interpreting Threats - A Legal Grey Area

It is illegal to commit "acts that threaten the sovereignty, unity, and integrity of India," according to Section 152 of the BNS. The catch? What precisely constitutes a threat is not clearly defined by the law. Because of this ambiguity, the provision is rather nebulous and can be interpreted in a variety of ways by those who are enforcing it. Therefore, a speech that criticizes a well-known historical or political figure or even expresses support for a contentious public figure may be seen as "endangering" the "unity and integrity of India," which could have legal ramifications for the speaker. A strict

law like this, particularly without sufficient safeguards against abuse, could be used to suppress criticism and dissent in our current, more divisive socio political environment.

WAY FORWARD

1. Precise Definition of Key Terms

Defining Key Terms is Important. It's important to have good working definitions for your key terms. There needs to be clear definitions in the way that a law defines terms like "subversive activities" or "acts that threaten sovereignty." To the extent that language is ambiguous, it invites its own arbitrary construction and application which may rein in speech that is protected by the Constitution. Legal definitions should be narrow, addressing only actions that truly present a real and imminent danger to national security.

2. Authoritative Judicial Interpretation

The Supreme Court should get ahead of the game and put out interpretative guidelines that explain what Section 152 means. This would establish a more precise measure for what constitutes a punishable crime under the law and serve as a court-endorsed protection against abuse. By setting a clear standard for the courts, we can stop law enforcement from abusing the law and protect the democratic right to dissent.

3. Explicit Protection for Peaceful Dissent

It is important to change Section 152 to contain such provisions to shield peaceful protests, public criticism of government policies and legitimate political expression from prosecution. Protecting dissent is an essential part of a democracy and should be spelled out in our national security laws.

4. Institutionalized Periodic Review Mechanism

We ought to include a structured mechanism for periodic review of how Section 152 is used. A special committee, within the Ministry of Law or as an independent commission, should be tasked with delving into the number of cases filed, the crimes charged, and trial outcomes. This will make officials accountable and encourage reform based on data.

5. Constitutional Compliance and Safeguards

The enforcement of Section 152 should be in accordance with Article 19(1)(a) (freedom of speech and expression) and Article 21 (right to life and personal liberty) of the Indian Constitution. We need safeguards in the law to stop these basic rights getting violated, and to protect the foundational principles of democracy.

6. High Threshold for Criminal Intent (Mens Rea)

While motive is an element to be proved in most cases, criminal intent, and, of course, knowledge that an illegal act has been committed are in most modern cases prerequisites of conviction.

We ought to emphasize the element of a "guilty mind" in cases under Section 152. Only concrete and proven acts committed with malicious intent against the sovereignty or integrity of the nation should be offences. Such an approach will sift through credible threats and harmless expression of opinion.

7. Enhanced Transparency and Public Accountability

The government should issue regular reports on enforcement of Section 152, reporting on the number of arrests, convictions, and acquittals. By pooling and publicly disclosing this information, civil society and the judiciary can monitor for the risk of abuse and ensure corrective measures, if needed.

8. Strong Judicial Oversight on Enforcement

Courts should be empowered and duty-bound to determine whether any prosecution under Section 152 shows a legally cognizable connection between the charged speech or behavior and demonstrable harm to national security. This judicial supervision is necessary so that the law will not be applied as means to shut up political criticism or politically unorthodox speech.

9. Comprehensive Enforcement Guidelines

The SC should lay down mandatory enforcement guidelines on lines of D.K. Basu v. State of West Bengal so that the powers of authorities under Section 152 is exercised strictly within the very limited precincts envisaged by the Constitution. These standards would provide uniformity in how the law enforcement is applied in the different areas.

10. Promotion of Free and Open Discourse

The government needs to recognize the value of a robust public sphere in which diverse views — including opposing and critical ones — can flourish. And in today's climate of the digital word, the word travels fast and all over the world.

11. Balancing Security with Liberty

In the end, we need a nuanced and sensible response that provides security and protects both individual freedom and due process. The judiciary and the legislature must cooperate to make sure that the Section 152 is not misused against political opposition or social criticism, and rather operates as a well-circumscribed instrument for countering real threats.

CONCLUSION

The law can be misused as the NCRB data for Section 124A of the IPC itself shows. There were 548 arrests for sedition filed between 2015 and 2020, but only 12 people were convicted, in only seven cases. Accordingly, Section 152 of BNS appears to signify a significant linguistic and structural departure from that of Section 124A of IPC, although the former continued to provide an easy way to gag the voice of disaffection in the name of national integrity. Whether this is real progress or simply a relabeling exercise will depend on the judiciary's interpretation of it, and on the tack the government takes when it enforces it.

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