Volume 1, Issue 1, January - June 2025, Pg. 34- 43

Journal of Asian Law College ISSN: 3107-3859 (Online)

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Law of Sedition: A Case Study of Section 152 of the Bharatiya Nyaya Sanhita, 2023

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ABSTRACT

While India appears to be progressing toward uprooting colonial customs, practices, and identity embedded in its soil, the legacy of traditional and colonial criminal law continues to cast a long shadow over free expression in various forms. One such example is the persistence of sedition law, which imposes criminal liability on vocal dissenters of the government, creating a formidable barrier to free speech and effectively constraining public discourse and dissent. The Indian government and its policies have frequently been conflated with the ruling political party, leading to measures that suppress those perceived as threats to their electoral base. Although Section 124A is officially declared to be substituted with the introduction of the Bharatiya Nyaya Sanhita (BNS) 2023, by Section 152 titled 'Acts Endangering the Sovereignty, Unity and Integrity of India,' the essence of the provision remains intact. This continuation persists despite three significant factors: clear evidence of the law's misapplication, the Supreme Court's directive in S. G. Vombatkere vs. Union of India, to suspend its application, and the strategic removal of the term 'sedition' from legal terminology. The BNS not only fails to address the judicial attenuation of section 124A but broadens its scope. Section 152 of the BNS outlines an expansive range of culpability. Mere expression of dissent is sufficient for indictment, as is any attempt to provoke, regardless of its effectiveness. The statute's broad purview makes even innocuous utterances or representations potentially actionable. This Research article aims to examine the reforms in sedition law proclaimed to be brought with the introduction of the BNS. It questions the necessity of such draconian measure and misuse witnessed in the contemporary times.

Keywords
Sedition, Bharatiya Nyaya Sanhita (BNS) 2023, Indian Penal Code, Sovereignty, National Security, Anti-national.

1 HT News Desk, "3 criminal laws replacing IPC, CrPc to come into effect from July 1" Hindustan Times, Feb. 24, 2024, available at: https://www.hindustantimes.com/india-news/three-new-criminal-laws-to-come-into- effect-from-july-1-101708765833972.html (last visited on February 17, 2025).

2 PTI, "PM Modi dedicates to nation implementation of 3 new criminal laws, says days of "Tarikh pe tarikh" are over" News18, Dec. 3, 2024, available at: https://www.news18.com/india/pm-modi-dedicates-to-nation- implementation-of-3-new-criminal-laws-says-days-of-tarikh-pe-tarikh-are-over-9144099.html (last visited on February 17, 2025).

INTRODUCTION

India is systematically dismantling colonial-era legal frameworks and cultural impositions that have persisted since British rule. While India's modern legal system originated under British imperialism, the nation is actively reforming these inherited structures. After 74 years since the Constitution's inception, India's criminal laws have undergone a comprehensive transformation. The trinity of criminal legislations that formed the backbone of Indian jurisprudence - The Indian Penal Code 1860, The Criminal Procedure Code 1973, and The Evidence Act, 1872 - has been fundamentally restructured in 2023 with new nomenclature. The Indian Penal Code has been succeeded by the Bharatiya Nyaya Sanhita, the Criminal Procedure Code by the Bharatiya Nagarik Suraksha Sanhita, and the Indian Evidence Act by the Bharatiya Sakshya Adhiniyam.1 With the advent of new criminal laws in India, legal scholars are heralding the beginning of a new chapter, commending the Modi Government's initiative to dismantle the colonial legacy established by the British rulers. 2 However, as Lyndon B. Johnson astutely observed, 'You do not examine legislation in the light of the benefits it will convey if properly administered, but in the light of the wrongs it would do and the harms it would cause if improperly administered.' The effectiveness of new legal provisions must be evaluated against both their historical precedents and the specific problems they aim to address. A notable example is the criminalization of dissent, considered to be the purest expression of patriotism, by utilizing 'Sedition' as an instrument. While ostensibly enacted to preserve public order, this law has predominantly served as a mechanism to suppress political opposition and stifle dissenting voices throughout its history. The strategic use of sedition laws to suppress dissent stems from a fundamental political reality: the power dynamic between governing authorities and citizens is directly reflected in how much criticism and opposition the state permits. The more authoritarian the regime, the more likely it is to criminalize dissenting voices. The relationship of subjection between the governor and the governed is proportional to the tolerance of dissent, whether it pertains to specific policies or policymakers themselves. As this line of dissent broadens, the ruler's legitimacy diminishes. The only recourse to eliminate this line of resistance has historically been the suppression of dissenters. This pattern of systematic suppression faced a decisive challenge in S. G. Vombatkere vs. Union of India,3where the Supreme Court initiated a pivotal re-examination of India's sedition framework. This watershed directive unearthed a repository of grievances against this draconian instrument, which had long served as a mechanism for suppressing dissent. The case fundamentally challenged sedition laws' encroachment upon the constitutional bedrock - the 'golden triangle' encompassing Articles 14, 19, and 21, which safeguard equality, expression, and liberty, respectively.4 In response to this judicial intervention, the legislature embarked upon reformative measures, culminating in new criminal codes. However, a critical analysis reveals that Section 152 of the Bharatiya Nagarik Suraksha Sanhita (BNS), while clothed in contemporary language, essentially preserves the authoritarian essence of its colonial predecessor, Section 124A of the Indian Penal Code. This legislative continuity raises profound questions about the authenticity of reform efforts in a post-constitutional democracy that has witnessed the systematic abuse of such provisions. This research endeavor seeks to conduct a meticulous examination of India's sedition laws through multiple analytical prisms. The investigation commences with an exploration of sedition's historical genesis in the Indian context in PART I, followed by a rigorous assessment of its constitutional validity in PART II. In PART III, the discourse then progresses to examine significant

3 2022 LiveLaw (SC) 470

4 Maneka Gandhi vs. Union of India and Another, (1978) 1 SCC 248)

5 D. Skuy, "Macaulay and the Indian Penal Code of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century" 32(3) Modern Asian Studies 513-557 (1998).

6 (1892) ILR 19 Cal 35

7 B. Sexton, "The trial of Gandhi" 16(3) Current History (1916-1940) 440-444 (1922).

8 J. Bakhle, "Savarkar (1883–1966), Sedition and Surveillance: the rule of law in a colonial situation" 35(1) Social History 51-75 (2010).

9 S. Narrain, " 'Disaffection' and the Law: The Chilling Effect of Sedition Laws in India" 46(8) Economic and Political Weekly 33-37 (2011).

judicial interventions and documented instances of the law's exploitation by governing entities. PART IV includes a dissection of Section 152 (BNS) and provides insights into contemporary legislative approaches, culminating in comprehensive concluding observations, critically examining whether the new legislation aligns with constitutional principles and historical lessons, or if it merely serves as a political expedient.

PART I. From British Empire's Arsenal to Independent India's Inheritance

The evolution of sedition laws in India spans two distinct historical periods: their origin under British colonial rule, and their continued existence after the Indian Constitution came into effect. The history of sedition law in India drawing inspiration from English law presents an intriguing trajectory of colonial legal engineering based on presumption of superiority. While the original Indian Penal Code of 1860 notably excluded sedition as an offense, it was subsequently introduced in 1870, drawing inspiration from Macaulay's draft Penal Code of 1839. This delayed incorporation raises significant questions about its deliberate omission from the initial text. The timing of sedition law's introduction through Section 124A of the Indian Penal Code appears strategically calculated. The British administration's primary motivation stemmed from their growing apprehension of the Wahabi movement, particularly in the aftermath of the devastating losses they suffered during the Revolt of 1857, widely recognized as India's First War of Independence. The deliberate exclusion of sedition from the 1860 Code, followed by its later addition, suggests parallel concerns about the potential misuse of such provisions—concerns that had already been highlighted in English law to silence those who spoke against 'the Crown.'5 The Wahabi movement marked merely the beginning of British India's contentious relationship with sedition law. The inaugural judicial interpretation of Section 124A emerged in the seminal case of Queen-Empress vs Jogendra Chunder Bose & Ors.6 This pivotal decision expansively construed the provision's scope, establishing that the offense of sedition encompassed any action capable of fostering antipathy or animosity among the populace against the Crown. The judgment's broad interpretation effectively transformed sedition from a specific offense into a sweeping prohibition against any expression of dissatisfaction with colonial authority. This expansive reading of the statute would later serve as a precedential cornerstone for subsequent colonial-era prosecutions. The early 19th century witnessed a surge in sedition charges against those who dared to challenge the imperial presence and voice opposition to colonial exploitation. Among the most notable cases were the trials of Bal Gangadhar Tilak, whose first encounter with sedition law in 1897 centered on two publications, one being a poem published under a pseudonym and the other wherein an unsigned report covering the June 1897 Shivaji festival, where Tilak and prominent Pune intellectual C.G. Bhanu addressed the gathering. The Bombay government alleged these works fostered 'disaffection' against the regime, likely prompted by the subsequent assassination of colonial officers W.C. Rand and Charles Ayerst. Though Tilak was acquitted shortly thereafter, this initial trial catalyzed the government's expansion of sedition law. The legal framework was broadened to encompass not just 'disaffection' but also 'hatred,' 'ill will,' and 'contempt.' This legislative evolution demonstrates how colonial authorities utilized legal mechanisms to strengthen their grip over the Indian subcontinent, particularly in response to specific threats to their authority. The introduction of sedition law thus represents a crucial turning point in colonial legal history, marking a shift toward more explicit control over political dissent. Tilak faced subsequent sedition

10 R.K. Misra, "Freedom of Speech and the Law of Sedition in India" 8(1) Journal of the Indian Law Institute 117- 131 (1966).

11 The Constitution of India, art. 372.

12 AIR 1951 Punj. 27

13 AIR 1959 All. 101

14 The Constitution (First Amendment) Act 1951, s. 3

15 1962 Supp (2) SCR 769

16 Chintaman Rao v. State of Madhya Pradesh, AIR 1951 SC 118

17BBCNews.(2012,September10). IndiacartoonistAseemTrivedi'sarrestsparks outrage. https://www.bbc.com/news/world-asia-india-19540565

charges in 1908 over his editorial in Kesari discussing the Muzaffarpur bomb incident, despite the government's Newspapers (Incitement to Offences) Act. This trial resulted in his transportation and six-year imprisonment, yet failed to dampen his spirit, as evidenced by his third trial in 1916 for a speech in Belgaum. The colonial administration's use of sedition law reached a pivotal moment with Mahatma Gandhi's trial in 1922.7 Gandhi revered as 'Bapu' by Indians, faced sedition charges with remarkable dignity. In a masterful display of moral courage, he openly proclaimed himself a 'disaffectionist' toward a government he deemed more harmful than its predecessors. Gandhi's defence centered on the draconian nature of colonial measures and the destructive impact of the divide-and-rule policy introduced in 1908. His philosophy of Satyagraha and non- cooperation represented legitimate means of withdrawing consent from British governance, all in pursuit of an independent (Swatantra) India. However, the Chauri Chaura incident compelled him to temporarily suspend his movement, creating dissension among his followers. His non-cooperative stance and the immense popular support he commanded deeply unsettled the British authorities, particularly when he openly invited arrest through his journal 'Young India.' Despite his unwavering commitment to non-violence, the colonial administration's fear of his influence resulted in a six-year sentence. This period marked a crucial phase in India's independence movement, demonstrating how colonial authorities wielded sedition law as a tool to suppress nationalist leaders such as Tilak, Gandhi, and Savarkar,8 while these very trials often served to amplify the leaders' message and strengthen the independence movement. The British colonial administration was determined to weed out the nationalists by misusing this provision, along with a comprehensive framework of laws targeting dissenters, which reflects their determination to prevent future uprisings and maintain control over growing independence movements. The British attempts to silence dissent proved futile as Indians drew a powerful moral distinction between 'rajdroh' (rebellion against British rule) and 'deshdroh' (betrayal of one's motherland).9 While the colonial authorities branded resistance as sedition, Indians viewed opposition to foreign rule as a patriotic duty, fundamentally different from disloyalty to their own nation and people. This conceptual differentiation became a powerful ideological tool in the independence movement, helping to legitimize resistance against colonial authority while maintaining strong bonds of national loyalty.

PART II. Testing Section 124A under the Constitutional Lens

Section 124A assumed a distinctive position in colonial law due to its widespread and often severe application. The formulation of the provision revealed a clear but nuanced derivation from English law. The English legal definition of sedition, as outlined in Halsbury's Laws of England (Vol. 9, p. 302), encompasses: 'the offense of publishing, verbally or otherwise, any words or document with the intention of exciting disaffection, hatred, or contempt against the sovereign, or the government and constitution of the kingdom, or either house of parliament, or the administration of justice, or of exciting his majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in church or state, or of exciting feelings of ill will and hostility between different classes of his majesty's subjects.' bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India. ' The relationship between these two legal provisions reveals a calculated adaptation rather than mere replication. While the British colonial authorities transferred the core concept of sedition to India, they crafted a more focused version tailored for

18 Sanskar Marathe v. State of Maharashtra & Ors., 2015 CriLJ 3561

19 J. Punwani, "The Trial of Binayak Sen" 45(52) Economic and Political Weekly 21-23 (2010).

20 Sanjoy Majumder, "Why an Indian student has been arrested for sedition" BBC News, Feb. 15, 2016, available at: https://www.bbc.com/news/world-asia-india-35576855 (last visited on February 17, 2025).

21"Unwarranted arrest: On sedition charges against Raghu Ramakrishna Raju" The Hindu, May 17, 2021, available at: https://www.thehindu.com/opinion/editorial/unwarranted-arrest-on-sedition-charges-against-raghu- ramakrishna-raju/article34581995.ece (last visited on February 17, 2025)

22Black'sLawDictionary1066(WestPublishingCo.,2ndedn.,1910),availableat:https://archive.org/details/blacks-law-dictionary-2nd-edition-1910/Black%27s%20Law%20Dictionary%2C%202nd%20Edition%20%281910%29/page/1066/mode/2up (last visited on February 17, 2025).

colonial control. Prior to India's independence, actions against 'Her Majesty' or the 'Crown Representative' were classified as seditious behavior, demonstrating how the British Raj strategically deployed sedition laws to suppress anti-colonial resistance. The key distinction lies in scope: while English law cast a wider net encompassing various institutions including parliament, judiciary, church, and social classes, the Indian version concentrated specifically on protecting the colonial government's authority. This focused approach made the law a more precise instrument of colonial control. After independence, the founding fathers of independent India approached this legal legacy with a complex mixture of caution and sympathy, shaped by their personal experiences of its draconian enforcement. Fresh from witnessing the trauma of partition and mindful of the sacrifices made in the independence struggle, these leaders now tasked with forming India's first republican government faced a delicate balance. While they understood the potential need for maintaining certain legal safeguards, the continued existence of colonial-era sedition laws within the new constitutional framework was increasingly viewed as problematic. This contradiction between democratic aspirations and the retention of repressive colonial legal instruments emerged as a significant criticism of the early constitutional scheme. A fundamental challenge faced by the Constitution's founding fathers was the inherent conflict between constitutionally guaranteed rights and the existing legal framework. The system was crafted by imperialists, while the rights guaranteed were post-constitutional, reflecting the aspirations of the Indian people.10 Freedom of speech and expression, enshrined in Article 19(1)(a) of the Indian Constitution, represents the cornerstone of democratic governance. This fundamental right acknowledges that democracy flourishes through the delicate interplay of dissent and consent. However, the Constitution also recognizes that this freedom is not absolute, as Article 19(2) delineates specific grounds under which the government may impose reasonable restrictions. The tension between this constitutional guarantee and the colonial-era sedition law emerged as a significant legal and political conundrum. The judiciary's initial encounter with this constitutional challenge produced divergent interpretations, creating considerable jurisprudential uncertainty. The question loomed large: would the colonial-era sedition law survive constitutional scrutiny, or would it be invalidated as an excessive restriction on fundamental rights? This ambiguity was particularly significant given that while the Constitution preserved pre-existing laws,11 it also introduced fundamental rights inspired by the Bill of Rights, raising questions about the compatibility of colonial legislation with these new constitutional guarantees. The Punjab and Haryana High Court, in the landmark case of Tara Singh Gopi Chand, took a bold stance by declaring Section 124A void, deeming it an unwarranted restriction on Article 19(1)(a). The court's reasoning was particularly noteworthy, emphasizing that while sedition laws might have served colonial purposes, they had no place in an independent, democratic republic – a position reinforced by the constitutional-makers' deliberate omission of 'sedition' from the constitutional text.12 The Allahabad High Court adopted a similar perspective in Ram Nandan vs. The State of Uttar Pradesh,13 where the accused faced sedition charges for advocating the overthrow of the Congress government, claiming its policies had reduced cultivators to destitution and forced women into prostitution. The court's analysis centered on the reasonableness criterion mandated by Article 19(2). It found Section 124A wanting, particularly in its failure to establish a clear nexus between speech and public disorder.

23Black'sLawDictionary1168(WestPublishingCo.,2ndedn.,1910),availableat:https://archive.org/details/blacks-law-dictionary-2nd-edition-1910/Black%27s%20Law%20Dictionary% 2C%202nd%20Edition%20%281910%29/page/1168/mode/2up (last visited on February 17, 2025).

24 Reg v. Alexander Martin Sullivan, 11 Cox C.C. 51

25 Ashutosh Sharma, "Amritpal Singh: The story so far" Frontline, March 3, 2023, available at: https://frontline.thehindu.com/news/amritpal-singh-the-story-so-far/article66660845.ece (last visited on February 17, 2025).

26 Nupur Agrawal "[S.152 BNS] Sedition Law Is A Shield For National Security, Not A Sword Against Political Dissent: Rajasthan High Court" Live Law, Dec. 22, 2024, available at: https://www.livelaw.in/high- court/rajasthan-high-court/rajasthan-high-court-quashes-fir-against-sikh-preacher-pro-khalistani-video-amritpal- singh-279162 (last visited on February 17, 2025).

The court emphasized that criminal liability for sedition should not be arbitrary but must be predicated on the demonstrable potential of an act to disturb public order. Absent such potential, the court reasoned, the provision merely served to suppress legitimate dissent, rendering it constitutionally untenable under Article 13 for its inconsistency with Article 19(1)(a). The judicial pronouncements challenging sedition law catalyzed a significant legislative response in the form of the First Amendment to the Indian Constitution. This amendment substantially expanded the scope of Article 19(2), which initially permitted restrictions only on grounds of 'libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.' The amendment introduced a more comprehensive framework of permissible restrictions, incorporating new grounds such as 'the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality, contempt of court, defamation, or incitement to an offence.'14 This expansive reformulation of Article 19(2) effectively broadened the constitutional basis for imposing reasonable restrictions on free speech. The amendment's deliberate inclusion of these wide-ranging grounds demonstrated the state's determination to establish a more robust legal framework for regulating expression, particularly concerning matters of national security and public order. This legislative intervention fundamentally altered the constitutional landscape within which sedition law would be interpreted and applied in independent India. The constitutional validity of sedition law was definitively addressed by the Supreme Court in the watershed case of Kedar Nath Singh vs. The State of Bihar.15 The case centered around Kedar Nath, a member of the Forward Communist Party in Bihar, who faced sedition charges for advocating the overthrow of the government through means other than electoral democracy. He had specifically criticized the Congress government for alleged black-marketing and questioned the effectiveness of Vinobha Bhave's land redistribution movement. The appellant's primary contention rested on the fundamental incompatibility between Section 124A and the constitutional guarantees of fundamental rights. The Supreme Court, sitting as a Constitutional Bench, consolidated this case with several other sedition-related matters to deliver a comprehensive ruling on the provision's constitutional validity. In its landmark deliberation, the Court established a crucial principle of constitutional interpretation: when faced with multiple possible interpretations of a law, the interpretation that harmonizes with constitutional principles should prevail over one that would render the law unconstitutional. The Court anchored its reasoning in the premise that Section 124A fell within the ambit of 'reasonable restrictions' permissible under Article 19(2), specifically in the interest of protecting public order. However, the Court's validation of the sedition law came with significant qualifications. It narrowed the scope of the provision's application, restricting it to acts involving a tendency to create public disorder or disturbance of law and order through violence. This nuanced interpretation effectively preserved the constitutional validity of Section 124A while substantially circumscribing its application, establishing a delicate balance between national security concerns and fundamental rights. This judicial intervention marked a pivotal moment in Indian constitutional history, as it transformed a colonial-era instrument of oppression into a carefully delineated provision compatible with democratic principles, while simultaneously establishing clear boundaries for its application.

PART III. The misapplication of the Sedition law: Chronicles of Legal Overreach

While sedition law survived constitutional scrutiny, the underlying rationale for validating such a draconian measure—maintaining public order—was frequently misapprehended by successive governments. The critical prefix of 'reasonable' in 'reasonable restrictions' demands that state actions avoid arbitrary or excessive territorial overreach.16 Although the Kedar Nath Singh judgment established a landmark precedent, it simultaneously issued a prescient warning about the potential chaos that could emerge from excessive implementation of sedition laws. The bitter irony lies in how sedition evolved from being an exploitative tool in British India to serving a similar function in independent India. This presents a profound paradox: in a nation that proudly declares itself a democracy, where sovereignty resides with 'We the People of India,' these very people found themselves systematically silenced by policy makers. Each new government brought its own policies and, consequently, faced new criticisms. However, rather than engaging with dissent constructively, the state frequently branded dissenters as deviants. Perhaps most troubling was the fundamental misapplication of sedition law. Instead of being employed against genuine attempts to overthrow the 'Government established by law' (as defined under Section 17 of the Indian Penal Code), it became a tool to shield the ruling party or more specifically, the parliamentary majority at the Centre from criticism. This perversion of the law's intended purpose represented a significant departure from both its constitutional interpretation and the democratic principles underlying the republic. This transformation of sedition law from a constitutional safeguard into a mechanism for political control illustrates how even carefully circumscribed legal provisions can be manipulated to serve purposes far removed from their intended constitutional objectives. Some instances of misuse illustrating political whims, with one of the most illustrative cases being Cartoonist Aseem Trivedi's case, exemplifies the collision between artistic expression and sedition law. Trivedi was charged with sedition for his cartoons that allegedly mocked national symbols and the Constitution. His work, aimed at highlighting corruption in the political system, included a modified version of the national emblem and Parliament depicted as a commode.17 The Bombay High Court's handling of the case provided important clarification on the scope of sedition law. The Court emphasized that criticism of government symbols or institutions does not amount to sedition unless it incites violence or public disorder. The judgment reinforced the principles established in Kedar Nath Singh, stating that mere criticism, however strongly worded, cannot constitute sedition without a clear nexus to public disorder.18 Another instance marked the prosecution of Dr. Binayak Sen, a distinguished public health physician and human rights activist, represents one of the most controversial applications of sedition law in modern India. Dr. Sen was arrested in Chhattisgarh in 2007 and subsequently sentenced to life imprisonment on charges of sedition and conspiracy. The prosecution's case primarily rested on his alleged connections with Naxalites and claimed he had acted as a courier for an imprisoned Naxal leader. The evidence presented was largely circumstantial, including documents allegedly seized from his residence and his meetings with the imprisoned Naxal leader, which Dr. Sen maintained were part of his professional medical duties and human rights work. The case drew international attention and criticism, highlighting the potential for misuse of sedition laws against humanitarian workers and activists.19 The Supreme Court eventually granted him bail in 2011, observing that mere possession

of Naxalite literature did not make a person a Naxalite, particularly when no evidence existed of its dissemination with the intent to incite violence. The Court's skepticism about the charges was evident in its observation that even Gandhi had been charged with sedition by the British government. Another case driven by political whims is the sedition charges against Jawaharlal Nehru University Student Union President Kanhaiya Kumar marked another contentious application of Section 124A. Kumar was arrested for allegedly raising 'anti-national' slogans during a campus event commemorating the execution of Afzal Guru. The case sparked nationwide debates about free speech, academic freedom, and the limits of nationalist discourse.20 The Delhi High Court granted him interim bail, with Justice Pratibha Rani's order emphasizing the need to balance free speech with reasonable restrictions. The judgment notably included references to patriotism and national consciousness, while acknowledging the importance of dissent in a democracy. Another instance which illustrates the contentious use of sedition laws in Indian politics is the arrest of MP Raghu Ramakrishna Raju. In May 2021, Raju, a sitting Member of Parliament from the YSR Congress Party (YSRCP), faced sedition charges after criticizing his own party's government in Andhra Pradesh. The state's Crime Investigation Department filed charges under multiple sections of the Indian Penal Code, including sedition, promoting enmity between groups, and making statements conducive to public mischief, based on his public statements and media interviews that allegedly created caste-based tensions and disaffection against the state government.21 The case garnered attention due to its unique circumstances of an MP facing charges for criticizing his own party's government. The Supreme Court's involvement proved crucial, as it ordered Raju's immediate medical examination at the Army Hospital in Secunderabad following allegations of custodial torture. The court's subsequent decision to grant him bail, noting that custodial interrogation was unnecessary, demonstrated judicial oversight of potentially politically motivated sedition charges. This case exemplified a concerning trend of using sedition laws to suppress political dissent, even against elected representatives, highlighting how these colonial-era laws could be manipulated for political retribution in modern India's democratic discourse.

PART IV. Bits and Bytes of Section 152 of BNS

The Supreme Court delivered a landmark directive in S. G. Vombatkere that effectively suspended the use of Section 124A (sedition) of the Indian Penal Code. The bench, led by Chief Justice N.V. Ramana alongside Justices Surya Kant and Hima Kohli, ordered all pending trials, appeals, and proceedings under Section 124A to be put on hold. They granted bail rights to those already charged and allowed new cases to seek appropriate court relief. CJI Ramana's critical remarks in July 2021 questioned the relevance of retaining this colonial- era law that was used to suppress freedom fighters like Gandhi and Tilak. He notably compared the provision's misuse to giving 'a carpenter a saw to cut a tree, only to have them cut down the entire forest' illustrating how the law's enormous power had been excessively wielded beyond its intended purpose. This judicial intervention marked a significant check on legislative overreach, reflecting the judiciary's role in protecting constitutional rights and reviewing colonial-era laws in modern India. The Indian government's approach to reforming sedition laws has taken a significant turn with recent developments. Initially, in response to the S. G. Vombatkere case, the government, under Prime Minister Modi, submitted an affidavit acknowledging the misuse of colonial-era laws and promised reform, particularly fitting with the spirit of Azadi ka Mahotsav. This commitment

materialized in December 2023 with the enactment of three new criminal laws, set for enforcement from July 1, 2024. However, the anticipated reforms have drawn criticism for essentially repackaging rather than substantially changing the existing laws. While Section 124A (sedition) was removed by name, its spiritual successor appears in the Bharatiya Nyaya Sanhita (BNS) as Section 152, titled 'Act endangering sovereignty, unity and integrity of India.' This new provision demonstrates heightened stringency through its markedly increased punitive scope, doubling the maximum imprisonment from three years to seven years, representing a substantial escalation in potential consequences for alleged offenders. The section now explicitly includes electronic communication and financial means as potential tools for offense, while introducing terms like 'subversive activities' and 'separatist activities' without clear definitions. The government's distinction between 'sedition' (rajdroh) and 'treason' (deshdroh) appears largely semantic, as the fundamental elements of the offense remain intact, albeit with expanded scope. To analyze the distinction between sedition and treason, we can refer to Black's Law Dictionary's definitions. Sedition is 'an insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquility of the state.'22Treason, in contrast, is defined as 'the offense of attempting to overthrow the government of the state to which the offender owes allegiance; or of betraying the state into the hands of a foreign power.'23 These definitions establish an important distinction: while sedition is related to treason, it differs fundamentally. Sedition encompasses acts that lean toward treasonous behavior but lack the overt action that characterizes treason. To use a scientific analogy, if treason is like the kinetic energy of action, sedition is the potential energy of intent. The relationship between these two concepts reveals the inherent power dynamic in sedition law: while treason requires concrete action against the state, sedition can be invoked against more subtle forms of dissent, making it a particularly potent tool in the hands of ruling authorities to suppress opposition. However, sedition is often seen as a preceding stage to treason.24 Upon examining Section 152, it appears that sedition is being incorporated within the scope of treason. The key distinction lies in identifying against whom the act is committed. The protected interest now encompasses India's sovereignty, unity, and integrity - grounds under which the government has sought protection as explicitly detailed in Article 19(2). This appears to be a deliberate attempt to preemptively establish the government's intent and present a prima facie case before courts when questions arise regarding the constitutional validity of Section 152 of the BNS. The provision's explanation clause, while protecting legitimate criticism of government actions through lawful means, maintains the underlying structure that could potentially be used to suppress dissent, much like its predecessor. This transformation raises questions about whether the new legislation truly addresses the concerns that led to the Supreme Court's intervention in the first place.

Conclusion: Beyond the Shadow of Section 124A, Charting Democracy's Course

The implementation of Section 152 of the Bharatiya Nyaya Sanhita (BNS) marks a significant evolution in India's legal framework for addressing separatist activities. Even before its formal enactment, similar principles were being applied through various existing legal provisions to address challenges to national integrity, particularly in cases involving separatist movements. The case of Amritpal Singh, leader of 'Waris Punjab De,' exemplifies this legal evolution. Prior to the BNS's implementation, authorities utilized multiple legal instruments, including the

National Security Act, Arms Act provisions, and various sections of the Indian Penal Code addressing criminal intimidation and communal harmony. 25 A pivotal development emerged when the Rajasthan High Court examined Section 152's application in Tejender Pal Singh v. State of Rajasthan & Anr. This case, involving allegations of Khalistani activism and expressions of support for Amritpal Singh (currently incarcerated in Assam), provided crucial judicial guidance on interpreting Section 152. The court emphasized the necessity for strict interpretation of the provision while maintaining a delicate balance between national security interests and fundamental rights. Justice Arun Monga's observation that such provisions must serve as 'a shield for national security' without becoming 'a sword against legitimate dissent' became particularly significant in shaping the provision's application.26 The court's analysis established critical parameters for applying Section 152, mandating that actions must pose demonstrable risks to national security, and mere dissent cannot be equated with sedition. This legal framework represents a sophisticated evolution from the suspended Section 124A, attempting to address modern challenges while incorporating constitutional safeguards. The court emphasized that evidence must establish clear links to secessionist activities, and constitutional protections for freedom of expression must be respected. This judicial interpretation reflects a nuanced approach to balancing national security concerns with democratic rights, establishing that any actionable offense under Section 152 must pose an immediate and demonstrable risk to national integrity or security, rather than merely expressing dissenting views. The recent enactment of Section 152 in the Bharatiya Nyaya Sanhita demands scrutiny not merely for its operational efficacy, but for its foundational principles and democratic legitimacy. At its core lies the perpetual struggle between governmental authority and civil liberties, creating an intricate balance that defines modern democracy. As citizens of sovereign India, we must examine this legislation through dual lenses: its immediate legal implications and its broader significance for our democratic framework. Does this law genuinely emerge from our contemporary societal needs, or does it merely repackage colonial-era controls in modern legislative vernacular? The answer transcends pure legal analysis, touching the very essence of our national identity and democratic evolution. The historical shadow of Section 124A looms large over this discourse. For over 150 years, that colonial instrument served as a tool for political manipulation and suppression of dissent. We must vigilantly ensure that Section 152 does not become its spiritual successor, merely cloaked in new terminology. The risk is substantial - if this law follows the same pattern of misuse and political exploitation, it could fundamentally undermine our democratic foundations by stifling legitimate dissent. The true measure of Section 152's legitimacy lies not only in its effectiveness at maintaining national security but in its alignment with constitutional principles and democratic values. As we evaluate this legislation, we must consider whether it represents the maturation of our democracy or signals a regression toward colonial-era mechanisms of state control. Our response to Section 152 will reflect our collective commitment to democratic principles. Will we allow another legal instrument to potentially suppress democratic expression for generations to come? The preservation of our democracy depends on maintaining robust channels for dissent while ensuring national security - a delicate balance that Section 152 must strike to truly serve our republican ideals.