



Reforms in Offence against the State (Desh-droh) and it's Impact

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ABSTRACT

The sedition law, or *Deshdroh* has been a contentious issue in democratic Indi-an societies, sparking debates on Fundamental Rights of Freedom of Speech and Expression, National Security, and Individual Rights. This Paper examines the evolution of the law of sedition under the new criminal law, with a focus on its implications for modern Indian democracy. The *Bharatiya Nyaya Sanhita (BNS)*, India's new criminal code, has introduced significant reforms in offences against the state, previously referred to as *Deshdroh*. The BNS removes the offence of sedition, which was previously defined as bringing or attempting to bring hatred, contempt, or exciting disaffection to-wards the Government. The BNS introduces new offences, including exciting or attempting to excite secession, armed rebellion, or subversive activities, en-couraging feelings of separatist activities, or endangering sovereignty or unity and integrity of India. The paper argues that the traditional notion of sedition as a crime against the state is no longer tenable in today's democratic societies, where free speech and dissent are essential components of political participation. Instead, it proposes a nuanced approach that balances national security concerns with individual rights to free expression. It examines the tensions between the need to prevent the spread of hate speech and misinformation, and the need to protect freedom of expression and dissent.

KEY WORDS

Sedition, *Bharatiya Nyaya Sanhita*, Free Speech, National Security, Democracy, Criminal Law.

INTRODUCTION

Sedition refers to actions or expressions that have the potential to provoke people to revolt against the authority of the state or Government. Introduced during the colonial era, retained after independence, and often invoked in recent years, this law has consistently been the subject of debate and controversy.

Sedition is defined as any act, through spoken or written words, signs, or visible representation, that seeks to incite hatred, contempt, or disaffection towards the Government of India established by law.

This definition was originally drafted in 1837 by British historian and politician Thomas Babington Macaulay. Under Section 124A, sedition is classified as a non-bailable offence, punishable with imprisonment ranging from three years to life, along with a monetary fine. The person charged under this law is also barred from a Government job and their passport is seized by the Government. Incidentally, the sedition charge was abolished by the United Kingdom in 2010.

Though the debate in Constituent Assembly, strong arguments, law was retained considering issues like partition induced violence, security of the nation concerns, social cohesion and the political stability in the new formed democracy. Since independence, sedition has been strongly criticised for being used in arbitrary and selective manner which led to the demand for repealing the same.

In 2023, with the introduction of the new criminal laws, claims were made that law pertaining to sedition has been removed within the new law in fact it is true that nowhere in the Bharatiya Nyaya Sanhita, the word sedition is stated.

However, a close examination of Section 152 of the Bharatiya Nyaya Sanhita, it is found that, the offence of sedition is there with a different name. This paper proposes to examine the law of sedition, its arbitrary invoking, demand for repeal, claim of being repealed and its existence in the new law.

Historical Background

In India, The Sedition Law rooted during the British colonial period, in the 1830s when Thomas Macaulay drafted the Indian Penal Code, initially included sedition and this section was enacted on 1870 when it was added as Section 124A by James Fitzjames Stephen, effectively carved a tool to suppress dissent against British rule.

Throughout in India history, prominent Indian nationalists like B.G Tilak , M.K. Gandhi, J.L. Nehru and others were often targeted under this law, raising concerns about its misuse to curb criticism against the Government even after India gained independence.

India Penal Code, 1860

Section 124A

- Focuses on hatred, contempt, or disaffection towards Indian Government.
- Spoken verbally or written words , signs , and visible representations.

Punishment

Upto 3 Years

Upto Life Imprisonment

Fine

BNS 2023

Sec 152

- Focuses on secession , armed rebellion, activities relating to subversive and separatist nature that endanger India's sovereignty and unity.

- Electronic communication and financial means.

Punishment

Upto 7 Years
Upto Life Imprisonment
Fine

Key Provisions of Section 152 OF BNS

Section 152: Acts those are endangering sovereignty, unity and integrity of India.

Whoever, with intent or knowledge, through spoken or written words, signs, visual representation, electronic communication, financial means, or any other method, provokes or attempts to provoke secession, armed rebellion, subversive acts, promotes separatist sentiments, or poses a threat to the sovereignty, unity, or integrity of India, or engages in such conduct, shall be punished with life imprisonment or imprisonment up to seven years, along with a fine.

The Bharatiya Nyaya Sanhita (BNS), 2023 introduces a major shift in treason-related provisions, with Section 152 directly addressing acts that endanger India's sovereignty, unity, and integrity.

Exploring Sedition Under BNS

The BNS not only introduces several new offences but also revises certain existing provisions and assigns new terminology to some of them. These reforms in the criminal justice system are seen as bold initiatives aimed at modernising and decolonizing India's legal framework. It has been argued that to ensure effective justice through a victim-centric approach, while also giving due importance to national security and addressing the increasing dependence on digital and electronic devices, such legal changes were essential.

It has been asserted that to revamp and replace the outdated colonial laws, the laws have been. With the effect of the new laws, there were comments surfacing in different media platforms that the claim as to going away with the sedition is untrue. Sedition is there in the new law with a proxy name. It has also been remarked that Section 152 of BNS applies sedition provisions in a more stringent and repressive manner than the former sedition law under the IPC.

It is worth investigating whether the law that replaces sedition does any better with respecting the purposes of the constitutional protection of freedom of speech and expression. Section 152 criminalises acts endangering the sovereignty, unity and integrity of India: This section uses broad import and ambiguous phrases which appears to advance the same logic as the erstwhile offence of sedition used to do. Critics argue that what actually constitute such endangerment has not been specifically defined under it and thereby rendering the provisions as vague and amenable to expansive interpretation by the enforcement agencies.

Further, Section 152 uses the term 'subversive activities' which means an act which tends to weaken or destroy an established political system, organization or authority. Many experts raised question over this term arguing that the provision could potentially be used to curtail legitimate dissent or protest against the Government.

Punishment for Sedition

- **Life Imprisonment:** For severe cases where actions directly threaten the unity or sovereignty of India, life imprisonment may be imposed.
- **Imprisonment up to 7 Years:** In less severe nature of cases, the punishment can extend up to 7 years, with an additional fine imposed.
- **Mandatory Fine:** A fine is also a mandatory punishment for this offence.
Cognizable
Non-bailable
Triable by Court of Session.

Key Changes in the New Criminal Law

- A. **Revised Legal Framework:** New provisions redefine sedition, focusing on national integrity rather than dissent suppression.
- B. **Expanded Offence Scope:** Broader definitions may encompass various actions perceived as threats to state security.
- C. **Stricter Penalties Imposed:** Minimum seven-year imprisonment reflects increased severity, raising concerns over civil liberties.

“Rajdroh” Vs. “Deshdroh”

124A IPC (Erstwhile Law) VS. Section 152 BNS (New Law)

There is a notable distinction between IPC Section 124A and BNS Section 152. While IPC Section 124A deals with acts “against the Government,” BNS Section 152 shifts the focus to actions endangering the “sovereignty, unity, and integrity of India.”

Colonial interests replaced by needs of the democratic interests in Swatantra Bharat (Independent India). Under IPC Section 124A, expressions that caused hatred or contempt towards the Government were criminalised. However, BNS Section 152 punishes actions such as armed rebellion, destructive activities, and separatist activities, which are seen as direct threats to the integrity on India.

Analysis

The shift from sedition to new provisions alters the legal landscape, expanding prosecutorial discretion and potentially criminalising a wider range of dissenting actions against the state.

The broader definitions of offences may threaten constitutional rights, leading to increased suppression of free speech and assembly, particularly affecting marginalised groups and dissenters.

The vagueness of new legal terms creates uncertainty, complicating judicial interpretation and potentially resulting in increased litigation over the constitutionality of actions deemed as endangering national sovereignty.

The new law of sedition raises several concerns, including:

- Its compatibility with Article 19 (1) (a) of the Indian Constitution.
- Its potential impact on free speech and dissent.
- Its potential for misuse.

Free speech, Sedition Laws

An analysis on current discourse:

- The offence of sedition is frequently described as being in conflict with the constitutional rights provided by the Indian Constitution, including the right to freedom of speech and expression, the right to life and personal liberty, and the right to a fair trial.
- The constitutional validity of sedition has been subject to differing interpretations, but the Supreme Court ultimately upheld its constitutionality in the 1962 case of Kedar Nath Singh vs. State of Bihar.
- The Supreme Court of India, however, stipulated that Government criticism does not constitute sedition unless it includes incitement to or a call for violence.
- Interesting it is also noteworthy that the sedition law has faced criticism not only for how it is applied but also for the substance of the law itself.
- In last ten years, the debate around demand of sedition has resurfaced with the crackdown on student activists of JNU in the year 2015. Available data says that in between 2014 to 2020, there was an increase by 28% over the issue of invoking sedition charges in India.

- It is pertinent to note that out of the total registered cases, a significant number of cases are around the Anti-NRC-CAA movement, farmers' agitation, 'celebrating India's loss in a cricket match against Pakistan', concerns as to basic healthcare facilities and migrant workers during the Covid-19 pandemic and likely other incidents.
- For last few years, despite the claim from the Government on reduction of terror related cases in India, the arrest and detention under sedition charges, invoking of different provisions of the Unlawful Activities (Prevention) Act, 1967, the National Security Act, 1980 and other stringent security laws specially rises.
- The recent arrest of student leaders, human rights activists, journalists, lawyers, writers made the civil society to show deep concern on it.
- There have been a series of incidents which led the human rights activists show concern as to invoking of the laws arbitrarily:
- **Bhima Koregaon incident, 2018:** Allegations of Selective use of sedition and other security laws against Dalit activists.
- Arrest and Detention as to CAA-NRC Movement
Allegations of selective use of laws against Anti-NRC-CAA protestors
Many out of Bail, many fighting for legal battles for last 5 years.
- Crackdown on activists from Andhra Pradesh and Telengana
Members of Human Rights Forum, Andhra Pradesh Civil Liberties Committee, Virasam (Revolutionary Writers' Association) and others, in connection with the Munchingiputtu case got arrested.
- Arrest of detention of journalists under Anti-Terror laws
Santosh Yadav, 2015, Chattisgarh
Aasif Sultan, 2018, Jammu and Kashmir
N Venugopal Rao, 2019, Telangana

CONCLUSION

The law of sedition under the new criminal law is a complex and contentious issue. While it aims to protect national security, it also raises concerns about free speech and dissent.

The new law has given microscopic definition of sedition, making it clearer what constitutes an offence. The law now requires proof of intent to incite violence or disorder, making it harder to prosecute cases. The new law includes safeguards to protect freedom of speech and expression, ensuring that criticism of the Government is not misinterpreted as sedition. The new law presumes innocence until proven guilty, shifting the burden of proof to the prosecution. The law outlines clear procedures for investigation and prosecution, reducing the risk of abuse of power. The new law provides for judicial oversight, ensuring that cases are reviewed and decided impartially.

In 2023, the new law i.e. the BNS came in to existence replacing the IPC. Claims were made that the draconian and colonial sedition has been scrapped under the new law. Though it is true that nowhere in the new law the term sedition is mentioned but the claims found to be untrue with reference to the substances under Section 152 of the BNS. It appears that the sedition offence is there in the new criminal law under the Section 152 with a different name. The substance of section 152 of BNS so far analysed in the main paper, it is found that the vagueness of what constitutes an act of endangering sovereignty can lead to a 'chilling effect' on free speech. From the substance of the offence, it can be said, the offence under section 152 may face the same fate of Section 124A. State machineries have been given authority to arrest and detain by using the wide and ambiguous phrases used in the section.

Moreover, the Rajasthan High Court in *Jeender Pal Singh vs. State of Rajasthan* cautioned the state against invoking Section 152 of the BNS. This 2024 judgment emphasised that Section 152 should not be used as a way to suppress dissent; rather it should be used as a protective measure for national security. The court called for a careful application and judicial oversight to ensure that legitimate criticism of Government is not equated with the erstwhile sedition offence under the new criminal law.

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