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**SEDITION'S METAMORPHOSIS: THE ENIGMA OF CHANGE IN THE  
BHARATIYA NYAYA SANHITA BILL AND ITS RIPPLE THROUGH  
SOCIETY**

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**ABSTRACT**

In the ever-evolving tapestry of our country's legislative branch, the transformative shifts may not readily unveil their significance in the daily affairs of ordinary lives. Despite this initially imperceptible connection, the far-reaching impacts and ramifications of these legislative evolutions intricately influence various facets of our society. Delving into the intricacies of how these amendments infuse beyond the superficial layers becomes of paramount importance. This research aims to meticulously dissect and scrutinise the nuanced ways in which the Bhartiya Nyaya Sanhita Bill, 2023, and its consequential amendments imprint their impact on the diverse and multifaceted population of the nation. By navigating through the labyrinth of legal intricacies, the aim is to shed light on how these amendments resonate with the principles of justice, equality, and individual rights.

This paper's attention is particularly dedicated to the profound transformation within sedition laws, recognising its pivotal role in reshaping the legal landscape. This focus aims to shed light on the imperative need for a comprehensive understanding of the implications of this change, urging individuals to respond judiciously to the evolving legal framework. Moreover, through meticulous analysis of the changes, the paper aims to notice the unnoticed subtleties. The research employs an analytical approach in order to engage with the perspectives of legal practitioners, providing a nuanced exploration of their insights to enrich the discourse on the implications of the Bhartiya Nyaya Sanhita Bill, 2023.

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## ORIGIN & EVOLUTION

### INTRODUCTION

Sedition, by definition, is the overt and evident conduct that aims to instigate the populace against those in authority. Section 124 (a) of the Indian Penal Code explains sedition 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 excites or attempts to excite disaffection towards, the Government established by law in India’.<sup>3</sup>In practice, however, the application of this legislation has often deviated from its intended purpose, leading to instances of its exploitation and misapplication. The constitutionality of this provision has always been controversial owing to the fact that the inception of sedition can be traced back to the 13th century in the Britain devised as a tool to repress the freedom of printing press and its capacity to critique the government.

### BRITISH COLONIAL RULE;

The Sedition Act, 1661 was formally enacted in the United Kingdom targeted towards punishing anyone who spoke or published dissenting remarks against the King, later broadening to encompass defamation against government officials and judges<sup>4</sup>. Its intended aim was to preserve public trust in the government and maintain peace in the society. The legislation's success in regulating speech and expression served as a model for its implementation in India under British colonial rule. It was initially drafted in 1837 by Thomas Macaulay but failed to get implemented in the Indian Penal Code, 1860. Nonetheless, in 1870, amendments were made to the legislation by introducing Section 124 (a) by James Stephen to address the perceived necessity for regulating speech and expression in the society<sup>5</sup>. The first known recorded case under the ambit of this Section was the Queen Empress Vs. Jogendra Chunder Bose and Ors<sup>6</sup>. in 1891. Bose's article, featured in his Bengali magazine *Bangobasi*, criticized the Age of Consent Act, 1891.<sup>7</sup>, portraying it as a form of enforced Europeanization and a restriction on Hindu rights and argued that the Act unfairly targeted Hindus, portraying them as legally incompetent and unable to resist it.

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<sup>3</sup>Indian Penal Code, 1860 § 124 No. 45 Acts of Parliament (1860)

<sup>4</sup> The sedition act, 1661 Acts of Parliament (1661)

<sup>5</sup> Nivedita Saksena & Siddhartha Srivastava, analysis of the modern day sedition, 7, NUJS L. REV. (2014)

<sup>6</sup> Queen Empress vs. Jogendra Chunder Bose and Ors. (1892)ILR 19CAL35

<sup>7</sup> Age of Consent Act, 1891 (*repealed 1950*)

Authorities accused Bose of inciting rebellion, with Chief Justice William Comer Petheram explaining "disaffection" as a sentiment of dislike or hatred towards the government. Despite this, Bose was released on bail, and the charges against him were ultimately dismissed. A sedition trial against Lokmanya Tilak in 1897 became significantly infamous for the misuse of the law<sup>8</sup>. Tilak, a trained lawyer and staunch advocate for independence, founded and published two newspapers—Kesari in Marathi and Mahratta in English. In 1894, Professor R. P. Karkaria presented a paper on Maratha king Shivaji to the Royal Asiatic Society in Bombay, sparking an annual celebration of Shivaji's coronation. Tilak later published reports of this celebration, titled "Shivaji's Utterances," which also served as a critique of colonial rule. Justice Arthur Strachey, in Tilak's trial, broadened the interpretation of Section 124A to their convenience, considering any attempt to incite enmity against the government as sedition. According to the court, the quantity or severity of the treason to the government is irrelevant. Under this clause, any act of hostility or disaffection, no matter how slight, will be punished. Tilak was sentenced to 18 months of rigorous imprisonment. Later, he faced sedition charges again for two Kesari articles, resulting in a six-year imprisonment in Burma. Tilak's trials played a crucial role in the anti-colonial struggle by revealing the colonial authorities' agenda to suppress civilian voices, thereby laying the groundwork for Gandhi's large-scale movements. In 1922, Gandhi himself confronted sedition charges for his articles in *Young India*<sup>9</sup>, where he condemned Section 124A as a tool for curtailing people's freedom. Gandhiji, while in trial, referred to this provision as the "prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen". A significant juncture occurred when the definition of sedition was clarified in terms of its intensity in the case of *Niharendu Dutt Majumdar v. King-Emperor*<sup>10</sup>. The Federal Court of India, defined sedition as leading to 'public disorder or the reasonable anticipation or likelihood of public disorder'. It was established that sedition necessitated more than just strong language; instead, it required direct encouragement of violence. Actions or statements that are deemed disaffection must provoke incitement and a foreseeable likelihood of public disturbance.

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<sup>8</sup> Queen-Empress v. Bal Gangadhar Tilak & Keshav Mahadev Bal, (1897) ILR 22 Bom 11

<sup>9</sup> Mohandas Karamchand Gandhi And ... vs Unknown (1920)22BOMLR368, 58IND.

<sup>10</sup> Niharendu Dutt Majumdar And Ors. vs Emperor AIR1939 CAL703

**POST INDEPENDENCE GOVERNANCE;**

During the Constituent Assembly Debates in April 1947, Vallabhbhai Patel suggested an exception to the proposed Rights to Freedom of Expression for "seditious" language, arguing that it should not be protected under the right to free speech. However, after extensive deliberation, the Constituent Assembly ultimately rejected this proposal in 1948. K.M. Munshi played a key role in this decision, highlighting the provision's colonial roots and its historical misuse to suppress the independence movement. This established the framework for the prevailing stance on enacting provisions regarding sedition in the constitution. In 1962, however, in the landmark judgement administered by the Supreme Court in the case of *Kedarnath Singh Vs. State of Bihar* wherein the five-judge bench upheld the constitutional validity of the Sec. 124 (a).<sup>11</sup> This marked a significant milestone in the development of sedition laws, as the judiciary examined whether Sections 124 (a) of the Indian Penal Code violate Article 19(1)(a)<sup>12</sup> in conjunction with Article 19(2)<sup>13</sup> of the Constitution. In this ruling, the Supreme Court emphasized the importance of recognizing activities against the state as offenses, as they pose a threat to the stability of the state. The court highlighted that the government established by law is a visible symbol of the state, and destabilizing it jeopardizes the very existence of the state. As a result, any actions covered by Section 124A, which weaken or foster animosity towards the government, are considered punishable due to their potential for inciting public disorder or violence. The court clarified that this doesn't violate the fundamental right to freedom of speech and expression, but rather establishes a reasonable restriction essential for ensuring the security and sovereignty of the state. These occurrences represent the variability in the application of sedition laws. Despite recognizing their potentially infringing nature, there was reluctance to repeal them, as authorities felt empowered and in control, as evidenced by several rulings during that period.

**PRESENT TIMES;**

The 21<sup>st</sup> Century saw 326 sedition cases being filed from 2014 - 2019, with charge sheets filed in 141 instances, leading to only 6 convictions. This highlights how the law's ineffectiveness and redundancy only served to intimidate individuals from speaking out against injustices by the administration, despite its limited practical application. Chief Justice of India N.V.

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<sup>11</sup> *Kedar Nath Singh vs State Of Bihar* 1962 AIR 955, 1962 SCR

<sup>12</sup> INDIA CONST. art. 19. §1, cl. a

<sup>13</sup> INDIA CONST. art. 19 cl. 2

Ramana highlighted on July 15, 2021, that the conviction rate under sedition laws is remarkably low and was only being mis utilized by the executive powers. In today's age of social media, even the most minor critique of the government has the potential to be magnified and distorted, as interpretations diverge widely among individuals. This amplification often leads to innocuous comments being wrongly branded as seditious.

The government in an attempt to decolonize the criminal law framework has introduced the Bharatiya Nyaya Sanhita Bill, 2023 which abolishes the laws against sedition and replaces it with offenses against the state.<sup>14</sup>

### **MISAPPLICATION OF SEDITION LAW**

The Sedition law in India, a vestige of colonial rule introduced by the British East India Company, has frequently come under scrutiny for its misapplication and misuse. At various instances, it has hampered the essence of democracy in India by quashing the voice of opposition and silencing the dissent of public at large. The British sought for this kind of resort to safeguard their colonial dominance by suppressing any form of agitation or resistance, but, deplorably, India created a space for such stringent law in the post-independence era as well. Originally, the reason to carry forward with this law was so protect the sovereignty and integrity of the nation, but in many scenarios, it has been keenly observed that this has rather been used as a mechanism to suppress the public outcry that might challenge the status quo or demand the accountability of those in power. The definition of Sedition, under the old Indian Penal Code, 1860, “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 excites or attempts to excite disaffection towards, the Government established by law in, 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” is broad and ambiguous which has given rise to its application in such a manner that has resulted in undermining of the freedom of expressions and other fundamental rights which are a vibrant principle of democracy.<sup>15</sup>The law held extreme potential for abuse of

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<sup>14</sup> Bharatiya nyaya sanhita, 2023, No. 45 (2023)

<sup>15</sup> Indian Penal Code, 1860 § 124 No. 45 Acts of Parliament (1860)

power and has sparked debate for creating a balance between national security interest and the protection of individual rights.

There have been two significant interpretations that have intensified the ambiguity associated with the application of sedition law in India. The first one was in the case, “Queen Empress v. Bal Gangadhar Tilak”, where the court held that sedition encompassed the act of exciting disaffection towards the government, even if it did not incite rebellion or violence.<sup>16</sup> This interpretation resulted in broadening the scope of Sedition law to an extent by which any political hatred would be taken into the ambit of an offense under this act. But quite contrary to this, in the case, “Niharendu Dutt Majumdar and Ors v. Emperor” the court acquitted the accused by interpreting that sedition would only be committed when there is incitement or violence or disorder.<sup>17</sup> Both the interpretations were contrary to each other, making the legislation a lot more ambiguous and unclear, which has contributed to the misapplication of the same.

In recent times, SC stayed coercive action against Telugu news channels regarding the Sedition FIR.<sup>18</sup> The court emphasized the careful scrutinization of the grounds and ambit of sedition law, especially with the context of print and press media. The Supreme Court, with Justices D.Y. Chandrachud, L. Nageswara Rao, and S. Ravindra Bhat, highlighted concerns over media freedom in Andhra Pradesh. This was in response to sedition charges filed by the state police against TV5 News and ABN Andhra Jyoti. These charges stemmed from broadcasting a dissenting MP's views against the state's ruling party. The court viewed these actions as potential attempts to suppress press freedom, illustrating a broader issue with the misuse of sedition laws. Often, governments may exploit these laws to stifle criticism and dissent, framing even legitimate critique as seditious activity. This situation underscores the delicate balance between maintaining state security and preserving the essential democratic right to free speech and expression, especially in the context of media's role in disseminating diverse viewpoints and holding those in power accountable. This is one of the most central method of misapplying sedition law, in which the journalists and media outlets that report on government misconduct or failings, or that simply offer a platform for opposition parties to voice their opinion faces sedition chargers. Despite having clear-cut guidance in “*Kedarnath*

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<sup>16</sup> Queen-Empress v. Bal Gangadhar Tilak & Keshav Mahadev Bal, (1897) ILR 22 Bom 11

<sup>17</sup> Niharendu Dutt Majumdar And Ors. vs Emperor AIR1939 CAL703

<sup>18</sup> Radhika Roy, Supreme Court Stays Coercive Actions, LiveLaw.in <https://rb.gy/vile97>

*v. State of Bihar*”, Section 124A of the IPC continues to be abused by the police and state agencies.

Suppressing the activists and civil societies is another misapplication of Sedition law. Activists and civil societies play a vital role in voicing opinion against the poor management of the running government. Activists, Human Rights activists and non-governmental organizations are engaged in lawful and peaceful protest for encouraging public awareness and participation. They act as a link for bridging the gap between the general public and government. In 2016, NGO Common Cause moved to the Supreme Court challenging the misuse and misapplication of sedition law in India by successive governments, which has caused major problems students, human right activists, journalists, etc.<sup>19</sup> The petition submitted has requested a comprehensive review of all cases filed under the sedition law, with a particular focus on evaluating whether these cases meet the necessary criteria for such charges. The petitioners have raised concerns that the sedition law is frequently misapplied, often being used as a tool to intimidate and threaten activists, with the underlying intention of quashing dissent and halting protests. They argue that this misuse represents a significant misuse of legal power, aimed more at silencing opposition and less at protecting national security. By calling for this review, the petition aims to shed light on the extent to which the sedition law is being used beyond its intended purpose, potentially leading to unwarranted legal actions against individuals exercising their right to protest. This move underscores the need for a critical examination of the application of sedition charges, ensuring they are not weaponized against free speech and peaceful activism.

In 2012, cartoonist Aseem Trivedi, was arrested under sedition act for presenting cartoons and caricatures during the protest of Anna Hazare against the corruption of the government.<sup>20</sup> Similar cartoons were also posted on a site called, “Cartoons against Corruption”. This was a sheer violation of the fundamental right of freedom to express oneself, because the court opined that it could not be taken under the scope or ambit of sedition as it did not ignite any public disorder or hatred. Sedition law has consistently undermined the core value of fundamental rights by restricting an individual's freedom to express themselves. There has been ample amount of misapplication of sedition law in India, instead of using it as a

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<sup>19</sup> Common Cause and Anr. Vs. Union of India No (s). 683/ 2016

<sup>20</sup> Drop sedition charges against cartoonist, hrw.org, (Feb 08, 2024)

<https://www.hrw.org/news/2012/10/12/india-drop-sedition-charges-against-cartoonist>



mechanism or tool for better governance, subsequent governments have tried to make it their shield, behind which they can protect themselves even after dissatisfying the public at large.

### **SEC.124 (a) OF THE IPC, 1860 Vs. SEC. 152 OF THE BNS Bill, 2023**

In a unforeseen occurrence, the government unveiled three contemporary bills poised to revolutionize the legal landscape of the country. These visionary pieces of legislation are set to supplant the ever-prevalent Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872, promising a fresh approach to governance and justice. These modifications are put in place to meet the current demands of society and to overthrow regulations enacted by colonial authorities to subjugate Indian citizens. As exclaimed by the Home Minister of India, Amit Shah, “In 2019, Prime Minister Modi told us that all laws made during British rule should be discussed and reviewed, keeping in mind present times and in the interest of Indian society”.<sup>21</sup> The Union Government has consistently used the rationale of decolonization, justice, and citizen-focused laws to support this legal overhaul project. To determine if the new laws achieve this objective, it's essential to first understand the intention of introducing the new offenses. The Bharatiya Nyaya Sanhita Bill of 2023 was initially presented in the Lok Sabha on August 11, 2023. However, it was subsequently withdrawn, and Bharatiya Nyaya (Second) Sanhita Bill of 2023 was introduced with some minor changes.<sup>22</sup> The bill successfully passed through the Rajya Sabha and received presidential assent on December 25, 2023. The bill comprises of 531 sections as opposed to the 484 sections in the IPC owing to the introduction of 20 new offenses, increased imprisonment for 33 crimes and 83 offenses have increased fines. A paramount alteration brought about by this bill is the utter removal of the criminalization of sedition. It notably introduces a novel offense against the State, *Deshdroh*, marking a pivotal shift away from penalizing individuals solely for criticizing public authorities, instead imposing punishment to those acts that aim to endanger sovereignty, unity and integrity of India. *Section. 152* of the Bharatiya Nyaya Sanhita Bill states that ‘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 mean, 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

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<sup>21</sup> Pib.gov.in <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1947941> (Feb 08, 2024)

<sup>22</sup> Bharatiya nyaya sanhita, 2023, No. 45 (2023)

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<sup>23</sup>. This provision seems to be in line with the citizens' privileges in a democracy that intend to scrutinize the government through constructive criticism as it abolishes the criminalization of sedition, focusing instead on penalizing those who jeopardize India's unity, sovereignty, and integrity with their actions. In essence, it emphasizes the importance of free expression while safeguarding the nation's fundamental values. Section 124(a) has long been contentious for its perceived role in stifling dissent and criticism of the government under the pretext of upholding public harmony and national unity. The contemporary bill appears to be an improvement as it does away with this provision and introduces provisions that aim to maintain peace and unity in the society. In practice, however, this provision, akin to sedition laws, may give rise to vagueness and ambiguity in its enforcement by not clearly defining actions that would undermine the integrity, unity, and sovereignty of the nation. Moreover, terms such as 'subversive activities' or the encouragement of 'feelings of separatist activities' lack clear definitions, leading to an expansion of the law's scope and potentially arbitrary enforcement. The government's goal is to enact modern laws that prioritize citizens and address current issues prevailing in the nation's framework. It is important to acknowledge how in the contemporary landscape, politics has become intertwined with the very fabric of citizens' identities, shaping their beliefs, values, and sense of belonging. As a result, the provisions against *deshdroh*, ostensibly aimed at safeguarding national unity, faces significant challenges in its application. In an environment where dissent and criticism are closely tied to political affiliations, there is a risk that legitimate expressions of discontent with government policies may be misconstrued as attempts to sow discord or promote separatism or feeling of enmity towards the state. Moreover, the pervasive influence of social media and digital communication platforms has amplified the speed and reach of political discourse. What may start as a simple critique of governmental actions can quickly escalate into a broader narrative of division and discord, fuelling tensions and undermining efforts towards national cohesion.

Hence, while this legislation endeavours to decolonize the country's legal framework and eliminate structures that impinge upon the right to free speech and expression, it is crucial to examine and evaluate the bill within the context of contemporary societal dynamics of the

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<sup>23</sup> Bharatiya nyaya sanhita, 2023, §152, No. 45 (2023)

politically charged environment as this could potentially result in bolstering and perpetuating the very conditions that these provisions aim to dismantle.

### **DEVELOPMENT ANALYSIS THROUGH EXPERT DIALOGUE<sup>24</sup>**

In the context of our research paper, we sought insights from an eminent Supreme Court advocate on the development of Sedition law. This included an examination of the historical evolution, modifications over time, the circumstances leading to its application, and a detailed comparison between Section 124A of the Indian Penal Code and Section 152 of the Bharatiya Nyaya Sanhita Bill.

According to him, the Sedition Law which was drafted by the British colonial authorities included any act or attempt to bring hatred or contempt towards the government established by law in India, continued to be in use for suppressing dissent and agitation of people, drawing criticism from civil society and other various human rights organisations. While answering the factors which contributes to the pattern of seditious activity, he mentioned that “political motivations” and “power dynamics” of the ruling and opposition parties are the conventional tools which help in controlling the narratives, delegitimizing dissent and maintaining a paramount supremacy of their authority. He even mentioned that the “broad and vague” language of the law makes it susceptible to misuse and abuse by those in power to target the dissenting voices and silence the opposition.

While drawing a comparison between Section 124A of the Indian Penal Code and Section 152 of the Bharatiya Nyaya Sanhita bill, he mentioned that the section 124A primarily focused on addressing dissatisfaction against the government by criticising and suppressing the dissenting voices, the excessive focus on it led to ignorance of the broader concerns such as protecting the national sovereignty and security of the nation. However, the new bill proposes some significant change, as Section 152 of the Bharatiya Nyaya Sanhita Bill, which is known as “*deshdroh*” brings a paradigm change in legal thinking and moving beyond the narrow scope of Section 124A. It transcends the limited focus on disaffection against the government and moves forward by comprehensively covering the acts endangering sovereignty, unity and integrity, and ensuring a more holistic approach to national security. He explicitly underlines that Section 152 would reduce the ambiguity and guard the nation and people’s interest from potential misuse.

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<sup>24</sup> Ranjan , Amitabh (2024 Personal Communication ) ‘Development analysis through expert dialogue’.

## CONCLUSION

In a revolutionary attempt to decolonize the laws of the nation, the government has introduced contemporary legislations aiming to abolish the laws prevailing since the colonial rule. The paramount objective as expressed by the government is to prioritize the voices of the people and eliminate laws historically used for suppression during the colonial era. While the removal of the sedition law and introduction of offenses endangering sovereignty unity and integrity of India may appear ideal in hindsight, this groundbreaking revolution has sparked a wide spectrum of reactions.

In the context of the current politically charged climate, the proposed law may inadvertently fuel misuse and manipulation, reminiscent of the sedition law's pitfalls. It's imperative for the government to meticulously evaluate all ramifications, aligning with the diverse needs and circumstances of the populace, prior to its enforcement, because in the absence of fully-crafter safeguards, this new law could unintentionally replicate the dominant and suppressive nature of the predecessors by curbing the freedom of speech under the guise of protecting national security, sovereignty, and integrity. However, the legal spectrum of the society feels positive about the changes made in the earlier-existing draconian law of Sedition. It is seen as the opportunity to redefine the legal landscape in a way which would truly depict people's aspiration, and to overcome all the loopholes and lacunas of the society. The triumphant fruition of this ambitious initiative rests on the balance between national security and the sacrosanct protection of an individual rights. The endeavour necessitates a more transparent, inclusive and meticulously deliberative process. Such a process must actively call for public support and consultation at all instances for a more public-oriented legislation to be drafted, alongside legal expertise is of paramount importance to break the erstwhile shackle of dominance and injustice.

The metamorphosis of Sedition law in India is a vigilant approach, acting as an unwavering harbinger for equity and justice. Only through appropriate access of this vision, the society can transcend towards a progressive governance. This will not only rectify the mistaken made in the past but would also lay the foundation for a strong legal infrastructure that is resilient, and reflective of the collective will and aspirations of the people.