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OFFENCE OF SEDITION REPEALED OR RETAINED – AN ANALYSIS

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I. INTRODUCTION- 'Sedition' as IPC offence always remained one of criticism – may be before or after independence. On political front, parties out-of-power have been critical of its misuse by the governments; and the lawmen have always demanded its repeal or at least its sparing use only in acts of rebellion or those seriously causing public disorder, as hereinafter mentioned in High Court judgments. The government, in its effort to indianise the laws in tune with the present-day needs, has replaced the three criminal laws[1] , whereby the Bharatiya Naya Sanhita (BNS) has taken place of IPC. The new Code does not provide 'sedition' as offence, but it does provide for an identical offence entitled "Acts endangering sovereignty, unity and integrity of India"[2]. Recently, this provision has been used for the arrest of Dr. Ali Khan Mahmudabad, Associate Professor of Ashoka University[3] for his comments on the 'operation sindhoor', very successfully launched by Indian forces against terrorist attack in Pahalgam

[1] Under this change, Indian Penal Code, 1860 has been replaced with Bharatiya Nyaya Sanhita, 2023; Indian Evidence Act,1872 changed with Bharatiya Saksha, Adhiniyam 2023; and Code of Criminal Procedure with Bharatiya Nagrik Suraksha Sanhita, 2023.
[2] Section 152, BNS 2023.
[3] He was arrested on 18th May, 2025 u/ss 152 and 196 of BNS and granted interim bail by the SC on 21st May, 2025.

and their hideouts in Pakistan[4]. This has generated a fresh controversy against the new provision.

The handling of the case by the Hon'ble Supreme Court for granting interim bail to the Professor with a cautious note and the reaction of a cross section of people including the lawmen, teachers, civil servants and media urgently demand a rational legal analysis of the new provision. Briefly referring to some sharp reactions, the author likes to refer to Senior Advocate of the Apex Court Sanjay Hegde's article entitled "Judicial sensitivity to sentiments is a sign of aggression"[5], wherein the author writes:

"The professor's scholarly critique became a matter for judicial assessment and a special investigation to assess whether there was any dog whistle intent that played on the fragility of the audience". In the concluding paragraph, the learned Advocate writes, "Judges are the guardians of the Constitution, and not the curators of culture. They must protect the right to speak and not the comfort of the listener. Because when speech is chilled in courtrooms, freedom dies not with a bang, but with a sigh of deference".

Similarly, a senior professor of sociology, Professor Avijit Pathak commented on the incident in his Article under the title, "Academic freedom shrinking in a climate of fear"[6]. The author expresses his fear and anguish as:

"However, in these changing times, as I reflect on, for instance, what Ali Khan Mahmudabad—passes through for his somewhat subtle and nuanced reflections on Operation Sindhoor, nationalism, war, gender and politics, I begin to tremble.--- Yes, this young professor was arrested, and even when he was granted bail, the Supreme Court Judge did not forget to remind him that he ought to be cautious while commenting on such

[4] Operation Sindoor was an Army Act of India, started on 7th May, 2025.
[5] The Hindu, June 9, 2025.
[6] The Tribune, June 3, 2025.

sensitive issues". "Is it that we are fast normalizing a toxic environment in which philosophic differences are suspected, dissenting voices are criminalized and the idea of academic freedom is discouraged"? The professor concludes, "However, under these hostile circumstances, those who love the vocation of teaching and believe that education remains futile without the spirit of critical pedagogy ought to overcome their silence and fight collectively for restoring an intellectual milieu, where, as Rabindranath Tagore would have said, "the mind is without fear, and the head is held high".

Another law professor of eminence, Faizan Mustafa presently Vice Chancellor of Chanakya National Law University wrote his article, "The university versus constitutionally protected speech"[7]largely to comment on the evasive approach of the University but in his otherwise cautiously worded and case law supported article, the constitutional law expert wrote:

"India's low rank of 151 out of 180 in the World Press Freedom Index does not enhance the stature in the comity of nations. No, doubt, 'nation first' should be the rule of thumb for all of us because no debate can survive if the nation itself perishes. We must be united in our fight against an enemy that has time and again been sponsoring and exporting terror to our country. A prompt and befitting response during Operation Sindoor has been given to the enemy nation". Then the author commenting on the freedom of speech writes, "Democracy is government by choice and people cannot exercise their choice if they are not told about all the available alternatives. Let alternative views be expressed and protected. Moreover, freedom of speech assures individual self-fulfillment. ----- Freedom of expression helps us in attaining the truth.---".

The tallest police officer of the country, Julio Riberio in his column: 'TRYSTS AND TURNS', commented on this incident

[7] The Hindu June 6, 2025.

under the heading, 'A professor and a draconian law'[8]. The author commented:

"I concede that liberal humanists like me cannot expect the Supreme Court to meet all our expectations. Judges have case law to contend with--- But the SC Division Bench's order in Prof. Ali Khan Mahmudabad's case puzzled and disappointed me. And I am not the only citizen whom the Honorable Court has stunned.---- Section 152 of the BNS, under which he was arrested, penalizes secession, armed rebellion and subversive activities. The professor has certainly not displayed any such intention in his post". The author's comment on section 152 BNS reads, "The provisions of Section 152 of the BNS are more severe than those of Section 124A of the IPC. The definition of "subversive activities" tends itself to varied interpretations. Ordinary citizens like Prof. Mahmadabad find themselves more vulnerable now".

The national newspapers like Indian Express, The Hindu and others also critically examined the new law, not appreciating the arrest of professor. Students of National Law Universities contributed papers to online journals, criticizing the new provision of BNS.

In these boiling circumstances, it is required that a patient and unbiased analysis of the new provision is made; and this paper is a humble effort to briefly study the offence of 'sedition' as it was u/s 124-A of IPC, new BNS section 152, a comparative analysis of the two provisions to suggest as to whether the offence of sedition has been repealed in its letter and spirit or not?

II. SEDITION UNDER IPC- Offence of 'sedition' came on the IPC as section 124-A by an amendment XXVII of 1870 and reshaped by amendment of 1898. The obvious objective of the provision was to deal with activities of Indians (the freedom movement) against the British regime. Accordingly, it was

[8] The Tribune, May 30, 2025.

provided to deal with acts against the Crown/ British Government but the words changed after independence presented it as under:

"124-A. Sedition – Whoever by words, either spoken or written, or by signs, or by visible representation or otherwise, brings or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1. - The expression disaffection includes disloyalty and all feelings of enmity.

Explanation 2 – Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3 – Comments expressing disapprobation of the administration or other section of the Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under the section."

During British rule, the provision was interpreted by the courts. In the case of Emperor v. Sadashiv Narayan[9], the Privy Council interpreted it as:

"A tendency to disorder cannot be said to be inherent in disaffection. ---- Therefore, it is apparent that Sec. 124-A also penalizes the making of speeches which are not against the interest of public order".

However, the post-independence approach of interpretation can be read from the Constitution Bench decision in Kedar Nath Singh's case[10] but many courts interpreted it in the spirit of pre-

[99] AIR 1947 PC 82.

[10] Kedar Nath Singh v. State, AIR 1962 SC 955.

independence decision. To illustrate, Full Bench decision of Allahabad High Court in Ram Nandan v. State[11] observed:

"The offence made punishable under section 124-A does not require an intention to incite to violence or public disorder".

Contrarily, in a 1931 case, the Calcutta High Court held: "For all crimes, there must be a criminal intent. So is for Sedition"[12].

The post-independence India lived in a democratic set up, thereby expecting new interpretation of the offence in the light of its new objective as per fundamental right of freedom of speech and expression enshrined in the Constitution. The right to differ with the government decisions and policies had a large space in the largest democracy of the world. The Punjab High Court in the case of Tara Singh Gopi Chand v. The State[13] declared section 124-A IPC unconstitutional since it violated the Fundamental Right to freedom of speech and expression. The result was not deleting the offence but amending clause (2) of Article 19 with a retrospective effect (Amendment Act 1951, section 3) to provide: "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India (by 16th Amendment Act, 1963), the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence". Later, the Allahabad High Court in Ram Nandan v. State of UP[14] criticized the provision to observe, "Mere possibility of public disorder is not enough to justify a restriction on Fundamrntal Right of freedom of speech and expression".

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[11] AIR 1959 All 101 at 107.
[12] Satyandranath Majumdar v. Emperor, AIR 1931 Cal 337.
[13] AIR 1951 Punjab 27.
[14] AIR 1959 All 101.

The Constitution Bench of the Supreme Court, though overruled above-said two High Court judgments which declared the provision as unconstitutional, but did limit its application in the case of Kedar Nath Singh v. State of Bihar[15] in the words:

"Comments, however, strongly worded expressing disapprobation of actions of Government without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal". It clarified, "It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. ---- So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order".

In Balwant Singh & Another v. State of Punjab[16], the Apex Court observed:

"The application (of s. 124A) would be attracted only when the accused brings in or attempts to bring in hatred or contempt or excites or attempts to excite disrespect towards the Government established by law in India. ---------- We find it difficult to hold that upon the raising of such casual slogans (of Khalistan) a couple of times without other act whatsoever, the charge of sedition can be founded".

This was relied upon by the Apex Court in the Common Cause v. Union of India & Another.[17], where the demand for declaring the provision as *ultra vires* of the Constitution was not entertained by the Apex Court ordering that authorities dealing with a case u/s 124-A IPC shall be guided by the principles and guidelines given by the Constitution Bench in the Kedar Nath's case.

[15] Supra note 10.
[16] AIR 1995 SC 1785.
[17] Writ Petition Civil No. 683 of 2016.

Even the Law Commission of India did not agree with the deletion of the provision from the IPC[18].

Registering of FIR u/s 124-A was stopped by order of the SC dated 11 May, 2022 on the assurance of Union Government in the case of SG Vombatkere v. Union of India[19], where constitutionality of sedition law was challenged.

The Chairperson of the Commission in his forwarding letter to the Honorable Union Minister of State (Independent Charge), Ministry of Law & Justice dated 24/05/2023 wrote:

"Consequently (to the going through history & case laws on the point) , the Law Commission is of the considered view that Section 124A needs to be retained in the Indian Penal Code, though certain amendments, as suggested may be introduced in it by incorporating the *ratio decidendi* of Kedar Nath Singh v . State of Bihar, so as to bring about greater clarity regarding the usage of the provision, "We further recommend that the scheme of punishment provided under the said section be amended to ensure that it is brought in parity with the other offences under Chapter VI of IPC. Moreover, congnizant of the views regarding the misuse of Section 124A, the Commission recommends that model guidelines curbing the same be issued by the Central Government. In this context, it is alternatively suggested that a provision analogous to Section 196(3) of the Code of Criminal Procedure,1973 (Cr P C) may be incorporated as a proviso to Section 154 of Cr P C, which would provide the requisite procedural safeguard before filing of a FIR with respect to an offence under Section 124A of IPC".

Reasons for retaining the provision, given by the Commission are: to safeguard unity and integrity of India, sedition is a reasonable restriction under Article 19(2), existence of counter-

[18] Law Commission of India, Report no. 279, April 2023 on "Usage of Law of Sedition", Chairperson Hon'ble Justice Ritu Raj Awasthi, Former Chief Justice Karnataka High Court.

[19] (2022) 7 SCC 433.

terror legislations does not obviate the need for section 124A, sedition being a colonial legacy is not a valid ground for its repeal, realities differ in every jurisdiction. The Commission recommended the following wording of section 124A:

"124A. Sedition – 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, **with a tendency to incite violence or cause public disorder shall be punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.**

Explanations 1 to 3 to be retained as such and another Explanation 4 to be added as:

Explanation 4. – The expression "tendency" means mere inclination to incite violence or cause public disorder rather than proof of actual violence or imminent threat to violence"[20].

The Government undertook the task of indianising the British laws and wanted to shape them as per the changed expectations and demands of the present- day needs and conditions. In this process came the change of criminal laws – two British (IPC & Evidence) and one already made Indian (Cr.P.C.). As BNS has taken the place of IPC and while introducing the Bill it was forcefully said by the Hon'ble Union Home Minister on the floor of Parliament that Sedition is no more an offence under the new law, being it the British legacy.

BNS replaces sedition by the offence entitled "Acts endangering sovereignty, unity and integrity of India". We are to examine as if the offence under section 152 is the repeat of sedition or it is different to be in tune with the expectations of a democratic society wedded to the cause of protecting the human

rights of personal liberty and the freedom of speech and expression.

III. SECTION 152 BNS – The section reads as under:

"152. Act endangering sovereignty, unity and integrity of India – 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 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.

Explanation – Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section".

While introducing the Bill in Parliament on December 20, 2022, the Home Minister *inter alia* said:

'BNS which will replace the IPC focuses on justice than punishment; three proposed criminal laws will save people from the colonial mindset and its symbols, if someone opposes government, he should not be punished as it's his freedom of speech'.[21]

The section makes a person liable to punishment if:

(i) He knowingly or with a purpose excites or attempts to excite;

(ii) Secession or armed rebellion or subversive activities or endangers sovereignty or unity and integrity of India;

(iii) Punishment prescribed is Life Imprisonment or up to 7 years imprisonment and shall also liable to fine.

From this it can be made out:

[21] Indian Express, December 21, 2022.

1. Intention or *mens rea* has been expressly made an essential ingredient for application of the provision;
2. Intention must be to excite or attempt to excite the wrongful acts mentioned in the section;
3. The wrongful acts are: secession i.e withdrawing from the State, armed rebellion (like waging war against the Government, made offence u/s 147 BNS), subversive activities meaning acts with intention to undermine or overthrow the Government or its institutions, encouraging feelings of separatist activities i.e. activities aimed at dividing the country or communities. Or he puts to danger the unity and integrity of India, may be in its social and communal sense.

As per announcement of the Government, the new Code does not provide the offence of Sedition but also the provision made is not much different, rather it appears to be broader than the offence deleted. The new provision has faced judicial scrutiny in the case of Tejender Pal Singh @ Timma v. State of Rajasthan[22], wherein the Jodhpur Bench of Rajasthan High Court quashed the FIR registered against the petitioner u/ss 152 and 197(1) (c) of the BNS with all its consequential proceedings. While delivering the judgment, Honorable Justice Arun Monga *inter alia* observed: "Use of sections 152 and 197 must be judicious to avoid infringing on free speech and prevent misuse. Proper judicial oversight and clear guidelines on interpreting terms like "disharmony" and "ill will" are essential to ensure the law achieves its intended purpose without becoming a tool for oppression of dissent". IV. Sedition versus Act endangering sovereignty and integrity of India – If we want to make a comparative study of section 124-A IPC and 152 BNS, we will have to look the two provisions from the angle of:

1. Words used and the difference made out i.e. deletions and additions (referring to keeping the same words);

[22] SB Criminal Misc (Pet.) No. 5005/2024.

2. Punishments prescribed; and
3. Other material difference, if any.

1. COMPARISON OF WORDS USED – Both sections have some common words and some more words inserted in section 152 BNS, which on the face of it make the BNS provision larger in scope and more stringent than section 124A IPC. To make the comparison of words used in both sections easily readable, we are using the language of section 124A as the basis, referring the deletions and marking bold the additions made in the language of section 152 BNS:

"124A IPC & 152 BNS – 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, (deleted: brings or attempts to bring into hatred or contempt or) excites or attempts to excite (deleted: disaffection towards the Government established by law in India), **secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act** shall be punished with imprisonment for life(, deleted: to which fine may be added) , or with imprisonment which may extend to three years (**replaced by seven years)**, (deleted: to which fine may be added, or with fine) **and shall also liable to fine.**"

(Deleted: Explanation 1 – The expression "disaffection" includes disloyalty and all feelings of enmity.)

Explanation (Deleted no. 2) – Comments expressing disapprobation of the measures**, or administrative or other action** of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite (Deleted: hatred, contempt or disaffection,) **the activities referred to in this section** do not constitute an offence under this section.

(Deleted: Explanation 3 – Comments expressing disapprobation of the administrative or other action of the Government without

exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.)"[23]

From the above comparative language of two sections, we can make out the following important difference of section 152 BNS from section 124 A of IPC:

(i) The intention or *mens rea* was a hidden ingredient in sedition, and the same has become express under BNS using the terms "purposely" of "knowingly";

(ii) Two additional means of committing the offence have been recognized. Although these would have been embraced by the term "otherwise" but a specific mention has been made in section 152. Out of these, "electronic communication" comes by way technological advancement but "financial mean" is conscious. To the mind of the author, it has broadened the horizon of the offence, thereby leaving a larger scope of its misuse because any person not directly involved in the commission or attempt of committing the offence can be booked under this term as having aided by financial mean;

(iii) As regards the *actus reus* of the offence, it is worth noting that bringing or attempting to bring hatred or contempt against Government has been deleted and the acts of secession, armed rebellion, subversive activities or encouraging feelings of separatist activities, endangering sovereignty or unity and integrity of India indulges in or commits any such act have been added.

A humble comment of this author on this point is that deletion is good, addition of words acts of secession and armed rebellion, activities endangering sovereignty or unity and integrity are also good. However, secession and armed rebellion may be called unwanted additions in the light of their specific provisions as offence under sections 147-150. But so far as the terms 'subversive activities' and 'encouraging feelings of separatist

[23] Bold words indicate the changes made in the new offence, and the normal language is that of s. 152 IPC.

activities' are concerned, there are great many chances of misuse. To substantiate, we would like to refer to the latest case of Tejender Pal Singh and u/s 124A of Balwant Singh. It is essentially required that the terms are clearly defined in the possible narrow sense in BNS.

2. PUNISHMENTS PRESCRIBED - In Tejender Pal Singh's case[24], the Honorable Judge tried to make a brief comparison of the two provisions and he observed under Para 12.1 of the judgment:

"Perusal of section 152 reveals that same is aimed at protecting the unity, sovereignty, and integrity of India. This provision has its genesis to section 124A (sedition) of repealed IPC.------- Prima facie, it appears to be rather reintroducing section 124A (sedition) by another name. It is rather debatable as to which of two provisions i.e. the one repealed (sedition) or the one reintroduced is more stringent".

Referring to the punishments of two sections, it is clear that the new provision attracts more severe punishment than the repealed one as the life imprisonment has been retained, or imprisonment up to 3 years has been enhanced to 7 years imprisonment, or with fine has been deleted by adding that "and shall also be liable to fine".

3. OTHER MATERIAL DIFFERENCE – The use of loose and undefined terms as the acts made punishable like 'subversive activities' and 'encouraging feelings of separatist activities' leave more chances of its easy interpretation to be made by the police and even the courts, which may result in divergent opinions of courts on the same term as it happened in the case of Sedition as an offence. The chances of misusing these loose terms are also like to be much increased than was the case with the offence of sedition.

In short, the offence has been made further grave attracting more severe punishments; and the loose terms like 'subversive

[24] Supra note 22.

activities' afford more chances of its misuse. All the same, the offence of sedition has been given a new name and its ambit has been further expanded. It necessitates a second look at this provision of BNS.

IV. CONCLUSION - The above analysis of section 152 makes it crystal clear that it has been developed on the bedrock of sedition under IPC and it definitely carries along the inherent weaknesses of the old provision. The change is practically for the name sake alone. It is a fact that for this reason, the new provision falls far short of the Government promise and expectations of the people. They are afraid that this provision has a wider scope of misuse against genuinely democratic people of India, to whom sovereignty is given by the Constitution. Section 152 BNS, if not amended, will certainly curtail the freedom of speech and expression, the *sine qua non* of the largest democracy of the world standing on the threshold of entering the developed world. The loose terms like 'subversive activities', 'separatist activities', 'use of financial mean' have the potency of possible misuse by the police and the political leadership for settling scores or fulfilling ulterior motives.

For the purpose, the following a few humble suggestions are made:

1. The words "or by use of financial mean" needs to be deleted because in case of any such use the term 'or otherwise' may help. In addition to its appearance is superfluous, it may invite an express attention of the police to book an innocent with its application under the name of a 'suspicion'.
2. The words 'excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or' may be deleted, to make the sentence '--- or by electronic communication endangers sovereignty or unity and integrity of India; or indulges in or commits any such act'. Provisions in sections 147 to 150 are sufficient to deal with situations like armed rebellion etc.

3. From the punishment part also life imprisonment needs to be deleted in view the above deletions from the *actus reus* part of the section. Maximum imprisonment of 10 years and fine is more than sufficient punishment under the deterrent theory adopted under IPC and continued under BNS.
4. The Law Commission examined the offence of 'sedition' under IPC and its suggestion to continue the offence with sentence of other offences of the Chapter in IPC (like raising punishment to 7 years and fine) has been adopted in the new provision of BNS but surprisingly, its observation with data regarding the misuse of the provision has been ignored. The Commission suggested for adding to the penal provision, a procedural safeguard for avoiding casual registration of FIR under IPC (now BNS) by using the language like that of section 196 Cr P C (s. 217 BNSS). Instead, this author likes to suggest a provision in section 173 of BNSS (parallel Cr P C s. 154) as Proviso to be appended: "Provided that in all cases where the offence charged by the police prescribes 3 years or more imprisonment, the FIR shall be registered only after verification of facts and giving its information to the Judicial Magistrate concerned".

Submitting for building a healthy harmony between freedom of speech as a fundamental right and the offence u/s 152 BNS, this author likes to quote the concluding words of Advocate Sanjay Hegde's article," [25] Let our courts (and also the prosecuting agencies) not forget that the Republic was not born from politeness but from protest. The Constitution came from the pen of Dr. B.R. Ambedkar, who also wrote, " --- the world owes much to rebels who would dare to argue in the face of the pontiff and insist that he is not infallible".

[25] Supra note 5.