
Sedition under the 2023 Bill, Repealed or Reformed ?

Abhinav Gaur & Siddharth Shankar Dubey

Advocated Allahabad High Court

In this article, we analyse and compare Section 124A (Sedition) of the Indian Penal Code (hereinafter referred to as the “IPC”) and the proposed Section 150 (Acts endangering sovereignty unity and integrity of India) of the Bharatiya Nyaya Sanhita Bill, 2023 (hereinafter referred to as the “Bill”) so as to find out whether the essence of Section 124A IPC will lose its existence with the enactment of the Bill or will it continue to disguise under Section 150 of the Bill. We will analyse when the Bill is brought into force, Sedition will be a law of the past and be considered repealed or will it continue to exist as a reformed provision with whittled down force.

The crime of Sedition has been misused by various Governments, pre-independence and post-independence, to their advantage from time to time and unfortunately often as a means to punish for showing disaffection towards the Government and seldom doing so for the Country. The power to misuse emerges from the very provision itself as it legitimises invoking powers under the colonial era law to punish a person for even showing disaffection towards the Government as if there was no fundamental right guaranteed under Article 19(1)(a) of the Constitution of India. But yes, there was no democratically elected Government when Section 124A was introduced in the year 1870 by the British to incarcerate Indians for voicing against the British Government. It was a law to silence the voice of Indians against the British.

Under Section 124A of the IPC, it is a crime punishable by life imprisonment to bring or attempt to bring hatred or contempt, excite or attempt to excite disaffection towards the ‘Government’ and not the ‘Country’. Is Government and Country the same? It was often debated. The essence of enacting the said provision was to discipline the citizens

by forcing them to abide by the command of the Government as it were its subjects. At the time of its enactment in the pre-independent India, there was no democratically elected Government and Indians were in fact considered to be subjects of the British, however, this provision ought to have been rendered otiose or should have been deleted from IPC after India gained its independence. But, it did not and rather thereafter the

The crime of Sedition has been misused by various Governments, pre-independence and post-independence, to their advantage from time to time and unfortunately often as a means to punish for showing disaffection towards the Government and seldom doing so for the Country.

democratically elected Governments started misusing the said provision for their advantage by suppressing the fundamental rights of the citizens to freely speak and express in the Independent India. It was as if the Government of independent India had merely stepped into the shoes of the British Government with the same sense that the citizens of India should abide by the diktats of the Government (which they chose) without any questions. Could affection towards Government be ‘forced’ by law was a matter of debate over the years and still continues to be so and if so, why would India have a democratically elected government at all when there is Section 124A (Sedition), as both were conceptually anti-thesis to each other.

This issue was raised in the Constituent Assembly by Sri K. M. Munshi who said that in a democratic government there should be a line between criticism of Government and incitement to compromise the national security and integrity. He said that essence of democracy was the criticism of Government, however, Section 124 A IPC was retained. Nonetheless, the same could be subjected to the judicial scrutiny in the year 1950 when in the case of *Romesh Thapar v. State*¹ the Apex Court held the policy of Madras to ban a journal namely *Cross Roads* as unconstitutional and similarly the attempt of another Government to pre-censor the journal namely the *Organiser* published by the *Rashtriya Swayamsevak Sangh* (RSS) met the same fate in the case of *Brij Bhushan v. Delhi*². Later in the year 1950, the Punjab & Haryana High Court in the case of *Tara Singh Gopi Chand v State*³ declared Section 124 A IPC as unconstitutional and the same was struck down.

With the rising outrage and objections to the crime of sedition, the Constitution of India was amended on June 18, 1951 and ‘reasonable restrictions’ were added to Article 19 and later Nehru in his Parliamentary address advocated for getting rid of Section 124A IPC and called it objectionable and obnoxious having no place in our Country.

Following the suit, in 1958 the Allahabad High Court in the case of *Ram Nandan v State of UP*⁴ also declared Section 124A IPC as unconstitutional thereby declaring that with the enforcement of the Constitution of India, the aforesaid provision was rendered void in the eyes of law. However, putting rest to the surge of judicial pronouncements on the subject but invoking a greater public debate, a five-judge constitution bench of the Apex Court in the case of *Kedar Nath v State of Bihar*⁵ upheld the constitutional validity of Section 124A IPC observing that”

“...every State, whatever its form of Government, has to be armed with the power to punish those who by

their conduct, jeopardies the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder...”

After 60 years of its pronouncements in the *Kedar Nath* case, the Apex Court on 11 May 2022 in the case of *S. G. Vombatkere v Union of India* observed that despite the riders and safeguards provided in the *Kedar Nath* case, the law on sedition was being widely misused and as such directed to keep the operation of Section 124A IPC in abeyance. By its order dated September 12, 2023, the aforesaid matter was referred to be heard by a bench of five or more judges since the *Kedar Nath* case was decided by a Constitution Bench. While doing so, the Apex Court observed that in the *Kedar Nath* case the constitutional validity of Section 124A was tested at the anvil of Article 19(1)(a), however, in *S. G. Vombatkere* the challenge was that the said provision violated Article 14 of the Constitution of India. Although it was submitted by the Central Government that the hearing in the matter should be deferred considering the Parliament of India was in the process of re-enacting the provisions of the penal code and the Bill was already placed before the Standing Committee, however, the Apex Court declined to accept the same. While declining to defer the hearing, the Apex Court observed that even if the Bill is brought into force, Section 124 A will remain to be on the statute book and the re-enactment would not apply retrospectively, and as such the ongoing criminal prosecutions would continue to be governed by Section 124A of the IPC.

The *Bharatiya Nyaya Sanhita* Bill, 2023 was introduced in the Lok Sabha on August 11, 2023 with an intent to repeal IPC and to redefine and introduce the criminal offences in the Country. Before we proceed further with the analysis of the provisions relating to ‘Sedition’ under IPC and the Bill, it may be pertinent to put the same in juxtaposition for better comparison:

¹ 1950 AIR 124

² 1950 SCR 605

³ 1951 CriLJ 449

⁴ 1959 CriLJ 1

⁵ 1962 AIR 955

<p style="text-align: center;">Section 124 A of the IPC Sedition</p>	<p style="text-align: center;">Section 150 of the Bill Acts endangering sovereignty unity and integrity of India</p>
<p>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 <i>disaffection</i> towards, the <u>Government</u> established by law in India, shall be punished with <u>imprisonment for life</u>, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine</p>	<p>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 <u>India</u>; or indulges in or commits any such act shall be punished with <u>imprisonment for life or with imprisonment which may extend to seven years</u> and shall also be liable to fine</p>
<p>Explanation 1 - The expression “disaffection” includes disloyalty and all feelings of enmity. Explanation</p> <p>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</p> <p>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.</p>	<p>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.</p>

What we knew as ‘Sedition’ for more than a century will certainly lose its existence and will be archived in legal history if and when the Bill is brought into force. However, a new provision akin to ‘sedition’ will continue to govern the crime against India under Section 150. Although the intent of both the provisions is the same, however, the offence under Section 150 of the Bill will be made out only if any act endangering sovereignty, unity and integrity of India is committed. Earlier it was a crime to even raise a voice against a democratically elected Government and its policies and administration which had become a bone of contention, however, now under the Bill there will not be any such offence. Rather, as it should have originally

been, the offence would only be said to be committed by any person if he by any means or act endangers sovereignty, unity and integrity of India. It was argued that under Section 124A of IPC the ‘Government’ was equated with ‘India’ and the same could have never been the intent of the legislature if the said provision was enacted in the independent India. Now, the said argument will finally rest when the Bill is enacted and sedition in its true sense will serve its purpose to protect India from all acts which endangers its sovereignty, unity and integrity. It is pertinent to note that the Bill will only apply prospectively, so for those who are already facing indictment or criminal prosecution under Section 124 A IPC, the legislature must

make an arrangement to ensure that they are not discriminated in law.

If closely compared, the distinction between the two provisions is evident that the phrase ‘disaffection towards the Government’ has been omitted and this change is a welcome step. Under the future legal regime, ‘sedition’ under a different nomenclature will continue to breathe in the form of an offence under Section 150 which aims to solemnly protect the interest of India which is above all forms of Government. With its enactment, criticising a government will no longer be a crime rather committing any act jeopardising the interest of India would attract a severe punishment. That being said, another phrase which has been sought to be omitted is the requirement of incitement of violence, and in its place the phrase “encourages feelings of separatist activities” has been added. The aforesaid phrase may invoke a broad spectrum of acts which might be said to be constituting an offence and may be misused by the law enforcement agencies. An act which might be said to be encouraging feelings of separatist activities would be purely circumstantial and difficult to prove in the Court of law and at the same time would give an opportunity to invoke the same against a person who may have separatist feeling but may not be encouraging others for committing separatist activities.

That said, it is clear that if the Bill is enacted, the offence of sedition which has been a bone of contention

for several years for being a sword at the hands of the Government would whittle down and rather may serve its true purpose of saving the country from the acts of secession or armed rebellion or subversive activities, or separatist activities which definitely endangers sovereignty, unity and integrity of India. However, it is interesting to note that the explanation to Section 150 of the Bill has not been drafted correctly and there seems to be an inadvertent mistake. It appears that the drafters wanted to carve out an exception in the explanation to Section 150 by stating that if any person criticizes government or its policies with an intent of them being revised or altered and such act does not excite any activities which are punishable under Section 150, then such an act would not constitute an offence under Section 150. However, it seems that the said explanation could not be transcribed completely and the aforesaid underlined phrase could not be mentioned in the explanation. Explanation to Section 150 as it reads now is incomplete and vague. Nonetheless, giving a benefit of doubt, and assuming that it would be an intent of the legislature to carve out the aforesaid exception, it is rather clear that ‘sedition’ as it exists under Section 124 A has been repealed and only for the said purposes the explanation has been provided in Section 150 of the Bill. For the sake of clarity, the explanation to Section 150 as it reads in Bill and as it ought to have been stated, is as follows:

Explanation to Section 150 of the Bill as it reads now	Explanation to Section 150 of the Bill as it should have been stated
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.	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, <u>shall not constitute an offence under this Section</u> .

The Bill has been passed by the Lok Sabha and is currently under discussions before the Standing Committee

and finally after more than 75 years of its independence, India may soon have its own penal laws. 