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DOES THE NEW CRIMINAL LAW NO LONGER PENALISE ACTS OF SEDITION?

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ABSTRACT

The Indian Government on July 1, 2024, enacted Bharatiya Nyaya Sanhita, 2024, in place of The Indian Penal Code, 1860. One of the comments on the new criminal code given by the government was that the new criminal code has moved away from penalizing acts of sedition. However, a closer examination reveals that the term 'sedition' has been eliminated while the essence of the act persists in section 150 of BNS, 2024. The new provision penalizes actions threatening the sovereignty, unity, and integrity of India at par with the old provision. It also further expands the scope of the penalization of seditious acts by including the wording 'electronic communication' and 'financial means' and has introduced stricter penalties, making imprisonment mandatory along with fees which was not the case earlier. In the interim order of *S.G. Vombatkere v. Union of India, 2022*, the Supreme Court put Section 124A of IPC in abeyance due to concerns regarding misuse. This raises the question, of whether the new provision in section 150 of BNS has addressed this issue. Currently, the new provision is seen to be more ambiguous and broadly worded in, that it offers more discretionary power to the authorities which could potentially lead to similar concerns as pointed out in *S.G. Vombatkere v. Union of India, 2022*, if not greater. Therefore, although the new criminal code does not explicitly penalize seditious acts, its essence remains. This suggests that the government's claim of abolishing punishment for sedition is not entirely accurate.

1. INTRODUCTION

Even though the government has asserted that the new criminal code, Bharatiya Nyaya Sanhita, 2024¹ replacing the Indian Penal Code, 1860² no longer penalizes acts of sedition³. Is it entirely true?

¹ Bharatiya Nyaya Sanhita, 2024

² Indian Penal Code, 1860

³ Economic Times, 'Provision of sedition offences to be completely repealed: Amit Shah in Lok Sabha' (11 August 2023) https://economictimes.indiatimes.com/news/india/new-ipc-bill-will-completely-repeal-sedition-offence-amit-shah/articleshow/102640242.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst accessed 23 July 2024

Prior to 1st July 2024 this Supreme Court case, S.G. Vombatkere v. Union of India, 2022⁴ determined the status of sedition law in India. The apex court passed an interim order and held Section 124A of the Indian Penal Code⁵ in abeyance. The court further urged the Central and the State government to refrain from registering an FIR (first information report) and directed all pending proceedings in sedition cases to be stayed. The court did so to review Section 124A of IPC⁶ to make sure that the security interest and the integrity of the state is balanced along with the civil liberties of citizens⁷. Fast forward to the enactment of the Bharatiya Nyaya Sanhita, 2024 (BNS)⁸ being brought into effect as on July 1, 2024⁹. In the new criminal code the term sedition is not used but a similar provision is introduced in Section 150 of BNS¹⁰.

2. S-150 OF BNS

Section 150 of BNS states

“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 means, 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.”¹¹

And Section 124A of IPC states

“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, ^{2****} the Government established by law in ³[India], ^{4****} shall be punished with ⁵[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.”¹²

⁴ S.G. Vombatkere v. Union of India, (2022) 7 SCC 433

⁵ Indian Penal Code 1860, s 124A

⁶ Ibid

⁷ **The Wire**, 'Full Text: What the Supreme Court Said While Putting the Sedition Law on Hold' (11 May 2022) <https://thewire.in/law/full-text-what-the-supreme-court-said-while-putting-the-sedition-law-on-hold> accessed 23 July 2024

⁸ Ibid (n1)

⁹ Economic Times, 'New criminal laws enacted from today: All you need to know about them' (1 July 2024) <https://economictimes.indiatimes.com/news/how-to/new-criminal-laws-enacted-from-today-all-you-need-to-know-about-them/articleshow/111391637.cms?from=mdr> accessed 23 July 2024

¹⁰ Bharatiya Nyaya Sanhita 2024, s 150

¹¹ ibid

¹² Ibid (n4)

Even though the term “sedition” is not found in the new criminal code, BNS. The essence of Section 124A¹³ can be found in Section 150¹⁴ as seen above. Section 150 of BNS¹⁵ introduces “electronic communication”, “ financial means” in its definition as acts that would endanger the sovereignty or unity and integrity of India. It can also be noted that the new provision of BNS mentions “indulges in or commits”¹⁶ for being penalised under this section. These words “indulges in or commits”¹⁷, particularly gives a wider scope for interpretation and discretion to the authorities than the old provision under section 124A of IPC¹⁸ to decide what comes within the scope of endangering sovereignty or unity and integrity of India.

Another notable difference is that the punishment in the old provision¹⁹ (IPC under section 124A) was “imprisonment for life or imprisonment which may extend to a period of 3 years or fine” whereas in the new provision²⁰ (BNS under section 150) the punishment is “imprisonment for life or imprisonment which may extend to a period of 7 years and fine.” Even though the most obvious difference is that the term of prison time has increased from 3 years in IPC to 7 years in BNS the old provision states “or fine” while the new provision states “and fine” making punishment with imprisonment mandatory in BNS which earlier was not mandatory as under IPC the convict could be punished with only a fine. Further, in the case of S.G. Vombatkere v. Union of India, 2022²¹ concerns were raised regarding the misuse and abuse of the the IPC provision for acts of sedition (section 124A). Does the amended provision in BNS rectify the concerns raised in the said order of S.G. Vombatkere v. Union Of India?²²

3. CONCLUSION

This paper has examined that the BNS provision (Section 150)²³ gives a wider scope for discretion to the authorities as to what constitutes endangering sovereignty or unity and integrity in India.

¹³ ibid

¹⁴ Ibid (n7)

¹⁵ ibid

¹⁶ ibid

¹⁷ ibid

¹⁸ Ibid (n4)

¹⁹ Ibid (n4)

²⁰ Ibid (n7)

²¹ Ibid (n3)

²² ibid

²³ Ibid (n7)

Given that there is a history of misuse of the provision (Section 124A of IPC)²⁴, this discretion given to the authorities may cause further abuse of Section 150 of BNS²⁵.

Conclusively, although the term “sedition” has not been utilized in Bharatiya Nyaya Sanhita, 2024²⁶. The essence of sedition still exists and seditious acts are penalised by the new criminal code. Further, the new criminal code has wider scope for punishment and stricter punishments as against IPC, 1860²⁷. Even though the government asserted that sedition is no longer penalised by the new criminal code, the essence of sedition still exists in BNS, 2024²⁸ in a more ambiguous and stricter light.

²⁴ Ibid (n4)

²⁵ Ibid (n7)

²⁶ Ibid (n1)

²⁷ Ibid (n2)

²⁸ Ibid (n1)