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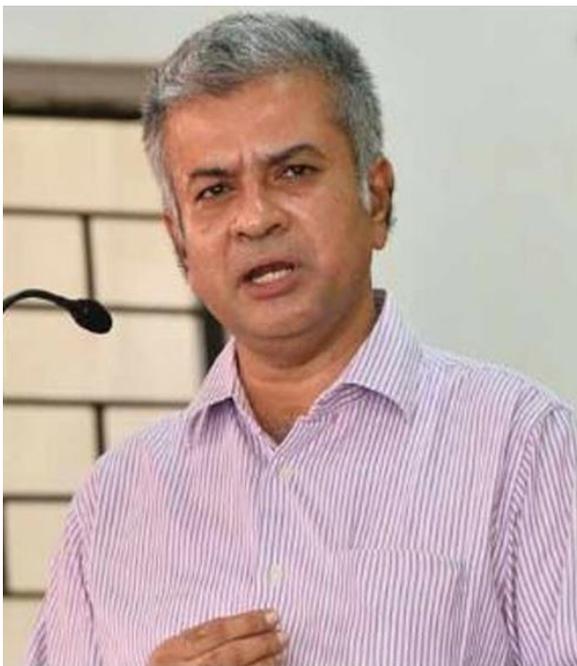
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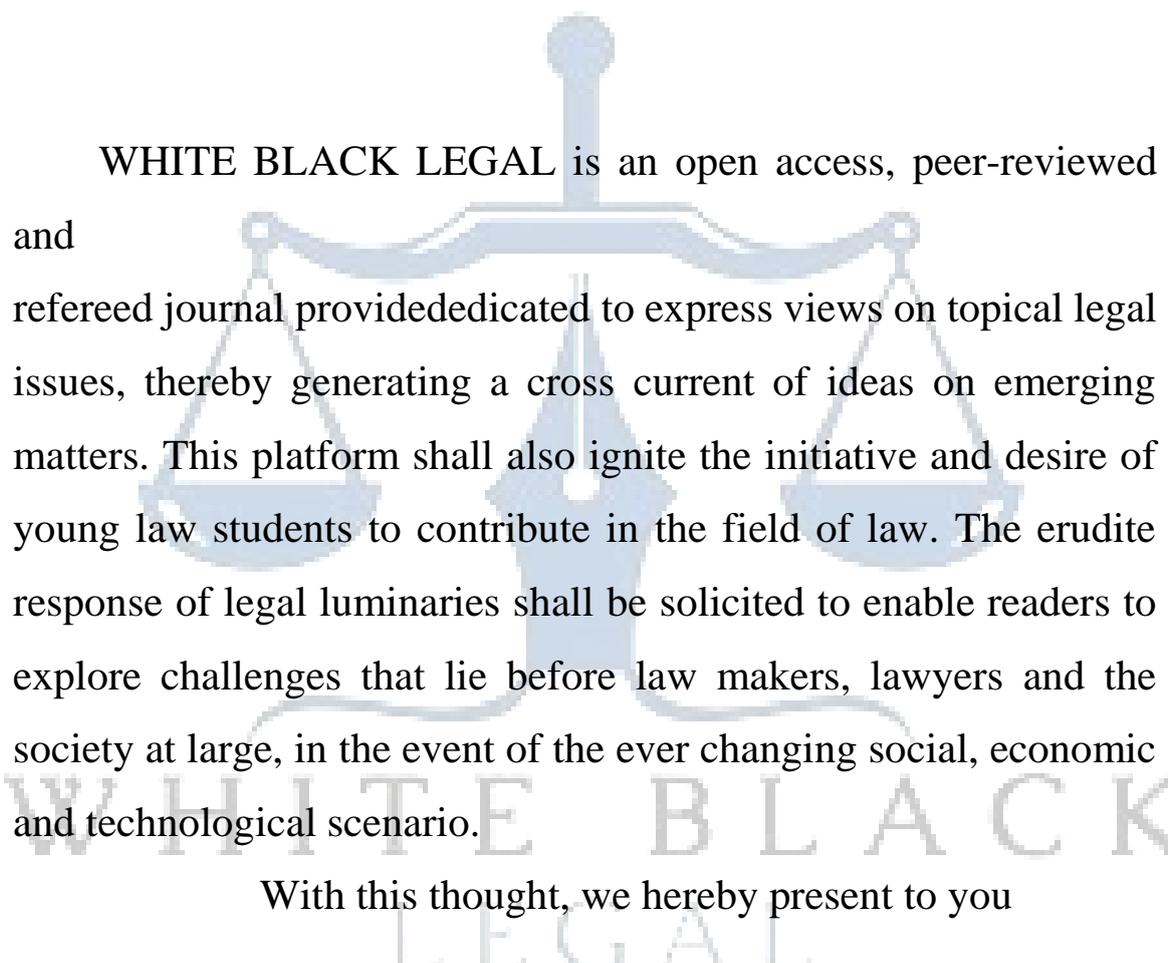


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SECTION 152 OF THE BHARATIYA NYAYA SANHITA: A SAFEGUARD FOR SOVEREIGNTY OR A PROXY FOR SEDITION?

AUTHORED BY - B VETRIVEL

Abstract:-

The Bharatiya Nyaya Sanhita (BNS) 2023 has introduced Section 152, which is designed to protect India's sovereignty, unity, and integrity by criminalizing actions that promote secession, armed insurrection, or subversive conduct. This provision aims to tackle significant threats to the nation's stability and security, demonstrating a resolute approach against activities that could undermine the constitutional order of the country. However, its introduction has ignited considerable debate, especially following the repeal of Section 124A of the Indian Penal Code (IPC), which was the previous sedition law.

Section 124A faced criticism for its ambiguous wording and potential for misuse, having been employed in the past to suppress dissent, limit free expression, and target political adversaries. Detractors of Section 152 express concern that it may act as a substitute for the repealed sedition law, thereby perpetuating similar challenges. A primary issue is the broad and subjective interpretation of phrases such as “threat to sovereignty” and “subversive activities,” which could be exploited to stifle legitimate dissent and criticism of the government.

Proponents of Section 152 argue that it is an essential legal instrument to confront modern security threats, including terrorism, separatism, and extremist propaganda. They assert that the provision includes safeguards to mitigate the risk of misuse and to ensure accountability in its enforcement. Nonetheless, the actual effectiveness and fairness of this section will largely hinge on its practical implementation.

A thorough analysis of Section 152 uncovers substantial similarities with the previously repealed sedition law, prompting concerns about its genuine purpose and the potential impact on India's democratic landscape. This underscores the necessity for a careful equilibrium between safeguarding national security and preserving individual liberties. Preventing the

misuse of Section 152 against dissenters will necessitate robust judicial oversight, unambiguous definitions, and strict adherence to the constitutional principles that safeguard freedom of speech and expression. This assessment sheds light on the persistent tension between the power of the state and the civil liberties within India's evolving legal framework.

1. Introduction:-

The development of India's legal framework illustrates its efforts to maintain a careful equilibrium between ensuring national security and upholding democratic freedoms. Throughout the years, the Indian Constitution and its associated laws have aimed to confront emerging threats to the nation's sovereignty, unity, and integrity, while simultaneously safeguarding the rights of its citizens, particularly the freedoms of speech and expression. The repeal of Section 124A of the Indian Penal Code (IPC), commonly referred to as the sedition law, represented a significant milestone in this evolution. Established during the colonial period, Section 124A faced longstanding criticism for its ambiguous and expansive language, which allowed for its exploitation as a means to suppress dissent, silence opposition, and target political rivals under the pretext of maintaining public order.

The elimination of the sedition law was perceived as a forward-thinking move towards harmonizing India's legal framework with its democratic principles. Nevertheless, the introduction of Section 152 in the Bharatiya Nyaya Sanhita (BNS) 2023 has reignited discussions regarding the relationship between national security and civil liberties. Section 152 is designed to address actions that jeopardize India's sovereignty, unity, and integrity, criminalizing behaviors that incite secession, armed rebellion, or subversive activities. While its declared purpose is to establish a strong mechanism to combat modern threats such as terrorism, separatism, and extremism, there are rising concerns about the potential for its misuse.

Critics contend that Section 152, with its broad language and subjective terms, resembles the now-repealed sedition law, raising worries that it could serve as a substitute for Section 124A. The phrases "subversive activities" and "threat to sovereignty," akin to the vague terminology in the previous sedition law, could be weaponized against individuals or groups voicing dissent against the government. This has led to significant concerns regarding the provision's impact on free speech and democratic values.

Advocates argue that Section 152 represents a necessary and contemporary measure to tackle the security challenges that India encounters in the 21st century. In contrast to Section 124A, which faced significant criticism for being an outdated law rooted in colonial interests, Section 152 is characterized as legislation crafted for a sovereign and democratic nation aiming to safeguard itself from both internal and external threats. Proponents highlight the significance of judicial protections and institutional oversight to avert potential misuse, asserting that this provision is meant to enhance India's dedication to its democratic values rather than compromise them.

This paper aims to conduct a thorough examination of Section 152, scrutinizing its design, scope, and purpose. It will evaluate whether the provision strikes an appropriate balance between the demands of national security and the constitutional rights to free speech and expression. By drawing comparisons with the abolished sedition law, the paper will investigate the possible consequences of Section 152, particularly regarding its impact on democratic dissent and its position within India's changing legal framework. The establishment of Section 152 emphasizes the persistent challenge of harmonizing state authority with individual liberties in a diverse and complex democracy such as India.

2. Historical Context of Sedition Law in India

Section 124A of the Indian Penal Code (IPC) was enacted in 1870 by the British colonial authorities with the intent to stifle dissent and exert control over a subjugated populace. This provision criminalized any actions, speech, or publications that aimed to incite or attempted to incite hatred, contempt, or disaffection towards the legally established government. During the colonial era, this section was frequently employed to silence those who opposed British rule, including freedom fighters, reformists, and journalists. Notable figures such as Mahatma Gandhi and Bal Gangadhar Tilak faced charges under this provision, underscoring its function as an instrument of political oppression.

The wording of Section 124A was intentionally broad and ambiguous, allowing for subjective interpretation. Terms such as "disaffection" and "hatred" lacked precise definitions, enabling authorities to apply the law against any dissenting voices, regardless of whether their actions were peaceful. This vagueness permitted colonial rulers to equate criticism of their policies with sedition, thereby effectively quelling the rising nationalist movement. Gandhi famously

described Section 124A as "the prince among the political sections of the IPC designed to suppress the liberty of the citizen."

Following India's independence in 1947, the sedition law remained in the IPC, though it underwent some modifications. While the colonial government had utilized it to suppress the independence movement, subsequent governments defended its retention as a necessary measure for safeguarding national security and public order. Nevertheless, the law quickly became a focal point of heated debate due to its potential for abuse. Critics contended that Section 124A, despite its colonial roots, continued to function as a convenient mechanism for governments to suppress political opposition, dissent, and criticism.

The Indian judiciary, through various rulings, sought to clarify the scope and application of Section 124A, the sedition law. In the landmark case of *Kedar Nath Singh v. State of Bihar* (1962), the Supreme Court upheld the constitutional validity of the sedition law but significantly narrowed its interpretation. The Court ruled that only acts with the "tendency to incite violence" or "create public disorder" could be prosecuted under Section 124A. This judgment emphasized the need to distinguish between legitimate dissent, a cornerstone of democracy, and acts that pose a tangible threat to state security. However, despite these judicial safeguards, the law continued to be misused.

In recent decades, Section 124A was increasingly invoked to target journalists, activists, students, and political opponents. Instances of individuals being charged with sedition for expressing critical views on social media, participating in protests, or voicing dissent against government policies became alarmingly common. This trend led to widespread criticism of the law as an instrument of oppression that curtailed free expression and stifled debate.

The growing instances of misuse and the chilling effect it had on free speech sparked calls for its repeal. Critics argued that the law was incompatible with the values of a modern democracy and that India's existing legal framework already provided sufficient safeguards to address genuine threats to national security. This culminated in the repeal of Section 124A in 2023 as part of broader legal reforms under the *Bharatiya Nyaya Sanhita*, paving the way for a reexamination of the balance between national security and individual freedoms. However, the introduction of Section 152 in the BNS has revived concerns about the persistence of laws that could potentially suppress democratic dissent.

3. Emergence of Section 152 in BNS 2023

The introduction of Section 152 in the Bharatiya Nyaya Sanhita (BNS) 2023 marks a significant transformation of India's colonial-era criminal legislation, aligning it with the country's changing socio-political and security dynamics. This particular section is aimed at countering actions that jeopardize India's sovereignty, unity, and integrity. It criminalizes any intentional or knowing efforts to provoke secession, armed insurrection, subversive conduct, or separatist ideologies. The provision covers a wide array of activities, including those expressed through verbal or written communication, symbols, digital platforms, or financial transactions, indicating a response to modern forms of dissent and subversion.

Section 152 establishes severe penalties, which may include imprisonment for a term of up to seven years or even life imprisonment, along with monetary fines. This approach highlights the government's dedication to preserving national stability and security amidst various threats, including terrorism, insurgency, and the rise of extremist ideologies. The provision aims to dissuade individuals or groups from participating in actions that could disrupt the nation or challenge its constitutional integrity.

Nonetheless, the introduction of Section 152 has ignited discussions regarding its breadth and potential consequences, particularly following the recent abolition of Section 124A of the Indian Penal Code, which was the colonial-era sedition law. Critics contend that the ambiguous and broad terminology used in Section 152 closely resembles that of its predecessor, raising alarms about possible misuse. Phrases such as "subversive activities" and "separatist sentiments" may be interpreted subjectively, posing a risk that the law could be employed against legitimate dissent, free expression, and governmental critique.

4. Comparative Analysis: Section 124A IPC and Section 152 BNS

The enactment of Section 152 under the Bharatiya Nyaya Sanhita (BNS) 2023 has prompted a comparative examination with the previously existing Section 124A of the Indian Penal Code (IPC), which has since been repealed. Both provisions are designed to safeguard the state from activities that could undermine its stability; however, they exhibit significant differences and similarities in terms of their scope, purpose, and consequences.

4.1 Scope of Offenses

Section 124A was aimed at criminalizing actions that incited hatred, contempt, or disaffection towards the legally established government. Its primary objective was to ensure loyalty to the government, yet it faced criticism for its ambiguous and expansive language, which allowed for potential misuse against legitimate expressions of dissent. In contrast, Section 152 reorients the focus from the protection of governmental authority to the preservation of the nation's sovereignty, unity, and integrity. It specifically targets actions that pose a threat to the stability of the state, including incitement to secession, armed rebellion, subversive activities, and separatist ideologies. This revised scope is more attuned to contemporary issues such as terrorism, insurgency, and extremist propaganda, which pose direct threats to national security.

4.2 Means of Commission

Sections 124A and 152 address a variety of expressive forms, including both verbal and written communication as well as visual representations. However, Section 152 broadens the scope of prohibited conduct to encompass contemporary communication methods and influences, such as electronic messaging and financial transactions. This expansion acknowledges the changing landscape of subversive activities in the digital era, where platforms like social media, encrypted communications, and online fundraising serve as significant instruments for disseminating separatist ideologies and inciting insurrection.

4.3 Intent Requirement

Both sections underscore the importance of intent, or mens rea, in determining the commission of an offense. Under Section 124A, it is necessary to demonstrate that the accused acted with the intention of fostering hatred, contempt, or disaffection towards the government. In a similar vein, Section 152 requires a deliberate or knowing intent to provoke secession, rebellion, or subversive actions. This emphasis on intent serves as a vital protection against arbitrary enforcement, ensuring that unintentional actions or mere expressions of dissent towards the government do not constitute criminal behavior.

4.4 Punishment

The penalties established under both provisions are stringent, reflecting the seriousness of offenses against the state. Section 124A stipulates punishments that range from three years to life imprisonment, with the possibility of a fine. Similarly, Section 152 maintains this level of strictness, allowing for imprisonment of up to seven years or life, accompanied by fines. The

uniformity in the harshness of these penalties emphasizes the gravity with which the state regards actions that threaten national security and unity.

4.5 Key Differences and Implications

Although Section 152 seems to modernize and clarify the range of offenses in comparison to Section 124A, there are ongoing concerns regarding its potential for misuse. The broader terminology in Section 152, especially phrases such as “subversive activities” and “separatist sentiments,” may be subject to subjective interpretation, raising apprehensions that the law could be used to suppress dissent and inhibit free expression. Furthermore, the incorporation of electronic communications and financial resources, while deemed necessary, prompts worries about the surveillance and targeting of individuals under the pretext of national security.

Section 152 signifies a shift in emphasis from protecting governmental authority to preserving the nation’s sovereignty and integrity. Nevertheless, the similarities in purpose, scope, and punitive measures with Section 124A underscore the ongoing challenges of preventing the misuse of such laws to infringe upon democratic freedoms. Effective judicial oversight, well-defined guidelines, and strict compliance with constitutional principles will be crucial in achieving a balance between national security and civil liberties.

5. Potential for Misuse

Notwithstanding the clearly defined objectives of Section 152 within the Bharatiya Nyay Sanhita (BNS) 2023, this provision poses considerable risks of misuse, prompting apprehensions regarding its potential effects on democratic freedoms and civil liberties in India.

5.1 Vague Terminology

A significant issue associated with Section 152 is its employment of ambiguous phrases such as "subversive activities" and "separatist activities," which lack precise definitions in the statute. This ambiguity fosters a legal gray area, permitting subjective interpretations by law enforcement and the judiciary. The expansive nature of these terms may result in legitimate dissent, criticism of governmental policies, or participation in peaceful protests being mischaracterized as threats to the nation’s sovereignty or integrity. If left unregulated, this vagueness could lead to the provision being misused against individuals or groups expressing dissenting views, thereby suppressing free speech and eroding democratic values.

5.2 Broad Applicability

Section 152 covers a vast array of actions and forms of expression, including verbal and written communication, electronic interactions, and financial transactions. While this extensive scope seeks to tackle modern challenges, such as digital propaganda and the financing of separatist movements, it simultaneously heightens the risk of overreach. Harmless activities, such as social media postings, involvement in online discussions, or financial support for causes deemed controversial, may come under scrutiny due to this provision. This broad applicability raises significant concerns regarding surveillance and the potential targeting of individuals based on political or ideological affiliations.

5.3 Chilling Effect on Free Expression

The harsh penalties outlined in Section 152, which include imprisonment for terms of up to seven years or even life sentences, further intensify the risk of misuse. The apprehension of facing prosecution under such stringent laws may discourage individuals from voicing dissent or participating in discussions on sensitive topics.

6. Safeguards and Judicial Oversight

To avert the potential misuse of Section 152 of the Bharatiya Nyaya Sanhita (BNS) 2023, it is essential to establish comprehensive safeguards and ensure judicial oversight.

6.1 Clear Definitions

It is vital to achieve legislative clarity to avoid arbitrary enforcement of the law. Ambiguous phrases such as "subversive activities" and "separatist activities" should be explicitly defined within the legislation. Precise definitions will help clarify the provision's scope, ensuring it targets only those actions that genuinely pose a threat to the nation's sovereignty and integrity, while also protecting against its misuse to stifle legitimate dissent.

6.2 Judicial Interpretation

The judiciary must actively engage in interpreting Section 152, establishing stringent precedents to guarantee its application is limited to instances involving a clear and credible threat to national security. Judicial oversight can help strike a balance between safeguarding the state and preserving constitutional rights, particularly the freedoms of speech and expression.

6.3 Legislative Intent

Insights from legislative debates are also crucial. Clarifications from officials, such as Home Minister Amit Shah's assertion that mere criticism of the government does not amount to an offense under Section 152, should inform its application. This intent must be clearly communicated to law enforcement agencies to prevent any overreach.

By ensuring judicial oversight, legislative clarity, and adherence to constitutional principles, Section 152 can be enforced in a manner that upholds national security while preserving democratic freedoms.

7. Conclusion

Section 152 of the Bharatiya Nyaya Sanhita (BNS) 2023 signifies India's endeavor to update its legal system in response to modern challenges concerning its sovereignty, unity, and integrity. This provision specifically addresses actions such as incitement to secession, armed rebellion, and subversive activities, aiming to enhance national security in a context where threats have transformed, particularly due to advancements in communication technologies and the emergence of extremist ideologies.

Nonetheless, Section 152 has raised apprehensions regarding its potential to act as a substitute for the abolished Section 124A of the Indian Penal Code, which was a remnant of colonial sedition laws. The broad and ambiguous terminology used in this provision, especially phrases like "subversive activities" and "separatist sentiments," poses a risk of subjective interpretation and arbitrary enforcement. These issues underscore the necessity for vigilant safeguards to avert misuse. In the absence of stringent oversight, Section 152 could unintentionally suppress legitimate dissent, curtail free speech, and erode the democratic fabric of the nation.

To ensure that the provision fulfills its intended objectives without infringing upon fundamental rights, it is essential to achieve legislative clarity. Ambiguous expressions must be explicitly defined to establish a narrow and precise framework for the law's application. Judicial oversight will be vital in interpreting Section 152, ensuring its application is limited to actions that genuinely threaten national security. Furthermore, adherence to the legislative intent, as articulated by leaders such as Home Minister Amit Shah, should guide its implementation, reinforcing the notion that government criticism does not constitute an offense

under this provision.

By finding a balance between national security and civil liberties, India can maintain its democratic principles while safeguarding its sovereignty and integrity. With effective safeguards and a commitment to constitutional values, Section 152 can serve as a contemporary and effective legal instrument.

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