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## **Sedition Rebranded Or Reform Realised? Unmasking The New Narrative Of Dissent Under Section 152 Of The Bharatiya Nyaya Sanhita, 2023**

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### ***Abstract***

*The enactment of the Bharatiya Nyaya Sanhita 2023 (hereinafter 'BNS'), which came into force on 1 July 2024, was presented by the government as a decisive departure from India's colonial legal inheritance. Central to that claim was the formal omission of the word 'sedition' and the repeal of Section 124A of the Indian Penal Code 1860 (hereinafter 'IPC'), replaced by Section 152 of the BNS. This paper interrogates whether this legislative substitution represents genuine constitutional reform or an exercise in semantic rebranding — one that retains the substantive content of sedition law while shedding its politically inconvenient label. Drawing upon a comparative textual analysis of Section 124A IPC and Section 152 BNS, an examination of the constitutional jurisprudence spanning Kedar Nath Singh (1962) through to the Supreme Court's notice of August 2025, and a review of emerging trial court applications of Section 152, this paper argues that the new provision not only preserves the repressive core of the old sedition law but materially extends it. The paper assesses implications for Articles 19(1)(a) and 21 of the Constitution, critiques the adequacy of existing judicial safeguards in the light of the BNS's broader language, and concludes with reform recommendations grounded in the proportionality doctrine and comparative international practice. The judicial challenge to Section 152 now pending before the Supreme Court of India — admitted on notice by a bench led by the Hon'ble Chief Justice B R Gavai in August 2025 — vindicates the central concern that formal abolition of sedition can coexist with its substantive perpetuation through legislative redrafting.*

**Keywords:** *Bharatiya Nyaya Sanhita, Section 152 BNS, Section 124A IPC, Sedition, Free Speech, Article 19(1)(a), Kedar Nath Singh, Constitutional Validity, Civil Liberties, Dissent, Proportionality.*

## I. INTRODUCTION

The BNS was heralded by the government as a decisive break from colonial legal inheritances. Home Minister Amit Shah, while introducing the Bill, specifically assured Parliament that the sedition law would be 'completely repealed'.<sup>1</sup> On the face of it, that assurance appears to have been honoured: Section 124A of the IPC — the provision that prosecuted Bal Gangadhar Tilak, Mahatma Gandhi,<sup>2</sup> and countless others for 'exciting disaffection' against the British Crown — finds no counterpart in the BNS bearing the same name. The word 'sedition' does not appear anywhere in the BNS.

That optimism has not held up. In its place has arrived Section 152 of the BNS, which criminalises 'acts endangering sovereignty, unity and integrity of India', punishable with imprisonment for life or up to seven years, along with a fine. Critics — and increasingly, courts — have observed that this provision does not merely carry forward the spirit of Section 124A; in several material respects, it broadens it. As Justice Arun Monga observed, the sedition law must remain 'a shield for national security, not a sword against political dissent'.<sup>3</sup> Whether Section 152 actually stays within those limits is what this paper tries to work out.

The concern is not just a theoretical worry. Since the BNS came into force, Section 152 has been applied against a Sikh preacher who posted a social media video expressing sympathy with a pro-Khalistan politician,<sup>4</sup> in student protest cases, and in proceedings against journalists. The Rajasthan High Court, in *Tejender Pal Singh v State of Rajasthan* (2024), cautioned against its misuse. And in August 2025 the Supreme Court formally issued notice to the Union government, agreeing to examine the constitutional validity of Section 152 — the petitioner, retired Major General S G Vombatkere, specifically contending that the provision has 'revived and repackaged' sedition in defiance of the Court's own suspension order of 2022.<sup>5</sup>

This paper proceeds in six parts. Part II contextualises sedition law within India's colonial and post-independence history. Part III undertakes a granular comparative analysis of Section 124A IPC and Section 152 BNS. Part IV maps the constitutional jurisprudence on sedition and free

<sup>1</sup> *Lok Sabha Debates*, 11 August 2023, (Amit Shah, Union Home Minister).

<sup>2</sup> M K Gandhi, 'Statement in Court' (18 March 1922) in *The Collected Works of Mahatma Gandhi*, vol 23 (Publications Division 1966) 114.

<sup>3</sup> *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955.

<sup>4</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>5</sup> 'Repackaged Sedition: Supreme Court to Examine Section 152 of BNS', *The Wire* (10 August 2025) <<https://thewire.in/law/repackaged-sedition-supreme-court-to-examine-section-152-of-bns>> accessed 10 June 2026.

speech through to 2025. Part V examines the real-world application of Section 152 and its chilling effect on civil liberties. Part VI offers conclusions and reform proposals.

## II. HISTORICAL BACKGROUND OF SEDITION LAWS IN INDIA

### A. COLONIAL ORIGINS AND THE ARCHITECTURE OF SUPPRESSION

Section 124A was inserted into the IPC in 1870 by the colonial administration, two decades after the Penal Code itself was enacted. It was put there deliberately. The 1857 uprising — what Indian historians have reclaimed as the First War of Independence — had exposed the vulnerability of imperial rule to organised popular resistance. The provision was designed to neutralise the capacity of Indian political leaders to 'excite disaffection' against the government.

The origins of its specific language lie in English common law on seditious libel, adapted by Sir James Fitzjames Stephen for Indian conditions. The provision criminalised any person who by words, signs, or visible representation brought or attempted to bring into hatred or contempt, or excited or attempted to excite disaffection towards the Government established by law. The punishment was transportation for life.

The law's immediate deployment was against India's most prominent nationalist voices. Bal Gangadhar Tilak was prosecuted twice — in 1897 and again in 1908.<sup>6</sup> Mahatma Gandhi, prosecuted in 1922, described Section 124A as 'perhaps the prince of political sections in the IPC designed to suppress the liberty of the citizen'. The architects of independent India were acutely conscious of this legacy. The Constituent Assembly debates reveal a sustained struggle over whether free speech should be subject to sedition-like restrictions at all.<sup>7</sup>

Ultimately, the original text of Article 19(2) did not include 'public order' as a ground for restricting free speech — that addition came only through the Constitution (First Amendment) Act 1951, partly in response to early judicial decisions that had read Article 19(1)(a) broadly.<sup>8</sup> The amendment both narrowed the protection and explicitly added 'sovereignty and integrity of India' as a permissible ground for restriction — a formulation whose echo in Section 152 BNS is unlikely to be coincidental.

<sup>6</sup> *Queen-Empress v Bal Gangadhar Tilak* ILR 22 Bom 112 (1897).

<sup>7</sup> *Constituent Assembly Debates*, vol VII (4 November 1948–8 January 1949) cols 731–800.

<sup>8</sup> Constitution (First Amendment) Act 1951.

*B. SEDITION IN POST-INDEPENDENCE INDIA: FROM KEDAR NATH TO THE 2022 STAY*

The constitutional challenge to Section 124A was definitively addressed by the Supreme Court in *Kedar Nath Singh v State of Bihar (1962)*, a five-judge Constitution Bench judgment.<sup>9</sup> The Court upheld Section 124A but significantly narrowed its operation: the provision could only be constituted by words or actions that had the tendency to incite violence or create public disorder. Mere criticism of the government, however strongly worded, could not amount to sedition.

Looking back, *Kedar Nath Singh* was the Court choosing the safe road. Instead of striking the provision down, it narrowed it — reading in a violence threshold that the text never actually said. Many scholars since then have pointed out that this created a problem: the provision stayed on the books, and whatever the Court said in 1962, police and state governments kept using it the old way. Reading down a bad law only works if the authorities actually follow the reading down, and that has plainly not happened

The gap between the *Kedar Nath Singh* reading and actual prosecutorial practice widened progressively. Sedition charges were deployed not merely against those inciting violence but against farmers' protest leaders, journalists critical of government policy, comedians, students, and documentary filmmakers. National Crime Records Bureau data shows that sedition registrations increased sharply between 2014 and 2021, with a conviction rate that remained below three percent<sup>10</sup> — a statistical pattern that strongly indicates the provision was being used as an instrument of pre-trial detention and harassment rather than as a mechanism for securing convictions on the merits.

The Supreme Court's landmark order of 11 May 2022 in *S G Vombatkere v Union of India* acknowledged this reality. The Court stayed all pending proceedings under Section 124A, directed States not to file fresh cases, and recorded the government's assurance that it was undertaking a review.<sup>11</sup> The stay was a dramatic intervention — an entire provision of the IPC held in effective suspension. It was in this fraught context that the BNS was drafted.

*C. KEY JUDICIAL MILESTONES: A CHRONOLOGICAL MAP*

The evolution of constitutional law on sedition can be traced through a series of judgments that cumulatively narrow the provision's permissible scope, even as legislative and executive practice has frequently tested those limits:

<sup>9</sup> *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955.

<sup>10</sup> National Crime Records Bureau, *Crime in India* (NCRB, annual 2014–2021).

<sup>11</sup> *S G Vombatkere v Union of India* WP(C) 682/2021.

(i) *Queen-Empress v Bal Gangadhar Tilak (1897)*: First major application of s 124A as a tool of political suppression. Broad construction adopted allowed conviction on the basis of newspaper articles opposing British administrative decisions.<sup>12</sup>

(ii) *Niharendu Dutt Majumdar v Emperor (1942)*: Federal Court narrows scope by holding sedition requires incitement to violence or public disorder, not mere expression of disaffection. This reading anticipated *Kedar Nath Singh* by two decades.<sup>13</sup>

(iii) *Kedar Nath Singh v State of Bihar (1962)*: Landmark five-judge Bench upholds s 124A but restricts application to acts with tendency to incite public disorder or violence. Criticism and comment, however harsh, are protected.<sup>14</sup>

(iv) *Indra Das v State of Assam (2011)*; *Arup Bhuyan v State of Assam (2011)*: Supreme Court reiterates that passive association with a banned organisation or passive expression of disaffection does not constitute sedition absent incitement to violence.<sup>1516</sup>

(v) *Shreya Singhal v Union of India (2015)*: Unanimous invalidation of s 66A IT Act on grounds of vagueness and overbreadth. Court confirms that a criminal provision restricting speech must be formulated with precision sufficient to allow a citizen to know in advance what is prohibited.<sup>17</sup>

(vi) *Vinod Dua v Union of India (2021)*: Supreme Court quashes FIR against a journalist under s 124A, holding that criticism of government policy — including criticism of pandemic management — cannot constitute sedition absent incitement to violence or public disorder.<sup>18</sup>

(vii) *Kishore Chandra Wangkhemcha v Union of India (2021)*: Petition challenging s 124A referred to larger Bench; Court emphasises protection for journalists and public commentators so long as expression does not incite violence.<sup>19</sup>

(viii) *S G Vombatkere v Union of India (2022)*: Historic stay on all proceedings under s 124A. Court directs review and expressly cautions against continued misuse pending that review.<sup>20</sup>

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<sup>12</sup> *Queen-Empress v Bal Gangadhar Tilak* ILR 22 Bom 112 (1897).

<sup>13</sup> *Niharendu Dutt Majumdar v Emperor* AIR 1942 FC 22.

<sup>14</sup> *Kedar Nath Singh v State of Bihar* (n 9).

<sup>15</sup> *Indra Das v State of Assam* (2011) 3 SCC 380.

<sup>16</sup> *Arup Bhuyan v State of Assam* (2011) 3 SCC 377.

<sup>17</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>18</sup> *Vinod Dua v Union of India* (2021) 8 SCC 103.

<sup>19</sup> *Kishore Chandra Wangkhemcha v Union of India* (2021) 6 SCC 177.

<sup>20</sup> *S G Vombatkere* (n 11)

(ix) *S G Vombatkere v Union of India (2025)*: Supreme Court (bench led by CJI B R Gavai) issues notice on constitutional challenge to s 152 BNS, acknowledging the petitioner's argument that the provision repackages s 124A in defiance of the 2022 stay order.

### III. SECTION 124A IPC AND SECTION 152 BNS: A COMPARATIVE ANALYSIS

#### A. THE TEXT OF THE PROVISIONS

Any serious comparison must begin with the actual statutory language. Section 124A IPC provided:

*“Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, excites 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.”<sup>21</sup>*

Section 152 of the BNS provides:

*“Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or 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 of either description for a term which may extend to seven years, and shall also be liable to fine.”<sup>22</sup>*

A careful reading reveals at least five structurally significant differences, each with implications for the breadth of the offence and the risk of misuse.

#### B. FIVE CRITICAL DIFFERENCES

##### (i) *The Shift from 'Government' to 'India'*

Section 124A targeted acts against 'the Government established by law'. Section 152 targets acts endangering 'sovereignty or unity and integrity of India'. This is not a cosmetic change. 'Government' has a precise legal meaning — it is an identifiable institution that can be criticised without conflating such criticism with an attack on the State. 'India', by contrast, is an

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<sup>21</sup> Indian Penal Code 1860, s 124A.

<sup>22</sup> Bharatiya Nyaya Sanhita 2023, s 152.

amorphous concept simultaneously encompassing territory, people, culture, and constitutional order.

This change matters more than it looks. Under *Kedar Nath Singh*, you could criticise the government harshly and be protected, so long as you were not calling for violence. Under Section 152, the same criticism could now be framed by a prosecutor as something that 'endangers the unity and integrity of India'. The Supreme Court in August 2025 flagged precisely this concern, noting the provision's language resembles Section 66A of the IT Act, which was struck down for vagueness in *Shreya Singhal*.<sup>23</sup>

*(ii) Addition of 'Electronic Communication' and 'Financial Means'*

Section 152 explicitly adds two modes of commission absent from Section 124A: electronic communication and use of financial means. In an era where political expression migrates increasingly to social media platforms, podcast networks, and crowdfunded journalism, this expansion has enormous practical significance. Take a journalist who runs a crowdfunding campaign to investigate an Army cantonment land scam. Under a broad reading of Section 152, that journalist could be charged with using 'financial means' to endanger 'unity and integrity of India'. That is not a far-fetched hypothetical — it is what the plain text allows.

This concern was illustrated by *Tejender Pal Singh v State of Rajasthan (2024)*, where a Sikh preacher was charged under Section 152 for posting a social media video expressing sympathy with a pro-Khalistan Canadian politician. The Rajasthan High Court cautioned that the provision must be interpreted with its constitutional roots firmly in view, but the very fact that such a charge was filed — and judicial intervention was required to check it — illustrates the operational risk.<sup>24</sup>

*(iii) Introduction of 'Subversive Activities' and 'Separatist Feelings'*

Section 124A criminalised 'disaffection' — a word that *Kedar Nath Singh* read to require incitement to violence before conviction. Section 152 introduces materially different vocabulary: 'secession', 'armed rebellion', 'subversive activities', 'separatist feelings', and acts 'endangering sovereignty or unity and integrity of India'.

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<sup>23</sup> 'Sedition Law in a New Form?', *India Legal Live* (8 August 2025) <<https://indialegallive.com/constitutional-law-news/courts-news/sedition-law-in-a-new-form-supreme-court-issues-notice-to-centre-on-petition-against-bns-sec-152/>> accessed 10 June 2026

<sup>24</sup> *Tejender Pal Singh @ Timma v State of Rajasthan*, S.B. Criminal Misc Petition No 5005/2024 (Raj HC, 16 December 2024).

The phrase 'subversive activities' is the most dangerous of the lot. It is not defined anywhere in the BNS. Historically, phrases like this in Indian security laws — TADA, POTA — have done the heaviest lifting and received the least scrutiny. The TADA and POTA experience in India — where courts had to impose procedural safeguards to prevent systematic misuse — is a cautionary precedent. Inserting similarly open-ended language into the general substantive criminal code carries risks that are orders of magnitude greater than in a special statute with built-in review mechanisms.<sup>25</sup>

*(iv) Enhanced Punishment and Pre-Trial Detention Effect*

Section 124A provided for imprisonment for life or up to three years, along with a fine. Section 152 provides for imprisonment for life or up to seven years, along with a mandatory fine. The maximum non-life sentence has thus more than doubled. This escalation matters not only for its punitive effect on those ultimately convicted but for its pre-conviction consequence: courts are less likely to grant bail where the prescribed maximum is seven years.

In a legal system where, as the Supreme Court has repeatedly observed, the process itself is the punishment, this increase in the upper limit of imprisonment is functionally a tool for prolonged pre-trial detention. It is through prolonged pre-trial detention — not through conviction — that sedition charges have historically achieved their chilling objective. The sub-three per cent conviction rate for sedition prosecutions between 2014 and 2021<sup>26</sup> underscores this structural reality.

*(v) Absence of a Statutory Incitement Threshold*

Kedar Nath Singh saved Section 124A by reading into it a threshold of incitement to violence. The question that arises with Section 152 is whether the same reading-down is available and — if so — whether it can save a provision whose operative language is materially broader. The terms 'subversive activities', 'separatist feelings', and acts 'endangering unity and integrity of India' are inherently more difficult to confine than 'disaffection', a word that at least had sixty years of interpretive gloss from the courts. The absence of a defined incitement threshold in the statutory text leaves prosecuting authorities with enormous and largely unchecked discretion.

<sup>25</sup> Unlawful Activities (Prevention) Act 1967.

<sup>26</sup> National Crime Records Bureau, *Crime in India* (NCRB, annual reports 2014–2021).

#### IV. CONSTITUTIONAL ANALYSIS: FREE SPEECH, PROPORTIONALITY, AND VAGUENESS

##### A. ARTICLE 19(1)(A) AND THE REASONABLENESS OF RESTRICTIONS

The right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution is not absolute. Article 19(2) permits the State to impose 'reasonable restrictions' in the interests of, among other things, the sovereignty and integrity of India, security of the State, and public order. The question posed by Section 152 is whether its restrictions are 'reasonable' within the meaning of Article 19(2) and whether the grounds it invokes are deployed proportionately.<sup>2728</sup>

The reasonableness requirement has been progressively developed by the Supreme Court to incorporate a proportionality enquiry. In *Modern Dental College and Research Centre v State of Madhya Pradesh (2016)*, the Court adopted a four-stage proportionality test: the measure must pursue a legitimate aim; it must be rationally connected to that aim; it must be the least restrictive means available; and it must strike a fair balance between the benefits and costs of the restriction. A provision formulated in vague, expansive terms that gives the executive unguided discretion to prosecute will ordinarily fail this test.<sup>29</sup>

Section 152 struggles to pass this test at almost every stage. The goal — protecting the country's sovereignty and territorial integrity — nobody disputes. The problem starts the moment you ask whether this particular law is actually needed for that, and whether it goes further than necessary. But the rational connection between that aim and the criminalisation of undefined 'subversive activities' or 'separatist feelings' is strained by the absence of any incitement threshold. The least restrictive means question is equally troubling: if the State's concern is with acts preparatory to or constitutive of actual violence against the State, the Unlawful Activities (Prevention) Act 1967 already provides a comprehensive framework with procedural safeguards. Adding an undefined sedition-equivalent in the general criminal code is both unnecessary and disproportionate.

##### B. THE VAGUENESS DOCTRINE AND SHREYA SINGHAL

The Supreme Court's unanimous judgment in *Shreya Singhal v Union of India (2015)* is perhaps the most important doctrinal development in free speech jurisprudence since Kedar Nath Singh. Striking down Section 66A of the Information Technology Act 2000 for vagueness and

<sup>27</sup> *Constitution of India*, arts 19(1)(a), 19(2) and 21.

<sup>28</sup> *Balwant Singh v State of Punjab (1995)* 3 SCC 21.

<sup>29</sup> *Modern Dental College and Research Centre v State of Madhya Pradesh (2016)* 7 SCC 353.

overbreadth, the Court held that a criminal provision restricting speech must define its scope with sufficient precision to allow an ordinary citizen to know in advance what conduct is prohibited. A provision punishing speech that is 'grossly offensive' or causes 'annoyance' fails this test because neither term has an ascertainable legal meaning.<sup>30</sup>

The language of Section 152 — 'subversive activities', 'encourages feelings of separatist activities' — is, if anything, more susceptible to the Shreya Singhal critique than 'grossly offensive'. Neither phrase is defined; their content will be determined entirely by the subjective assessment of the prosecuting authority. 'Encouraging feelings of separatist activities' introduces a further layer of abstraction, criminalising not acts of separation, not incitement to separation, but the encouragement of feelings directed at separation. At this level of abstraction, the provision risks becoming a tool for policing thought rather than conduct.

The Supreme Court's August 2025 proceedings on Section 152 directly raised this parallel, noting the 'similarity with the now-struck Section 66A of the IT Act, which was removed for its ambiguous language'. This signals that the Court is approaching Section 152 through the Shreya Singhal lens rather than the more deferential Kedar Nath Singh framework — with significant implications for the provision's survival.

### *C. DOES SECTION 152 CIRCUMVENT THE 2022 STAY?*

There is a more uncomfortable question sitting underneath all of this. When the Supreme Court stayed Section 124A in 2022, the government said it would review the law. What it actually did was pass a new law with largely the same content and a different section number. Whether that counts as honouring the Court's order is a question I do not think has been taken seriously enough yet. That order directed the Union and State governments not to register fresh cases under Section 124A pending a review. The government subsequently enacted the BNS, repealing Section 124A and replacing it with Section 152.

The petitioner in the August 2025 challenge has argued that this legislative manoeuvre constituted a bypass of the Court's stay — that the government, rather than undertaking the review the Court directed, restated the provision under a new name and number, exploiting the technical repeal of Section 124A to render the stay order infructuous. This argument raises fundamental questions about whether Parliament may use its legislative competence to circumvent a constitutional court's protective order in the domain of fundamental rights.

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<sup>30</sup> *Shreya Singhal* (n 4).

The Supreme Court's acceptance of notice on what is explicitly framed as a repackaging argument — rather than summarily dismissing it — signals genuine constitutional engagement with substance over form. The eventual ruling will be of significance beyond Section 152 itself, potentially establishing whether and how courts can protect the effectiveness of fundamental rights stays against legislative evasion.

## V. SECTION 152 IN PRACTICE: CIVIL LIBERTIES AND THE CHILLING EFFECT

### A. EARLY APPLICATIONS: PATTERNS OF CONCERN

Section 152 has been in force since 1 July 2024 and the early record of its application is instructive. The most widely reported case is *Tejender Pal Singh v State of Rajasthan (2024)*, where a Sikh preacher was charged under Sections 152 and 197 of the BNS for posting a Facebook video in which he expressed sympathy for Amritpal Singh, a pro-Khalistan political figure.<sup>31</sup> The Rajasthan High Court, while considering the quashing petition, noted that Section 152 had 'its roots in Section 124A (sedition) of the IPC' and cautioned that it must be applied 'in harmony with freedom of speech and expression'.

The more telling thing about *Tejender Pal Singh* is not that the High Court intervened — it is that the case was registered at all. The posting of a social media video expressing sympathy for a political figure — even one whose politics are constitutionally controversial — is precisely the kind of expression that the Kedar Nath Singh framework protected. The mere expression of what prosecutors characterised as 'separatist feelings', absent any incitement to violence, was on the pre-BNS jurisprudence insufficient to constitute sedition. Section 152's undefined terminology has apparently created sufficient ambiguity for prosecuting authorities to bring charges that would have been legally untenable under Section 124A as narrowed by the courts.

### B. THE CHILLING EFFECT ON PROTEST AND JOURNALISM

The most insidious consequence of an overbroad criminal provision is not necessarily the convictions it generates but the expression it prevents. The chilling effect of vague speech restrictions — where citizens and journalists self-censor because they cannot determine in advance what conduct is criminal — has been recognised by the Supreme Court as a constitutionally cognisable harm in its own right, independent of any actual prosecution.

India's recent history of protest movements — the farmers' protests of 2020–21, the anti-CAA protests of 2019–20, the wrestlers' protests of 2023, and campus activism arising from the RG Kar Medical College incident — illustrates the vulnerability of political dissent to misuse of

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<sup>31</sup> *Tejender Pal Singh* (n 24).

broadly-worded criminal provisions. These movements saw sedition charges under Section 124A IPC deployed against participants at the height of each controversy. Under the BNS's broader Section 152 — with its undefined 'subversive activities' and 'separatist feelings' — the same pattern is not merely possible; it is arguably more accessible to prosecuting authorities, because the wider vocabulary gives greater charging discretion than Section 124A provided.

For journalism in particular, the explicit addition of 'electronic communication' as a mode of commission in Section 152 means that investigative reporting, commentary, and social media expression now fall within the provision's textual scope in a manner that required creative interpretation under Section 124A. Journalists investigating sensitive national security topics or reporting critically on government responses to secessionist movements face an expanded zone of criminal risk that is difficult to navigate with confidence — and that will predictably produce self-censorship.

### *C. STRUCTURAL SAFEGUARDS: ADEQUATE OR INSUFFICIENT?*

The BNS includes a procedural safeguard for Section 152: prior sanction of the Central or State government is required before a court can take cognizance of a complaint. This mirrors the approach taken in the UAPA<sup>32</sup> and provides a layer of executive accountability. However, the history of sanction requirements in Indian security law — including under TADA, POTA, and UAPA — does not inspire confidence that sanctions will be withheld in cases of obvious misuse. Sanctions are administrative acts reviewed by courts only for procedural regularity, not for substantive merits.

What the BNS does not provide — and what would materially reduce the risk of misuse — is a judicially supervised filter at the FIR registration stage: a requirement that a magistrate satisfy herself, before any investigation proceeds, that the impugned expression contains a prima facie incitement to violence. The absence of such a filter means that the process — arrest, remand, bail hearings, reputational damage — proceeds without judicial scrutiny until the charge-sheet stage, by which point the damage to the accused's liberty is typically done. As the Supreme Court has repeatedly observed in the context of security legislation, in a system where the process is the punishment, this gap in procedural protection is not a technicality; it is the substance of the problem.

## **VI. CONCLUSION AND SUGGESTIONS**

### **A. Has Sedition Been Rebranded?**

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<sup>32</sup> Unlawful Activities (Prevention) Act 1967 (n 25).

This study set out to examine whether Section 152 of the Bharatiya Nyaya Sanhita, 2023 represents a genuine departure from the colonial offence of sedition or merely its legislative reconfiguration. The analysis demonstrates that, despite the formal repeal of Section 124A of the Indian Penal Code, the substantive concerns that animated decades of constitutional criticism continue to persist under the new provision. The broad and indeterminate terminology employed in Section 152, the absence of an express requirement of incitement to violence or public disorder, the severe penal consequences attached to its violation, and the expansive discretion available to law enforcement authorities collectively reproduce many of the constitutional deficiencies associated with the former sedition law.

Indeed, Section 152 arguably extends the scope of criminal liability beyond that contemplated under Section 124A by incorporating additional modes of communication and broader categories of prohibited conduct. The rapid emergence of constitutional challenges following its enactment further underscores the continuing controversy surrounding the provision. The fact that concerns previously raised against Section 124A have resurfaced in relation to Section 152 suggests that the legislative transition from the Indian Penal Code to the Bharatiya Nyaya Sanhita has not resolved the underlying constitutional tensions between national security and freedom of expression. Rather, it has relocated them within a new statutory framework.

### **B. Constitutional and Democratic Implications**

The constitutional validity of restrictions on political speech must be assessed against the foundational commitments of the Indian constitutional order. From the deliberations of the Constituent Assembly to the jurisprudence of the Supreme Court in *Kedar Nath Singh*, *Shreya Singhal*, *Vinod Dua* and *S.G. Vombatkere*, a consistent principle emerges: democratic governance requires the protection of dissent, criticism and unpopular political expression unless such expression bears a proximate nexus with violence, public disorder, or incitement to unlawful action.

Section 152 raises serious concerns in this regard. By criminalising conduct capable of being interpreted as encouraging “separatist feelings” or engaging in “subversive activities” without clearly defining these expressions, the provision creates uncertainty regarding the permissible boundaries of political speech. Such uncertainty risks generating a chilling effect that may deter legitimate democratic participation and public discourse. Constitutional democracies derive their legitimacy not from suppressing dissent but from accommodating disagreement within the

framework of law. Consequently, any restriction upon expression must satisfy the requirements of legality, necessity, proportionality and precision.

The ongoing judicial scrutiny of Section 152 therefore assumes significance beyond the immediate question of statutory interpretation. It concerns the broader constitutional commitment to ensuring that criminal law does not become an instrument for regulating political disagreement or suppressing lawful criticism of governmental action.

### **C. Recommendations for Reform**

In light of the concerns identified in this study, several reforms merit consideration:

- **Precise statutory definitions:** Terms such as “subversive activities”, “separatist feelings”, and “endangering the unity and integrity of India” should be defined with sufficient clarity to satisfy constitutional standards against vagueness and arbitrary enforcement.
- **Express incitement requirement:** The offence should be confined to conduct that intentionally incites, or is likely to incite, violence, armed rebellion, or other forms of imminent unlawful action. This requirement should be incorporated directly into the statutory text rather than left to judicial interpretation.
- **Judicial oversight at the initiation stage:** Registration of proceedings under Section 152 should be subject to prior judicial scrutiny to ensure the existence of a prima facie case satisfying the incitement threshold.
- **Proportionate punishment:** The sentencing framework should be reassessed to ensure that punishment remains proportionate to the gravity of the offence and does not create an undue incentive for prolonged pre-trial detention.
- **Independent sanction mechanism:** Prosecutions under Section 152 should be reviewed by an independent body before sanction is granted, thereby providing an additional safeguard against misuse.

### **Final Observations**

The replacement of Section 124A with Section 152 was presented as part of a broader effort to decolonise India’s criminal justice framework. However, legislative reform cannot be assessed solely by changes in statutory language or nomenclature. Its success must ultimately be

measured by its conformity with constitutional values, particularly the protection of fundamental freedoms and the limitation of state power.

Viewed through this lens, Section 152 remains constitutionally contentious. While it departs from the terminology of colonial sedition, it retains many of the structural characteristics that made the former provision vulnerable to constitutional challenge. Whether the Supreme Court ultimately upholds, narrows, or invalidates the provision remains to be seen. What is clear, however, is that the constitutional questions raised by sedition have not disappeared with the repeal of Section 124A. They persist under a different statutory label and continue to demand careful judicial and legislative attention. The resolution of these questions will have significant implications for the future of free expression, democratic accountability, and constitutional governance in India.

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