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# BALANCING NATIONAL INTEGRITY AND FREE SPEECH: THE CONSTITUTIONAL FATE OF SECTION 152 OF THE BHARATIYA NYAYA SANHITA

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## ABSTRACT

The repeal of Section 124A of the Indian Penal Code, 1860 (IPC), popularly known as the sedition law, was widely perceived as a historic step toward dismantling one of colonial India's most repressive legal provisions. However, the enactment of Section 152 of the Bharatiya Nyaya Sanhita, 2023 (BNS), which criminalizes acts "endangering the sovereignty, unity and integrity of India," has revived longstanding debates concerning the limits of free speech in a constitutional democracy.<sup>1</sup>

This article critically examines the constitutional viability of Section 152 BNS by situating it within the historical trajectory of sedition law in India and analyzing its compatibility with the freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India.<sup>2</sup> The article evaluates the provision through constitutional doctrines such as vagueness, proportionality, and chilling effect, while drawing upon landmark judicial precedents including *Kedar Nath Singh v. State of Bihar*, *Balwant Singh v. State of Punjab*, and *Shreya Singhal v. Union of India*.<sup>3</sup>

Further, the study adopts a comparative approach by examining legal frameworks in the United Kingdom, the United States, Australia, and South Africa. It argues that although Section 152 appears to align more closely with the grounds enumerated under Article 19(2), its broad and ambiguous language risks reproducing the misuse historically associated with sedition law.<sup>4</sup>

The article concludes that the constitutional fate of Section 152 will largely depend on judicial interpretation and the introduction of procedural safeguards. A democratic constitutional order must strike a careful balance

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<sup>1</sup> Bharatiya Nyaya Sanhita, No. 45 of 2023, §152 (India).

<sup>2</sup> Article 19(1)(a) of the Constitution of India.

<sup>3</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955; *Balwant Singh v. State of Punjab*, (1995) 3 SCC 214; *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>4</sup> Article 19(2) of the Constitution of India.

between protecting national integrity and preserving the right to dissent.

**Keywords:** Sedition, Section 152 BNS, Freedom of Speech, Constitutional Law, Article 19(1)(a), Sovereignty.

## I. INTRODUCTION

Few questions in constitutional democracies generate as much tension as the relationship between national security and freedom of expression. On the one hand, the State possesses a legitimate interest in safeguarding its sovereignty, territorial integrity, and constitutional order. On the other hand, democratic governance depends fundamentally upon the ability of citizens to criticize governmental institutions without fear of criminal sanction. The challenge of reconciling these competing imperatives has long occupied courts, legislatures, and scholars across jurisdictions.<sup>5</sup>

In India, this tension has historically manifested through the law of sedition. For more than a century, Section 124A of the Indian Penal Code, 1860 served as the primary legal instrument regulating speech perceived as threatening to the authority of the State.<sup>6</sup> Introduced by the British colonial administration in 1870, the provision criminalized words or actions that brought the government into “hatred or contempt” or excited “disaffection” against it.<sup>7</sup> During the colonial era, this law was frequently deployed against nationalist leaders and political activists, including Bal Gangadhar Tilak and Mahatma Gandhi.<sup>8</sup> The legacy of sedition law therefore remained deeply intertwined with India’s struggle for independence and the broader debate on civil liberties.

Despite its controversial origins, Section 124A continued to exist in post-independence India. The Supreme Court’s landmark decision in *Kedar Nath Singh v. State of Bihar* attempted to reconcile the provision with constitutional guarantees of free speech by limiting its application to speech that incites violence or public disorder.<sup>9</sup> While this judicial interpretation preserved the formal constitutionality of the provision, it did not eliminate concerns regarding its misuse. In practice, sedition charges were often invoked against journalists, activists, students, and

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<sup>5</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford University Press 2016).

<sup>6</sup> Indian Penal Code §124A (1860).

<sup>7</sup> James Fitzjames Stephen, *A History of the Criminal Law of England* (1883).

<sup>8</sup> A.G. Noorani, *Indian Political Trials 1775–1947* (Oxford University Press 2003).

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

political opponents, even in cases where no clear incitement to violence was present.<sup>10</sup> Over time, the gap between the narrow judicial interpretation of sedition and its expansive application by law enforcement authorities became increasingly apparent.

The constitutional debate surrounding sedition reached a turning point in 2022, when the Supreme Court of India effectively suspended the operation of Section 124A while the Union Government reconsidered the provision. This unprecedented judicial intervention acknowledged the growing concern that colonial-era restrictions on political speech might no longer be compatible with the constitutional commitment to freedom of expression<sup>11</sup>. Against this backdrop, the enactment of the Bharatiya Nyaya Sanhita, 2023 marked a significant legislative development. The new criminal code formally repealed the sedition provision and replaced it with Section 152, which criminalizes acts endangering the sovereignty, unity, and integrity of India.<sup>12</sup>

At first glance, this legislative reform appears to signal a decisive break from the colonial framework of sedition law. By shifting the focus from protecting the “government established by law” to safeguarding the sovereignty and territorial integrity of the nation, the provision arguably aligns more closely with the grounds for restricting speech under Article 19(2) of the Constitution of India.<sup>13</sup> However, the introduction of Section 152 has also generated renewed controversy. Critics argue that the provision’s broad terminology—particularly references to “subversive activities” and “encouraging separatist feelings”—may allow it to function in a manner similar to the repealed sedition law.<sup>14</sup>

This debate raises an important constitutional question: **does Section 152 represent a genuine attempt to modernize India’s criminal law framework, or does it merely reproduce the structural problems historically associated with sedition?** While several commentators have examined the colonial origins of sedition law and the jurisprudence surrounding Section 124A, relatively little scholarship has systematically analyzed the constitutional implications of its replacement under the Bharatiya Nyaya Sanhita.<sup>15</sup>

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<sup>10</sup> Law Commission of India, Consultation Paper on Sedition (2018).

<sup>11</sup> S. G. Vombatkere v. Union of India, (2022) Supreme Court interim order.

<sup>12</sup> Bharatiya Nyaya Sanhita §152.

<sup>13</sup> Article 19(2) of the Constitution of India.

<sup>14</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

<sup>15</sup> Upendra Baxi, “Freedom of Speech and Sedition in India,” *Indian Law Review*.

This article seeks to address that gap by examining the constitutional fate of Section 152 through a doctrinal and comparative lens. It argues that although the provision reflects an attempt to align criminal law with the constitutional objective of protecting national integrity, its survival ultimately depends upon the manner in which it is interpreted and applied by courts. Without clear statutory limits and robust judicial oversight, the provision risks reproducing the same chilling effects on free expression that characterized the earlier sedition regime.<sup>16</sup>

To develop this argument, the article proceeds in several stages. The first section traces the historical evolution of sedition law in India, highlighting its colonial origins and its contested role in post-independence constitutional jurisprudence. The second section examines the text and scope of Section 152 of the Bharatiya Nyaya Sanhita, focusing on how the new provision differs from the earlier sedition framework. The third section analyzes the constitutionality of Section 152 in light of Article 19 of the Constitution and established doctrines such as vagueness, proportionality, and chilling effect. The fourth section situates the Indian debate within a comparative constitutional context by examining how other democratic jurisdictions regulate speech that threatens national security. Finally, the article concludes by proposing reforms and interpretive safeguards that may help reconcile the protection of national integrity with the preservation of democratic dissent.

Ultimately, the debate surrounding Section 152 reflects a deeper constitutional dilemma confronting modern democracies: how to defend the State against genuine threats while preserving the freedoms that give democratic governance its legitimacy. The resolution of this dilemma will play a crucial role in shaping the future of free speech jurisprudence in India.<sup>17</sup>

## **II. LITERATURE REVIEW**

### **A. Scholarly Critiques of Sedition Law**

Scholarly engagement with sedition law in India has been extensive, particularly in light of the growing debate surrounding freedom of expression and national security. Legal scholars have approached the subject from constitutional, historical, and comparative perspectives, often questioning whether sedition laws are compatible with democratic principles.<sup>18</sup>

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<sup>16</sup> Shreya Singhal v. Union of India, (2015) 5 SCC 1.

<sup>17</sup> Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law* (Edward Elgar 2014).

<sup>18</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford University

One of the most influential critiques of sedition law has been articulated by Gautam Bhatia, who argues that sedition provisions represent an enduring colonial legacy that continues to distort the constitutional guarantee of free speech.<sup>19</sup> Bhatia contends that although the Supreme Court in *Kedar Nath Singh v. State of Bihar* attempted to narrow the application of sedition by restricting it to speech that incites violence, the continued existence of the provision enables authorities to misuse it against political dissenters.<sup>20</sup> According to Bhatia, the doctrine of chilling effect remains particularly relevant in evaluating such laws because even the threat of prosecution can discourage citizens from exercising their constitutional rights.<sup>21</sup>

Similarly, Aparna Chandra, in her work on constitutional freedoms and criminal law, emphasizes that broadly worded offences affecting speech tend to grant excessive discretion to law enforcement authorities.<sup>22</sup> Chandra argues that vague statutory language undermines the rule of law by allowing subjective interpretations of what constitutes disloyal or anti-national speech. She suggests that constitutional jurisprudence should prioritize precision and clarity in criminal statutes that regulate expression.<sup>23</sup>

Anup Surendranath has also contributed significantly to the debate by examining the relationship between sedition prosecutions and democratic accountability.<sup>24</sup> His research highlights the gap between the narrow interpretation adopted by the judiciary and the expansive manner in which the law has been applied by police authorities. Surendranath observes that in many cases the mere filing of sedition charges becomes a form of punishment in itself, regardless of the eventual outcome of the trial.<sup>25</sup>

From a historical perspective, Upendra Baxi has explored the colonial origins of sedition law and its transformation in post-independence India.<sup>26</sup> Baxi argues that the persistence of colonial criminal provisions reflects a deeper structural continuity in India's legal system. According to him, meaningful legal reform requires not only legislative amendments but also a shift in the

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Press 2016).

<sup>19</sup> *Id.*

<sup>20</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

<sup>21</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

<sup>22</sup> Aparna Chandra, "Freedom of Speech and the Criminal Law," *Indian Constitutional Law Review*.

<sup>23</sup> *Id.*

<sup>24</sup> Anup Surendranath, "Sedition and the Limits of Free Speech," *National Law School of India Review*.

<sup>25</sup> *Id.*

<sup>26</sup> Upendra Baxi, "Freedom of Expression and Sedition," *Indian Law Review*.

institutional culture of law enforcement and governance.<sup>27</sup>

## **B. Comparative Free Speech Scholarship**

Scholars focusing on comparative constitutional law have also provided valuable insights. Aharon Barak, writing on proportionality in constitutional law, emphasizes that restrictions on fundamental rights must satisfy a strict balancing test between state interests and individual liberties.<sup>28</sup> Although Barak's work is not limited to sedition law, his theory of proportionality has been widely applied by courts around the world in evaluating restrictions on freedom of speech.<sup>29</sup>

Similarly, Eric Barendt, in his scholarship on freedom of expression, argues that democratic societies must tolerate a wide range of political speech, including criticism of governmental institutions.<sup>30</sup> Barendt suggests that criminal sanctions should be reserved only for speech that directly incites violence or threatens the stability of the state.<sup>31</sup>

Another important perspective is offered by Kent Greenawalt, who examines the limits of political speech in democratic systems<sup>32</sup>. Greenawalt recognizes that states may impose restrictions when speech poses a genuine threat to national security but cautions that such restrictions must remain narrowly tailored to prevent abuse.<sup>33</sup>

## **C. Institutional and Policy Perspectives**

Within the Indian context, Law Commission of India reports have also contributed to the scholarly debate. The Commission's consultation paper on sedition acknowledged widespread concerns regarding misuse of Section 124A IPC while simultaneously emphasizing the need for legal mechanisms to address genuine threats to national security.<sup>34</sup>

Collectively, this body of scholarship demonstrates a broad consensus that while states possess legitimate interests in protecting sovereignty and public order, the criminalization of political

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<sup>27</sup> Id.

<sup>28</sup> Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press 2012).

<sup>29</sup> Id.

<sup>30</sup> Eric Barendt, *Freedom of Speech* (Oxford University Press 2005).

<sup>31</sup> Id.

<sup>32</sup> Kent Greenawalt, *Speech, Crime, and the Uses of Language* (Oxford University Press 1989).

<sup>33</sup> Id.

<sup>34</sup> Law Commission of India, *Consultation Paper on Sedition* (2018).

speech must be approached with caution. The present article builds upon this scholarship by examining whether Section 152 of the Bharatiya Nyaya Sanhita represents a meaningful constitutional reform or whether it risks perpetuating the problems historically associated with sedition law.<sup>35</sup>

More recently, scholars such as Arghya Sengupta and Shruti Rajagopalan have analysed the tension between free speech and national security in contemporary India.<sup>36</sup> Their work highlights the importance of institutional safeguards and judicial oversight in preventing the misuse of broadly worded criminal laws.<sup>37</sup>

### III. RESEARCH METHODOLOGY AND APPROACH

This article adopts a qualitative doctrinal research methodology to examine the constitutional implications of Section 152 of the Bharatiya Nyaya Sanhita, 2023. Doctrinal research, also referred to as black-letter legal research, focuses on the systematic analysis of statutory provisions, constitutional principles, judicial precedents, and scholarly commentary in order to interpret and evaluate legal rules.<sup>38</sup> The method is particularly appropriate for constitutional and criminal law scholarship because it allows for a detailed examination of how legal doctrines evolve through judicial interpretation and legislative reform.<sup>39</sup>

The primary objective of this research is to assess whether Section 152 of the Bharatiya Nyaya Sanhita represents a substantive departure from the colonial sedition law contained in Section 124A of the Indian Penal Code, 1860, and whether the new provision is compatible with the constitutional guarantee of freedom of speech and expression under Article 19(1)(a) of the Constitution of India.<sup>40</sup> To achieve this objective, the study relies on multiple sources of legal authority and adopts a multi-layered analytical framework.

First, the research undertakes a historical analysis of sedition law in India. This involves examining the colonial origins of Section 124A IPC and its role in suppressing political dissent during the British period. Historical materials, including colonial legislation, judicial decisions,

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<sup>35</sup> Bharatiya Nyaya Sanhita, §152 (2023).

<sup>36</sup> Arghya Sengupta, "Free Speech Jurisprudence in India," Vidhi Centre for Legal Policy.

<sup>37</sup> Shruti Rajagopalan, "National Security and Civil Liberties in India," Mercatus Center Working Paper.

<sup>38</sup> Terry Hutchinson & Nigel Duncan, *Defining and Describing What We Do: Doctrinal Legal Research*, 17 *Deakin L. Rev.* 83, 101 (2012).

<sup>39</sup> Mike McConville & Wing Hong Chui, *Research Methods for Law 3–7* (Edinburgh Univ. Press 2007).

<sup>40</sup> 40. INDIA CONST. art. 19, cl. 1(a).

and constitutional debates, are analyzed to understand the ideological foundations of sedition law and the concerns that led to its critique in independent India.<sup>41</sup>

Second, the article conducts a doctrinal analysis of constitutional jurisprudence on free speech. Key judgments of the Supreme Court of India—such as *Romesh Thappar v. State of Madras*, *Kedar Nath Singh v. State of Bihar*, *Balwant Singh v. State of Punjab*, and *Shreya Singhal v. Union of India*—are examined to identify the principles governing restrictions on speech under Article 19(2).<sup>42</sup> Particular attention is paid to constitutional doctrines such as vagueness, proportionality, and chilling effect, which have played an increasingly significant role in modern free speech jurisprudence.<sup>43</sup>

Third, the research analyzes the statutory framework of the *Bharatiya Nyaya Sanhita, 2023*, with specific focus on the language and scope of Section 152. Through a textual and contextual interpretation of the provision, the article evaluates whether the new law adequately addresses the constitutional concerns associated with the earlier sedition provision.<sup>44</sup>

Fourth, the study incorporates a comparative constitutional approach. By examining how other democratic jurisdictions regulate speech that threatens national security, the article seeks to situate India's legal framework within a broader global context. Comparative references are drawn from jurisdictions such as the United Kingdom, the United States, Australia, and South Africa, where sedition laws have either been abolished or significantly narrowed.<sup>45</sup> This comparative analysis helps identify alternative legal models that balance national security with the protection of free expression.<sup>46</sup>

Finally, the article adopts a normative and analytical perspective to assess the constitutional legitimacy of Section 152. Rather than merely describing the legal framework, the study evaluates whether the provision satisfies the requirements of democratic constitutionalism. This involves assessing the extent to which the law respects fundamental rights while

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<sup>41</sup> 41. Anup Surendranath, *Sedition and the Law in India*, in *The Oxford Handbook of the Indian Constitution* 1041, 1044–45 (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford Univ. Press 2016).

<sup>42</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

*Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

*Balwant Singh v. State of Punjab*, (1995) 3 SCC 214.

*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>43</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 95–120 (Oxford Univ. Press 2016).

<sup>44</sup> *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 152 (India).

<sup>45</sup> Law Commission of India, *Consultation Paper on Sedition* (Aug. 30, 2018).

<sup>46</sup> Eric Barendt, *Freedom of Speech* 191–210 (2d ed., Oxford Univ. Press 2005).

simultaneously addressing legitimate concerns regarding national integrity and public order.<sup>47</sup>

It must be acknowledged that the study is primarily based on secondary legal sources, including judicial decisions, statutes, academic literature, and policy reports. While this approach allows for a comprehensive doctrinal analysis, the research does not involve empirical data collection or field-based investigation. Nevertheless, doctrinal analysis remains an established and widely accepted methodology in legal scholarship, particularly in the study of constitutional law.<sup>48</sup>

Through this methodological framework, the article aims to provide a critical and systematic examination of the constitutional future of Section 152 of the Bharatiya Nyaya Sanhita and its implications for freedom of speech in India's evolving legal landscape.

#### IV. HISTORICAL EVOLUTION OF SEDITION LAW IN INDIA

##### A. Colonial Origins of Section 124A IPC

The law of sedition in India has deep roots in the colonial legal framework established by the British administration. The offence was formally introduced into the **Indian Penal Code** through an amendment in 1870. Although the Penal Code was originally drafted by **Thomas Babington Macaulay** and his law commission in 1837, the sedition provision did not initially form part of the enacted statute. It was later inserted to strengthen the colonial government's capacity to suppress political dissent and maintain imperial authority.<sup>49</sup>

Section 124A criminalised any attempt to bring into "hatred or contempt" or to excite "disaffection" toward the government established by law. The provision was drafted in extremely broad terms, allowing the colonial administration significant discretion in determining what constituted disaffection against the state. Importantly, the explanation clauses clarified that "disaffection" included feelings of enmity, hostility, and disloyalty toward the government.<sup>50</sup> Such language effectively enabled the colonial authorities to prosecute political criticism that might otherwise have been considered legitimate dissent in a democratic

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<sup>47</sup> Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* 340–356 (Cambridge Univ. Press 2012).

<sup>48</sup> Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law* 67–75 (Edward Elgar 2014).

<sup>49</sup> 49. Thomas Babington Macaulay et al., *A Penal Code Prepared by the Indian Law Commissioners* (1837); see also Bharatiya Nyaya Sanhita, No. 45 of 2023, Statement of Objects and Reasons.

<sup>50</sup> Indian Penal Code, No. 45 of 1860, § 124A (as inserted by the Indian Penal Code (Amendment) Act, 1870).

system.

The introduction of sedition law in India must therefore be understood in the broader context of colonial governance. The British Empire relied heavily on legal mechanisms to control political mobilization and nationalist movements in its colonies. Sedition laws served as a tool to curb revolutionary writings, nationalist newspapers, and speeches advocating self-rule. By criminalizing expressions perceived as undermining governmental authority, the colonial administration sought to maintain political stability and prevent organized resistance.<sup>51</sup>

Legal historians have often emphasized that sedition law in colonial India functioned less as a safeguard against violence and more as an instrument for **suppressing political dissent**. Consequently, the provision was frequently used against nationalist leaders, journalists, and activists who challenged colonial rule.<sup>52</sup>

## **B. Sedition Trials in Colonial India**

The practical application of sedition law during the colonial era is best illustrated through the prosecution of prominent nationalist leaders. Among the most notable cases were those involving **Bal Gangadhar Tilak and Mahatma Gandhi**, both of whom were charged under Section 124A for their political writings and speeches.

Tilak, a leading figure in the Indian nationalist movement, faced multiple sedition prosecutions for articles published in his newspaper *Kesari*. In the famous 1897 trial before the Bombay High Court, the colonial government accused Tilak of inciting rebellion through writings that criticized British rule and glorified resistance against tyranny. The court adopted a broad interpretation of sedition, holding that even indirect encouragement of disaffection toward the government could fall within the scope of Section 124A.<sup>53</sup>

Tilak was again prosecuted for sedition in 1908 and sentenced to six years' imprisonment in Mandalay, Burma. These trials demonstrated the expansive application of sedition law and

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<sup>51</sup> Anup Surendranath, Sedition and the Law in India, in *The Oxford Handbook of the Indian Constitution* 1041, 1043–44 (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford Univ. Press 2016).

<sup>52</sup> Gautam Bhatia, Offend, Shock, or Disturb: Free Speech Under the Indian Constitution 24–30 (Oxford Univ. Press 2016).

<sup>53</sup> *Queen Empress v. Bal Gangadhar Tilak*, (1897) I.L.R. 22 Bom. 112 (India).

revealed how colonial courts interpreted political criticism as a threat to imperial authority.<sup>54</sup>

Another historically significant prosecution was the 1922 sedition trial of **Mahatma Gandhi**. Gandhi was charged for articles published in *Young India*, which criticized British policies and called for non-cooperation with colonial authorities. During the trial, Gandhi openly acknowledged the charge but defended his actions on moral and political grounds, famously describing Section 124A as “the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen.”<sup>55</sup>

The trial became a symbolic moment in India’s freedom struggle. Gandhi was convicted and sentenced to six years’ imprisonment, although he was released after two years due to health reasons. The case highlighted the inherent tension between colonial authority and the growing demand for political freedom in India.<sup>56</sup>

These sedition prosecutions reinforced the perception that the law was primarily used to silence voices advocating independence and democratic reform. As a result, the provision became closely associated with colonial repression.

### C. Constituent Assembly Debates

Following independence in 1947, the framers of the Constitution confronted the question of whether sedition should continue to exist in the legal framework of a democratic republic. During the debates of the **Constituent Assembly of India**, several members expressed concern that colonial sedition laws were fundamentally incompatible with democratic values and the protection of civil liberties.

Initially, the draft Constitution included “sedition” as a permissible ground for restricting freedom of speech under Article 13 (later renumbered as Article 19). However, strong opposition from members such as **K. M. Munshi** led to its removal. Munshi argued that sedition had historically been used to suppress legitimate criticism of the government and that its inclusion in the Constitution would undermine the democratic right to dissent.<sup>57</sup>

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<sup>54</sup> Emperor v. Bal Gangadhar Tilak, (1908) I.L.R. 32 Bom. 112 (India).

<sup>55</sup> Emperor v. Mohandas Karamchand Gandhi, (1922) 24 Bom. L.R. 218 (India).

<sup>56</sup> Id.

<sup>57</sup> Constituent Assembly Debates 780–82 (Dec. 1, 1948) (statement of K. M. Munshi).

Ultimately, the Constituent Assembly decided to omit the term “sedition” from the list of restrictions under **Article 19(2) of the Constitution of India**. Instead, the Constitution permitted restrictions on speech only in the interests of specific concerns such as public order, security of the state, and friendly relations with foreign states.<sup>58</sup>

This decision reflected a conscious attempt by the framers to distance the new constitutional order from colonial legal traditions. It signaled the commitment of independent India to protect political speech and democratic dissent.

#### **D. Early Constitutional Free Speech Jurisprudence**

The Supreme Court of India soon began interpreting the scope of free speech under the Constitution. One of the earliest and most significant decisions was **Romesh Thappar v. State of Madras (1950)**.<sup>59</sup>

In this case, the government of Madras had banned the circulation of a political journal on the grounds that it threatened public safety. The Supreme Court struck down the ban, holding that freedom of speech and expression is the foundation of a democratic society. The Court emphasized that restrictions on speech must be narrowly construed and justified under the Constitution.<sup>60</sup>

The judgment established an important principle: **political criticism of the government cannot be suppressed merely because it is unpopular or inconvenient for those in power**. Instead, restrictions must be justified by a clear and present danger to public order or national security.<sup>61</sup>

This early jurisprudence laid the foundation for the development of constitutional protections for free speech in India. It also raised questions about whether the colonial sedition law could survive in a constitutional democracy committed to safeguarding fundamental rights.<sup>62</sup>

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<sup>58</sup> INDIA CONST. art. 19, cl. 2.

<sup>59</sup> Romesh Thappar v. State of Madras, AIR 1950 SC 124.

<sup>60</sup> Id.

<sup>61</sup> Id.

<sup>62</sup> Gautam Bhatia, *The Transformative Constitution* 120–26 (HarperCollins India 2019).

## V. JUDICIAL INTERPRETATION OF SEDITION AFTER INDEPENDENCE

### A. Constitutional Validity in Kedar Nath Singh

The constitutional validity of sedition law came before the Supreme Court in the landmark case of **Kedar Nath Singh v. State of Bihar (1962)**.<sup>63</sup> The petitioner, a political activist, had been convicted under Section 124A for delivering a speech criticizing the government and advocating revolutionary change.

The Court was faced with the challenge of reconciling the sedition provision with the constitutional guarantee of freedom of speech under Article 19(1)(a) of the constitution of India.<sup>64</sup> Instead of striking down the law entirely, the Supreme Court adopted a **restrictive interpretation**.

The Court held that sedition would apply only to speech that **incites violence or has the tendency to create public disorder**. Mere criticism of the government, however strongly worded, could not be punished under Section 124A.<sup>65</sup> By narrowing the scope of the provision, the Court sought to preserve the constitutionality of the law while preventing its misuse against legitimate political expression.

This interpretation has since served as the controlling precedent governing sedition law in India.<sup>66</sup>

### B. Protection of Political Speech

Subsequent decisions of the Supreme Court further strengthened the protection of political speech. In **Balwant Singh v. State of Punjab (1995)**, the accused had shouted pro-Khalistan slogans shortly after the assassination of Prime Minister Indira Gandhi. Although the slogans were politically provocative, the Court held that they did not amount to sedition because they did not incite violence or create public disorder.<sup>67</sup>

The judgment reaffirmed the principle that **isolated expressions of dissent, even if**

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<sup>63</sup> Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

<sup>64</sup> INDIA CONST. art. 19, cl. 1(a).

<sup>65</sup> Kedar Nath Singh, AIR 1962 SC 955.

<sup>66</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 101–06 (Oxford Univ. Press 2016).

<sup>67</sup> Balwant Singh v. State of Punjab, (1995) 3 SCC 214.

**controversial, cannot be criminalized unless they lead to tangible threats to public order.**<sup>68</sup> This decision reflected the Court's continuing commitment to safeguarding democratic debate.

### C. Free Speech Jurisprudence and the Internet

The development of free speech jurisprudence in India gained new dimensions in the digital era. A landmark judgment in this context was **Shreya Singhal v. Union of India (2015)**, where the Supreme Court struck down Section 66A of the Information Technology Act.<sup>69</sup>

The Court held that vague and overbroad restrictions on speech have a “**chilling effect**” on freedom of expression. It emphasized that only speech that incites imminent violence or public disorder may be restricted by criminal law.<sup>70</sup>

Although the case did not directly involve sedition, its reasoning significantly influenced debates surrounding Section 124A. The judgment reinforced the principle that democratic societies must tolerate even harsh criticism of the government in order to preserve the vitality of public discourse.<sup>71</sup>

## VI. SECTION 152 OF THE BHARATIYA NYAYA SANHITA, 2023

### A. Text and Scope of the Provision

The enactment of the **Bharatiya Nyaya Sanhita** represents a major reform in India's criminal law framework, replacing the colonial-era **Indian Penal Code**. One of the most debated provisions within the new statute is Section 152, which addresses acts that threaten the sovereignty, unity, and integrity of India. The provision has been widely discussed because it effectively replaces the controversial sedition offence previously contained in Section 124A of the Penal Code.<sup>72</sup>

Section 152 criminalizes acts that intentionally or knowingly excite or attempt to excite secession, armed rebellion, or subversive activities against the state. The provision also

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<sup>68</sup> Id.

<sup>69</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>70</sup> Id.

<sup>71</sup> Aparna Chandra et al., *The Indian Constitution: Cases and Materials* 497–505 (Oxford Univ. Press 2018).

<sup>72</sup> *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 152 (India).

includes conduct that encourages separatist sentiments or otherwise endangers the sovereignty and unity of India. The offence may be committed through words, written communication, signs, visible representations, electronic communication, financial assistance, or other forms of participation. The punishment prescribed includes imprisonment for life or imprisonment extending up to seven years along with a fine.<sup>73</sup>

The structure of the provision reflects a deliberate shift in legislative focus. Rather than penalizing expressions of disaffection toward the government—as was the case under Section 124A—the new provision targets conduct that threatens the nation’s territorial integrity or constitutional order. This reframing attempts to distinguish between criticism of governmental authority and actions that undermine the state itself.<sup>74</sup>

Importantly, Section 152 also retains an explanatory clause clarifying that lawful criticism of government policies does not constitute an offence. Comments expressing disapproval of governmental measures, when made with the intention of bringing about change through lawful means, are expressly excluded from criminal liability under the provision.<sup>75</sup>

From a constitutional perspective, this clarification attempts to align the statute with the protection of free speech guaranteed under Article 19(1)(a) of the Constitution of India.<sup>76</sup> However, the practical scope of the provision remains subject to judicial interpretation, particularly regarding what forms of expression may be considered as encouraging separatism or subversive activity.

## **B. Differences Between Section 124A IPC and Section 152 BNS**

The most significant difference between the earlier sedition provision and the new statutory framework lies in the conceptual shift in the definition of the offence. Section 124A of the Penal Code criminalized any attempt to bring the government into hatred or contempt or to excite disaffection toward it. By contrast, Section 152 of the new code focuses on acts that threaten the sovereignty and territorial integrity of the nation.<sup>77</sup>

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<sup>73</sup> Id.

<sup>74</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 101–06 (Oxford Univ. Press 2016).

<sup>75</sup> Bharatiya Nyaya Sanhita, No. 45 of 2023, § 152 Explanation.

<sup>76</sup> INDIA CONST. art. 19, cl. 1(a).

<sup>77</sup> Indian Penal Code, No. 45 of 1860, § 124A (repealed 2023).

This change has several implications. First, the new provision removes the controversial language relating to “hatred,” “contempt,” and “disaffection” toward the government. Critics of the earlier sedition law frequently argued that these terms were vague and allowed authorities to prosecute political dissent. By eliminating these expressions, the legislature appears to have attempted to narrow the scope of the offence.

Second, Section 152 introduces the requirement that the act must be done “purposely or knowingly,” thereby explicitly incorporating the element of criminal intent (*mens rea*). This addition potentially raises the evidentiary threshold required to establish the offence, making it necessary to demonstrate that the accused intended to provoke secession or rebellion rather than merely expressing controversial views.

Third, the provision explicitly includes modern forms of communication such as electronic communication and financial assistance. The earlier sedition law primarily referred to spoken or written words and visible representations. By expanding the scope of the offence to digital platforms and financial networks, the new statute reflects the evolving nature of political mobilization and communication in the digital era.

Despite these differences, some scholars argue that the practical effect of the law may not differ significantly from the earlier sedition provision. Although the terminology has changed, the underlying objective of protecting state authority remains intact.<sup>78</sup> Consequently, critics contend that Section 152 may represent more of a rebranding than a substantive transformation of sedition law.

### **C. Government’s Rationale for Reform**

The introduction of the Bharatiya Nyaya Sanhita was presented by the government as part of a broader effort to decolonize India’s criminal justice system. According to official statements made during the legislative process, the objective of replacing the Indian Penal Code was to remove colonial-era provisions that were designed primarily to protect imperial authority rather than the rights of citizens.<sup>79</sup>

In this context, the government argued that the earlier sedition law had become politically

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<sup>78</sup> Aparna Chandra, *Freedom of Expression and the Sedition Debate in India*, 8 Nat’l L. Sch. India Rev. 149 (2016).

<sup>79</sup> Statement of Objects and Reasons, Bharatiya Nyaya Sanhita Bill, 2023.

contentious and historically associated with colonial repression. By replacing Section 124A with a new provision focused on threats to national sovereignty, the legislature sought to modernize the law while retaining mechanisms to address serious threats to the state.

Government representatives also emphasized that the new provision was designed to address contemporary challenges such as organized separatist movements, insurgency, and digitally coordinated subversive activities. In an era where political mobilization and propaganda often occur through online platforms and international financial networks, the law was framed to address these emerging security concerns.

Furthermore, policymakers suggested that the new provision attempts to strike a balance between national security and freedom of expression. By explicitly protecting lawful criticism of government actions, the law seeks to reassure that democratic dissent will not be criminalized.

#### **D. Critiques and Concerns**

Despite the government's stated objectives, Section 152 has generated significant debate among legal scholars, civil society organizations, and constitutional commentators. One of the primary concerns relates to the potential breadth of the provision and the possibility that it may still be used to suppress dissent.

Critics argue that several key terms used in the provision—such as “subversive activities” and “encouraging separatist feelings”—remain insufficiently defined. The lack of precise statutory definitions may grant wide interpretative discretion to law enforcement agencies. In the absence of clear judicial guidelines, such discretion could lead to inconsistent or overly broad application of the law.

Another concern relates to the possibility that the provision may have a chilling effect on free speech.<sup>80</sup> Even if lawful criticism of the government is formally protected under the explanatory clause, individuals may hesitate to express controversial political opinions for fear that their statements could be interpreted as encouraging separatist sentiments.

Additionally, scholars have pointed out that the punishment under Section 152 remains severe,

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<sup>80</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

including life imprisonment in certain cases. This raises questions about whether the penalty is proportionate to the types of conduct that may fall within the scope of the provision.

From a constitutional standpoint, the ultimate interpretation of Section 152 will likely depend on the judiciary. As with the earlier sedition provision, courts may be required to develop doctrinal safeguards to ensure that the law is applied only to conduct that genuinely threatens national security or public order.

## VII. CONSTITUTIONAL ANALYSIS OF SECTION 152

### A. Freedom of Speech under Article 19(1)(a)

Freedom of speech and expression constitutes one of the most essential pillars of democratic governance. In the Indian constitutional framework, this right is guaranteed under Article **19(1)(a) of the Constitution of India**, which ensures that every citizen has the liberty to express opinions, ideas, and political criticism without undue interference from the state. The protection of free expression is fundamental to maintaining democratic accountability, enabling citizens to participate in public discourse and hold governmental institutions responsible for their actions.<sup>81</sup>

The Supreme Court of India has repeatedly emphasized the centrality of free speech in a constitutional democracy. In **Romesh Thappar v. State of Madras (1950)**, the Court described freedom of speech as the foundation of all democratic organizations, stressing that open discussion of political matters is indispensable to the functioning of democratic institutions.<sup>82</sup> The judgment underscored that political speech enjoys the highest level of constitutional protection because it enables citizens to scrutinize governmental conduct.

Similarly, in **Shreya Singhal v. Union of India (2015)**, the Supreme Court reaffirmed that free expression includes not only popular or widely accepted opinions but also controversial, unpopular, or dissenting viewpoints. The Court held that the mere tendency of speech to cause annoyance or inconvenience cannot justify criminal restrictions, as such limitations would undermine the vibrancy of democratic discourse.<sup>83</sup>

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<sup>81</sup> INDIA CONST. art. 19, cl. 1(a).

<sup>82</sup> Romesh Thappar v. State of Madras, AIR 1950 SC 124.

<sup>83</sup> Shreya Singhal v. Union of India, (2015) 5 SCC 1.

Within this constitutional framework, any statutory provision that potentially restricts political speech must be carefully scrutinized. **Section 152 of the Bharatiya Nyaya Sanhita** criminalizes acts that may encourage secession or subversive activities against the state. While the protection of national security and sovereignty is undoubtedly a legitimate objective, the application of such provisions must be balanced against the fundamental right to criticize governmental policies and advocate political change.

The constitutional challenge therefore lies in determining whether the language and scope of Section 152 adequately protect democratic dissent while addressing genuine threats to national integrity.

### **B. Reasonable Restrictions under Article 19(2)**

Although the Constitution guarantees freedom of speech, this right is not absolute. The state may impose restrictions on speech under certain circumstances, as enumerated in **Article 19(2) of the Constitution of India**. These restrictions include considerations such as the security of the state, public order, sovereignty and integrity of India, and incitement to an offence.<sup>84</sup>

The Supreme Court has consistently held that restrictions on fundamental rights must satisfy the standard of “reasonableness.” In **Kedar Nath Singh v. State of Bihar (1962)**, the Court addressed the constitutional validity of sedition law under Section 124A of the Indian Penal Code. Rather than striking down the provision entirely, the Court interpreted it narrowly, holding that sedition would apply only to speech that incites violence or has a tendency to create public disorder.<sup>85</sup>

This judicial interpretation established an important constitutional safeguard: **mere criticism of the government cannot be treated as a criminal offence unless it involves incitement to violence or rebellion**. The decision effectively limited the scope of sedition law in order to preserve compatibility with the constitutional guarantee of free speech.

The relevance of this precedent becomes particularly significant in evaluating Section 152 of the Bharatiya Nyaya Sanhita. If the provision is interpreted broadly to include expressions of dissent or political advocacy, it may conflict with the principles established in *Kedar Nath*

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<sup>84</sup> INDIA CONST. art. 19, cl. 2.

<sup>85</sup> Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

*Singh*. However, if courts interpret the provision narrowly—limiting its application to acts that directly threaten national security or incite violent rebellion—it may withstand constitutional scrutiny.

### **C. Doctrine of Vagueness**

Another critical constitutional principle relevant to Section 152 is the doctrine of vagueness. According to this doctrine, criminal laws must define offences with sufficient clarity so that individuals can reasonably understand what conduct is prohibited. Vague statutes risk arbitrary enforcement because they grant excessive discretion to law enforcement authorities.

The Supreme Court elaborated this principle in **Shreya Singhal v. Union of India (2015)**, where it struck down Section 66A of the Information Technology Act. The Court held that the provision was unconstitutional because it used ambiguous terms such as “annoyance” and “inconvenience,” which could be interpreted in numerous subjective ways. Such vagueness, the Court noted, allows authorities to suppress speech arbitrarily.<sup>86</sup>

In the context of Section 152, similar concerns arise regarding terms such as “subversive activities” and “encouraging separatist feelings.” These expressions are not clearly defined within the statute and may therefore be open to varying interpretations. Without precise legal definitions, the provision may inadvertently create uncertainty regarding the boundaries between lawful dissent and criminal conduct.

From a constitutional perspective, vague criminal provisions can undermine the rule of law by allowing discretionary enforcement. Consequently, judicial interpretation will likely play a crucial role in clarifying the scope of these terms and ensuring that the law does not encroach upon protected speech.

### **D. Proportionality Test**

Modern constitutional jurisprudence in India has increasingly relied on the doctrine of proportionality to assess the validity of restrictions on fundamental rights. The proportionality test requires that any limitation imposed by the state must satisfy four key criteria: a legitimate objective, a rational connection between the measure and the objective, necessity of the

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<sup>86</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

restriction, and a balance between the restriction and the right being limited.<sup>87</sup>

The Supreme Court articulated the framework of proportionality in **Modern Dental College & Research Centre v. State of Madhya Pradesh (2016)**. The Court held that restrictions on fundamental rights must not be excessive or disproportionate in relation to the objective sought to be achieved.<sup>88</sup>

Applying this principle to Section 152 requires an examination of whether the severity of the criminal penalties and the breadth of the provision are proportionate to the objective of protecting national security. While safeguarding the sovereignty and integrity of the nation is undoubtedly a legitimate state interest, the law must ensure that its application does not unnecessarily restrict political expression.

For instance, the possibility of life imprisonment under Section 152 raises questions regarding proportionality, particularly if the provision is applied to cases involving speech rather than direct acts of violence. Courts may therefore need to develop interpretative safeguards to ensure that the provision is used only in situations where the threat to national security is genuine and substantial.

### **E. Chilling Effect on Democratic Speech**

The concept of the “chilling effect” refers to situations where individuals refrain from exercising their constitutional rights due to fear of legal consequences. Even when laws are not actively enforced, their mere existence may discourage citizens from expressing dissenting opinions.

The Supreme Court recognized this phenomenon in **Shreya Singhal v. Union of India**, observing that vague or overly broad laws can create an environment where citizens self-censor their speech to avoid potential prosecution.<sup>89</sup> Such self-censorship is particularly problematic in a democratic society because it undermines open debate and public participation in governance.

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<sup>87</sup> Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* 131–35 (Cambridge Univ. Press 2012).

<sup>88</sup> *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

<sup>89</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

Section 152 may potentially create similar concerns if individuals fear that criticism of government policies could be interpreted as encouraging separatist sentiments or subversive activity. Journalists, activists, and political commentators may become hesitant to express strong opinions on sensitive political issues.

From a constitutional perspective, democratic societies depend on robust and uninhibited public discourse. The ability to criticize government policies, advocate institutional reforms, and challenge state authority through peaceful means is essential for democratic accountability. Laws that create uncertainty about the legality of such expression risk undermining this democratic function.<sup>90</sup>

Consequently, the long-term constitutional validity of Section 152 will likely depend on how courts interpret and apply the provision. Judicial oversight may be necessary to ensure that the law targets only conduct that genuinely threatens the security and integrity of the state, while preserving the fundamental right of citizens to engage in democratic dissent.

## **VIII. RECENT SUPREME COURT DEVELOPMENTS ON SEDITION (2022–2024)**

### **A. Suspension of Sedition Law in *S.G. Vombatkere v. Union of India***

A significant turning point in the constitutional debate surrounding sedition law occurred in 2022 when the Supreme Court of India considered multiple petitions challenging the validity of Section 124A of the Indian Penal Code. These petitions culminated in the landmark interim order in *S. G. Vombatkere v. Union of India*.<sup>91</sup>

The petitioners argued that sedition law had become incompatible with modern democratic values and that its continued existence posed a serious threat to freedom of expression. They contended that the provision was frequently misused by law enforcement agencies to prosecute journalists, activists, students, and political critics. According to the petitioners, the broad wording of Section 124A allowed authorities to criminalize speech that merely expressed dissatisfaction with governmental policies.

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<sup>90</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 114–18 (Oxford Univ. Press 2016).

<sup>91</sup> *S.G. Vombatkere v. Union of India*, W.P. (CrI.) No. 217 of 2021 (Supreme Court of India, Interim Order dated May 11, 2022).

During the proceedings, the Union Government acknowledged the need to reconsider the colonial-era provision and informed the Court that it intended to review the law. In response, the Supreme Court issued an extraordinary interim order directing both the Union and state governments to **refrain from registering new cases under the sedition provision** until the matter was reconsidered.<sup>92</sup>

The Court further directed that ongoing investigations and trials under the sedition law should remain in abeyance. Individuals already charged under the provision were permitted to approach courts for appropriate relief. This order effectively suspended the operation of the sedition law across the country, marking one of the most significant judicial interventions in the field of free speech jurisprudence.

The decision was widely interpreted as a recognition by the judiciary that sedition law had become controversial and potentially incompatible with contemporary constitutional standards.

## **B. Reconsideration of Kedar Nath Singh**

The suspension of sedition law also revived debates regarding the continued validity of the Supreme Court's earlier judgment in **Kedar Nath Singh v. State of Bihar (1962)**.<sup>93</sup> In that case, the Court had upheld the constitutionality of sedition by interpreting the provision narrowly, limiting its application to speech that incites violence or public disorder.

For decades, *Kedar Nath Singh* served as the principal constitutional safeguard against the misuse of sedition law. However, critics argued that despite the Court's restrictive interpretation, the provision continued to be invoked in cases involving peaceful political expression.

The petitions before the Supreme Court in 2022 questioned whether the reasoning of *Kedar Nath Singh* remained adequate in the context of modern constitutional jurisprudence. Since the 1960s, the Supreme Court has developed more rigorous standards for evaluating restrictions on fundamental rights, including the doctrines of proportionality, chilling effect, and vagueness.<sup>94</sup>

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<sup>92</sup> Id.

<sup>93</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

<sup>94</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

These developments raised the possibility that sedition law might be reconsidered under contemporary constitutional principles. Some constitutional scholars suggested that the Court could adopt a stricter test similar to the “imminent lawless action” standard developed in American free speech jurisprudence, particularly as articulated in **Brandenburg v. Ohio**.<sup>95</sup>

Although the Court has not yet delivered a final judgment on the constitutionality of sedition law, the interim order in *S. G. Vombatkere* indicates that the judiciary is willing to reassess the role of such provisions in a democratic society.

### C. Judicial Signals on Free Speech and National Security

Recent constitutional jurisprudence reflects an increasing judicial emphasis on protecting freedom of expression while balancing concerns related to national security. The Supreme Court has repeatedly affirmed that democratic governance requires the ability of citizens to criticize governmental actions without fear of criminal prosecution.

At the same time, the Court has acknowledged that certain forms of speech—particularly those that incite violence or threaten national integrity—may legitimately be restricted. The challenge lies in distinguishing between **lawful dissent** and **unlawful incitement**.

In several recent observations, the Court has emphasized that criticism of the government does not equate to disloyalty toward the nation. Democratic institutions, the Court noted, derive their legitimacy from public accountability and open debate. Consequently, criminal laws regulating speech must be interpreted in a manner that preserves this democratic space.<sup>96</sup>

These judicial signals suggest that the Court may adopt a more rights-oriented approach when evaluating national security laws that affect freedom of expression.

### D. Implications for Section 152 of the Bharatiya Nyaya Sanhita

The judicial developments surrounding sedition law have significant implications for the interpretation of **Section 152 of the Bharatiya Nyaya Sanhita**. Although the new provision

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<sup>95</sup> *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

<sup>96</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 120–25 (Oxford Univ. Press 2016).

replaces the earlier sedition offence, many constitutional concerns remain relevant.<sup>97</sup>

First, the Supreme Court's interim suspension of sedition law demonstrates the judiciary's willingness to intervene when criminal provisions risk infringing fundamental rights. This suggests that courts may apply rigorous constitutional scrutiny when evaluating the application of Section 152 in future cases.

Second, the emphasis on protecting dissent indicates that courts may interpret the provision narrowly, limiting its application to situations involving genuine threats to national security. If Section 152 is applied broadly to include peaceful political expression, it could face similar constitutional challenges as the earlier sedition law.

Third, the evolving jurisprudence on proportionality and chilling effect may play a decisive role in determining the scope of the provision. Courts may require the state to demonstrate that restrictions on speech are necessary and proportionate to the objective of protecting national security.<sup>98</sup>

Ultimately, the constitutional fate of Section 152 will depend on how the judiciary balances two competing imperatives: the protection of national sovereignty and the preservation of democratic freedom of expression. The Supreme Court's future decisions in this area will therefore shape the contours of free speech jurisprudence in India for years to come.<sup>99</sup>

## IX. COMPARATIVE CONSTITUTIONAL PERSPECTIVES

Comparative constitutional analysis provides valuable insight into how different democratic jurisdictions regulate speech that may threaten national security or public order. Many countries that historically possessed sedition laws have either abolished them or significantly narrowed their scope in order to align with modern constitutional principles of free expression. Examining these developments offers an important perspective on how India might balance national security concerns with the protection of democratic dissent.<sup>100</sup>

### A. United Kingdom: Abolition of Sedition

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<sup>97</sup> Bharatiya Nyaya Sanhita, No. 45 of 2023, § 152 (India).

<sup>98</sup> *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

<sup>99</sup> Aparna Chandra, *Freedom of Expression and National Security in India*, 10 *Indian J. Const. L.* 45 (2017).

<sup>100</sup> Vicki C. Jackson & Mark Tushnet, *Comparative Constitutional Law* 122–25 (3d ed. 2014).

The United Kingdom, from which India inherited much of its colonial criminal law framework, historically recognized sedition as a common law offence. Sedition laws in Britain were originally designed to protect the authority of the Crown and prevent public criticism that could undermine the stability of the state. Over time, however, the offence came to be viewed as incompatible with modern democratic values and freedom of expression.

Recognizing this shift, the United Kingdom formally abolished the offences of sedition and seditious libel through the **Coroners and Justice Act 2009**.<sup>101</sup> The decision was based on the understanding that existing laws relating to terrorism, incitement to violence, and public order were sufficient to address genuine threats to national security. The continued existence of sedition law was therefore considered unnecessary and potentially harmful to free speech.

British policymakers also noted that sedition laws were rarely used in contemporary times and had largely become symbolic remnants of colonial governance. Their abolition reflected a broader commitment to protecting political expression, even when such expression involves criticism of the government or the monarchy.<sup>102</sup>

The British approach illustrates that modern democratic states can safeguard national security without relying on broad and historically controversial offences such as sedition.

## **B. United States: The “Imminent Lawless Action” Test**

In contrast to the United Kingdom’s legislative abolition of sedition, the United States has addressed similar concerns primarily through constitutional jurisprudence. The First Amendment to the U.S. Constitution provides robust protection for freedom of speech, and American courts have developed strict standards to determine when speech may be restricted.

The most influential decision in this context is **Brandenburg v. Ohio (1969)**. In this case, the United States Supreme Court held that speech advocating the use of force or violation of law can only be punished if it is **directed toward inciting imminent lawless action and is likely to produce such action**.<sup>103</sup>

This standard significantly narrowed the circumstances in which the state may criminalize

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<sup>101</sup> Coroners and Justice Act 2009, c. 25, § 73 (U.K.).

<sup>102</sup> Law Comm’n, *Criminal Libel and Sedition* (Law Com No. 340, 2012).

<sup>103</sup> *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

political expression. Mere advocacy of radical political ideas, criticism of the government, or even support for controversial movements is constitutionally protected unless it directly incites immediate unlawful activity.

The “imminent lawless action” test has become a cornerstone of American free speech jurisprudence. It reflects a strong constitutional commitment to protecting political dissent and recognizes that democratic societies must tolerate a wide range of opinions, including those that challenge the legitimacy of the state.<sup>104</sup>

From a comparative perspective, this approach provides an important benchmark for evaluating laws that regulate speech relating to national security.

### C. Australia: Reform and Narrowing of Seditious Laws

Australia historically maintained seditious offences within its criminal law framework, inherited from British colonial legislation. However, in response to growing criticism regarding the breadth of these provisions, the Australian government undertook significant reforms in the early twenty-first century.

The reforms were incorporated through amendments to the **Australian Anti-Terrorism Act 2005** and subsequent legislative changes. These reforms replaced the term “seditious” with offences relating to **urging violence against the government or the Constitution**.<sup>105</sup>

The revised provisions emphasize that criminal liability arises only when speech encourages violence or force against governmental institutions or groups within the community. By focusing on incitement to violence rather than expressions of disaffection, the law attempts to balance national security concerns with the protection of political speech.

Additionally, Australian law includes safeguards intended to protect legitimate political communication. Statements made in good faith for purposes such as criticism of government policies or advocacy of lawful reform are excluded from criminal liability.<sup>106</sup>

These reforms demonstrate how a legal system can modernize historically controversial

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<sup>104</sup> Erwin Chemerinsky, *Constitutional Law: Principles and Policies* 1045–47 (5th ed. 2015).

<sup>105</sup> Anti-Terrorism Act 2005 (Cth) (Austl.).

<sup>106</sup> Andrew Lynch et al., *Counter-Terrorism and the Constitution* 178–82 (Federation Press 2007).

offences while preserving the ability to address genuine threats to national security.

#### **D. Canada: Constitutional Protection of Political Expression**

Canada provides another important example of how democratic constitutional systems approach the regulation of speech relating to national security. Canadian law recognizes certain offences relating to sedition under the Criminal Code of Canada; however, their interpretation has been significantly influenced by constitutional protections for freedom of expression.<sup>107</sup>

The Canadian Charter of Rights and Freedoms guarantees freedom of thought, belief, opinion, and expression. Canadian courts have interpreted these protections broadly, emphasizing that political expression lies at the core of democratic governance.

As a result, sedition-related offences are applied very narrowly and generally require proof of incitement to violence or the use of force against the state. Courts have been cautious to ensure that criticism of government policies or advocacy for constitutional reform does not attract criminal liability.<sup>108</sup>

This approach reflects a constitutional understanding that democratic societies must permit vigorous debate about governmental authority and institutional structures. The role of criminal law is therefore limited to situations where speech poses a real and immediate threat to public safety or national security.

#### **X. POLICY CRITIQUE AND REFORM PROPOSALS**

The introduction of Section 152 of the Bharatiya Nyaya Sanhita represents an attempt by the legislature to reform the controversial sedition framework that existed under the earlier criminal law regime. While the new provision reflects certain improvements in terminology and structure, concerns remain regarding its potential scope and its compatibility with constitutional guarantees of free speech. Consequently, a number of policy reforms may be necessary to ensure that the provision effectively addresses threats to national security while safeguarding democratic dissent.<sup>109</sup>

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<sup>107</sup> Criminal Code, R.S.C. 1985, c. C-46 (Can.).

<sup>108</sup> R v. Keegstra, [1990] 3 S.C.R. 697 (Can.).

<sup>109</sup> Bharatiya Nyaya Sanhita, No. 45 of 2023, § 152 (India).

## A. Narrowing the Definition of National Security Offences

One of the most significant concerns associated with Section 152 relates to the breadth of certain expressions used in the provision, including references to “subversive activities” and “encouraging separatist feelings.” These terms lack precise statutory definitions and may therefore permit varying interpretations by law enforcement authorities.<sup>110</sup>

To prevent arbitrary or inconsistent application of the law, it would be advisable for the legislature or judiciary to clarify these expressions through interpretative guidelines. Criminal liability should ideally be limited to acts that involve **incitement to violence, armed rebellion, or direct threats to the sovereignty and territorial integrity of the state**. Mere advocacy of political reform, criticism of government policies, or expression of unpopular political opinions should remain outside the scope of criminal prosecution.

A narrower definition of national security offences would not weaken the ability of the state to address genuine threats. Instead, it would strengthen the legitimacy of the law by ensuring that it targets only conduct that poses a serious risk to constitutional order.<sup>111</sup>

## B. Introducing Procedural Safeguards

Another important reform concerns procedural safeguards in the investigation and prosecution of offences under Section 152. Historically, one of the most persistent criticisms of sedition law was its alleged misuse by authorities at the stage of police registration of cases.<sup>112</sup>

To address this concern, the law could incorporate a requirement that prosecutions under Section 152 receive prior sanction from a senior government authority or judicial officer before the registration of a case. Such a safeguard would introduce an additional level of scrutiny and help ensure that the provision is invoked only in cases involving genuine threats to national security.

Additionally, specialized review mechanisms could be established to periodically evaluate the use of the provision. Transparent reporting regarding the number of cases registered and their

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<sup>110</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>111</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 130–35 (Oxford Univ. Press 2016).

<sup>112</sup> Law Comm'n of India, Consultation Paper on Sedition (2018).

outcomes would contribute to public accountability and help prevent misuse.

### C. Judicial Oversight and Constitutional Interpretation

The role of the judiciary remains crucial in determining the constitutional boundaries of laws regulating speech. As demonstrated in the landmark decision of **Kedar Nath Singh v. State of Bihar**, judicial interpretation can significantly narrow the scope of criminal provisions in order to preserve their compatibility with fundamental rights.<sup>113</sup>

Courts may therefore play an important role in ensuring that Section 152 is interpreted in a manner consistent with constitutional principles. A restrictive interpretation that limits the offence to situations involving **incitement to violence or imminent threats to national integrity** would help align the provision with the broader framework of free speech jurisprudence.

Furthermore, courts may apply modern constitutional doctrines such as proportionality and the chilling effect to evaluate the validity of prosecutions under the provision.<sup>114</sup> Such judicial oversight would help maintain the balance between national security and civil liberties.

### D. Law Enforcement Training and Awareness

The effective implementation of national security laws depends not only on statutory language but also on the manner in which the law is applied by enforcement authorities. Police officials and investigators must be adequately trained to distinguish between legitimate political dissent and conduct that genuinely threatens the security of the state.

Training programs focusing on constitutional rights, free speech jurisprudence, and democratic values can play a vital role in preventing misuse of legal provisions regulating speech. By promoting a deeper understanding of the constitutional limits of criminal law, such initiatives can contribute to more responsible enforcement practices.<sup>115</sup>

### E. Periodic Legislative Review

Given the evolving nature of national security threats and communication technologies, it may

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<sup>113</sup> Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

<sup>114</sup> Shreya Singhal v. Union of India, (2015) 5 SCC 1.

<sup>115</sup> Aparna Chandra et al., *The Indian Constitution: Cases and Materials* 245–48 (Oxford Univ. Press 2018).

also be beneficial to incorporate mechanisms for periodic legislative review of laws regulating speech and national security. Parliamentary committees or independent commissions could be tasked with evaluating the effectiveness and impact of Section 152 at regular intervals.

Such reviews would enable policymakers to assess whether the provision continues to serve its intended purpose or whether further reforms are required. This process of periodic reassessment would ensure that the legal framework remains responsive to changing social and technological realities while maintaining its commitment to constitutional freedoms.<sup>116</sup>

## XI. CONCLUSION

The evolution of sedition law in India reflects the continuing constitutional struggle to balance the imperatives of national security with the preservation of democratic freedoms. Originally introduced during colonial rule to suppress political dissent, the offence of sedition under the Indian Penal Code became one of the most contested provisions in independent India's criminal justice framework. Although the Supreme Court attempted to reconcile the provision with constitutional guarantees in Kedar Nath Singh v. State of Bihar by limiting its application to speech that incites violence or public disorder, concerns regarding misuse and overbreadth persisted for decades.<sup>117</sup>

The replacement of the colonial sedition provision with Section 152 of the Bharatiya Nyaya Sanhita represents a significant legislative attempt to modernize India's criminal law framework. By shifting the focus from expressions of "disaffection" toward the government to acts threatening the sovereignty and integrity of the nation, the new provision seeks to distinguish between legitimate political criticism and conduct that undermines national stability. This conceptual shift reflects an effort to align the law with the constitutional commitment to freedom of speech while retaining the state's ability to respond to genuine threats against national security.<sup>118</sup>

Nevertheless, the introduction of Section 152 does not entirely resolve the constitutional concerns historically associated with sedition law. The use of broadly framed expressions such as "subversive activities" and "encouraging separatist feelings" raises important questions

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<sup>116</sup> Vicki C. Jackson & Mark Tushnet, *Comparative Constitutional Law* 130–34 (3d ed. 2014).

<sup>117</sup> Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

<sup>118</sup> Bharatiya Nyaya Sanhita, No. 45 of 2023, § 152 (India).

regarding the potential scope of the provision. Without clear statutory definitions or consistent judicial interpretation, there remains a risk that the law may be applied in ways that discourage legitimate political dissent. The possibility of severe criminal penalties further intensifies the need for careful scrutiny of the provision's application.<sup>119</sup>

The constitutional framework governing freedom of expression in India, particularly under Article 19(1)(a) of the Constitution of India and the permissible restrictions under Article 19(2) of the Constitution of India, requires that any limitation on speech must satisfy the standards of reasonableness, proportionality, and clarity. Judicial doctrines such as the prohibition against vague criminal statutes and the recognition of the chilling effect on speech provide essential safeguards against the excessive use of criminal law to regulate political expression.<sup>120</sup>

Recent constitutional developments, including the interim order of the Supreme Court in S. G. Vombatkere v. Union of India, further highlights the judiciary's growing willingness to reassess colonial-era speech restrictions in light of modern constitutional principles. These developments indicate that the ultimate constitutional fate of laws regulating speech against the state will depend on whether they can be reconciled with the democratic values embedded within the Constitution.<sup>121</sup>

Comparative constitutional experiences from jurisdictions such as the United Kingdom, the United States, Australia, and Canada also demonstrate an increasing global recognition that criminal liability for political speech must be narrowly confined to situations involving incitement to violence or direct threats to national security. These examples suggest that democratic societies are best served by legal frameworks that protect robust public debate while addressing genuine threats through narrowly tailored legal provisions.<sup>122</sup>

Ultimately, the effectiveness and legitimacy of Section 152 will depend not merely on its statutory language but on how it is interpreted and applied in practice. Courts, legislators, and law enforcement authorities must ensure that the provision targets conduct that genuinely threatens national sovereignty while safeguarding the constitutional right of citizens to

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<sup>119</sup> Law Comm'n of India, Consultation Paper on Sedition (2018).

<sup>120</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>121</sup> *S. G. Vombatkere v. Union of India*, W.P. (CrI.) No. 217 of 2021 (Sup. Ct. India, interim order May 11, 2022).

<sup>122</sup> Vicki C. Jackson & Mark Tushnet, *Comparative Constitutional Law* 130–35 (3d ed. 2014).

criticize, question, and challenge governmental authority.<sup>123</sup>

In a vibrant constitutional democracy, dissent is not a threat to the state but an essential feature of democratic accountability. The enduring challenge for India therefore lies in ensuring that laws enacted in the name of national security do not inadvertently undermine the very democratic freedoms they seek to protect.<sup>124</sup>

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<sup>123</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 135–40 (Oxford Univ. Press 2016).

<sup>124</sup> M.P. Jain, *Indian Constitutional Law* 1430–35 (8th ed. 2018).