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## **ABOLITION OF SEDITION IN INDIA'S NEW CRIMINAL LAW: BALANCING PROGRESSIVE REFORM AND NATIONAL SECURITY**

### **Abstract**

India's newly reformed criminal law marks a significant milestone in the Indian criminal justice system by abolishing "Sedition". For over a century, the criticism of the sedition law (Section 124A of the Indian Penal Code, 1860) lies in vagueness of its language and frequent misuse of it to silence voices of political dissent and curb freedom of speech and expression. In contrast, Section 152 of the Bharatiya Nyaya Sanhita aims to safeguard the sovereignty, unity, and integrity of India. Its abolition marks an important step in aligning the Indian legal framework with modern democratic principles and human rights standards. However, this change can also act as a hurdle in balancing national security and individual freedom.

The article examines historical evolution of sedition law in India and also explores the instances, where it has been used by the state as a tool to silence state activists, journalists and political

opponents. Further, the article examines the judiciary's approach to construing the offence of sedition, which has led to calls for its repeal. The article also critically examines the recent legislative reforms, and analyses that whether the abolition of sedition law is sufficient in protecting free speech or other laws are still prevalent to pose a threat to civil liberties.

Furthermore, the article will explore the broader implications of this reform on India's democratic discourse and also examine the potential challenges in balancing public order and security.

Through a juxtaposed analysis of sedition laws in democratic jurisdictions, this article examines whether India's move towards decriminalising sedition adequately strengthens the legal system or instead creates a regulatory void requiring further reform. Finally, this article will reflect on the future of free speech in India, examining the need for continued reforms to fully protect civil liberties in a rapidly evolving socio-political context.

**Key Words:** Sedition, National Security, Bharatiya Nyaya Sanhita, Public Order, Legislative reforms.

## **Introduction**

The sedition law in India has its roots in the British colonial era, where it was primarily invoked as a means to suppress uprisings against the governing body. In simple terms, sedition refers to encouraging people to revolt against authority, and this concept was enshrined in Indian law based on that premise. Historically, both before and after India gained independence, sedition provisions have been repeatedly invoked by the State to curb opposition to those in power<sup>1</sup>. Consequently, the judiciary has played a crucial role in ensuring that the executive and legislative branches' actions have a limited impact, at least in practice. Notably, even under British rule, the legal system made efforts to address issues related to sedition. The need for a unified and standardized criminal law system in British India became apparent due to the diverse legal frameworks that existed across different territories under British rule. This variation often led to inconsistencies in the administration of justice<sup>2</sup>. To address this, a comprehensive criminal

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<sup>1</sup>Hari Singh Gour, *Penal Law of India* 1213 (Law Publishers India Pvt. Ltd. 11<sup>th</sup> ed., 2010)

<sup>2</sup>Suchitra Karthikeyan, "Explained: India's sedition law, its usage, and the opinions around it, Explained | India's sedition law, its usage, and the opinions around it", available at:

code was developed to ensure uniformity throughout the Indian subcontinent. In the 1830s, Thomas Macaulay was appointed to introduce such uniformity, and this effort culminated in the Indian Penal Code of 1860. Sedition, however, was not originally included but was added in 1870 through the Penal Code Amendment, Act No. XXVII of 1870<sup>3</sup>. Over time, sedition became a key instrument for the British to suppress the Indian freedom movement, though it ultimately failed to quell the struggle for independence. Even after independence, sedition remained part of the Penal Code and has sparked considerable debate, with critics labeling it as a repressive provision originally designed to stifle the independence movement and now used to suppress dissent. In 1948, the Constituent Assembly rejected K.M. Munshi's proposal to eliminate sedition from the legal framework<sup>4</sup>. Recent legal and policy developments demonstrate a growing trend toward revisiting sedition laws across multiple jurisdictions, notably India<sup>5</sup>, Malawi<sup>6</sup>, Pakistan<sup>7</sup>, Singapore<sup>8</sup> and Uganda. So, this analysis examines the distinctions between Section 124A of the Indian Penal Code and Section 152 of the Bharatiya Nyaya Sanhita.

## Sedition under the Indian Penal Code

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<https://www.thehindu.com/news/national/explained-indias-colonial-sedition-law-origins-govt-abuse-courts-take-on-it/article65375097.ece> (Last visited on October 23, 2024).

<sup>3</sup>W.R Donough, *A Treatise on the Law of Sedition and Cognate Offences in British India* (Spink and Co. London, 1911).

<sup>4</sup>Sarah Sorial, "Sedition and the Questions of Freedom of Speech" 18 *Current Issues in Criminal Justice* 431-448 (2007).

<sup>5</sup>The Economic Times, New Criminal Laws Get Parliament Nod, Rajya Sabha Passes Bills with Voice Vote, Dec. 22, 2023 "Stating that the sedition law has been scrapped, [Home Minister] Shah said the new laws provide for punishment of acts against the sovereignty and integrity of the country but not against criticism of the state.", available at: <https://economictimes.indiatimes.com/news/india/new-criminal-lawsget-parliament-nod-rajya-sabha-passes-bills-with-voice-vote/articleshow/106189307.cms>.

<sup>6</sup>MISA Malawi, "Members of Parliament in Malawi Remove Sedition as Criminal Offence", available at: <https://malawi.misa.org/2022/11/22/members-of-parliament-in-malawi-remove-sedition-as-criminal-offence/>.

<sup>7</sup>*Haroon Farooq v. Federation of Pakistan & others*, Lahore High Court, W.P No.59599 of 2022

<sup>8</sup>Ministry of Home Affairs, Commencement of the Sedition (Repeal) Act 2021, available at: <https://www.mha.gov.sg/mediaroom/press-releases/commencement-of-the-sedition-repeal-act-2021/>

Section 124A of the Indian Penal Code, 1860 broadly criminalises expressive conduct that is perceived to foster hatred, contempt, or disaffection against the Government established by law in India, prescribing severe penalties ranging from long-term imprisonment to life imprisonment, often accompanied by a fine. During colonial rule, this law was primarily used to serve British interests, silencing individuals who dared to voice their anger or dissatisfaction with the British regime. Ironically, while sedition laws remained in force in India post-independence, the British themselves abolished the offence of sedition in 2009 through Section 73 of the Coroners and Justice Act, 2009, following a long period of disuse, with no sedition cases filed after 1972.<sup>9</sup>

The first case where Section 124A was invoked was in *Queen v. Jogendra Chandra Bose*<sup>10</sup>, where the owner, editor, manager, and printer of the Bengali periodical “Bangobasi” were charged with sedition for publishing an article that criticized the British administration’s decision to raise the age of consent for sexual intercourse. Although the trial took place, the charges were eventually dismissed after the accused issued an apology.

Initially, the Federal Court ruled in *Niharendu Dutt Majumdar v. The King Emperor*<sup>11</sup> that sedition was tied to the incitement of violence, and that mere criticism or use of abusive language did not constitute sedition. It further ruled that sedition required an element of lawlessness caused by the accused, and if such an act did not occur, there could be no offence of sedition. Similarly, after independence, the courts have continued to play an active role, and the Supreme Court has recently taken significant steps toward declaring the sedition law unconstitutional<sup>12</sup>. This demonstrates that both the judiciary and the government recognize the problematic aspects of the sedition law, and efforts are being made to address these concerns, moving in the right direction, or at least it appears so. However, this narrower interpretation was later overturned by the Privy Council in *King-Emperor v. Sadashiv Narayan Bhalerao*<sup>13</sup>.

The section contains the following key elements:

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<sup>9</sup>Rohan Deshmukh, *Political Dissent and Sedition: Historical Perspective* 88 (Law Publishers Pvt. Ltd. 1<sup>st</sup> ed., 2024).

<sup>10</sup>(1892)ILR 19CAL. 35.

<sup>11</sup>AIR 1939 CAL. 703.

<sup>12</sup>A.K. Mukherjee, “The Federal Court and Laws of Sedition in India” 98 *Indian Journal of Political Science* (1943).

<sup>13</sup>(1944) 46 BOM LR 459.

1. An effort or attempt to incite hatred or contempt against the Government of India through speech, writing, symbols, or actions.
2. This effort must lead to the incitement of violence against the government.

Interestingly, the provision does not consider the actual ramifications of the words or actions when determining sedition. Whether or not there was a real outbreak or public disturbance is irrelevant for applying this section.

The law itself is not overly broad, as it excludes expressions of disapproval toward government actions that do not incite feelings likely to cause public disorder. In *Naurang Singh v. Union Territory of Chandigarh*<sup>14</sup>, the Punjab and Haryana High Court ruled that taking into account the content and tone of the accused's speech, it was evident that the intent was to bring the government into contempt with a likely outcome of violence and public disorder.

One of the most notable sedition cases was the trial of Bal Gangadhar Tilak<sup>15</sup>, sparked by his editorials in the Kesari newspaper, which contributed to a broader redefinition of sedition in India. Other prominent cases, such as the trials of Bhagat Singh and the trio Benoy, Badal, and Dinesh, reveal how sedition laws were once used to prosecute freedom fighters for their nationalist expressions and criticism of British rule. The constitutionality of Section 124A was upheld by the Supreme Court in the case of *Kedar Nath Singh v. State of Bihar*<sup>16</sup>. The court clarified that the provision is restricted to acts demonstrating a clear intention to overthrow or destabilise the government through violent means. The Court also emphasized that citizens retain the right to criticize or express disapproval of the government, even if such expression has the potential to cause public disorder, provided it does not incite violence against the government.

The wide scope of Section 124A makes it susceptible to misuse, often resulting in cases being filed against individuals who criticize the government. This provision has often been used to charge journalists, among others, for voicing dissent<sup>17</sup>. The Supreme Court has periodically

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<sup>14</sup> AIR 1997 SC 335.

<sup>15</sup>*Emperor v. Bal Gangadhar Tilak*, (1917)19BOM.LR21.

<sup>16</sup>1962 AIR 955.

<sup>17</sup>Laurence W. Maher, "The Use and Abuse of Sedition" *Sydney Law Review* 287 (1992).

elucidated key aspects of how sedition laws are applied. In *Balwant Singh & Anr v. State of Punjab*<sup>18</sup>, the Court ruled that the act of two people shouting slogans casually in an arbitrary setting does not amount to sedition, since it does not signify a sincere attempt to challenge or criticize the government. The case of *Aseem Trivedi v. State of Maharashtra*<sup>19</sup> involved a cartoonist facing sedition charges for his satirical work, highlighting how the provision is often misapplied to target artists and dissenting voices.<sup>20</sup>

In 2016, the NGO Common Cause filed a petition with the Indian Supreme Court requesting the establishment of guidelines that would require senior police officers to formally assess and confirm that any purported "seditious act" showed a clear intent or propensity to provoke violence or unrest before allowing an FIR to be filed or arrest made<sup>21</sup>. The Court did not pass any guidelines, but reiterated the decision of *Kedar Nath* case, which is to be complied by the authorities<sup>22</sup>.

The landmark case of *Shreya Singhal v. Union of India*<sup>23</sup> led to the striking down of Section 66A of the Information Technology Act, 2000. The case originated from the arrest of two teenage girls by the Mumbai Police after they posted comments on Facebook expressing dissatisfaction with a protest called by the Shiv Sena. The provision was challenged as violating Article 19(1) of the Indian Constitution. In 2015, the Supreme Court invalidated the provision and established a distinction between "advocacy" and "incitement." The Court further clarified that under Section 124A, an individual can only be prosecuted if there is a direct link between their actions and the incitement of violence or public disorder. Restrictions on free speech, to be reasonable, must have a clear and direct connection to maintaining public order, rather than being based on speculative or remote possibilities.

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<sup>18</sup>(1976) 1 SCC 425.

<sup>19</sup> 2015 SCC Bom. 587.

<sup>20</sup>Jason Burke, "Indian Cartoonist Aseem Trivedi jailed after arrest on sedition charges" The Guardian (September 10, 2012), available at: <https://www.theguardian.com/world/2012/sep/10/indian-cartoonist-jailed-sedition>(Last visited on October 23, 2024).

<sup>21</sup>*Common Cause v. Union of India*, (2016) 15 SCC 269.

<sup>22</sup>*Ibid.*

<sup>23</sup>2015 AIR SCW 1989.

A high-profile case that gained national attention occurred at Jawaharlal Nehru University in Delhi, where Kanhaiya Kumar was arrested by the police under Sections 124A and 120B of the Indian Penal Code for allegedly making seditious statements. Kumar denied all charges of raising seditious slogans. His arrest triggered widespread debates throughout India and even attracted attention internationally, including in the United States<sup>24</sup>.

### 3. Section 152 of Bharatiya Nyaya Sanhita

In 2021, numerous petitions were filed by journalists, media organizations, civil society groups, politicians, and others, questioning the constitutionality of the sedition law. These petitions argued that, in light of the Supreme Court's evolving interpretation of fundamental rights and freedom of expression, particularly the principles of overbreadth, arbitrariness, and reasonableness, Section 124A required further examination. Some petitions specifically referred to India's international commitments and key rulings highlighting how ambiguous laws can suppress free speech. Additionally, they pointed out that the *Kedar Nath* judgment had been ineffective in curbing the misuse of the sedition provision to stifle dissent and criminalize speech. In response, the Government of India submitted its response through an affidavit that the sedition law was under review. The affidavit quoted the Prime Minister, who emphasized the need for the country to move away from colonial legacies, including outdated laws and practices.<sup>25</sup>

In the affidavit, it was noted that the Prime Minister believed the nation must work towards dismantling obsolete colonial-era laws and practices that have outlived their relevance. As a result, in May 2022, the Supreme Court issued an order pausing all sedition cases, stating that Section 124A of the IPC was out of sync with modern society and was originally intended for a colonial context. While this order has largely been followed, many sedition cases also involve other charges, and trials for those charges continue.<sup>26</sup>

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<sup>24</sup>Trial Watch, "The Crime of Sedition: What Comes Next for an Archaic Law?", available at: <https://cfj.org/reports/the-crime-of-sedition-what-comes-next-for-an-archaic-law/>. (Last Visited on October 15, 2024).

<sup>25</sup>Petitions filed by Journalist Union of India, available at: <https://www.scobserver.in/wp-content/uploads/2021/07/Journalist-Union-of-Assam-vs-Union-of-IndiaWPCrI-No.-498-of-2021-Public-Copy.pdf> (Last visited on October 21, 2024).

<sup>26</sup>Siddique Kappan, "U.S. Comm'n on Inter Religious Freedom", available at: <https://www.uscirf.gov/religious-prisoners-conscience/forb-victims-database/siddique-kappan>. (Last visited on October 22, 2024).

In April 2023, the Law Commission of India published a report titled “*Usage of the Law of Sedition*”<sup>27</sup>, which not only supported the retention of the colonial-era sedition provision but also proposed enhancing one of the alternative punishments from three years to seven years of imprisonment<sup>28</sup>.

Soon thereafter, the government introduced a new statute to supercede the outdated penal code. While this new legislation eliminates the offence of sedition, it introduces provision criminalizing "acts endangering the sovereignty, unity, and integrity of India." Concerns have been raised that this new provision, while differing in specifics, may essentially serve the same function as the sedition law, sharing some of its key characteristics<sup>29</sup>. The new provision replaces the construct of inciting "disaffection towards the Government established by law" with encouraging "feelings of separatist activities" or actions that "endanger the sovereignty, unity, and integrity of India." It also criminalizes "subversive activities," but fails to define key terms like what constitutes separatist or subversive activities, leaving ambiguity in interpretation, which forms part of the discussion in this research. Additionally, while Section 124A targeted disaffection expressed through words, signs, or visible representation, the new law broadens this to include the use of "electronic communication" or "financial means" for engaging in the prohibited acts. While the previous sedition law carried penalties of life imprisonment, fines, or imprisonment up to three years, the new provision increases the punishment to life imprisonment or imprisonment for up to seven years. Due to these changes, many experts have described the new law as even more severe than Section 124A.<sup>30</sup>

In September 2023, the Supreme Court referred the challenge to the sedition provision to a Constitution Bench for reconsideration of the *Kedar Nath* case<sup>31</sup>. Although the Union

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<sup>27</sup>Law Commission of India, 279th Report: Usage of the Law of Sedition (2023).

<sup>28</sup>Kaleeswaram Raj, “*Sedition Law Report: A Regressive Step by Law Commission*”, Frontline (June 8, 2023), available at: <https://frontline.thehindu.com/the-nation/sedition-lawreport-a-regressive-step-by-law-commission/article66946834.ece>. (Last visited on October 19, 2024).

<sup>29</sup>*Ibid.*

<sup>30</sup>Section 152 of the Bharatiya Nyaya Sanhita (BNS) aims to criminalize actions that threaten the sovereignty, unity, and integrity of India. It prescribes a punishment of either life imprisonment or imprisonment for up to seven years, along with a fine. The minimum sentence for this offence has been raised from three years to seven years.

<sup>31</sup>*Supranote 17.*

Government sought an adjournment on the ground that the sedition law was proposed to be repealed, the Court underscored that the new legislation would not have retrospective effect, and therefore the legality of ongoing and prospective prosecutions under Section 124A would still require judicial scrutiny<sup>32</sup>.

Recently, three notable developments have taken place in relation to the offence of sedition. First, the Supreme Court has placed a temporary stay on the operation of Section 124A of the Indian Penal Code. Second, the Law Commission of India<sup>33</sup>, has recommended the continued inclusion of sedition within the legal framework. Third, while introducing the new criminal law bills, the Home Minister informed the Lok Sabha that the offence of sedition had been done away with<sup>34</sup>.

A comparative analysis of Section 124A of the Indian Penal Code and Section 152 is mentioned in the table given below:

S. 124A, Indian Penal Code – Sedition	Section 152, BhartiyaNyaya Sanhita – Acts endangering sovereignty, unity and integrity of India
<p>This provision in simple words says that if a person speaks, writes, uses signs, images, or any other method to create or attempt to create hatred, contempt, or strong disloyal feelings against the Government established by law in India, that person can be punished.</p> <p>The punishment may include:</p> <ul style="list-style-type: none"> <li>• Imprisonment for life, with or without a fine, or</li> </ul>	<p>In simple terms, this law says that if a person intentionally or knowingly, through speech, writing, signs, pictures, electronic messages, financial support, or any other means:</p> <ul style="list-style-type: none"> <li>• Tries to encourage separation from India, armed rebellion, or subversive activities,</li> <li>• Promotes feelings of separatism, or</li> <li>• Threatens the sovereignty, unity, or</li> </ul>

<sup>32</sup>*Ibid.*

<sup>33</sup>*Supra note 29.*

<sup>34</sup>Supreme Court Observer, “Sedition Law in India: A Timeline”, available at: <https://www.scobsever.in/journal/sedition-in-india-a-timeline/> (Last visited on October 23, 2024).

<ul style="list-style-type: none"> <li>• Imprisonment for up to three years, with or without a fine, or</li> <li>• Only a fine.</li> </ul> <p>In essence, the law criminalises actions or expressions that are seen as encouraging hostility or disaffection against the government.</p> <p>Explanations</p> <ol style="list-style-type: none"> <li>1. The expression “disaffection” includes disloyalty and all feelings of enmity.</li> <li>2. Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.</li> <li>3. Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.</li> </ol>	<p>integrity of India,</p> <p>or actually carries out any of these acts,</p> <p>then that person can be punished with:</p> <ul style="list-style-type: none"> <li>• Life imprisonment, or</li> <li>• Imprisonment up to seven years, and</li> <li>• A fine.</li> </ul> <p>In short, it criminalises actions that threaten India’s unity, sovereignty, or encourage rebellion.</p> <p>Explanation</p> <p>Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section.</p>
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Section 152 of the BNS retains the methods for committing what was previously known as sedition, such as "by words... visible representation," but modifies the prohibited actions. In the IPC, Section 124A criminalizes inciting or attempting to incite "hatred, contempt, or disaffection" towards the government established by law. The BNS, however, criminalizes

inciting or attempting to incite "secession, armed rebellion, subversive activities, or encouraging separatist sentiments that threaten the sovereignty, unity, and integrity of India." Along with shifting the focus from the "government of India" under Section 124A to "India" in Section 152, the range of activities deemed to threaten the nation's "unity and integrity" has been broadened. Additionally, the clause introduces modern methods of committing the offence by incorporating "electronic communication" and "financial means" and includes a requirement for "purposely or knowingly" engaging in such acts, thus clarifying the *mens rea* needed for the offence.

### 3.1. *Key Features of Section 152 of the Bhartiya Nyaya Sanhita (BNS)*

Section 152 of the BNS has been established to modernize India's legal framework regarding actions that threaten national integrity and sovereignty, replacing outdated colonial laws. Here's a detailed examination of its main features:

#### 3.1.1 *Comprehensive Definition of Offences:*

This section categorically criminalizes actions that aim to incite or promote secession, armed rebellion, or any subversive activities against the state. The inclusive wording leaves room for diverse interpretations, which could encompass a variety of political expressions and dissent.<sup>35</sup>

#### 3.1.2 *Diverse Forms of Communication:*

The law explicitly includes multiple modes of expression such as spoken or written communication, visual representations, and electronic media. This acknowledges the evolving nature of communication in today's digital age and recognizes its potential to incite unrest<sup>36</sup>.

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<sup>35</sup> Ashima Obhan, "Sovereignty, Secession and Subversion: A Wolf in Sheep's Clothing?", available at:

<https://www.obhanandassociates.com/blog/sovereignty-secession-and-subversion-a-wolf-in-sheeps-clothing/> (Last visited on October 26, 2024).

<sup>36</sup>Utkarsh Anand, "Sedition under the new Bhartiya Nyaya Sanhita Bill, 2023: What's changed." available at: <https://www.hindustantimes.com/india-news/sedition-under-the-new-bharatiya-nyaya-sanhita-bill-2023-what-s-changed-101691751947093.html>(Last visited on October 26, 2024).

### 3.1.3 *Stringent Penalties:*

Persons convicted under this provision may face severe repercussions, including life imprisonment or a prison term of up to seven years, along with the possibility of fines. This represents a notable increase in penalties compared to previous statutes, indicating a toughened stance on national security.

### 3.1.4 *Protections for Lawful Dissent:*

A key feature of Section 152 is its provision that, comments aimed at lawfully challenging government actions are not considered offenses, provided they do not incite rebellion. This aims to strike a balance by safeguarding free speech and allowing for lawful dissent.<sup>37</sup>

### 3.1.5. *Relation to Previous Laws:*

This section supersedes the repealed Section 124A of the Indian Penal Code (IPC), which faced criticism for its vague application against political dissent. The introduction of Section 152 is intended to clarify and refine the legal framework regarding sedition while addressing concerns about national security.

### 3.1.6. *Concerns Over Potential Misuse:*

The broad terminology of Section 152 has raised alarms among critics, who argue it may lead to arbitrary enforcement and interpretations, thus hindering free speech and legitimate dissent. The risk of using this law against political adversaries is a considerable concern for civil liberties advocates

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<sup>37</sup> Shrushti Taori and Tatva Damania, “Balancing Free Speech And National Security: A Critical Analysis Of Section 152 Of The Bhartiya Nyaya Sanhita And Section 124A of the Indian Penal code”, available at: <https://www.livelaw.in/lawschool/articles/balancing-free-speech-national-security-critical-analysis-section-152-bhartiya-nyaya-sanhita-section-124-a-ipc-259465>(Last visited on October 28, 2024).

### *3.1.7. Constitutional and International Implications:*

The enactment of this law prompts discussions about its alignment with constitutional guarantees of free expression and compliance with international human rights standards. Experts underscore the importance of closely monitoring its implementation to protect fundamental rights

### *3.1.8 Impact on Political and Social Discourse:*

The implementation of Section 152 may significantly affect political engagement and public discourse in India. The stringent nature of the provisions could deter citizens from expressing dissent towards government policies, leading to a chilling effect on free expression.

## **4. Challenges ahead**

### *4.1. The Issue of Vagueness*

Unlike the IPC, Section 152 does not provide any explanations to clarify the meaning and scope of its terms. For example, the phrase "subversive activities" lacks a legal definition, leaving unclear what specific activities may qualify as subversive, the degree of harm necessary, or the intended target of such harm<sup>38</sup>. The lack of precise legal definitions in the BNS or other legislation increases the risk of overbroad application, resulting in vagueness and arbitrariness—factors that have led to previous legal provisions being struck down<sup>39</sup>. In *Shreya Singhal v. Union of India*<sup>40</sup>, the Supreme Court ruled Section 66A of the IT Act unconstitutional, largely because of the vagueness of terms like "grossly offensive or of menacing character,"

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<sup>38</sup> The Cambridge Dictionary describes "subversive" as "attempting to destroy or damage something, particularly an established political system," while Oxford Languages defines it as "seeking or intended to subvert an established system or institution" and states that "to subvert" means to "undermine the power and authority of an established system or institution." This broad definition could encompass legitimate protests and dissent against the government, as these actions often challenge the legitimacy and authority of government decisions and actions.

<sup>39</sup>*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248., *State of Bombay & Anr. v. F.N. Balsara*, 1951 SCC 860.

<sup>40</sup> (2015) 5 SCC 1.

"annoyance," "inconvenience," "danger," "enmity," "hatred," and "ill will." These ambiguous terms made the provision susceptible to misuse by authorities. Similarly, Section 152 lacks clarity regarding what constitutes "financial means" or the type of financial support that would qualify as committing the offence, whether direct or indirect.

Moreover, the Explanation provided in this clause appears incomplete and unclear<sup>41</sup>. While it references acts aimed at voicing dissent against government policies or actions with the intent to alter them through lawful means, it fails to clarify whether these acts are considered offensive or fall outside the scope of this section, suggesting they should not be deemed an offence. Consequently, it does not adequately reflect the meaning of Explanation 3 of Section 124A of the IPC, which it seems to emulate.

#### 4.2. *Vagueness in the Object of Harm*

A notable shift in Section 152 is its failure to establish a clear object of protection, unlike the Indian Penal Code. The IPC specifically targets the incitement of disaffection, hatred, or contempt toward "the Government established by law in India," whereas Section 152 refers to endangering the "sovereignty, or unity and integrity of India."<sup>42</sup> The former conceptualizes the government as a distinct entity, while the latter broadens the scope of the offense, as it addresses the nation, a more abstract and less defined concept. This term could encompass the government, public figures, or even society and communities as a whole. Such vague and expansive definitions can significantly affect the threshold of harm necessary for an act to be classified as sedition.

The implications of this departure from the IPC can be better understood by examining the judicial standards that have evolved to define who constitutes the "Government" under Section 124A of the IPC. This legal framework has historically provided a safeguard against the overly broad application of the sedition law.

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<sup>41</sup>The Crime of Sedition: What Comes Next for an Archaic Law?, available at: <https://cfj.org/wp-content/uploads/2024/02/Sedition-Report-February-2024-Update.pdf>

<sup>42</sup> The former conceptualizes the government as a distinct entity, while the latter broadens the scope of the offense, as it addresses the nation—a more abstract and less defined concept.

In *Kedar Nath Singh v. State of Bihar*<sup>43</sup>, the Supreme Court articulated that the term "Government established by law" represents the visible embodiment of the State, essential for its continuity and stability, distinguishing it from the individuals executing administrative functions. The rationale for maintaining a provision like sedition was thus twofold: it identified a specific object requiring protection and clarified the level of harm necessary for an act to qualify as sedition—that is, it must pose a threat to the ongoing existence or stability of the State.

This clarity is exemplified in the case of *State through Superintendent of Police, CBI/SIT v. Nalini and Ors*,<sup>44</sup> where the Supreme Court interpreted Section 3 of the now-repealed Terrorist And Disruptive Activities (Prevention) Act, 1987, which similarly targeted the "Government as by law established." This provision defined a terrorist act as conduct undertaken with the intent to intimidate or coerce the government, instil fear among the public, create communal disharmony, or disrupt social harmony, through the use of explosives, lethal weapons, hazardous substances, or by unlawfully detaining and threatening individuals. The act must result in, or be likely to result in, loss of life, bodily injury, destruction of property, or disruption of essential services vital to the community. The Court concluded that the assassination of Rajiv Gandhi, a former Prime Minister of India, did not qualify as a terrorist act since he was not the sitting Prime Minister, and targeting him did not equate to an effort to instill fear in the Government of the Centre or State.

By identifying "India" as the object of harm and failing to clearly define specific actions constituting the offense, section 152 establishes a tenuous connection between the act and its repercussions.

#### 4.3. *Criminalizing Dissent*

In the landmark *Kedar Nath* case, the Supreme Court drew a crucial distinction between disloyalty to the government and strong criticism of its policies. The Court affirmed that freedom of speech and expression under Article 19(1)(a) of the Constitution encompasses the right to

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<sup>43</sup>1962 AIR 955.

<sup>44</sup>(1999) 5 SCC 253.

criticize or comment on the government and its actions, even in strong language. This freedom remains intact so long as it does not incite violence against the state or lead to public disorder. The judgment established that freedom of speech should be the rule, while sedition should remain the rare exception, effectively shielding dissent from being criminalized. In the case of *Balwant Singh v. State of Punjab*<sup>45</sup>, the Court held that raising slogans such as “Khalistan Zindabad” in a casual manner, without instigating violence or disorder, does not amount to sedition. While the Court has shown a strong tendency to uphold freedom of speech, whether this protective stance is reflected in actual practice remains uncertain<sup>46</sup>. Clause 150 could potentially dilute this protection, as it might interpret mere slogan-raising—without any intent to incite violence—as a secessionist act or as promoting separatism. This broadening of the sedition law in Clause 150, compared to Section 124A as defined in earlier judicial rulings, risks transforming an exceptional measure into a more generalized one, raising questions about the law’s capacity to distinguish between sedition and legitimate dissent.

#### 4.4. Lowered threshold of harm

Section 152 raises concerns about the continuation of judicial safeguards that have historically been incorporated into the definition of sedition. These safeguards were initially introduced to address the ambiguous language of Section 124A, particularly the terms “hatred,” “contempt,” and “disaffection.” Although Section 152 may seem to provide greater clarity, it is important to take into account the judiciary’s evolving safeguards on sedition in order to properly evaluate its significance.

The language in Section 124A has always been open to varied interpretations, leading to a degree of ambiguity. This was demonstrated by conflicting judicial interpretations, such as the Federal Court’s decision in *Niharendu Dutt Majumdar v. King Emperor*<sup>47</sup>, which narrowly defined “hatred,” “contempt,” and “disaffection” to apply only when public order was at risk. In contrast,

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<sup>45</sup>(1995) 3 SCC 253.

<sup>46</sup>“*A Decade of Darkness: The Story of Sedition in India*”, available at:<https://sedition.article-14.com/>

<sup>47</sup>AIR1939CAL. 70.

the Privy Council in *King-Emperor v. Sadashiv Narayan Bhalero*<sup>48</sup> adopted a broader approach, interpreting these terms to encompass any expression of negative feelings towards the government, regardless of its impact on public order.

In *Niharendu*, the Federal Court clarified that the objective of sedition laws was to curb anarchy, which it understood as a breakdown of respect for governmental authority and the rule of law, resulting in public disorder. The Court articulated a standard that speech or acts must either incite disorder or demonstrate a clear intention to do so. However, this interpretation was later overruled by the Privy Council in *Sadashiv*, which opted for a literal interpretation of Section 124A. This broadened the scope to include any expression of ill-will, such as hatred or hostility toward the government, without requiring a connection to public disorder. The *Sadashiv* judgment effectively lowered the standard, criminalizing expressions that merely “excite” negative feelings toward the government without any threshold for their intensity.

Thus, any assertion that Section 152 brings clarity through more specific language is misleading. It remains unclear whether the threshold of impacting public order will be applied to the new provision, or whether its wording will be construed in a strict and literal manner.. Unlike Section 124A of the IPC, the words "hatred," "contempt," and "disaffection" are entirely absent in Section 152 of the BNS.

One of the central arguments in the ongoing Supreme Court<sup>49</sup> challenge concerns the vagueness of the phrase "tendency or intention to create public disorder," which Kedar Nath identified as key to the offence. Section 152 introduces potentially even more ambiguous terms, such as "excites or attempts to excite subversive activities" and "encouraging feelings of separatist

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<sup>48</sup> 1947 SCC PC 9.

<sup>49</sup>Tamine Kishore, Petitioner’s Submissions in *KishorechandraWangkhemcha v. Union of India*, Writ Petition (Criminal) No.106/2021

available at: <[https://www.scobserver.in/wp-content/uploads/2021/09/Kishore\\_Wangkhemcha\\_v.\\_Union\\_of\\_India1.pdf](https://www.scobserver.in/wp-content/uploads/2021/09/Kishore_Wangkhemcha_v._Union_of_India1.pdf)>, (Last visited on October 24, 2024) ; Aparna Bhat, Petitioner’s Submission in *People’s Union for Civil Liberties v. Union of India*, 2021 available at: <[https://www.scobserver.in/wp-content/uploads/2021/09/Sedition\\_WritPetition\\_PUCL.pdf](https://www.scobserver.in/wp-content/uploads/2021/09/Sedition_WritPetition_PUCL.pdf)>, (Last visited on October 24, 2024).

activities." Without clear definitions or judicial interpretation, these terms remain vague and arguably lower the threshold for criminalization, raising constitutional concerns.

Additionally, Section 152 specifically penalizes acts that promote separatist sentiments, whereas *Kedar Nath* held that criminalizing expressions of hatred, hostility, or disapproval of the government was an unjustifiable restriction on free speech. While Section 152 references different expressions, it is unclear if the principles from *Kedar Nath* will continue to apply.

Judicial guidance on sedition under Section 124A sought to balance freedom of expression with public order in a democratic context. However, Section 152 lacks this framework and may be just as vague, if not even more ambiguous, than the former Section 124A<sup>50</sup>. The lack of legislative clarity in the BNS suggests that judicial intervention will be necessary, potentially requiring a new interpretative approach. In the absence of clear guidance, there is a risk of misuse, with some commentators suggesting that Clause 150 is even more open to subjective interpretation and potential abuse than Section 124A, threatening to undermine democratic values by criminalizing dissent.

In recent years, the application of sedition under Section 124A saw a marked increase, often targeting social media posts and being used to suppress protests, this was prior to the Supreme Court's order placing the provision on hold. Section 152 of the BNS appears likely to extend this pattern rather than signaling a departure from its colonial origins.

#### 4.5. *Mens rea*

A critical issue that merits consideration is whether the *mens rea* threshold embedded in Section 152, articulated through the terms "purposely or knowingly," constitutes a meaningful

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<sup>50</sup>PTI, 'Bharatiya Nyaya Sanhita Bill allows using draconian police powers for political ends: Kapil Sibal' (The Hindu, 12 August 2023), Last visited on October 25, 2024; Lubhayathi Rangarajan, "Home Minister Amit Shah Says Sedition Is Dead. But Its Replacement Is More Fearsome Than The Colonial Law Ever Was", Chitranshul Sinha, "Sedition law is not gone, it's set to be more draconian" (Indian Express, 12 August 2023), last accessed on 29.08.2023.

advancement over the formulation under Section 124A of the IPC. While Section 124A does not explicitly mention intention or knowledge, it cannot be regarded as a strict liability offence. The Supreme Court has consistently emphasized that, unless a statute clearly indicates otherwise, offences should be interpreted with an implied mens rea requirement, in line with common law principles.<sup>51</sup> This principle was firmly established in cases like *Ravule Hariprasad Rao v. State*<sup>52</sup> and *State of Maharashtra v. M.H. George*<sup>53</sup>, where the Court held that, even if statutory language is broad or unqualified, the element of mens rea is typically presumed unless a clear intent to exclude it is evident. Thus, merely adding the terms “purposely or knowingly” in Section 152 does not fundamentally enhance Section 124A, as *mens rea* was always an implicit component of the latter, as underscored in *Kedar Nath*.

## **5. Sedition Laws in the United States and the United Kingdom: International Best Practices**

### **5.1. Sedition Law in the United States of America**

In the United States, the offence of sedition is not a single offence, but has been placed under a separate chapter in the federal criminal code namely chapter 115 of title 18 of the U.S. Code. The chapter deals with treason, sedition and subversive activities which pertain to violent or forceful actions against the government except peaceful criticism or dissent<sup>54</sup>.

The most significant of these is 18 U.S.C. § 2384, which declares the act of conspiracy between two or more people a crime, if the intention is to overthrow, destroy or oppose by force, the authority of the U.S. government or to prevent or delay by force the execution of any U.S. law. Persons convicted under this section are liable for imprisonment for up to twenty years<sup>55</sup>.

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<sup>51</sup>*Union of India v. Ganpati Dealcom Private Ltd.*, (2023) 3 SCC 315.

<sup>52</sup>1951 SCC 241.

<sup>53</sup>(1965) 1 SCR 123.

<sup>54</sup> 18 U.S.C., ch. 115, *Treason, Sedition, and Subversive Activities*

<sup>55</sup> 18 U.S.C. § 2384, *Seditious Conspiracy*

Although these statutes enable prosecution of persons who pose serious threats to the government, however their application is limited in light of the U.S. Constitution's First Amendment which safeguards the right to freedom of speech and expression. In the 1969 landmark case of *Brandenburg v. Ohio*<sup>56</sup> the U.S. Supreme Court ruled that a speech which advocated illegal ideas cannot be made punishable unless the intention of the speech was to incite imminent lawless action which was likely to produce such action. The test of "imminent lawless action" acts as standard for deciding whether the speech comes under the protection of the First Amendment.

Earlier the United States had a strict sedition law. The Sedition Act of 1918 was passed by the Congress during World War I to bring an amendment to the Espionage Act of 1917 to criminalise criticism against the government during the war. However in 1920, the Act was repealed to prioritise civil liberties.<sup>57</sup> Decisions from that period, such as *Abrams v. United States*<sup>58</sup> and *Debs v. United States*<sup>59</sup>, upheld convictions under the wartime sedition framework but were later undermined by evolving First Amendment jurisprudence.

In modern practice, sedition related prosecutions have become rare because to prove the crime a clear evidence of violent intent and conspiracy is required to be produced. U.S. law thus treats sedition as a serious offence against the government, while at the same time protecting political dissent and free expression<sup>60</sup>.

## 5.2. Sedition Law in the United Kingdom

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<sup>56</sup> 395 U.S. 444 (1969)

<sup>57</sup> "Espionage Act of 1917 and Sedition Act of 1918" *National Constitution Center*, available at: <https://constitutioncenter.org/the-constitution/historic-document-library/detail/espionage-act-of-1917-and-sedition-act-of-1918-1917-1918> (Last visited on December 16, 2025)

<sup>58</sup> 250 U.S. 616 (1919)

<sup>59</sup> 249 U.S. 211 (1919)

<sup>60</sup> "Sedition", *Charles International Law*, September 24, 2025, available at: <https://www.charlesinternationallaw.com/sedition> (Last visited on December 16, 2025)

In the United Kingdom, sedition was earlier a criminal offence which provided punishment for any speech or act that incited disaffection against the Crown or the government<sup>61</sup>. The Sedition Act, 1661 was one such law, however with time these laws became obsolete.

The Coroners and Justice Act 2009, abolished the earlier laws on sedition in England, Wales and Northern Ireland. Section 73 of the Act removed the provisions relating to sedition from the criminal law to protect freedom of speech and expression where the earlier act punished persons for criticizing the government. The 2009 Act was a reflection of the legislature's efforts to protect contemporary democratic values and free speech<sup>62</sup>.

The UK thus has no law that makes sedition an offence per se. However conduct similar to sedition can still be prosecuted under other crime heads such as treason or public order offences.

## 6. Way Forward

As Shakespeare once noted, a rose by any other name would smell as sweet, yet the recent criminal law bills in India suggest that a thorn, regardless of what it's called, still pricks sharply. India stands at a pivotal crossroads as three proposed criminal law bills, including one meant to replace the current sedition law, spark concerns around civil liberties.<sup>63</sup> In 2020, the central government established a Committee for Reform in Criminal Law to reevaluate India's three primary criminal codes. Subsequently, in the 2022 case *S.G. Vombatkere v. Union of India*<sup>64</sup>, the Supreme Court put a hold on enforcing Section 124A of the IPC, influenced by the government's request for more time to review the sedition law in light of human rights and civil liberties.

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<sup>61</sup> Urvashi Tyagi "Law of Sedition in Other Countries: A Comparative Study", 7 (2) *International Journal of Legal Science and Innovation* (2025)

<sup>62</sup> Coroners and Justice Act 2009, s. 73, *Explanatory Notes*, para. 411, available at :<https://www.legislation.gov.uk/ukpga/2009/25/notes/paragraph/411>

<sup>63</sup> Ashish K James and Dyuti Anand, "A Thorn by Another Name Pricks Just as Sharply: India's New Laws Intensifying the Sting of Sedition", available at: <https://library.nalsar.ac.in/2023/09/08/a-thorn-by-another-name-pricks-just-as-sharply-indias-new-laws-intensifying-the-sting-of-sedition/>

<sup>64</sup>(2022) 7 SCC 433.

With a sweeping overhaul of criminal law in mind, three new bills were recently introduced in the Lok Sabha, including the Bharatiya Nyaya Sanhita (BNS) Bill, intended to replace the Indian Penal Code. On closer inspection, the BNS Bill reintroduces a sedition-like provision through Section 152, termed “Acts Endangering the Sovereignty, Unity, and Integrity of India.” This clause not only broadens the scope of punishable actions but also increases penalties for acts of dissent, echoing the original intent of sedition laws. This legislative approach appears to sidestep the Supreme Court’s stay on Section 124A in the *Vombatkere* case<sup>65</sup>, which was prompted by concerns over human rights. Instead of addressing these issues, the rebranding and tightening of the sedition provision could be interpreted as an attempt to strengthen control over dissent, wrapped in the guise of legal reform.

Section 152 of the BNS Bill significantly expands the scope by encompassing actions related to secession, armed rebellion, subversive activities, and promotion of separatist sentiments. This broadening reflects themes from the 42nd Law Commission Report (1971)<sup>66</sup>, which advocated for an expanded interpretation of sedition by targeting not just acts that fostered disaffection against the government, but also those that threatened India’s unity, security, or public order. However, the addition of vague terms like "subversive activities" and "feelings of separatist activities" extends the reach of this provision even beyond what the 1971 Report had recommended.<sup>67</sup>

Similarly, the phrase “feelings of separatist activities” also introduces interpretative challenges, as it could criminalize mere intellectual support for separatist ideologies.<sup>68</sup>

The risk of exploitation becomes even more apparent when considering how Section 152 might interact with Section 111 of the BNS. Section 111 defines a “terrorist act” in a manner that

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<sup>65</sup>*Ibid.*

<sup>66</sup> Law Commission of India, 42<sup>nd</sup> Report on the Reform of the Indian Penal Code (1971).

<sup>67</sup>The phrase “subversive activities” bears resemblance to its application in Article 105 of China’s Criminal Law, which penalizes “rumors or slanders” that undermine state power. However, in the Indian legal context, this term presents interpretative difficulties due to its lack of established legislative or judicial history. Without a clearly defined scope, it risks broadening the law’s reach, potentially criminalizing a wide array of actions and suppressing legitimate political dissent.

<sup>68</sup>Its vagueness raises concerns about potential misuse, which could hinder political discourse and result in the prosecution of individuals for holding differing beliefs.

obscures the distinction between lawful protest and criminal behaviour, particularly when linked to maintaining the unity and integrity of India and public order. The provisions in subsections (ii) and (iii) related to disrupting essential services or infrastructure can be applied to non-violent protests, which inherently seek to challenge the status quo to highlight specific issues.

Analyzing the shift from Section 124A to the new section 152 of the Bharatiya Nyaya Sanhita, it is clear that the latter, although presented as a break from colonial practices, may inadvertently reinforce such legacies. Despite being described as a transformative evolution away from colonial influences, section 152 appears to impose more restrictions, potentially serving as a mechanism for the state to limit democratic expression. The inclusion of terms like “subversive activities” and “feelings of separatist activities” creates ambiguity, which opens the door to misapplication and misuse.

The lessons from history are clear: once legitimized, instruments of repression tend to cast long, dark shadows over civil liberties. It is crucial for scholars and the public to critically assess this legislation rather than accepting it uncritically. The trajectory of our democratic future depends on this careful examination.

## **7. Conclusion and Suggestions**

The sedition law has long been a source of controversy in India, leading to various legal challenges. Critics argue that these laws are vague and overly broad, allowing for their misuse to suppress dissent and limit freedom of speech. Numerous cases have highlighted how the sedition law has been weaponized against activists, journalists, and others who express criticism of the government. Nevertheless, the need to maintain national integrity is also crucial. India’s strength lies in its unity in diversity, which must be preserved. Some believe that the sedition law serves this purpose. Proponents argue that such laws are vital for ensuring the security and stability of the state and for preventing potential violence and insurrection.

This raises an important question about how much freedom of speech and expression must be limited to achieve these aims. Ultimately, a balance is essential for the effective functioning of the country. The introduction of the Bharatiya Nyaya Sanhita (BNS) 2023, which replaces the

sedition law with Section 152, may seem like a significant reform. The BNS's treatment of sedition indicates a possible move toward a more calibrated balance between the interests of the State and the protection of individual freedoms.

However, the real impact of these changes will depend heavily on judicial interpretation and enforcement, determining whether they effectively curb misuse and uphold democratic values. This transition is a crucial step toward aligning sedition laws with modern democratic principles, but it requires ongoing analysis and oversight to ensure that this balance is achieved.

The challenges posed by the new legislation underscore that simply repealing or reforming sedition laws, without a genuine commitment to safeguarding freedom of speech, will ultimately be ineffective. The courts hold a significant opportunity here: the doctrine of "void for vagueness," which has increasingly been applied to sedition laws, is equally relevant to new, ambiguous laws. A key test will be how the Indian Supreme Court adjudicates the sedition cases and whether its rulings will offer broader insights into the necessity for clarity in criminal law. The influential nature of the Kedar Nath judgment, as highlighted by the Privy Council's decisions and their impact in places like Hong Kong, suggests that a favourable ruling by the Indian Supreme Court could have far-reaching implications for other jurisdictions as well.

Accordingly, it is imperative for the government and lawmakers to acknowledge the significance and gravity of the sedition law.. The rising misuse of sedition laws by authorities poses a significant concern. Key characteristics of a healthy democracy include personal liberty and the right to freedom of speech and expression. However, the misuse of sedition laws threatens the very foundation of these constitutional freedoms in India. To address this urgent issue, the government must clearly define the term "sedition" to prevent its draconian application by any government.

