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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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SCRAPING SEDITION: INDIA'S SHIFT FROM RAJDROH TO DESHDROH

AUTHORED BY - SHIVAM SHANDILYA

Abstract

Sedition has been a subject of intense debate in India, especially in the context of its historical evolution, legal framework, and contemporary relevance that often intersects with issues of national security, public order, and individual liberties. Earlier, section 124A of the Indian Penal Code, 1860 (IPC), defined and penalised sedition, a colonial-era provision that has often been criticised for its broad and ambiguous scope, leading to potential misuse. Recognising the need for reform, the Bhartiya Nyaya Sanhita (BNS), 2023, has introduced significant changes in the legal framework governing offences against the State, replacing sedition with a redefined provision on Acts endangering sovereignty, unity and integrity of India under section 152, marking a shift in the Indian Criminal Justice System (CJS). These reforms aim to balance the State's need to maintain order while safeguarding constitutional freedoms, particularly the right to free speech and dissent.

This paper will conduct a comparative study of the IPC and BNS, focusing on how the definition, scope, and punishment of sedition has evolved. The study will begin with an exploration of the historical background and judicial interpretation of sedition under IPC, highlighting landmark cases where the provision was used or misused. It will analyse the transition from IPC to BNS, emphasising key legal changes, their objectives, and their potential implications, the comparative analysis will assess whether the new law merely rebrands sedition under a different framework or genuinely reforms the approach towards offences against the State.

Further, the paper discusses the impact of these reforms on democracy, civil liberties, governance. It evaluates whether the shift enhances legal clarity and protects against arbitrary prosecutions or if it continues to pose risks to dissent and political opposition. By providing a comprehensive assessment of these reforms, this paper aims to contribute to the broader discourse on balancing national security and fundamental rights in a democratic society. It critically analyses whether the legal changes reflect a progressive shift in India's criminal

ISSN: 2582-6433

justice system or a strategic modification maintaining the core elements of sedition under a new guise.

I. INTRODUCTION

The Criminal Justice System (CJS) in India plays a critical role in shaping the lives of the victims, the perpetrators, and the people of the society. A fair and transparent CJS upholds the principle of rule of law, protects the fundamental rights, and nurtures the public confidence in the Constitutional Institutions. It also reinforces stability, promotes social harmony, and legitimises the foundation of democratic governance.

The Indian legal framework with respect to offences against the State was shaped by a colonial mindset.[1] It was designed to uphold the authoritarian rule over the population and to ensure the stability and prosperity of the imperial dominion. The constitution of India had two competing goals; one was to transform India, while the other was to keep things the same.[2] Sedition continued in post-independence with the intent of preserving national sovereignty and internal stability. However, the tension between maintaining national security and safeguarding civil liberties has made this part of the law highly contentious.[3]

The law of sedition, Section 124A of the Indian Penal Code, was introduced by the British in 1870, a decade after the enactment of IPC, 1860. It is designed to suppress dissent and hatred against colonial rule. During the Indian Independence Movement, several freedom fighters, including M.K. Gandhi and Bal Gangadhar Tilak were charged under this section for their anti-colonial rhetoric.[4]

Members of the Constituent Assembly were keen to get rid of sedition, as it had long been used against Indian patriots. However, by virtue of its first amendment, introduced in 1951, the Constitution did little to limit the scope of sedition.

Over the decades, the application of Section 124A had been criticised for its vague and broad

[1] Anushka Moolchandani, A Paradigm Shift in Indian Criminal Law: Comparative Analysis of the Indian Penal Code, 1860 and the Bharatiya Nyaya Sanhita, 2023, Volume 4, Issue 2, Part A IJJCCSL, 32, (2024)
[2] Abhinav Chandrachud, Republic of Rhetoric: Free Speech and the Constitution of India, Penguin, 2, (2017)
[3] Opposition Trying to Misrepresent Decision to Scrap Sedition Law: Amit Shah, The Print (December 20, 2023, 09:45 PM) https://theprint.in/india/opposition-trying-to-misrepresent-decision-to-scrap-sedition-law-amit-shah/1894523/.
[4] Sedition Law: How Tilak, Gandhi Were Tried Under It in Colonial India, Indian Express (July 17, 2021, 08:51 AM) https://indianexpress.com/article/explained/sedition-law-bal-gangadhar-tilak-mahatma-gandhi-colonial7408106/.

ISSN: 2582-6433

language, which allowed authorities to interpret an act of dissent as sedition.[5] The judiciary played an active role by reading down the provision in the landmark case of *Kedar Nath Singh v. State of Bihar (1962)*[6]. The Supreme Court upheld the constitutionality of sedition but limited its application to acts that incite violence or public disorder. However, in 1973, Indira Gandhi's government, only a few years before the Emergency, made sedition a cognizable offence for the first time since its inception.

In 2022, the Supreme Court temporarily suspended the application of sedition and recognised that Section 124A needs an urgent review.

However, on July 1st, 2024, three new criminal laws, namely, Bhartiya Nyaya Sanhita (BNS) 2023, Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023, and Bharatiya Sakshya Adhiniyam (BSA) 2023, replaced the colonial-era Indian Penal Code (IPC) 1860, Code of Criminal Procedure (CrPC), and Indian Evidence Act 1872, respectively.

The introduction of BNS has repealed the controversial pre-constitutional provision of sedition and it introduces a new Section 152, which is in line with Section 124A of IPC. While the reform is seen as a significant legal development, the critical concerns persist as to whether it genuinely limits the scope for arbitrary prosecution by widening the scope of free speech or simply reconstitutes sedition in a different legislative framework.

This paper critically analyses the transition from IPC to BNS, particularly focusing on the comparative shift from sedition to the new provision under Section 152. It explores the historical context, judicial interpretations, and socio-political implications of these legal changes. Further, the paper evaluates whether these reforms strengthen the constitutional freedoms or continue to pose risks to dissent and free expression under a different legal framework.

By providing a comprehensive study of these reforms, this paper seeks to contribute to the broader discourse on national security and individual rights. It assesses whether the legislative changes mark a progressive shift in India's criminal justice system or reflect a strategic continuation of the imperialist model of State control over dissenting voices.

[5]Judicial Controversy over Section 124A (Sedition) of the Indian Penal Code, LexLife India (Mar. 29, 2021), https://lexlife.in/2021/03/29/judicial-controversy-over-section-124a-sedition-of-the-indian-penal-code/.
[6] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955 (India).

ISSN: 2582-6433

II. SEDITION: HISTORICAL OVERVIEW AND EVOLUTION OF OFFENCES AGAINST THE STATE

The concept of sedition and offences against the State had gone under significant transformation in Indian legal history. The concept has been shaped by British colonial powers, followed by post-independence challenges and the evolving tension between interpretations of free speech and national security.

A. Definition and Scope of Offences Against the State

Offences against the State encompass a wide category of various criminal acts that threaten the sovereignty, unity and integrity, and security of the State. Under the Indian Penal Code, Sedition was classified under Chapter VI, titled Offenses Against the State, placing it in the same category as serious crimes such as waging war against the state. This classification reflected the severity with which the law was enforced during colonial rule.

The original text of Section 124A of the Indian Penal Code, 1860, as added in 1870, defined an act of sedition that –

"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."[7]

The explanation attached to this section further stated the expression 'disaffection' as including 'disloyalty and all feelings of enmity'. It was evident that the provision for sedition was quite strict in order to assure the safety of the British Crown. However, over the period of time and post-independence, this definition has been amended multiple times in the years 1898, 1937, 1948, and 1950.[8]

B. Historical Development of Sedition in Colonial and Post-Independence India

The foundation of sedition in India was laid during the British Rule. Lord Thomas Babington Macaulay initially drafted the Indian Penal Code in 1837, wherein Section 113 was related to

[7] . The Indian Penal Code, Act 45 of 1860, § 124A.
[8] Shrushti Taori and Tatva Damania, Balancing Free Speech and National Security: A Critical Analysis of Section 152 Of the Bhartiya Nyaya Sanhita and Section 124-A Of The IPC, LiveLaw, (June 2, 2024, 11:25 AM) https://www.livelaw.in/lawschool/articles/balancing-free-speech-national-security-critical-analysis-section-152bhartiya-nyaya-sanhita-section-124-a-ipc.

ISSN: 2582-6433

sedition; however, it was omitted from the code enacted in 1860. It was in 1870 when Section 124A was introduced through an amendment by James Fitzjames Stephen. The British Raj added this under the title of 'exciting disaffection' due to increasing Wahabi activities and fearing that Muslim preachers would incite religious war in the Indian subcontinent.[9]

The earliest applications of Section 124A were in the year 1891 in the case of *Queen Empress v. Jogendra Chunder Bose*, where editors of the Bengali magazine 'Bangobasi' were prosecuted for criticising the British government's policies. Even though the charges were eventually dropped following an apology, this case set a precedent for using sedition laws against vocal critics of colonial rule.[10]

Sedition was also infamously employed against prominent freedom fighters; for instance, Bal Gangadhar Tilak faced charges in 1897 and 1908 for his writings advocating *Swaraj*.[11] Similarly, M.K. Gandhi was tried and convicted in 1922 for articles published in *Young India* that criticised colonial governance. These instances underscore how the law of sedition was utilised to stifle the bourgeoning independence movement.[12]

C. Evolution of State Security Laws

Apart from sedition, India has enacted multiple special laws that have been widely criticised for their alleged use by incumbent governments as political tools to suppress dissent. In the 1970s and 1980s, India witnessed the introduction of laws such as the Maintenance of Internal Security Act (MISA) of 1971 and the National Security Act (NSA) of 1980, both of which were criticised for using the provisions to curtail political opposition.

Among contemporary legal instruments, the Unlawful Activities (Prevention) Act (UAPA) of 1967 is regarded as one of the most controversial. The UAPA grants the Central Government the authority to designate individuals or organisations as 'terrorists' and provides for special procedures in terrorism cases, which notably include shifting the burden of proof onto the

[9] Siddhant Mishra, Historically Speaking, The Prince of IPC, Section 124A, WordPress.com (Sept. 23, 2020), https://historicallyspeakingssc.wordpress.com/2020/09/23/the-prince-of-ipc-section-124a/.
[10] Malavika Parthasarathy, Sedition Law in India: A Timeline, SUP. CT. OBSERVER Supreme Court Observer, (Oct. 18, 2021), (Apr. 27, 2022), https://www.scobserver.in/journal/sedition-in-india-a-timeline/.
[11] Bal Gangadhar Tilak, Trial of Tilak (1908), Internet Archive, (1986) https://archive.org/details/trialoftilak00tila/page/n1/mode/1up.
[12] Mahatma Gandhi, Great Trial of 1922, MKGANDHI.org (Mar. 18, 1922), https://www.mkgandhi.org/speeches/gto1922.php#:~:text=I%20had%20either%20to%20submit,except%20that%20kind%20of%20conversion.

ISSN: 2582-6433

accused, thereby complicating the process of obtaining bail. The UAPA has been persistently criticised by observers, legal scholars, and human rights organisations for its potential misuse as a political tool to stifle dissent and for allegedly undermining constitutionally guaranteed rights to due process and freedom of expression.

The language of Section 152 is similar to that of Section 15 of UAPA. However, the punishment and the mechanism of trial to be followed are different in UAPA and BNSS.

III. SECTION 152 OF BNS 2025: TRANSITION FROM RAJDROH TO DESHDROH

Section 152 of the Bharatiya Nyaya Sanhita represents a major transition. This change redefines what constitutes an offence against the state, shifting the focus from the concept of Rajdroh, which refers to disaffection against the State, to Deshdroh, which includes acts that pose a threat to national sovereignty.

A fundamental question was raised by Bal Gangadhar Tilak during his sedition trial: whether his prosecution represented sedition by the people against the British Indian government, which would be considered Rajdroh, or whether it was the government itself that was acting against the interests of the Indian people, which would be considered Deshdroh.[13] Rajdroh is traditionally referred to as a betrayal against the ruler.

The legal understanding of sedition in India has been shaped by contrasting opinions between the Federal Court in India and the Privy Council in Britain. In the case of *Niharendu Dutt Majumdar*, the Federal Court ruled that for an act to be considered seditious, it must include words or actions that incite disorder or at least have the intention or tendency to do so; however, this interpretation was later overturned by the Privy Council in the *Sadashiv case*, which reaffirmed the position established in the earlier case of Bal Gangadhar Tilak.[14] According to the Privy Council, sedition did not necessarily require acts that led to violence or rebellion; instead, it was defined as any attempt to provoke feelings of enmity towards the government, regardless of whether such feelings resulted in disorder, mutiny, or unrest. As a result, under

[13] Simran Agarwal and Sahapedia.org, How Bal Gangadhar Tilak's 1897 Trial Marked the Criminalisation of Dissent, The Wire (Aug. 01, 2020) https://thewire.in/history/how-bal-gangadhar-tilaks-1897-trial-marked-the-criminalisation-of-dissent.
[14] Niharendu Dutt Majumdar and Ors. v. Emperor AIR 1939 CALCUTTA 703 (India)

ISSN: 2582-6433

Indian law, even the act of creating disaffection, hatred, or contempt towards the government, without causing any immediate disturbance, was considered a punishable offense.

A. Judicial Interpretation of 'Disaffection'

The explanation attached to Section 124A stated that "disaffection" refers to disloyalty and any feelings of enmity toward the government. One of the earliest cases related to this law was *Queen Empress v. Jogendra Chunder Bose*[15]. In this case, the Chief Justice of the Calcutta High Court, Sir Comer Petheram, explained that disaffection simply means a feeling that is the opposite of affection, essentially dislike or hatred. As per his judgement, anyone who tries to provoke such negative feelings towards the government could be charged with sedition.

A similar interpretation was given in *Queen Empress v. Bal Gangadhar Tilak*[16], where Justice Strachey of the Bombay High Court expanded the meaning of disaffection. He described it as hatred, hostility, dislike, contempt, and any form of ill will toward the government. He also stated that disloyalty includes any possible negative feeling against the ruling authority. In his view, inciting disaffection was equivalent to encouraging hatred, spreading political unrest, and weakening people's trust in the government.

In *Queen Empress v. Amba Prasad,* the Allahabad High Court ruled that disaffection did not just mean the absence of love or goodwill toward the government; instead, it is a strong feeling of aversion, something much deeper, like ill will.[17]

In 1922, M.K. Gandhi and Young India publisher Shanker Lal Banker were charged under Section 124A for allegedly encouraging disaffection against the British government. The trial, overseen by Judge Strangman, became a defining moment in India's freedom struggle, drawing widespread public attention.

During the proceedings, Gandhi delivered a powerful statement explaining his ideological shift. He described how he went from being a loyal supporter of the British Crown to an unwavering advocate of non-cooperation. He openly declared that he saw it as his moral duty to resist laws that he considered unjust. Gandhi strongly criticised Section 124A, calling it a legal tool

[15] Queen Empress v. Jogendra Chunder Bose and Ors. (1891) ILR 19 CAL 35 (India).
[16] Emperor v. Bal Gangadhar Tilak, AIR 1916 Bom 9, (India).
[17] Queen-Empress vs Amba Prasad (1897) ILR 20 ALL 55 (India).

ISSN: 2582-6433

designed to crush individual freedom. He argued that love for a government could not be forced by law and that expressing disaffection should not be a crime unless it encouraged violence. Instead of defending himself, he embraced the charges, viewing them as an honour.

This trial not only highlighted Gandhi's philosophy of civil disobedience but also exposed how the colonial government used the law of sedition to suppress political opposition.
After India gained independence in 1947, there was considerable debate over whether the sedition law should be removed from the CJS. K. M. Munshi argued that the law was a colonial era tool designed to control Indians and should have no place in a free India. However, it continued as a part of CJS under Section 124A of the Indian Penal Code until recently.

In *Kedar Nath Singh v. State of Bihar*, the Supreme Court upheld the constitutionality of Section 124A. The court held that offences against the government should be considered offences against the state since the government represents the state's authority. However, the judgment also clarified that criticising the government did not amount to sedition unless it involved inciting violence. This ruling narrowed the scope of the sedition law and prevented it from being used to suppress political criticism.[18]

In *Balwant Singh v. State of Punjab*[19], the Supreme Court reiterated the judgement of Kedar Nath Singh. This case involved individuals accused of sedition for shouting slogans in favour of Khalistan after the assassination of the then Prime Minister of India Indira Gandhi. While lower courts convicted them, the Supreme Court overturned the verdict, stating that merely chanting slogans without any accompanying violent action did not amount to sedition.

The introduction of Section 152 of BNS is considered a major shift in CJS. The new law removes the term disaffection and moves away from the colonial era. The reason behind introducing the new laws is to make CJS completely indigenous and able to run on Indian ethos. Section 152 of BNS emphasises the importance of national sovereignty and unity. The transition from Rajdroh, (disloyalty to the ruler) to Deshdroh (threats against the nation), marks a fundamental change in approach. The focus is now on protecting the integrity of the nation rather than simply shielding the government from criticism.

[18] Kedar Nath Singh v. State of Bihar, 1962 SCR SUPL. (2) 769, (India).
[19] Balwant Singh and Ors v. State of Punjab, AIR 1995 SUPREME COURT 1785, (India).

ISSN: 2582-6433

The revised law introduces the concept of "democratic disaffection". This means that citizens have the right to express dissatisfaction, criticise the government, and voice dissent while still being committed to democratic values. In any functioning democracy, dissent is essential for holding those in power accountable, promoting open debate, and driving meaningful reform. The ability to question government actions is crucial for ensuring transparency and good governance.

For decades, Section 124A of the Indian Penal Code has been misused to suppress political opponents and limit free speech. Many critics argue that the law has often been weaponised to brand legitimate criticism as anti-national. With the introduction of Section 152 under the Bharatiya Nyaya Sanhita, the focus shifts from disaffection against the government to threats against national integrity. However, since the new law still contains words that are broad and undefined in the provisions, there is a concern that it could be misused in the same way as its predecessor.

IV. JUDICIAL INTERPRETATION: FREE SPEECH V. SEDITION

In a democratic country, the government policies and decisions are subject to criticism if they are being implemented badly. The criticisms sometimes gets public support and sometimes it does not have a significant impact on people's opinions. Over time, the way criticism is perceived also changes. What might have once been seen as outright defiance of imperialism does not always carry the same weight in a government that is chosen by the people. A healthy democracy should not only tolerate criticism but also ensure that it is not silenced.

Therefore, voicing strong opinions about government actions or policies, when done with the intent of advocating for public welfare or pushing for lawful reforms, is not the same as being disloyal to the government. Sedition involves deliberately encouraging hostility or inciting disaffection against the State in a way that actively undermines its authority. However, before labelling any statement as seditious, it is important to look at both the intent and the context.

Section 124A of the Indian Penal Code makes it clear that strong criticism of government actions, when aimed at improving public conditions or seeking lawful changes, does not qualify as sedition. But in practice, the line between legitimate dissent and seditious speech has often been blurred. Because of its vague wording, this law was used as a tool to suppress political opposition, limit free speech, and silence those who challenge the people in power. Although

ISSN: 2582-6433

the law technically allowed space for constructive criticism, the fear of being charged with sedition has historically discouraged open debates.

After India's constitution came into effect, Section 124A was challenged for violating the fundamental right to free speech guaranteed under Article 19(1)(a). In the *Tara Singh Gopichand v. State,* the East Punjab High Court held the provision unconstitutional, arguing that it conflicted with democratic values.[20] However, the legal scenario changed with the first amendment in 1951, which introduced broader restrictions under Article 19(2), allowing the government to impose reasonable limits on free speech in the interest of national security and public order.

Despite this amendment, the Allahabad High Court, in *Ram Nandan v. State of Uttar Pradesh*[21], held that Section124A still placed excessive restrictions on free speech and was not justified in serving public interest and it was held unconstitutional.

The Supreme Court finally settled the debate in the landmark *Kedar Nath Singh v. State of Bihar* case.[22] The constitutionality of Section 124A was upheld by the court; further it limited the scope of it and clarified that it should only apply to speech that accompanies incitement of violence or public disorder. While Article 19(1)(a) guarantees free speech, Article 19(2) allows reasonable restrictions in cases related to national security, public order, etc. The court made it clear that the law of sedition should not be misused to silence criticism but should only be enforced in cases where speech actively provokes violence or unrest.

In *Vinod Dua v. Union of India*, the Supreme Court dismissed a sedition FIR against journalist Vinod Dua over his remarks about the Prime Minister's handling of the COVID-19 crisis.[23] The court held that while his statements were critical of the government, they could not be classified as sedition. His petition also sought the formation of a committee to screen sedition FIRs against journalists, but the court declined, stating that this would overstep legislative powers. This ruling reinforced that Section 124A should only be applied in cases where speech directly incites violence or threatens public order and not merely to punish government critics.

[20] Tara Singh Gopichand v. State, AIR 1951 PUNJAB 27 (India).
[21] Ram Nandan v. State, AIR 1959 ALL 101 (1958) (India).
[22] Kedar Nath Singh v. State of Bihar 1962 SCR SUPL. (2) 769 (India).
[23] Vinod Dua v. Union of India, AIR 2021 SC 3239 (India).

ISSN: 2582-6433

In 2022, the Supreme Court, in *SG Vombatkere v. Union of India*, recognised that Section 124A, being a pre-constitutional law, needs urgent review.[24] The court acknowledged that its vague wording made it prone to misuse, leading to unnecessary cases against individuals who were merely expressing dissent. As a result, it temporarily suspended the law's application while the provision is in the process of review. During this time, all pending sedition cases were put on hold, and law enforcement agencies were instructed not to register any new cases under this section.

Reports from the National Crime Records Bureau revealed a sharp rise in sedition cases, disproportionately targeting journalists, activists, and political opponents. However, despite this increase, conviction rates remained extremely low, often below 3%, suggesting that the law was being used more as a tool for intimidation than for actual prosecution.[25]

Another major argument against the sedition law is its historical background. Originally introduced by the British in 1870 to suppress India's freedom movement, the law was repealed in the United Kingdom in 2009. This raises an important question. Why should an outdated colonial law still be relevant in a modern democratic India?
With the introduction of the Bharatiya Nyaya Sanhita, Section 124A of the Indian Penal Code has been replaced by Section 152 of the Bharatiya Nyaya Sanhita. While the new law still penalises actions that pose a threat to national security, its language and scope have been significantly modified. One of the biggest changes is the removal of the term disaffection, which was frequently misused under Section 124A to silence criticism.

The explanation under Section 152 of the Bharatiya Nyaya Sanhita clarifies that expressing disapproval of government actions, as long as it does not incite violence or public disorder, is not an offense. While this is similar to the explanation under the previous law, the removal of the word disaffection is a crucial change. It ensures that simply expressing dissatisfaction with the government cannot be equated with sedition. This marks a significant shift from the past, where the sedition law was often weaponised to target dissenters.

The deletion of the word of "disaffection" will ensure that the incumbent government cannot

[24] S.G. Vombatkere v. Union of India (2022) 7 SCC 433 (India).
[25] Sedition in India: A Colonial Legacy, Misuse, and Effect on Free Speech, Economic. & Political. Weekly. Engage, https://www.epw.in/engage/article/sedition-india-colonial-legacy-misuse-and-effect

ISSN: 2582-6433

misuse the provision to silence critics. However, there are some words for which an explanation or definition is not provided in the BNS. For example, there is no express definition provided for the terms 'subversive activities' and 'feelings of separatist activities' under BNS. The lack of definition may allow the government to target activists, journalists, academics, and dissenters, branding criticism as 'subversive'. The literal meaning of the word 'subversive', associated with undermining the authority of the State, destabilising constitutional government, and inciting rebellion or revolution. But, without a definition, judiciary may dive deep in every case to punish under this section.

Similarly, there is little precedent in law where mere 'feelings' have been criminalised without a demonstrable action or clear incitement to violence. This creates a significant challenge for the judiciary, which may be called upon to determine whether expressions of identity, demands for autonomy, or assertions of cultural and linguistic rights can legitimately be categorised as 'separatist.' If the courts were to allow such an interpretation, it would risk criminalising ordinary political discourse, particularly in regions with a long history of identity-based movements such as Kashmir, the North-East, and Punjab.

In modern democratic countries, the focus is more on public order and incitement to violence, not feelings or political ideologies. In the United Kingdom, subversion was considered a part of sedition until it was abolished by the Coroners and Justice Act 2009.[26]

The Supreme Court is set to examine the validity of Section 152. The interpretation of the terms, 'subversive activities' and 'feelings of separatist activities' under the provision is needed, as these phrases have no definitions and raise significant constitutional concerns. The absence of clear definitions gives rise to the risk of arbitrary prosecution. The judiciary would probably rely on the doctrines of vagueness and proportionality, either by reading down or severing problematic portions of the provision, while actively incorporating safeguards in the form of standards of procedure, such as the requirement of mens rea, a proximate nexus to disorder, and the application of the clear and present danger test. In this way, judicial scrutiny of Section 152 is not only anticipated but indispensable, ensuring that the pursuit of national security does not come at the cost of fundamental rights and democratic discourse.

[26] Coroners and Justice Act 2009, UK Legislation

ISSN: 2582-6433

V. BALANCING NATIONAL SECURITY WITH CIVIL LIBERTIES

A thriving democratic society is built on the foundation of free speech, which allows individuals to express ideas, dissent, and participate meaningfully in public life. However, this freedom cannot be in its absolutism when national security is at stake. It is, therefore, essential to strike a harmonious balance between safeguarding civil liberties and protecting national interests, ensuring that neither is unduly compromised in pursuit of the other.

Laws concerning offences against the State must focus on genuine threats, such as violent insurrections and acts of waging war and terrorism, rather than being used as tools to silence dissent.

International legal frameworks, like Article 19 of the International Covenant on Civil and Political Rights (ICCPR)[27] to which India is a signatory, emphasises that restrictions on speech must meet the test of necessity and proportionality. The judiciary in countries like the United States (*Brandenburg v. Ohio, 1969*)[28] and the United Kingdom (*R v. Chaytor, 2010*)[29] has reinforced the principle that speech can only be criminalised if it leads to imminent lawless action.

VI. POLICY IMPLICATIONS: THE WAY FORWARD

The effectiveness of legal reforms largely depends on how law enforcement agencies and policymakers interpret and implement them. The transition from the colonial-era Section 124A to Section 152 of the BNS necessitates a clear understanding of the objectives of law boundaries. Policymakers must ensure that these reforms strike a balance between protecting national security and upholding civil liberties.

To ensure that Section 152 BNS functions as a progressive reform rather than a rebranded version of sedition, the following steps are recommended:

Firstly, there shall be a clear definition of terms to prevent broad and subjective interpretations. A key concern surrounding the introduction of Section 152 BNS is whether it represents a substantive legal reform or a mere rebranding of sedition under a new name. While the term "sedition" has been removed, the broad language of the new provision raises questions about

[27] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
[28] Brandenburg v. Ohio, 395 U.S. 444 (1969)
[29] R v Chaytor and Others, UK SC 52.

ISSN: 2582-6433

its practical implications. Legal scholars argue that unless clear interpretative guidelines are established, the provision could continue to be used against dissenting voices, just as Section 124A was.[30] Therefore, a clear legal definition is important for terms like "endangering sovereignty, unity, and integrity" to prevent the broad interpretations.

Secondly, there shall be a proper implementation of stringent judicial scrutiny to prevent frivolous cases and ensure compliance with constitutional protections. It is essential that all cases brought under Section 152 are subjected to rigorous judicial scrutiny at the earliest possible stage. This means that courts should have the power to assess whether the facts of a case genuinely warrant prosecution under the provision before the accused is subjected to the lengthy and often punishing process of trial. Early judicial oversight would act as a safeguard against frivolous or politically motivated complaints and would help maintain the law's credibility. It would also ensure that only cases involving genuine threats to national sovereignty and integrity proceed to full trial.

Thirdly, the Law Enforcement Agencies require adequate training and guidelines to prevent arbitrary application of the new provisions. A strong legal framework must accompany these reforms to establish safeguards against abuse, ensuring that cases are investigated and prosecuted fairly, without political or ideological biases. As stated above that the broad and vague definition allowed governments to use it is as a tool for political suppression rather than national security. In many cases, sedition charges were eventually dismissed, indicating their frivolous nature. The concern remains whether Section 152 BNS will be implemented differently or if it will continue to serve as a mechanism for restricting dissent under a different legal framework.[31] A vital step would be to provide comprehensive training for police officers, public prosecutors, and other law enforcement authorities on the correct application of the provision. Misuse of the law is often the result of insufficient understanding of constitutional principles and the limits of state power. Training programmes should emphasise that the purpose of Section 152 is not to silence criticism or prevent political debate but to address conduct that poses an actual and demonstrable threat to the security and integrity of the nation. By grounding enforcement in constitutional values, the risk of abuse would be significantly

[30]Pushkar Anand and Shivang Tripathi, All English Editorial, Jammu University, (Jan. 10, 2025), https://jammuuniversity.ac.in/sites/default/files/inlinefiles/ALL%20ENGLISH%20EDITORIAL%2010-01-2025.pdf.
[31] , Vaibhav Yadav, The Sedition Conundrum in India: A Critical Examination of Its Historical Evolution, Current Application, and Constitutional Validity, Int'l Annals Criminology (2023), (July 26,2023) https://www.cambridge.org/core/journals/international-annals-of-criminology/article/abs/sedition-conundrumin-india-a-critical-examination-of-its-historical-evolution-current-application-and-constitutionalvalidity/.

ISSN: 2582-6433

reduced.

Further incidents where individuals have been arrested for social media posts criticising government policies or expressing solidarity with opposition movements raise concerns about the extent of free speech in the digital space. While national security concerns are valid, excessive restrictions on online speech could undermine democratic principles. Therefore, judicial interpretation and law enforcement guidelines must ensure that Section 152 BNS is not used arbitrarily against digital dissent but instead focuses on genuine threats to national security such as incitement to violence.

Fourthly, there should be the creation of an independent oversight body tasked with monitoring the impact of the provision and making recommendations for its improvement. Such a body could include legal experts, retired judges, human rights activists, and security professionals. Its mandate should be to collect data on how the provision is applied, examine whether it is meeting its intended objectives, and identify patterns of misuse or overreach. Periodic reports could be submitted to Parliament, ensuring that lawmakers have reliable information when considering amendments or refinements to the provision.

Lastly, public awareness is another critical element. Citizens must be informed of their constitutional rights and the limits of state. This can be achieved through public campaigns, simplified explanatory materials, and accessible legal aid services. An informed public is far better equipped to resist wrongful prosecution, demand accountability, and protect the democratic space. When people understand the scope of their freedoms, they become active participants in the preservation of those freedoms.

The long-term impact will depend on how effectively the new provision is applied. If interpreted strictly in the context of national security without targeting political dissent, it could be a positive reform. However, if it merely replaces sedition with another vaguely defined offence, the legal system risks perpetuating the same issues under a different statute.[32]

Additionally, the judiciary's role will be crucial in setting legal precedents that establish clear

[32] Pushkar Anand and Shivang Tripathi, Section 152 of BNS Should Not Become a Proxy for Sedition, The Hindu, (Jan. 10, 2025, 12:55 AM) https://www.thehindu.com/opinion/op-ed/section-152-of-bns-should-not-become-a-proxy-forsedition/article69081250.ece.

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boundaries for the application of Section 152 BNS. Courts must ensure that prosecutions under this section adhere to principles of legality and proportionality, preventing potential overreach by authorities.

Conversely, the proponents of the reform argue that BNS 2023, provides better safeguards and focuses on acts that directly threaten sovereignty and national integrity, rather than criminalising mere criticism of the government. The legal community will need to closely monitor its implementation to determine whether it marks a genuine departure from past practices.

VII. CONCLUSION

The history of sedition law in India, from its colonial inception under Section 124A of the Indian Penal Code to its contemporary reformulation under Section 152 of the Bhartiya Nyaya Sanhita, illustrates the deep and enduring tensions between state authority and individual freedoms. While the repeal of sedition was considered as a step towards decolonising Indian criminal law, its near replication in a new legislative form raises difficult questions about whether true reform has taken place or whether the rhetoric of change conceals continuity.

The constitutional promise of free speech cannot be preserved merely through legislative reform but requires vigilant judicial oversight. The judiciary has a critical role here, as it has in the past, to ensure that broad or vague language is not turned into a weapon against legitimate criticism. At the same time, the State's obligation to maintain security and public order cannot be disregarded, but such objectives must be pursued within the framework of constitutional values.

Section 152 should not become another shadow of colonial sedition. It should instead be tested against constitutional values of liberty, equality, and democratic participation. Whether it turns into a progressive step or simply a repackaged continuation of the old law will depend on how the State chooses to balance security with freedom in the years to come.