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BHARATIYA NYAYA SANHITA, 2023 AND THE TRANSFORMATION OF INDIAN CRIMINAL LAW: A CRITICAL COMPARATIVE ANALYSIS WITH THE INDIAN PENAL CODE, 1860

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ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 (BNS) replaced the Indian Penal Code, 1860 (IPC), with the relevant provisions coming into force on 1 July 2024. One of the most significant changes concerns the removal of the express offence of sedition under Section 124A of the IPC and the introduction of Section 152 of the BNS, titled “Act endangering sovereignty, unity and integrity of India.” This paper critically examines whether this change represents substantive decolonisation of Indian criminal law or whether it creates a differently framed offence capable of producing similar restrictions on political expression.

The paper compares the wording, protected interests, mental elements, modes of commission, explanations and punishments under both provisions. It examines the colonial origins of sedition, the constitutional interpretation developed in *Kedar Nath Singh v. State of Bihar*, and the relevance of decisions such as *Romesh Thappar v. State of Madras*, *Brij Bhushan v. State of Delhi*, *Balwant Singh v. State of Punjab*, *Shreya Singhal v. Union of India* and *S.G. Vombatkere v. Union of India*. It also analyses Section 152 through Articles 14, 19(1)(a), 19(2) and 21 of the Constitution of India.

The paper argues that Section 152 is not textually identical to Section 124A. It focuses on sovereignty, unity and integrity, expressly refers to secession, armed rebellion and subversive activities, and incorporates the words “purposely or knowingly.” Nevertheless, expressions such as “subversive activities,” “encourages feelings of separatist activities,” “endangers” and “or otherwise” raise concerns about vagueness, overbreadth and arbitrary enforcement. The absence of an express, general violence-or-public-disorder threshold in the operative text

makes constitutional interpretation particularly important.¹

The paper concludes that Section 152 must be interpreted narrowly and applied through evidence-based procedures. Courts should distinguish peaceful dissent, journalism, academic research and lawful advocacy from intentional or knowing participation in concrete prohibited activities. The constitutional quality of the reform will ultimately depend on statutory clarity, judicial interpretation and the discipline with which the offence is enforced.

Keywords: Bharatiya Nyaya Sanhita; Indian Penal Code; sedition; Section 124A; Section 152; freedom of speech; Article 19(2); sovereignty; vagueness; chilling effect; constitutional criminal law.

1. INTRODUCTION

Criminal law lies at the intersection of individual liberty and the State's responsibility to maintain security. This tension is particularly visible in the law governing sedition and speech considered threatening to the State. A constitutional democracy must be capable of responding to armed rebellion, violent secession and genuine threats to territorial integrity. At the same time, it must protect criticism of government, opposition to public policy and peaceful demands for constitutional change.

Section 124A of the Indian Penal Code, 1860 criminalised bringing or attempting to bring hatred or contempt, or exciting or attempting to excite disaffection towards the Government established by law in India. Although the provision contained explanations protecting certain forms of lawful criticism, it became closely associated with colonial restrictions on political opposition. It was used against nationalist leaders and remained controversial after independence because of the tension between governmental authority and freedom of expression.

The Bharatiya Nyaya Sanhita, 2023 replaced the IPC as India's principal substantive criminal law from 1 July 2024. The new enactment does not retain the express heading of sedition under Section 124A. Instead, Section 152 creates the offence of an act endangering the sovereignty, unity and integrity of India.²

Section 152 addresses conduct connected with secession, armed rebellion, subversive activities and separatist activities. It also refers to different modes of communication, including words,

¹ Indian Penal Code, 1860, Act 45 of 1860, Section 124A, subject to applicable repeal, savings and transitional provisions.

² *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

signs, visible representations, electronic communication and financial means. Its punishment may extend to imprisonment for life or imprisonment for a term of up to seven years, together with a fine. An explanation protects certain comments disapproving of government measures or administrative action when made to obtain change through lawful means, provided they do not excite or attempt to excite the activities specified in the section.

The legislative change raises two related questions. First, does Section 152 represent a genuine departure from colonial sedition law? Second, does the new provision sufficiently distinguish legitimate political expression from conduct that threatens sovereignty, unity and territorial integrity?

The answer cannot be determined merely by comparing statutory titles. A meaningful assessment must examine the actual ingredients of each offence, the relevant mental element, the scope of protected interests, the available defences or explanations, the punishment and the constitutional principles governing speech-related criminal liability.

This paper does not assume that Section 152 is automatically unconstitutional or that it represents a complete break from sedition law.³ Instead, it undertakes a comparative and doctrinal examination of the provisions, evaluates the continuing relevance of judicial precedent and considers safeguards that could prevent the criminalisation of peaceful dissent.

2. RESEARCH QUESTIONS, OBJECTIVES, METHODOLOGY AND SCOPE

2.1 Research Questions

1. How did Section 124A of the IPC define sedition, and how did the Supreme Court restrict its operation?
2. What are the ingredients, mental element, modes of commission and punishment under Section 152 of the BNS?
3. Which changes between the provisions are substantive, and which concern terminology or legislative framing?
4. How should Articles 14, 19(1)(a), 19(2) and 21 apply to Section 152?
5. What legal principles should distinguish lawful dissent and advocacy from punishable conduct?

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

6. What interpretive, investigative and procedural safeguards can reduce arbitrary enforcement while allowing the State to respond to genuine threats?

2.2 Objectives

The objectives of this paper are to compare Sections 124A and 152, trace the historical and constitutional development of sedition law, examine important judicial decisions, evaluate the risks of vagueness and overbreadth, and identify safeguards for freedom of expression. The paper also evaluates whether replacing a colonial-era statutory label amounts to substantive legal reform.

2.3 Research Methodology

This paper adopts a doctrinal legal research methodology. Primary sources include the IPC, BNS, Constitution of India, Supreme Court judgments and relevant legislative materials. Secondary sources include scholarly commentary and legal reporting concerning Section 152.⁴ The analysis is comparative and analytical. It examines statutory ingredients, applies constitutional principles and uses hypothetical situations to illustrate the distinction between protected expression and potentially criminal conduct. It does not constitute an empirical study of all FIRs or prosecutions under Section 152.

2.4 Scope and Limitations

The principal focus is the relationship between former Section 124A of the IPC and Section 152 of the BNS. Other offences concerning waging war, terrorist acts, organised crime and related conduct are discussed only where relevant.

Section 152 is comparatively new, and its authoritative interpretation may continue to develop. The status of constitutional challenges and pending litigation should be verified against official court records before final academic submission. This paper is an academic analysis and not a substitute for case-specific legal advice.

3. HISTORICAL EVOLUTION OF SEDITION IN INDIA

3.1 Colonial Origins

Section 124A was introduced into the IPC in 1870 during British colonial rule. The colonial administration regarded organised political resistance and nationalist mobilisation as

⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

challenges to imperial authority. The provision criminalised specified expressions of hatred, contempt or disaffection towards the government established by law.

The prosecution of Bal Gangadhar Tilak and Mahatma Gandhi illustrates the historical use of sedition law against anti-colonial political expression. Gandhi famously criticised the provision as a restriction on liberty. These historical examples explain why sedition became associated with the criminalisation of political opposition.

Historical criticism, however, does not independently determine the constitutionality of a modern offence. The central question remains whether the law clearly identifies prohibited conduct and respects constitutional limitations on State power.

3.2 Competing Judicial Approaches Before Independence

Pre-independence courts differed over whether sedition required a connection with public disorder. In *Queen-Empress v. Jogendra Chunder Bose*, the court considered the scope of disaffection under the provision. In *Niharendu Dutt Majumdar v. King-Emperor*, the importance of public disorder and incitement to violence received greater emphasis. The Privy Council adopted a different approach in *King-Emperor v. Sadashiv Narayan Bhalerao*.⁵

These competing approaches anticipated the constitutional difficulty that emerged after independence: whether disaffection itself could be criminalised or whether liability had to be restricted by a connection with violence or public disorder.

3.3 Constitution-Making and Article 19

Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, subject to the restrictions permitted by Article 19(2). The word “sedition” is not expressly included among the grounds in Article 19(2).

The First Amendment Act, 1951 altered the constitutional framework governing restrictions on speech and included grounds such as public order. The absence of the word “sedition” does not mean that every form of conduct historically described as sedition is immune from regulation. Conduct threatening security, sovereignty or public order may be restricted where the restriction satisfies constitutional requirements.

However, a permissible objective does not give the State unlimited authority to punish speech. Restrictions must remain reasonable, sufficiently clear and connected to the constitutionally recognised harm.

⁵ Constitution of India, Article 19(2).

3.4 The Constitutional Settlement in *Kedar Nath Singh*

In *Kedar Nath Singh v. State of Bihar*, the Supreme Court upheld Section 124A through a restrictive interpretation. The Court distinguished strong criticism of government from speech involving incitement to violence or a tendency or intention to create public disorder.

The judgment became the controlling constitutional interpretation of the former sedition provision. It established that Section 124A could not properly be used simply to punish criticism of government or political disaffection unconnected with the relevant threat to public order.

3.5 The 2022 Interim Order and Legislative Replacement

On 11 May 2022, the Supreme Court issued interim directions in *S.G. Vombatkere v. Union of India* concerning the operation of Section 124A while the Union Government reconsidered the provision. The order was interim; it was not a final judgment declaring Section 124A unconstitutional.

The later enactment of the BNS introduced Section 152 instead of retaining the express offence of sedition.⁶ This raised a new question: to what extent should the constitutional principles developed under Section 124A guide the interpretation of Section 152?

The principles protecting political expression remain relevant. Nevertheless, Section 152 is a separate statutory provision whose meaning must be assessed through its own text, purpose and constitutional context.

4. SECTION 124A OF THE IPC: TEXT, INGREDIENTS AND JUDICIAL CONSTRUCTION

4.1 Statutory Formulation

Section 124A of the IPC criminalised bringing or attempting to bring hatred or contempt, or exciting or attempting to excite disaffection towards the Government established by law in India. Its punishment included imprisonment for life with fine, imprisonment for a term that could extend to three years with fine, or fine.

The explanations addressed certain forms of disapproval of government measures and administrative action undertaken to obtain change through lawful means, subject to the conditions specified in the provision.

⁶ Bharatiya Nyaya Sanhita, 2023, Section 152, including its explanation.

4.2 Principal Ingredients

The principal features of Section 124A were:

1. Bringing or attempting to bring hatred or contempt, or exciting or attempting to excite disaffection.
2. The government established by law in India as the object of the alleged disaffection.
3. The use of words, signs, visible representations or other recognised forms of expression.
4. Explanations addressing certain forms of lawful criticism.
5. The restrictive constitutional interpretation established in *Kedar Nath Singh*, connecting liability with incitement to violence or a tendency or intention to create public disorder.

4.3 Government as the Protected Object

A central criticism of Section 124A was that its wording appeared to protect the government against disaffection.⁷ In a parliamentary democracy, however, the government of the day is not identical to the nation or the constitutional State. Governments are temporary institutions that citizens may criticise, oppose and seek to replace through democratic processes.

Criticism of a ministry, demands for resignation, opposition to economic policy and advocacy of constitutional reform do not automatically threaten national sovereignty. Criminal law can address violence, conspiracy and other unlawful conduct without treating disaffection itself as proof of danger.

The restrictive interpretation in *Kedar Nath Singh* sought to prevent Section 124A from being applied to mere political hostility.

4.4 Attempt, Tendency and Constitutional Limits

The concepts of attempt and tendency raise questions about how early the State may intervene. Criminal law can legitimately punish certain attempts before the ultimate harm occurs. However, discussion, speculation and peaceful advocacy are not automatically equivalent to attempts to commit a prohibited act.

Under the interpretation adopted in *Kedar Nath Singh*, the relevant conduct had to be connected with incitement to violence or a tendency or intention to create public disorder. The constitutional limit prevented the provision from being treated as a general prohibition on unpopular opinions.

⁷ Bharatiya Nagarik Suraksha Sanhita, 2023, concerning applicable criminal-procedure requirements for arrest, investigation, remand and bail.

4.5 Punishment and Process

The possibility of life imprisonment made Section 124A a particularly serious offence. Criminal proceedings may affect an accused person long before conviction, through arrest, bail proceedings, reputational damage, legal expenses and uncertainty.

The effect of a criminal law cannot be measured only by conviction rates. The existence of a broadly worded offence may discourage journalists, students, researchers, activists and ordinary citizens from engaging in lawful discussion. This is commonly described as the chilling effect.

5. SECTION 152 OF THE BNS: TEXT, INGREDIENTS AND LEGISLATIVE DESIGN

5.1 Statutory Text and Placement

Section 152 is titled “Act endangering sovereignty, unity and integrity of India.” It addresses conduct carried out purposely or knowingly through words, signs, visible representations, electronic communication, financial means or otherwise, where the conduct excites or attempts to excite feelings of secession, armed rebellion or subversive activities, or involves conduct intended to excite or attempt to excite such feelings, as specified by the provision.

The section also addresses conduct endangering the sovereignty, unity and integrity of India. It prescribes imprisonment for life or imprisonment for a term that may extend to seven years, together with a fine.

The explanation protects specified comments disapproving of government measures or administrative action when made to obtain change through lawful means, provided the comments do not excite or attempt to excite the activities covered by the section.

The statutory language must be read as a whole. Each prosecution should identify the particular limb of the section relied upon and establish the ingredients applicable to that limb.

5.2 The Mental Element: “Purposely or Knowingly”

The express words “purposely or knowingly” are significant. They indicate that the relevant mental element must be established rather than inferred merely from the unpopularity or controversial nature of an expression.⁸

Purpose generally concerns the result or conduct sought by the person, while knowledge concerns awareness of relevant circumstances or consequences. Their precise application

⁸ International Covenant on Civil and Political Rights, Article 19.

depends on statutory interpretation and the applicable principles of criminal law.

A court should not assume the required mental state merely because a statement is inflammatory to some listeners or critical of the government. Relevant evidence may include the complete communication, its context, audience, surrounding events, repetition, coordination with violent actors and any connection with the prohibited activity.

The prosecution should be required to prove the applicable mental element beyond reasonable doubt. A speaker should not be expected to establish patriotic intent as a condition of exercising freedom of expression.

5.3 Modes of Commission and Technology

Section 152 expressly refers to electronic communication and financial means. This recognises that serious unlawful activity may be organised through online platforms, digital networks and financial support rather than physical speeches alone.

However, electronic communication is only a medium. A post, video, message, livestream or digital campaign may be lawful or unlawful depending on its content, purpose and connection with prohibited conduct.

Likewise, financial assistance may support lawful relief work or legitimate political activity, while other transfers may knowingly support armed rebellion or prohibited operations. The existence of an online communication or financial transaction cannot independently establish criminal liability. The statutory ingredients and mental element must be proved.

5.4 Secession, Armed Rebellion and Subversive Activities

Secession and armed rebellion concern serious challenges to territorial or constitutional order. The expression “subversive activities,” however, may be less precise.

Political campaigns often seek to change institutions, laws, constitutional arrangements or governments. Such efforts are not necessarily violent or unlawful. If “subversive” is interpreted to include peaceful transformative politics, the offence could threaten legitimate democratic participation.⁹

The phrase concerning the encouragement of feelings of separatist activities also requires careful interpretation. It should not be read as criminalising a person's mere belief, historical analysis or peaceful discussion of separatism. A constitutionally appropriate interpretation

⁹ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34 (12 September 2011).

should focus on conduct that satisfies the statutory ingredients and poses a sufficiently serious threat.

5.5 “Endangers Sovereignty, Unity and Integrity”

The term “endangers” may cover conduct that creates a serious threat even before actual harm occurs. Preventive criminal law is not inherently illegitimate; the State need not always wait for violence to take place.

Nevertheless, the alleged danger must be supported by evidence. If “endangers” is interpreted to include any expression regarded as detrimental to national unity, the provision could confer excessive discretion on enforcement authorities.

A narrow interpretation should require a serious and credible connection between the accused's conduct and the protected constitutional interest, particularly where the prosecution is primarily based on speech.

5.6 The Explanation and Lawful Criticism

The explanation to Section 152 protects certain criticism of government measures and administrative action intended to secure change through lawful means, provided the criticism does not excite or attempt to excite the prohibited activities.

This is an important statutory safeguard. However, it should not be treated as the complete extent of constitutional protection. Article 19(1)(a) protects a broader range of expression, including journalism, historical analysis, satire, academic research and political discussion.

5.7 Punishment

Section 152 provides for imprisonment for life or imprisonment for up to seven years, together with a fine. The severity of the maximum punishment reinforces the importance of clear statutory ingredients, careful charging decisions and proportionate sentencing.

The seriousness of armed rebellion or violent secession may justify severe penalties.¹⁰ Yet the punishment imposed must correspond to the conduct proved, the accused's role, the mental element and the gravity of the threatened or actual harm.

¹⁰ *Brandenburg v. Ohio*, 395 U.S. 444 (1969). This is comparative authority and is not binding on Indian courts.

6. COMPARATIVE ANALYSIS: IPC SECTION 124A AND BNS SECTION 152

6.1 Comparative Table

1. Title and terminology

- IPC Section 124A: Commonly known as the offence of sedition.
- BNS Section 152: Act endangering sovereignty, unity and integrity of India.
- Significance: The new title reframes the protected interest, but the title alone does not establish the provision's constitutional validity or practical scope.

2. Protected interest

- IPC Section 124A: The Government established by law in India.
- BNS Section 152: Sovereignty, unity and integrity of India, together with the specified prohibited activities.
- Significance: The framing shifts from disaffection towards government to national security and territorial integrity.

3. Core conduct

- IPC Section 124A: Bringing or attempting to bring hatred or contempt, or exciting or attempting to excite disaffection.
- BNS Section 152: Conduct connected with secession, armed rebellion, subversive activities, separatist activities and endangerment of sovereignty, unity and integrity, as specified by the section.
- Significance: The provisions are not word-for-word reproductions and must be analysed through their separate ingredients.

4. Mental element

- IPC Section 124A: Its wording was judicially restricted by *Kedar Nath Singh*.¹¹
- BNS Section 152: Expressly uses “purposely or knowingly.”
- Significance: The express mental element may constrain liability if rigorously interpreted and proved.

5. Modes of commission

- IPC Section 124A: Words, signs, visible representations and other recognised forms.
- BNS Section 152: Words, signs, visible representations, electronic communication, financial means and “or otherwise.”

¹¹ Coroners and Justice Act 2009 (United Kingdom), Section 73.

- Significance: The newer wording expressly addresses digital and financial conduct but also raises questions about the breadth of residual language.

6. Violence or public disorder

- IPC Section 124A: *Kedar Nath Singh* required a connection with incitement to violence or a tendency or intention to create public disorder.
- BNS Section 152: The operative text does not state an equivalent general violence-or-public-disorder threshold in the same express terms.
- Significance: Whether constitutional principles require a close-nexus limitation under Section 152 is a central issue.

7. Explanation

- IPC Section 124A: Contained explanations addressing certain forms of lawful disapprobation.
- BNS Section 152: Contains an explanation protecting specified lawful criticism that does not excite the prohibited activities.
- Significance: Statutory protection remains, but its wording differs and does not replace the wider protection afforded by the Constitution.

8. Punishment

- IPC Section 124A: Included life imprisonment with fine, a term that could extend to three years with fine, or fine.
- BNS Section 152: Provides imprisonment for life or imprisonment for up to seven years, together with a fine.
- Significance: The maximum punishment remains severe, increasing the importance of precision and proportionality.

9. Judicial position

- IPC Section 124A: Governed by the restrictive interpretation in *Kedar Nath Singh*, alongside the interim directions issued in *S.G. Vombatkere*.¹²
- BNS Section 152: Requires interpretation of its own text and constitutional context; the status of challenges must be checked against official court records.
- Significance: Constitutional principles continue to matter, but the old precedent does not automatically resolve every question about the new provision.

10. Principal constitutional risk

¹² *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, concerning vague and overbroad speech restrictions.

- IPC Section 124A: Criminalisation of disaffection without a sufficiently serious threat, if read broadly.
- BNS Section 152: Vagueness and overbreadth arising from expressions such as “subversive activities,” “endangers” and “or otherwise.”
- Significance: Different statutory language can still produce a similar chilling effect if applied broadly.

6.2 What Changed?

The first change is conceptual. Section 124A focused on hatred, contempt and disaffection towards the government, whereas Section 152 focuses on sovereignty, unity and integrity and enumerates specified activities.

The second change is structural. Section 152 expressly identifies secession, armed rebellion and subversive activities rather than relying on the earlier language of disaffection.

The third change concerns the mental element. The express words “purposely or knowingly” may help prevent liability based on inadvertent communication, provided courts enforce this requirement rigorously.

The fourth change concerns technology and finance. Electronic communication and financial means are expressly included, recognising contemporary forms of mobilisation and material support.

The fifth change concerns the explanation and alternative term of imprisonment. The new provision retains a severe maximum punishment while providing a term of up to seven years as an alternative.

6.3 Why the Change Matters

A critical assessment must distinguish legislative intent from legal effect. The replacement may be understood as an attempt to move away from colonial sedition terminology and focus on threats to sovereignty and territorial integrity. Nevertheless, overlapping concerns about broad language and political speech remain.

The fact that Section 152 contains different wording does not prove that it is either identical to or entirely different in practical effect from Section 124A. The appropriate method is to compare statutory text, constitutional purpose, judicial interpretation and actual enforcement.

7. WHY THE LAW CHANGED: DECOLONISATION, SECURITY AND LEGISLATIVE POLICY

7.1 Decolonisation as a Legal Objective

Replacing colonial-era criminal legislation may symbolise a change in constitutional identity. The history of a provision, its original purpose and its historical use are relevant to assessing reform.

However, decolonisation involves more than removing colonial terminology. It also requires criminal laws to reflect liberty, equality, democratic participation and restraint in the exercise of State power.

A replacement provision should therefore be assessed by asking whether it improves clarity, limits arbitrary discretion and protects constitutional freedoms while addressing genuine threats.

7.2 Legitimate National-Security Interests

The State has a legitimate responsibility to respond to armed rebellion, violent secession and knowing material assistance to prohibited violent activity.¹³ Article 19(2) expressly recognises sovereignty and integrity of India among the grounds on which reasonable restrictions may be imposed.

The constitutional debate is not whether the State may address genuine threats. It is whether the legal boundary between serious unlawful conduct and peaceful expression is sufficiently clear.

A narrowly defined offence can protect the public without criminalising ordinary criticism or peaceful advocacy.

8. JUDICIAL POSITION: PRECEDENTS AND THEIR CONTINUING RELEVANCE

8.1 *Romesh Thappar v. State of Madras* (1950)

In *Romesh Thappar v. State of Madras*, the Supreme Court examined restrictions affecting the circulation of a journal and emphasised the constitutional importance of political expression.

The judgment must be understood in the context of the constitutional text applicable at the time. Its continuing relevance lies in the principle that restrictions on expression must be

¹³ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, concerning the distinction between discussion, advocacy and incitement.

justified under the Constitution rather than imposed merely because speech is inconvenient or critical of government.

8.2 *Brij Bhushan v. State of Delhi* (1950)

In *Brij Bhushan v. State of Delhi*, the Supreme Court considered pre-censorship of a newspaper. The case demonstrates the constitutional sensitivity of prior restraints on expression.

Although Section 152 concerns criminal liability rather than prior censorship, the underlying principle remains relevant: restrictions affecting political expression require a clear constitutional basis.

8.3 *Kedar Nath Singh v. State of Bihar* (1962)

Kedar Nath Singh is the principal authority concerning the constitutional interpretation of former Section 124A. The Supreme Court upheld the provision through a restrictive construction linking its application with incitement to violence or a tendency or intention to create public disorder.

The decision distinguished criticism of government from conduct threatening public order. Its importance for Section 152 is twofold.

First, it reinforces the principle that criminal law should not punish mere disaffection or criticism. Second, it provides a relevant constitutional framework for evaluating a new provision that may affect political expression.¹⁴

However, Section 152 is a separate statutory provision. *Kedar Nath Singh* did not directly decide its validity. Its precise application must therefore be considered in light of the new statutory wording and the constitutional issues raised by it.

8.4 *Balwant Singh v. State of Punjab* (1995)

In *Balwant Singh v. State of Punjab*, the accused had raised pro-Khalistan slogans following the assassination of Prime Minister Indira Gandhi. The Supreme Court set aside the convictions, taking account of the context, limited nature of the slogans, lack of meaningful public response and absence of sufficient incitement or public disorder on the facts.

The case demonstrates that expressions supporting separatism cannot always be assessed solely by their literal wording. Intent, circumstances, audience response and likely consequences may be relevant.

¹⁴ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955, concerning the restrictive interpretation of IPC Section 124A.

The decision does not establish that every expression supporting separation is protected. Rather, it warns against treating a political sentiment as equivalent to a criminal threat without examining the statutory ingredients and surrounding circumstances.

8.5 *Shreya Singhal v. Union of India* (2015)

In *Shreya Singhal v. Union of India*, the Supreme Court struck down Section 66A of the Information Technology Act, 2000. The provision was held unconstitutional because its broad and uncertain language impermissibly restricted protected expression.

The Court distinguished discussion and advocacy from incitement, emphasising the importance of drawing a clear line between protected speech and expression that may legitimately be restricted.

This distinction is relevant to Section 152, which expressly covers electronic communication and contains terms requiring careful interpretation. However, *Shreya Singhal* does not automatically determine the validity of Section 152. The latter must be assessed according to its own wording, protected interests and penalties.

8.6 *S.G. Vombatkere v. Union of India* (2022)

The Supreme Court's interim order of 11 May 2022 concerning Section 124A is an important part of the recent history of sedition law. The order directed caution in the registration of new cases and the use of coercive measures under the previous provision while the Union Government reconsidered it.

The order was interim and did not finally declare Section 124A unconstitutional. Its importance lies in the recognition that the operation of sedition law raised significant questions concerning liberty and constitutional rights.

8.7 Constitutional Challenges to Section 152

Constitutional challenges to Section 152 have been reported. Such challenges have raised concerns about vagueness, overbreadth, the scope of "subversive activities" and the absence of an express proximity-to-violence requirement.

Issuing notice in a case does not mean that the provision has been struck down or upheld. The procedural status of any challenge must be distinguished from a final judicial determination.

Before academic submission, the latest official Supreme Court orders and judgments should be checked to establish the current position. Until a final authoritative ruling is confirmed, the paper should avoid describing the constitutional validity of Section 152 as conclusively settled.

8.8 Other Relevant Constitutional Doctrines

Several constitutional doctrines inform the analysis of Section 152:

1. **Proportionality:** The restriction must pursue a legitimate objective, have a rational connection with that objective, be appropriately limited and maintain a proper balance between public benefit and interference with rights.¹⁵
2. **Vagueness:** A criminal law should give people reasonable notice of prohibited conduct and should not leave excessive discretion to enforcement authorities.
3. **Overbreadth:** A provision may be problematic if it captures substantial amounts of constitutionally protected conduct beyond what is necessary to address the legitimate harm.
4. **Chilling effect:** Uncertainty and severe penalties may discourage lawful expression even when a prosecution does not result in conviction.
5. **Fair procedure:** Investigation, arrest and prosecution must comply with constitutional and statutory safeguards.

These doctrines overlap but are not identical. A law may have a legitimate objective while still being vague or overbroad.

9. CONSTITUTIONAL ANALYSIS UNDER ARTICLES 14, 19 AND 21

9.1 Article 19(1)(a): Freedom of Speech and Expression

Article 19(1)(a) protects political criticism, journalism, academic inquiry, peaceful advocacy and expression challenging dominant views. Freedom of expression would have little practical meaning if it protected only opinions accepted by the government or majority.

Citizens must be able to criticise public institutions, question national policy, debate federal arrangements and seek lawful political change. Such expression may be forceful or unpopular without necessarily constituting a criminal threat.

Article 19(2) permits reasonable restrictions on specified grounds, including sovereignty and integrity of India, security of the State, public order and incitement to an offence. The existence of a permissible ground is only the starting point. The restriction must also be reasonable and sufficiently connected to the protected interest.

9.2 Article 19(2): Legitimate Aim and Close Nexus

Section 152 pursues legitimate objectives when it addresses conduct threatening sovereignty,

¹⁵ Constitution of India, Article 14, concerning equality and the constitutional prohibition on arbitrary State action.

territorial integrity or the constitutional order through armed rebellion or serious prohibited activities.

The difficult issue is the connection between the accused's conduct and the harm alleged. A restriction should not be justified merely because expression offends the public, weakens confidence in the government or expresses a radical political position.¹⁶

Where speech forms the basis of prosecution, there should be a serious and proximate connection between the conduct and a recognised constitutional harm. The precise analysis will depend on the statutory limb and the facts.

For example, a public lecture explaining the history of separatist movements, a newspaper reporting their demands or a peaceful campaign seeking lawful autonomy does not ordinarily establish the same connection as direct operational incitement to armed rebellion.

The law must distinguish discussion of a threat from participation in creating that threat.

9.3 Article 14: Equality and Non-Arbitrary Enforcement

Article 14 guarantees equality before the law and equal protection of the laws. In criminal law, this requirement also guards against arbitrary State action.

Vague standards may allow similarly situated speakers to be treated differently because of their political identities, the subject of their criticism or the preferences of local authorities. Such inconsistency is especially concerning when the alleged harm is difficult to define or measure. Written reasons, supervisory review and clear charging standards can help reduce arbitrary enforcement. Authorities should identify the prohibited activity, the evidence of purpose or knowledge and the connection between the alleged conduct and the threatened harm.

The purpose of Article 14 is not to require identical outcomes in every case. It is to ensure that distinctions are legally relevant rather than arbitrary.

9.4 Article 21: Personal Liberty and Fair Procedure

Article 21 protects life and personal liberty, subject to constitutionally valid procedure established by law. The procedure must satisfy the applicable requirements of fairness and non-arbitrariness.¹⁷

A prosecution under a serious national-security provision may involve arrest, restrictions on movement, prolonged investigation, difficulty obtaining bail, social stigma and professional

¹⁶ Constitution of India, Article 21; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹⁷ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353, concerning proportionality in Indian constitutional law.

consequences. These effects can arise before guilt has been established.

Constitutional scrutiny should therefore consider more than the eventual standard for conviction. Registration of cases, arrest, investigation, remand and continued prosecution must comply with the Constitution and applicable criminal-procedure law.

9.5 Vagueness

Vagueness is created when a law does not afford reasonable notice of the conduct it prohibits or grants excessive discretion to enforcement officials. Certain words in Section 152, like “subversive activities” or “feelings of separatist activities” and the words “endangers” and “or otherwise” need to be carefully interpreted. These expressions could have valid uses, but they are too broad to be clarified by the judiciary. The provision may pose a threat to political participation if the term is limited to activities that are clearly and unlawfully subversive to the State, it becomes more predictable how the state will operate. The term “or otherwise” does not mean “or any other way” and doesn't provide unlimited powers to criminalise behaviour that an authority doesn't like. It will be understood within the framework of the modes and forbidden activities listed. Likewise there should be evidence of serious and credible risk and not a speculative or remote consequence for “endangers.”

9.6 Overbreadth

Overbreadth is when the law regulates conduct that is more than is needed to protect the harm. Section 152 can be used restrictively for actions “intentionally or knowingly” doing something that helps armed rebellion, violent secession or “significant threats to the integrity of the nation. It might also be interpreted very broadly to cover peaceful protests, political slogans, academic research, journalism and on-line discussions linked to separatist thoughts. The latter applications give rise to constitutional issues if they are not accompanied by proof of the elements required under the statute and of a connection with a recognised harm. But the explanation which justifies lawful disapprobation is relevant and ought not to be considered as exhausting constitutional protection.¹⁸ The right to freedom of expression under article 19(1)(a) is not limited to criticism of reform measures by government, but extends to descriptive, artistic, historical, satirical and academic expression.

¹⁸ *Superintendent, Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633, concerning freedom of speech and public order.

9.7 Proportionality and Severe Punishment

Particularly, proportionality is important when considering the possibility of up to seven years imprisonment, and imprisonment with life sentence, as well as fine. Armed rebellion and violent secession is not to be taken lightly and should be met with severe punishment. However, the severity of the punishment should correspond with the seriousness of the behaviour, the part played by the accused in the offence, the state of mind of the accused and harm inflicted or threatened. If the alleged conduct is not violent and/or it is not clearly defined, then a broadly worded offence with a high maximum sentence has the potential for disproportionate consequences.

10. LEGITIMATE DISSENT VERSUS CRIMINAL CONDUCT: PRACTICAL APPLICATIONS

The following hypotheticals illustrate the issues raised by Section 152. They are analytical examples, not predictions about the outcome of any actual prosecution.

10.1 Strong Criticism of Government

Suppose a speaker calls the government corrupt, incompetent or authoritarian and demands its resignation. Even harsh or unpopular criticism does not, without more, establish secession, armed rebellion or a serious threat to sovereignty.

The government of the day is not identical to the nation. Unless the conduct satisfies the actual ingredients of Section 152, prosecution risks converting political opposition into a national-security offence.

10.2 Peaceful Advocacy for Constitutional Change

Suppose an organisation campaigns peacefully for greater state autonomy, lawful constitutional reform or changes to the federal structure. Advocacy for legal change is a normal feature of democratic politics.

The statutory explanation protects certain forms of lawful criticism, but constitutional protection is broader. A prosecution should not succeed merely because the proposed change is controversial or described by political opponents as separatist.

The relevant questions are whether the conduct advances a prohibited activity and whether the required mental element and serious threat are established.

10.3 Academic Research or Journalism

A journalist may investigate a separatist organisation, or a researcher may study the ideology and history of an armed movement.¹⁹ Such work may require quoting slogans, manifestos or statements.

Quotation or analysis does not necessarily constitute endorsement. Purpose, framing, verification, context and the presence or absence of operational assistance are relevant.

Criminal liability should not be inferred solely from the subject matter of a publication.

10.4 Slogans at a Political Rally

Suppose a group raises slogans supporting an independent political entity. The constitutional analysis should not stop at the literal meaning of the slogans.

Relevant considerations include the setting, audience, repetition, intent, whether violence is urged, whether the words are linked to an organised operation and whether they are likely to create a serious and proximate threat.

Balwant Singh v. State of Punjab illustrates why context matters. Evidence of coordination with armed actors or deliberate incitement to imminent violence could materially alter the analysis.

10.5 Direct Incitement to Armed Rebellion

Suppose a speaker knowingly directs an organised group to take up arms against the State, identifies targets, coordinates timing and seeks immediate participation in violent rebellion.

This conduct differs materially from abstract discussion or peaceful advocacy. Depending on the evidence and statutory ingredients, it may fall within Section 152 and other applicable criminal provisions.

Freedom of expression does not automatically immunise direct operational incitement to serious violence.

10.6 Financial Support

Suppose a person transfers money to an organisation. The legal significance depends on the recipient, purpose, the person's knowledge and intent, the nature of the organisation and the intended use of the funds.

A donation to lawful relief work should not be equated with knowing financial support for

¹⁹ *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 SCC 641, concerning political expression and constitutional freedoms.

armed rebellion. The statutory reference to financial means requires proof of the relevant mental element and connection with prohibited activity; it should not create guilt by association.

10.7 Online Posts and Viral Clips

Online content can spread rapidly and may be quoted or edited out of context. A viral clip should not be assessed without examining the original recording, surrounding conversation, audience, intended meaning and any connection with prohibited conduct.²⁰

The fact that a statement attracts widespread criticism does not establish that it constitutes a threat to sovereignty or integrity. Digital evidence should be preserved and assessed in its complete context.

10.8 Satire, Art and Fiction

Satire, artistic expression and fictional works may portray separatism, political conflict or institutional breakdown. Such expression may be uncomfortable or controversial without advocating unlawful conduct.

The relevant inquiry should consider purpose, context, the actual content and whether the statutory ingredients are satisfied. Criminal liability should not be based merely on the depiction of a prohibited idea.

11. ENFORCEMENT, PROCEDURE AND THE CHILLING EFFECT

11.1 The Offence on Paper and in Practice

The effect of a criminal provision relies on more than just the words of the provision. It also relies on the standards adopted by Police, Investigators, Prosecutors and Courts. A provision which is for a good purpose can still infringe on liberty if it is used without clearly defined criteria.²¹ The statutory design and enforcement practices need to be taken into consideration when assessing Section 152.

11.2 Threshold Scrutiny Before Registration and Charge

Authorities need to determine the type of prohibited activity that has occurred and evidence to support each of the statutory ingredients. It is not legal analysis to call a statement ‘anti-

²⁰ *Bennett Coleman & Co. v. Union of India*, (1972) 2 SCC 788, concerning press freedom under Article 19(1)(a).

²¹ For the exact wording of Section 152, consult the official BNS text published by the Government of India and the India Code database.

national'. The record should be "a clear record of why the alleged conduct constitutes a secession, an armed rebellion, subversive activity or a serious danger to the sovereignty or integrity of the United States. It should also pinpoint the evidence for purpose or knowledge, and the link between the behaviour and the risk of harm. This specificity makes it easier to see that it is a legally viable case versus one that is basically political.

11.3 Arrest and Bail

Investigation of serious offence shall be carried out pursuant to the Constitution and relevant criminal procedure law, such as Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Invocation of Section 152 should not mean that arrest is automatic. Authorities need to adhere to legal requirements and the courts need to take into account the governing framework when determining issues of remand and bail. Nothing can be done in place of the statutory requirements or the need to investigate the evidence and the role of the accused.

11.4 Evidence and Digital Context

Recording, screenshots, translations, messages, financial data and evidence of audience reaction are examples of speech related investigations. A defensible investigation should maintain original material, document the provenance, review editing/translation issues and review the over-all context.²² The same words can have various meanings in a quotation, a satire, a historical analysis, an endorsement or direct instruction. Context does not excuse the failure to pay attention to the evidence; it is an integral element to appreciating what the evidence is establishing.

11.5 Prosecutorial Discretion and Viewpoint Neutrality

There must be a clear difference between political opinion and illegal activity by prosecutors. The support for the ruling party is not an evidence of the legality and opposition to the government is not an evidence of criminality. To minimise inconsistencies in decisions, written charging standards and special training and supervisory review are essential. In cases where the main focus is on speech, the link between the speech and the harm caused by the statute should be explained in the decision to prosecute. Words of vague nature like "anti-national", "seditious" or "subversive" should not be a substitute for the statutory ingredients.

²² Kanieka Arora, "Revisiting Sedition in India: Constitutional Continuity and Change from the IPC to the BNS," *Panjab University Law Review*, vol. 64, no. 2. Verify the final bibliographic details against the journal's official publication page before submission.

11.6 Transparency and Accountability

Clear and predictable treatment can help build trust in the criminal justice system. The anonymised data collected in FIRs, charges and in the closure of cases, the bail outcome, trials and conviction in cases would enable researchers to evaluate the working of Section 152. This information would help in identifying legitimate national-security enforcement from those that could unfairly limit legitimate expression.

12. COMPARATIVE AND INTERNATIONAL PERSPECTIVES

12.1 Comparative Law as a Source of Principles

The use of foreign cases may be helpful for comparative law analysis, but needs to be done with great care. The texts of the constitution, the historical nature of law and the statutory instruments vary from jurisdiction to jurisdiction. There are ways of identifying the importance of clarity, proximity, likelihood and proportionality that are foreign. They are not per se valid or a determinant of how any Section 152 will be interpreted under Indian law.

12.2 International Human-Rights Standards

The International Covenant on Civil and Political Rights (ICCPR), Article 19, guarantees freedom of expression, which can be limited under the conditions of applicability of the law and necessity tests, including those of national security and public order.²³ The UN Human Rights Committee's General Comment No. 34 reiterates that restrictions must not place the right at risk and that they must meet the criteria of legality, necessity and proportionality. These principles can be used to challenge the clarity of Section 152 and the link between the behaviour which is prosecuted and the alleged harm. International standards not to criminalise violent rebellion or real threats to national security do not bar states. They warn against "ambiguous" offences which could be used by the police to punish criticism and to silence information which is of legitimate public interest.

12.3 The United States: Advocacy and Incitement

The U.S. Supreme Court differentiated between protected advocacy and incitement under the First Amendment in *Brandenburg v. Ohio*. The test that is relevant to the advocacy provoking or likely to provoke imminent lawless action. The Indian constitution is different and *Brandenburg* is not precedent to the Indian courts. It adds value by putting one to thought on

²³ "SC Issues Notice on Plea Challenging Validity of BNS Section 152," *The Indian Express*, 8 August 2025.

intent, imminence and likelihood rather than abstract advocacy as being the same as incitement.

12.4 The United Kingdom: Retreat from Historical Seditious

Sedition and seditious libel were common-law offences which were abolished in U.K. by the Coroners and Justice Act 2009, section 73. This legislative judgment stemmed from worry about the fit between the historical offences and contemporary democratic expression and the presence of alternative criminal laws that cover the real threats. The United Kingdom's legal and security situation is different from that of India, therefore, repeal does not affect the situation under the Indian constitution. It does however show that there is a way to remove historical offences while simultaneously having laws in place for targeted violence, threats and incitement.²⁴

12.5 Lessons for India

The comparative and international materials support several principles:

1. Criminal restrictions should identify prohibited conduct with sufficient clarity.
2. Political criticism should not be treated as equivalent to incitement.
3. The relationship between conduct and alleged harm should be carefully established.
4. Restrictions should be necessary and proportionate to the legitimate objective.
5. Enforcement should not discriminate on the basis of political viewpoint.
6. National-security objectives should be pursued through precise statutory ingredients and fair procedures.

These principles support a constitutional approach that protects both genuine security interests and democratic expression.

13. FINDINGS AND CRITICAL EVALUATION

13.1 Principal Findings

The comparative analysis produces the following findings:

1. Section 152 is not a verbatim reproduction of Section 124A. Its protected interest and operative wording differ.
2. Removing the term “sedition” is symbolically significant, but a change in terminology does not establish that the practical scope of criminal liability is narrower.

²⁴ Shrushti Taori and Tatva Damania, “Balancing Free Speech and National Security: A Critical Analysis of Section 152 of the Bharatiya Nyaya Sanhita and Section 124-A of the IPC,” LiveLaw, 2 June 2024.

3. The express mental element “purposely or knowingly” may be an important safeguard, but it cannot independently cure uncertainty in the prohibited conduct.
4. Express references to electronic communication and financial means recognise contemporary forms of organisation while increasing the need for contextual evidence.
5. The absence of an express general violence-or-public-disorder threshold in Section 152 makes its relationship with the limiting principle in *Kedar Nath Singh* a central constitutional question.
6. The explanation protects certain lawful criticism, but it should not be treated as the complete extent of Article 19(1)(a).
7. Vagueness, overbreadth, proportionality, chilling effect and arbitrary enforcement are related but distinct constitutional concerns.
8. Precedents interpreting Section 124A remain relevant to constitutional principles, but the validity and exact meaning of Section 152 must be assessed through its own text and constitutional context.

13.2 Is Section 152 a Genuine Transformation?

Section 152 alters the focus of the offence, by emphasising on sovereignty, unity and integrity; and by specifying activities that are prohibited.²⁵ Its unique mental element and electronic/financial modes of recognition may be able to help solve the serious threats of the present day. The use of the broad language of the provision, however, includes “subversive activities,” “encourages feelings of separatist activities,” “endangers” and “or otherwise.” It carries serious consequences and is related to a number of types of communication and behavior. The effect of the government treating political opposition or peaceful advocacy as proof of subversion could be similar to that of sedition law. The change will thus not be fully realized if the new provision is restricted to a narrow interpretation and does not find its way into practice.

13.3 The Proper Constitutional Boundary

The courts should consider the exact part of the statute, the intent to commit the threat, the overall circumstances and the evidence of the connection between the conduct and the threat, in a principled interpretation of Section 152. In a situation where prosecution is based on speech, it is important to scrutinize closely the seriousness and proximity of the interest to be

²⁵ “Sedition 2.0? Supreme Court Seeks Centre’s Response to Plea Challenging Section 152 BNS,” *Bar & Bench*, 8 August 2025.

protected. Peaceful advocacy, journalism, academic research, satire and criticism should not be a crime because these discuss separatism or challenge government policies.

13.4 A Principled Interpretation

The courts should consider the exact part of the statute, the intent to commit the threat, the overall circumstances and the evidence of the connection between the conduct and the threat, in a principled interpretation of Section 152.²⁶ In a situation where prosecution is based on speech, it is important to scrutinize closely the seriousness and proximity of the interest to be protected. Peaceful advocacy, journalism, academic research, satire and criticism should not be a crime because these discuss separatism or challenge government policies.

14. RECOMMENDATIONS

14.1 Judicial Interpretation

Courts should:

1. Clarify that “subversive activities” does not include ordinary political opposition, peaceful protest, scholarship, journalism or advocacy of lawful constitutional change merely because it is controversial.
2. Interpret “endangers” to require an evidence-based and serious threat to sovereignty, unity or territorial integrity rather than speculative or remote harm.
3. Interpret the phrase concerning the encouragement of separatist activities so that mere expression or discussion of political belief is not treated as sufficient by itself.
4. Examine the full context of speech, including audience, intent, medium, surrounding events and the likelihood of the alleged harm.
5. Preserve the distinction between discussion, advocacy and incitement, drawing on *Shreya Singhal* and other relevant authorities without mechanically importing foreign legal tests.

14.2 Legislative Clarification

The legislature should consider:

1. Defining “subversive activities” more precisely by identifying the relevant unlawful conduct or serious threat.

²⁶ Pending litigation must be distinguished from a final ruling on constitutional validity. Verify the latest official Supreme Court orders before relying on the procedural status

2. Clarifying the relationship between the phrase “or otherwise” and the listed modes and prohibited activities.
3. Ensuring that the statutory explanation is not interpreted as the only category of protected expression.
4. Reviewing proportionality in the punishment structure, distinguishing operational support for violence from lower-harm forms of expression.
5. Publishing explanatory materials that clarify the intended distinction between peaceful dissent and punishable conduct.

14.3 Investigative and Prosecutorial Safeguards

Authorities should:

1. Require a written assessment identifying each statutory ingredient and the evidence supporting it before pursuing a Section 152 charge.
2. Provide specialised training on freedom-of-speech doctrine, digital evidence, context, satire, translation and the distinction between advocacy and incitement.
3. Use supervisory review for cases primarily based on speech or online expression.
4. Apply arrest, remand and bail provisions consistently with the Constitution and BNSS.
5. Publish anonymised annual data on FIRs, charges, case closures, bail outcomes, trials and convictions.

14.4 Academic and Public Accountability

It is important for universities, bar associations, civil-society organisations and legal researchers to keep track of the evolution of Section 152 via official judgments and reliable case data. No comment should be made in public about an allegation being evidence of guilt, or that all national security prosecutions are necessarily illegitimate. A mature constitutional debate acknowledges the role of the State in safeguarding the public and the public’s right to challenge the State.²⁷

15. CONCLUSION

The shift from Section 124A of IPC to Section 152 of BNS is an important question of whether the recodification of Indian criminal law is a substantive constitutional change or not. Sedition,

²⁷ Bharatiya Nyaya Sanhita, 2023, provisions concerning waging war against the Government of India and other offences against the State; overlapping charges require separate ingredient-by-ingredient analysis.

as it was once defined, was influenced by colonial past and posed a constant danger as the words of hatred, contempt and disaffection could be applied to political opponents. The Supreme Court in Kedar Nath Singh, held that the provision could be restricted by a saving construction; it would only be if there was incitement to violence or tendency or intention to create public disorder. It set a precedent for free criticism of the government without threatening the State. Section 152 re-frames the legal question. It is about sovereignty, unity and integrity and both defines secession, armed rebellion, subversive activities and separatist activities. It is its express requirement of purposeful or knowing conduct and its recognition of electronic and financial means which may help in dealing with serious threats in today's world. Such a provision is therefore not exactly as provided in Section 124A. However, the broad expressions, the leftover language and extreme penalties leave major issues of notice, discretion, proportionality and chilling of expression. Whether or not Section 152 is limited to serious wrongdoing or extends to speech that is radical, unpopular or critical of the government is the critical question. Criminal liability must be predictable, non-arbitrary and proportionate according to articles 14, 19 and 21. Article 19(2) allows for reasonable restrictions on the grounds of sovereignty and integrity, but as it is written, doesn't give the state an unlimited right to punish dissent. The explanation to Section 152 is applicable, but constitutional protection applies to more than just the category of lawful criticism as outlined in that explanation. This paper concludes that Section 152 can only be constitutionally defensible through the careful application of statutory interpretation and its enforcement.²⁸ Courts must seek proof of purpose or knowledge and specify the concrete prohibited activity, and carefully consider the context and the link between speech and a serious threat. Discussion of separatism and criticism of government policy should not be considered a crime, as should peaceful advocacy, journalism, academic research, satire and criticism. Investigators, prosecutors should give reasons, maintain context of digital and make sure there is no viewpoint-based enforcement. Legislative language should be clarified on the ambiguous phrases and it should be determined if the penalties are commensurate with the various types of conduct addressed. True decolonisation needs more than this — it requires the name of an offence to be changed. It calls for a system of laws and procedures to protect national security, but not to compromise democratic freedom. Whether or not the interpretation and application of Section 152 will uphold the constitutional difference between dissent and crime will be a key success factor for the section.

²⁸ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1; compare *Brandenburg v. Ohio*, 395 U.S. 444 (1969), as persuasive comparative authority.

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