CONSTITUTIONAL VALIDITY OF THE SEDITION LAW UNDER SECTION 152 OF THE BHARATIYA NYAYA SANHITA: A CRITICAL ANALYSIS

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Abstract

The repeal of Section 124A of the Indian Penal Code, 1860 was widely celebrated as the end of a colonial-era restriction on speech. However, its functional replacement, Section 152 of the Bharatiya Nyaya Sanhita, 2023, has revived the constitutional debate in a new form. Although the word 'sedition' has been deliberately excised from the text, the provision continues to criminalise vaguely defined categories of expression that endanger the 'sovereignty, unity and integrity of India'. This essay critically examines whether Section 152 can withstand scrutiny under Articles 14, 19(1)(a) and 21 of the Constitution. It traces the doctrinal journey from Kedar Nath Singh v. State of Bihar through the 2022 abeyance order in S.G. Vombatkere and the pending constitutional challenge to Section 152, and evaluates the provision against the tests of vagueness, overbreadth, chilling effect and proportionality. It concludes that Section 152, in its present form, does not cure the constitutional infirmities of its predecessor and requires either judicial reading-down or legislative amendment.

Keywords: Sedition; Section 152, Bharatiya Nyaya Sanhita; Article 19(1)(a); Vagueness Doctrine; Proportionality; Chilling Effect.

I. Introduction

Few provisions in Indian criminal law have generated as much sustained controversy as the offence popularly known as sedition. For over a century, the law criminalising expression that brings the State into hatred or contempt has stood at the fault line between the citizen's right to dissent and the State's claim to self-preservation. When Parliament enacted the Bharatiya Nyaya Sanhita, 2023 ("BNS") to replace the Indian Penal Code, 1860 ("IPC"), the government announced with some fanfare that the offence of sedition under Section 124A IPC[1] had been abolished. In its place, Section 152 BNS[2] was introduced, ostensibly to protect the sovereignty, unity and integrity of India rather than the dignity of the government of the day.

This essay argues that the rebranding exercise has been largely cosmetic. While Section 152 removes the word 'sedition' and nominally narrows the offence to acts endangering the unity and integrity of the nation, its operative language remains broad, its intent requirement is thin, and its punishment is in fact more severe than that prescribed under the old Section 124A. The provision therefore raises the very same constitutional questions that have troubled courts since independence: whether a criminal restriction on speech that does not require a proximate link to public disorder can be a reasonable restriction within the meaning of Article 19(2), and whether such a provision can survive the more exacting tests of arbitrariness and proportionality that have developed under Articles 14 and 21.

The analysis proceeds in four parts. Part II traces the legislative evolution from Section 124A IPC to Section 152 BNS. Part III examines the judicial treatment of sedition, culminating in the ongoing challenge to Section 152 itself. Part IV undertakes a doctrinal critique of the provision using the tools of vagueness, overbreadth, chilling effect and proportionality. Part V concludes with an assessment of the provision's prospects before the Supreme Court and offers modest recommendations for reform.

II. Legal Framework: From Section 124A IPC to Section 152 BNS

Section 124A IPC, inserted by the colonial legislature in 1870 and expanded in 1898, punished words, signs or visible representation that brought or attempted to bring into hatred or contempt, or excited or attempted to excite disaffection towards, the Government established by

[1]The Indian Penal Code, 1860, § 124A (repealed by the Bharatiya Nyaya Sanhita, 2023).
[2]The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 152 (India).

law. Its constitutionality was tested even before the Constitution was a decade old: the Punjab High Court in *Tara Singh* and the Allahabad High Court in *Ram Nandan*[3] struck the provision down as an unreasonable restriction on the freedom of speech guaranteed under Article 19(1)(a).

Parliament responded not by amending Section 124A but by amending the Constitution itself. The Constitution (First Amendment) Act, 1951[4] inserted the ground of 'public order' into Article 19(2), thereby supplying a constitutional peg on which the offence of sedition could later be hung. It was on this amended text that the Supreme Court, in *Kedar Nath Singh v. State of Bihar*,[5] upheld the constitutional validity of Section 124A, but only by reading down its scope: mere criticism of the government, however strongly worded, would not attract the offence unless the words complained of had the tendency to incite violence or public disorder.

Notwithstanding this narrowing construction, the provision continued to be invoked liberally against journalists, students, activists and political opponents over the following six decades, prompting the Supreme Court in 2022 to take the unusual step of directing that Section 124A be kept in abeyance while the Union government reconsidered the provision. This set the stage for its eventual replacement.

Section 152 BNS departs from Section 124A in structure but not, this essay argues, in substance. It punishes any person who, purposely or knowingly, by words spoken or written, by signs, by visible representation, by electronic communication or by the use of financial means, excites or attempts to excite secession, armed rebellion or subversive activities, or encourages feelings of separatist activities, or endangers the sovereignty or unity and integrity of India.[6] An explanation, modelled on the *Kedar Nath Singh* reading, exempts comments made to disapprove of governmental measures with a view to their lawful alteration, provided such comments do not themselves excite the prohibited activities.[7] The offence is cognisable, non-bailable and triable by a Court of Session, and carries a maximum sentence of life imprisonment or seven years together

[3] *Tara Singh Gopi Chand v. State*, AIR 1951 Punj 27; *Ram Nandan v. State*, AIR 1959 All 101 (India).
[4] The Constitution (First Amendment) Act, 1951, which inserted 'public order' and other grounds into Article 19(2).
[5] *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955 (India).
[6] The Bharatiya Nyaya Sanhita, 2023, § 152 (India).
[7] The Bharatiya Nyaya Sanhita, 2023, § 152, Explanation.

with a fine — a punishment ceiling markedly higher than the three-year sentence available under the repealed Section 124A.[8]

The drafters have thus achieved a paradox: the word most associated with colonial excess has been deleted from the statute book, while the underlying prohibition has, if anything, been broadened to capture 'subversive activities' and the vaguer notion of 'separatist feelings', and the punishment prescribed has been increased. Whether this reformulation cures the constitutional defects long associated with sedition, or merely disguises them, is the question to which this essay now turns.

III. Judicial Interpretation

The judicial history of sedition in India is best understood in three phases. In the first phase, running from *Kedar Nath Singh* in 1962 to the early 1990s, the Supreme Court upheld the constitutionality of Section 124A but confined its application through the tendency-to-incite-violence test. In *Balwant Singh v. State of Punjab*,[9] the Court acquitted individuals who had raised secessionist slogans, holding that mere sloganeering, without any accompanying act or intention to incite disorder, could not amount to sedition. The decision illustrated the intent and proximate-nexus requirements that *Kedar Nath Singh* was understood to impose, even though the vagueness of the underlying offence continued to permit its liberal invocation by investigating agencies at the first-information-report stage.

The second phase began with a renewed constitutional challenge to Section 124A, culminating in the Supreme Court's order in *S.G. Vombatkere v. Union of India*,[10] in which the Court, without formally striking down the provision, directed that no fresh first information reports be registered under it and that all pending proceedings remain in abeyance until the Union government completed its promised re-examination of the law. A three-judge bench subsequently held, in September 2023, that any final adjudication on the constitutionality of Section 124A would require doubting *Kedar Nath Singh*, a Constitution Bench decision, and

[8]The Bharatiya Nyaya Sanhita, 2023, § 152 (punishment clause: imprisonment for life or up to seven years, and fine).
[9]*Balwant Singh v. State of Punjab*, (1995) 3 SCC 214 (India).
[10]*S.G. Vombatkere v. Union of India*, 2022 SCC OnLine SC 609 (India) (order dated 11 May 2022, directing that Section 124A be kept in abeyance).

referred the matter to a bench of at least five judges.[11] That reference remains pending; a seven-judge bench has since been contemplated but is yet to be constituted.

The third and most recent phase concerns Section 152 BNS directly. In August 2025, the Supreme Court issued notice on a petition by the same litigant, *S.G. Vombatkere*, contending that Section 152 is a repackaged version of the sedition offence, reviving in substance what the 2022 abeyance order had suspended, and that its language — particularly the phrases 'subversive activities' and 'encouragement of separatist feelings' — is even more expansive than that of Section 124A.[12] In a separate matter arising out of a first information report registered at Morigaon, Assam against the editor of an online publication and an affiliated foundation, the Court granted protection from arrest and orally questioned whether the potential for misuse of Section 152 could itself render the provision constitutionally infirm.[13] More recently, in May 2026, a division bench clarified that trials and appeals already pending under Section 124A may proceed at the accused's request, notwithstanding the 2022 freeze — a procedural clarification that leaves the underlying constitutional question about both Section 124A and Section 152 undecided.[14]

What emerges from this trajectory is a judiciary that has been reluctant to strike down the offence outright, preferring instead interim protective orders and doctrinal deferral to a larger bench. This caution is not unprincipled — courts are ordinarily reluctant to overturn a unanimous Constitution Bench decision through a smaller bench — but it has produced nearly a decade of legal uncertainty during which both the old and the new provision have continued to generate first information reports against journalists, students and political dissenters.

IV. Doctrinal Analysis: Vagueness, Overbreadth, Chilling Effect and Proportionality

[11]Order dated 12 September 2023 in W.P.(Crl.) No. 106 of 2016, referring the challenge to Section 124A IPC to a bench of at least five judges.
[12]*S.G. Vombatkere v. Union of India*, Writ Petition (Civil), Supreme Court of India (India); notice issued on the challenge to Section 152 BNS on 8 August 2025.
[13]*Foundation for Independent Journalism & Anr. v. Union of India* (Siddharth Varadarajan matter), Supreme Court of India (India), order granting protection from coercive action in an FIR registered at Morigaon, Assam under Section 152 BNS, 2025.
[14]*Kamran v. State of Madhya Pradesh*, (Sup. Ct. India, order dated 21 May 2026) (clarifying that trials, appeals and bail proceedings under Section 124A may continue at the accused's option notwithstanding the 2022 abeyance order).

Four interlocking doctrines are relevant to assessing the constitutionality of Section 152: the void-for-vagueness principle, the doctrine of overbreadth, the chilling-effect rationale, and the proportionality standard that now governs any restriction on a fundamental right.

First, on vagueness. Terms such as ‘subversive activities’ and ‘feelings of separatist activities’ are nowhere defined in the BNS. A criminal statute that fails to give an ordinary citizen fair notice of what conduct is prohibited, and that confers unguided discretion on the police to decide what falls within its sweep, is constitutionally suspect. The Supreme Court applied precisely this reasoning in *Shreya Singhal v. Union of India*[15] to strike down Section 66A of the Information Technology Act, 2000 on the ground that expressions such as ‘grossly offensive’ and ‘menacing character’ were incapable of objective determination and were therefore liable to be applied arbitrarily. The phrases used in Section 152 are, if anything, less precise than those struck down in *Shreya Singhal*, since ‘subversive’ and ‘separatist’ sentiment are matters of political characterisation rather than ascertainable fact.

Second, on overbreadth. Even accepting that the State has a legitimate interest in punishing incitement to secession or armed rebellion, Section 152 sweeps within its net conduct that falls well short of any genuine threat to national integrity — for instance, the mere expression of separatist sentiment absent any act or incitement, or criticism of security operations in a manner that a prosecuting authority chooses to characterise as encouraging separatist feelings. A provision that criminalises a substantially greater range of speech than is necessary to achieve its stated purpose fails the requirement, recognised since *Kedar Nath Singh* itself, that restrictions on speech be no broader than what public order genuinely demands.

Third, the chilling effect. Because the boundary between protected criticism and the punishable encouragement of separatist feeling is left to the subjective assessment of the investigating officer, journalists, academics and civil society actors reporting on sensitive regions or communal issues face a genuine risk of prosecution for good-faith reporting. The Morigaon first information report against a journalist for a published article is illustrative: whatever the ultimate merits of that case, the very institution of criminal proceedings, with its attendant risk of arrest, imposes a cost on speech that a rational actor will often avoid by simply not publishing.

[15] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India) (on vagueness and the chilling effect under Article 19(1)(a)).

This is the essence of the chilling-effect doctrine recognised in *Shreya Singhal*,[16] and it applies with equal force to Section 152.

Fourth, and most significantly for the pending reference, proportionality. *Kedar Nath Singh* was decided in an era when each fundamental right was tested in isolation against the specific head of restriction under which it was said to fall — in that case, Article 19(2) alone. Since *Maneka Gandhi v. Union of India*[17] established that Articles 14, 19 and 21 form an interlinked 'golden triangle', and since *K.S. Puttaswamy v. Union of India*[18] articulated a four-fold proportionality standard requiring a legitimate aim, a rational connection between the measure and that aim, the absence of a less restrictive alternative, and a fair balance between the right infringed and the societal interest served, any restriction on speech must satisfy each of these limbs independently, not merely the public-order justification considered in 1962. Section 152 struggles particularly at the third and fourth limbs: a narrower provision confined to incitement with a proximate connection to actual violence or secessionist acts, of the kind *Balwant Singh* implicitly required, would achieve the State's legitimate security interest without criminalising the broader category of dissenting or separatist expression that causes no imminent harm. The enhanced maximum sentence of life imprisonment, applicable even to speech offences falling short of any completed act of rebellion, further undermines the proportionality of the provision as a whole.

Taken together, these four doctrines suggest that Section 152, far from resolving the constitutional difficulties associated with Section 124A, has in some respects aggravated them: the offence has been drafted more broadly, the punishment has been enhanced, and the explanation borrowed from *Kedar Nath Singh* does little to cure the underlying vagueness because it merely restates the exception for lawful criticism without clarifying the boundary of the offence itself.

V. Conclusion

Section 152 of the Bharatiya Nyaya Sanhita represents an opportunity, deliberately not taken, to align India's law on speech and national security with contemporary constitutional

[16] *Id.*
[17] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India) (inter-relationship of Articles 14, 19 and 21).
[18] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India) (four-fold proportionality standard).

standards. The removal of the word ‘sedition’ has symbolic value, but symbolism cannot substitute for the doctrinal work of narrowing an offence to conduct that poses a proximate and demonstrable threat to public order or the integrity of the State. As presently worded, Section 152 remains vulnerable on grounds of vagueness, overbreadth, chilling effect and proportionality, and the pending challenge before the Supreme Court gives the Court an opportunity to either read the provision down along the lines suggested by *Balwant Singh*, or to await the outcome of the larger-bench reference concerning *Kedar Nath Singh* before pronouncing on Section 152 independently.

Pending that determination, this essay suggests three modest reforms that Parliament could adopt without waiting for judicial intervention: first, replacing the open-ended terms ‘subversive activities’ and ‘separatist feelings’ with a definition tied to incitement of an identifiable unlawful act; second, introducing a requirement of proximate causation between the speech in question and a realistic threat of violence or secession, consistent with the tendency test as clarified in *Balwant Singh*; and third, requiring a preliminary judicial or prosecutorial screening before the registration of a first information report under the provision, so as to filter out complaints that amount to nothing more than the expression of political disagreement. Until such reform is undertaken, Section 152 will continue to occupy the same constitutionally uneasy space that Section 124A occupied for over a century — nominally a protector of the nation’s unity, but functionally available as an instrument to discourage the very dissent that a constitutional democracy is meant to accommodate.