
THE ABOLITION OF THE SEDITION LAW IN INDIA'S NEW BHARATIYA CRIMINAL LAWS: IMPLICATIONS FOR FREEDOM OF SPEECH

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Abstract

This paper critically examines the repeal of Section 124A of the Indian Penal Code, 1860, through the Bharatiya Nyaya Sanhita (BNS), 2023—a landmark legal reform aimed at modernizing India's colonial-era criminal statutes. Section 124A, long criticised for its vague definition and frequent misuse to suppress legitimate dissent, has historically constrained freedom of speech under Article 19(1)(a) of the Constitution. While the repeal marks a significant symbolic shift, this study interrogates the introduction of Section 152 in the BNS, which criminalises acts endangering India's sovereignty, unity, and integrity, notably extending penal scope beyond speech to electronic communications and financial support.

Through analysis of key judicial pronouncements, including Kedar Nath Singh v. State of Bihar (1962) and recent Supreme Court developments, the paper highlights continuing concerns over the potential for subjective and arbitrary application of this provision against journalists, activists, and critics. Comparative insights from democracies like the UK, US, and Australia, where sedition laws have been narrowed or abolished, underline the necessity for clearer legislative language and robust judicial safeguards in India.

The paper concludes that the substance of sedition law risks being preserved under a new guise unless judicial oversight, procedural protections, and legislative clarity are enacted to protect free speech and prevent political misuse. This reform's ultimate success hinges on its implementation aligning with democratic principles to safeguard constitutional freedoms in the world's largest democracy.

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Introduction

Sedition refers to any act, speech, or expression that incites disaffection against the government. Under Section 124A of the Indian Penal Code, 1860, sedition was defined as: *"Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, or with imprisonment which may extend to three years, and shall also be liable to fine."*

The Supreme Court of India in *Kedar Nath Singh v. State of Bihar* (1962) ruled that sedition only applies if there is incitement to violence or public disorder, not mere criticism of the government.² In *Balwant Singh v. State of Punjab* (1995), the Court further clarified that raising slogans without provoking violence does not amount to sedition (Supreme Court of India).³

The abolition of Section 124A under the Indian Penal Code, 1860⁴, has been hailed as a landmark reform in Indian criminal law. However, the simultaneous introduction of Section 152, which penalises acts “endangering the sovereignty, unity, and integrity of India,” has raised pertinent questions regarding the true extent of this reform. The wording of Section 152 remains broad, allowing room for subjective interpretation, which could lead to arbitrary application against critics, journalists, and activists. Given the historical misuse of sedition laws in India, this legislative shift warrants close examination.⁵ While the government claims this move modernises India’s legal framework, critics argue that Section 152 merely rebrands sedition under a different provision.

The decision to repeal the colonial-era sedition law formed part of the Indian government’s broader narrative of decolonizing and modernizing the legal system. Union Home Minister Amit Shah emphasized in parliamentary discussions that the repealing of Section 124A was

² Supreme Court of India, Supreme Court to Decide Constitutionality of Section 124A IPC, SCC Online (May 4, 2021), <https://www.scconline.com/blog/post/2021/05/04/supreme-court-to-decide-constitutionality-of-section-124a-ipc-read-why-it-came-into-force-and-why-5-judge-bench-in-kedar-nath-singh-verdict-found-it-constitutional/>.

³ *Balwant Singh v. State of Punjab*, (1995) 50(2) High Court of Punjab and Haryana Law Reports 411, [https://hcph.gov.in/storage/ilr/50/1995%20\(205%20%20files\)/ENGLISH/50\(2\)/1995_2_411_419.pdf](https://hcph.gov.in/storage/ilr/50/1995%20(205%20%20files)/ENGLISH/50(2)/1995_2_411_419.pdf)

⁴ Indian Penal Code, 1860, Act No. 45, §§ 124A (repealed), <https://www.indiacode.nic.in/repealedfileopen?rfilename=A1860-45.pdf>

⁵ Harsh Mander, Sedition in India: Colonial Legacy, Misuse, and Effect, *Economic & Political Weekly* (July 2023), <https://www.epw.in/engage/article/sedition-india-colonial-legacy-misuse-and-effect>

symbolic of discarding oppressive colonial relics while reaffirming the state's commitment to maintaining national unity and security.⁶ This legislative intent, however, has been met with mixed reactions—while proponents welcome the move as a progressive reform, critics caution that the retention of Section 152 with its vague wording risks preserving the essence of sedition law under a different label. Thus, the political statements provide an important backdrop to interpreting the intent and implications of the BNS reform. Understanding the legal definition and historic judicial interpretation of sedition is essential to appreciate the significance of recent legislative changes.

The Evolution of Sedition Law in India

The sedition law was introduced in 1870 as part of the Indian Penal Code by the British colonial government to suppress opposition. Notably, Bal Gangadhar Tilak and Mahatma Gandhi were prosecuted under Section 124A for their speeches against British rule.⁷ The provision broadly criminalised any speech that created “disaffection” against the government, making it a powerful tool to curb dissent. After independence, Article 19(1)(a) of the Constitution guaranteed freedom of speech and expression, but Article 19(2) permitted reasonable restrictions on grounds such as sovereignty, integrity, and public order. The First Amendment (1951) expanded these restrictions, indirectly validating sedition laws.

The Supreme Court played a crucial role in defining the scope of sedition. The landmark case of *Kedar Nath Singh v. State of Bihar* (1962) upheld the constitutionality of the sedition law but ruled that it applied only when speech incited violence or public disorder. In *Shreya Singhal v. Union of India* (2015), the Court struck down Section 66A of the IT Act, 2000, for its vague and arbitrary restrictions on free speech.⁸ This reinforced the principle that laws restricting expression must be narrowly defined. More recently, in *SG Vombatkere v. Union of India* (2022), the Supreme Court suspended the application of Section 124A due to concerns over its misuse.⁹ Subsequently, the Indian government repealed the provision in the Bharatiya Nyaya Sanhita, 2023, replacing it with Section 152, which criminalises acts endangering the

⁶ Aditi Phadnis, Home Minister Amit Shah Says ‘Sedition Is Dead, But Its Replacement Is More Fearsome Than the Colonial Law Ever Was’, Article 14 (Aug. 10, 2023), <https://article-14.com/post/home-minister-amit-shah-says-sedition-is-dead-but-its-replacement-is-more-fearsome-than-the-colonial-law-ever-was-64d99ff8dc0d8>

⁷ Supreme Court Observer, Sedition Law in India: A Timeline, <https://www.scobserver.in/journal/sedition-in-india-a-timeline/>

⁸ Gautam Bhatia, Sedition and the Right to Freedom of Speech and Expression, SCOnline (Dec. 12, 2017), <https://www.sconline.com/blog/post/2017/12/12/sedition-right-freedom-speech-expression/>

⁹ S.G. Vombatkere v. Union of India, Writ Petition (Civil) No. 682/2021, Supreme Court of India (May 11, 2022), <https://www.casemine.com/judgement/in/62849af9ec927d5cfddb712f>

sovereignty, unity, and integrity of India. This historical trajectory illustrates how colonial legacies continue to influence India's present legal framework on dissent and free speech.

Historical Context and Critique

The sedition law in India has its origins in colonial rule, designed primarily as a tool for suppressing political dissent against British authority. Historically, it was used disproportionately against freedom fighters like Bal Gangadhar Tilak and Mahatma Gandhi, reflecting its oppressive nature. Even after independence, sedition laws have been controversially applied against dissenters, activists, journalists, and marginalized groups, raising serious concerns about their compatibility with democratic values. India's commitment to international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), which emphasizes freedom of expression, conflicts with the broad and often arbitrary use of sedition laws.¹⁰ Critics argue that India already possesses adequate legal mechanisms to safeguard sovereignty and public order without resorting to sedition provisions, advocating for its complete repeal as essential to nurturing a vibrant democracy. With this background, it becomes imperative to critically assess whether the new law represents genuine reform or merely a rebranding of old restrictions.

Bharatiya Nyaya Sanhita, 2023: Repeal or Rebranding?

The BNS, 2023, replaces the IPC with a revised set of criminal laws. While Section 124A has been removed, Section 152 has been introduced, stating: *"Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine."*¹¹

The newly introduced Section 152 in the Bharatiya Nyaya Sanhita (BNS), 2023, while formally replacing the colonial-era Section 124A, expands the scope of penalising acts that "endanger

¹⁰ International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 U.N.T.S. 171, entered into force Mar. 23, 1976, arts. 19. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹¹ The Bharatiya Nyaya Sanhita, 2023, Act No. 45 of 2023, <https://www.indiacode.nic.in/bitstream/123456789/20062/1/a2023-45.pdf>

the sovereignty, unity, and integrity of India.” Unlike the old sedition law, Section 152 covers diverse acts beyond speech, including electronic communication and financial support aimed at threats to national security. The punishment under this provision is more severe, allowing imprisonment for life or up to seven years, and it is a cognizable and non-bailable offence, highlighting the seriousness with which the new law treats such acts. However, the provision’s broad and vague language, lacking a clear statutory definition of what amounts to “endangering sovereignty,” raises concerns about potential misuse. The Supreme Court has acknowledged the “potentiality of abuse” under Section 152 and the need for mindful judicial scrutiny. Although the law includes a clause permitting lawful criticism without incitement, ambiguity remains regarding its practical application, leaving activists, journalists, and dissenters vulnerable to arbitrary charges, possibly echoing the misuse seen under the repealed sedition law.

The introduction of Section 152 in the Bharatiya Nyaya Sanhita (BNS), 2023, raises questions about whether it marks a genuine repeal of sedition laws or merely a rebranding under a different name. While the explicit reference to sedition has been removed, the core principles of criminalising speech against the state remain intact, leading to concerns that Section 152 could serve the same purpose as the repealed Section 124A of the IPC.

One of the primary arguments for the rebranding theory is the broad and vague language of Section 152. The provision criminalises acts that “endanger the sovereignty, unity, and integrity of India”, but it does not define what constitutes such an endangerment. This lack of clarity leaves room for subjective interpretation, which could lead to the law being misused against journalists, activists, and political opponents—a pattern previously observed with Section 124A. In essence, while the colonial-era provision has been formally abolished, the power to criminalise dissent remains embedded in the new law.

Another significant concern is that Section 152 does not introduce clear safeguards to prevent its arbitrary application. The absence of specific criteria distinguishing legitimate criticism from unlawful actions makes it difficult to determine whether this provision is fundamentally different from its predecessor. Unlike many other democratic nations that have either narrowly defined sedition or abolished it entirely, India’s new law continues to leave broad discretion in the hands of law enforcement and the executive, reinforcing concerns that it functions as a renamed version of the sedition law rather than a genuine repeal.

Proponents of the repeal argument contend that the removal of Section 124A is a symbolic and legal step toward modernising India's criminal laws. They argue that Section 152, despite its similarities, is framed within a national security context rather than being a tool to suppress dissent. However, critics point out that the effectiveness of this repeal depends not just on legislative changes but also on how the new provision is implemented in practice. If it is used in a manner similar to Section 124A, then it is difficult to view this change as anything more than a structural modification with little substantive difference.

Ultimately, whether Section 152 represents a repeal or a rebranding will be determined by how it is applied in practice. If it is used selectively to curb free speech and suppress criticism, it will reinforce the argument that sedition has merely been repackaged under a new legal framework. However, if its enforcement is strictly limited to cases of genuine threats to national security, it could mark a significant departure from the misuse associated with Section 124A. The true test of this legal transition will lie in future interpretations and applications of Section 152, as well as the extent to which it aligns with democratic principles of free speech and dissent. Highlighting this critical debate prepares us to contextualize India's approach within a broader international perspective.

Comparison with International Approaches

A comparative examination of sedition laws reveals that many established democracies have either abolished or considerably narrowed these provisions to align with robust free speech protections. The United Kingdom formally abolished sedition laws in 2009, recognizing their incompatibility with the Human Rights Act of 1998, which safeguards freedom of expression.¹² In the United States, the First Amendment offers broad protections, with sedition-related restrictions limited to speech inciting imminent lawless action, as crystallized in the landmark case *Brandenburg v. Ohio* (1969).¹³ Australia continues to retain sedition laws under its Criminal Code Act, 1995, but confines their application strictly to direct incitement of violence or rebellion. India's new provision under Section 152 remains broader and less precise compared to these international standards, leaving room for potential overreach and

¹² Human Rights Act 1998, c. 42, § 12 (U.K.), <https://www.legislation.gov.uk/ukpga/1998/42/section/12>

¹³ *Brandenburg v. Ohio*, 395 U.S. 444 (1969), <https://supreme.justia.com/cases/federal/us/395/444/>

suppression of legitimate dissent, suggesting a need for clearer legislative framing inspired by global best practices.

A comparative analysis with other democracies reveals that India's approach to sedition laws remains broader than global standards. The United Kingdom abolished sedition laws in 2009, citing their incompatibility with free speech protections under the Human Rights Act, 1998. In the United States, the First Amendment protects speech unless it incites "imminent lawless action," as established in *Brandenburg v. Ohio* (1969)¹⁴. Australia retains sedition laws under the Criminal Code Act, 1995, but strictly limits their application to cases of direct incitement to violence.¹⁵

India's move aligns with global trends in removing sedition laws, but Section 152 remains broader than sedition provisions in most modern democracies. While other nations have placed clear restrictions on the application of such laws, India's new provision retains a level of ambiguity that could allow for continued suppression of dissent. Drawing comparisons with other democracies helps clarify the unique challenges and opportunities in India's legal landscape.

Judicial Oversight and Future Challenges

The Supreme Court of India has played a pivotal role in shaping the interpretation and application of sedition laws and continues to be central in overseeing the enforcement of Section 152. In 2023, the Court took the significant step of suspending the application of the sedition law to reassess its constitutionality and the scope of judicial safeguards necessary to prevent misuse. This proactive judicial engagement underscores the delicate balance between protecting free speech and maintaining public order. The Court is expected to establish strong guidelines to ensure Section 152 is enforced strictly in cases of genuine threats to national security, and not as a tool for silencing political dissent or criticism. Judicial scrutiny will be crucial in distinguishing lawful dissent from activities that truly endanger sovereignty, thereby preventing arbitrary or disproportionate use of the new provision.

¹⁴ *ibid*

¹⁵ Criminal Code Act 1995 (Cth) (Austl.),

https://www.vertic.org/media/National%20Legislation/Australia/AU_Criminal_Code.pdf

To prevent Section 152 from replicating Section 124A, judicial oversight is essential. Future legal challenges could argue that the law is unconstitutional due to its vague and overbroad nature, violating Article 19(1)(a) of the Constitution.¹⁶ The Supreme Court may also issue guidelines restricting the provision's misuse, ensuring that it is applied only in cases of actual threats to national security. Courts must further clarify that political criticism and dissent do not fall within the scope of "endangering sovereignty." The manner in which the Indian judiciary interprets Section 152 will ultimately determine its impact on free speech protections. Given these global and national perspectives, the judiciary's role in interpreting and applying the law emerges as crucial for protecting constitutional freedoms.

Recent Case Studies on Sedition and Section 152

Recent legal cases highlight the practical challenges in applying the new Section 152 and the lingering fear of misuse reminiscent of sedition law's legacy. For example, cases involving activists or journalists accused under Section 152 for their social media posts or protests illustrate how the broad wording creates uncertainty around permissible dissent. Judicial interventions in these cases have varied: some courts have urged restraint and emphasized the need for clear evidence of incitement, while others have allowed arrest without stringent checks, which has raised alarms about potential rights violations. These cases exemplify the tension between national security claims and freedom of expression, underscoring the urgent call for judicial guidelines to curb arbitrary enforcement. These examples demonstrate the practical repercussions of the law and underline the pressing need for judicial guidelines.

Broader Impact of Bharatiya Nyaya Sanhita on Indian Criminal Law

The Bharatiya Nyaya Sanhita, 2023, represents a comprehensive effort to modernize and Indianize the country's criminal laws, aiming to streamline legal processes and incorporate contemporary societal needs. Beyond the contentious sedition provisions, the BNS introduces reforms focusing on victim rights, digital evidence inclusion, and enhanced procedural safeguards. The overall objective is to create a citizen-centric justice framework that addresses both traditional and emerging criminal challenges. However, despite these progressive aspirations, certain provisions, including Section 152, evoke concerns due to their vague terminology and potential for broad executive interpretation. Thus, while the BNS marks a

¹⁶ Article 19, Constitution of India, 1950, <https://www.constitutionofindia.net/articles/article-19-protection-of-certain-rights-regarding-freedom-of-speech-etc/>

significant step in criminal law modernization, vigilance is crucial to ensure that reforms do not undermine fundamental rights or perpetuate colonial-era oppression under new guises. Finally, considering these developments within the wider reform agenda of the BNS presents a holistic view of India's evolving criminal justice system.

Conclusion

This paper concludes that while the repeal of Section 124A under the Indian Penal Code is an important symbolic step toward discarding colonial-era laws, the introduction of Section 152 in the Bharatiya Nyaya Sanhita, 2023 raises serious concerns about retaining the core restrictions of sedition law under a new guise. The broad and vague language of Section 152 criminalizes acts that endanger India's sovereignty, unity, and integrity, and extends penalties beyond speech to electronic communications and financial support. Without clear definitions and robust safeguards, this provision risks arbitrary enforcement against dissenters, activists, journalists, and critics and could undermine constitutional freedoms guaranteed under Article 19(1)(a).

The future impact of Section 152 will depend heavily on judicial oversight and legislative clarity. The Supreme Court's role in narrowly interpreting this provision to distinguish legitimate free speech from genuine threats to national security is crucial. Procedural protections and strict criteria for prosecution must be put in place to prevent misuse. India's legal reform should align with democratic principles and international human rights standards like those reflected in the United Kingdom, United States, and Australia, where sedition laws have been either abolished or precisely defined. Only with clear legislative language, judicial vigilance, and procedural safeguards can India uphold its constitutional commitment to freedom of speech while addressing issues of sovereignty and security.
