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Acts Endangering the Sovereignty, Unity and Integrity of India under the Bharatiya Nyaya Sanhita, 2023 and the Repealed Offence of Sedition

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ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 (BNS), which came into force on 1 July 2024, replaced the Indian Penal Code, 1860 and, with it, the colonial offence of sedition in Section 124A. In its place Section 152 punishes acts that endanger the sovereignty, unity and integrity of India. Although the change was presented as a clean break with the colonial past, critics describe the new provision as sedition under a different name. This paper uses the doctrinal method to compare the two provisions on the interest protected, the conduct targeted, the mental element, the permitted modes of commission, the statutory safeguard for criticism, the punishment and the procedure. It reviews the judicial treatment of Section 124A, particularly the Constitution Bench decision in Kedar Nath Singh*, and tests Section 152 against Articles 19(1)(a) and 19(2) of the Constitution. The paper concludes that Section 152 moves the object of protection from the Government to the State and its territorial unity and adds an express mental element, but retains open-ended expressions such as "subversive activities" and "separatist activities" that may chill legitimate dissent unless they are defined or read down by the courts.*

Keywords: *sedition, Section 152, Section 124A, sovereignty and integrity, freedom of speech, Bharatiya Nyaya Sanhita 2023*

I. INTRODUCTION

Every legal system must decide how far it may punish speech and conduct that threaten the existence or cohesion of the State without choking the open debate on which a democracy depends. India has faced this question since the colonial period, and the offence of sedition has been its most contested answer. Section 124A of the Indian Penal Code, 1860 (IPC) punished attempts to bring the Government established by law into hatred or contempt, or to excite

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disaffection towards it.[1] For over a century the section was used against nationalist leaders, and after independence it continued to be invoked against journalists, students, political workers and ordinary citizens.

Parliament enacted the Bharatiya Nyaya Sanhita, 2023 (BNS) as a replacement for the IPC, and it took effect on 1 July 2024.[2] The BNS contains no section called sedition. Instead, Section 152 creates an offence titled "Act endangering sovereignty, unity and integrity of India".[3] During the legislative debates the Union Home Minister stated that the colonial sedition law had been repealed,[4] whereas critics, including petitioners before the Supreme Court, argue that Section 152 revives the same idea in broader and vaguer words.[5]

The discussion is confined to the substantive criminal law and the constitutional standards that bear on it. This paper examines the text and ingredients of Section 152, compares them with the repealed provision, studies the constitutional limits within which both must operate and suggests reforms, with the aim of determining whether the new framework is a genuine departure from Section 124A or a re-drafting of it.

II. Sedition under Section 124A of the Indian Penal Code

A. Origin and text

Macaulay's original draft of the Penal Code contained a sedition clause, but it was left out when the Code was enacted in 1860. The offence was added only in 1870, at a time when the colonial administration was anxious about dissent.[6] In its final form the section covered anyone who, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brought or attempted to bring into hatred or contempt, or excited or attempted to excite disaffection towards, the Government established by law in India. Three Explanations followed. The first stated that disaffection includes disloyalty and all feelings of enmity. The second and third protected comments that disapproved of government measures or administrative action,

[1] The Indian Penal Code, No. 45 of 1860, India Code (1860), § 124A (repealed by The Bharatiya Nyaya Sanhita, No. 45 of 2023, India Code (2023), § 358(1)).

[2] The Bharatiya Nyaya Sanhita, No. 45 of 2023, India Code (2023), § 358(1); Ministry of Home Affairs, Notification S.O. 850(E), Gazette of India, Extraordinary, pt. II sec. 3(ii) (Feb. 23, 2024) (appointing 1 July 2024 as the date of commencement).

[3] The Bharatiya Nyaya Sanhita, *supra* note 2, § 152.

[4] Lok Sabha Debates, Dec. 20, 2023 (statement of Amit Shah, Minister of Home Affairs), *as reported in Opposition Trying to Misrepresent Decision to Scrap Sedition Law: Home Minister Amit Shah*, South First (Dec. 21, 2023), https://thesouthfirst.com/pti/opposition-trying-to-misrepresent-decision-to-scrap-sedition-law-shah/.

[5] Writ Petition, *S.G. Vombatkere v. Union of India*, W.P. (C) No. 720 of 2025 (S.C.); *see* Anmol Kaur Bawa, *'Colonial Sedition Law Brought Back': Plea in Supreme Court Challenges Constitutionality of Section 152 BNS*, LiveLaw (Aug. 8, 2025), https://www.livelaw.in/top-stories/colonial-sedition-law-brought-back-plea-in-supreme-court-challenges-constitutionality-of-section-152-bns-300334.

[6] Law Comm'n of India, Report No. 279, *Usage of the Law of Sedition* ¶¶ 1.10–1.14 (2023), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/06/2023060150.pdf.

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provided they did not excite or attempt to excite hatred, contempt or disaffection. The punishment ranged from imprisonment for life, to which fine could be added, through imprisonment of up to three years, to which fine could be added, to fine alone.[7]

B. Colonial interpretation

Colonial courts read the section widely. In *Queen-Empress v. Bal Gangadhar Tilak*, Strachey J. of the Bombay High Court, charging the jury, treated disaffection as the absence of affection and directed that the offence was complete without any actual disturbance.[8] The Federal Court later took a narrower position in *Niharendu Dutt Majumdar v. King Emperor*, holding that incitement to public disorder, or at least a tendency to it, was the essence of the offence.[9] The Privy Council rejected that view in *King-Emperor v. Sadashiv Narayan Bhalerao* and restored the wider reading,[10] so that the colonial understanding of sedition remained tied to the mere excitement of ill-feeling towards the Government.

C. Constitutional phase

The framers of the Constitution deliberately left the word "sedition" out of Article 19(2), the clause that lists the grounds on which free speech may be restricted.[11] Early decisions such as *Romesh Thappar v. State of Madras* and *Brij Bhushan v. State of Delhi* read the security of the State narrowly and held that remote threats to public tranquillity could not justify restraints on speech.[12] Parliament responded through the Constitution (First Amendment) Act, 1951, which added public order as a ground of restriction and required only that restrictions be reasonable.[13] In *Tara Singh Gopi Chand v. State* and *Ram Nandan v. State of U.P.*, the Punjab and Allahabad High Courts struck down Section 124A as incompatible with Article 19(1)(a).[14]

The Supreme Court settled the matter in *Kedar Nath Singh v. State of Bihar*. A Constitution Bench upheld the section but confined it to acts that carry an intention or tendency to create disorder, or incite violence.[15] Criticism of the Government, however strongly worded, was held

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[7] The Indian Penal Code, *supra* note 1, § 124A & expls. 1–3; *see also* LAW COMM'N OF INDIA, *supra* note 6, ¶ 10.5 (setting out the text of the section).

[8] *Queen-Empress v. Bal Gangadhar Tilak*, (1897) ILR 22 Bom 112 (charge to the jury by Strachey J.), *quoted in Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955, 1962 Supp. (2) SCR 769, 786–87.

[9] *Niharendu Dutt Majumdar v. King Emperor*, AIR 1942 FC 22, (1942) FCR 38; *see Kedar Nath Singh*, *supra* note 8, at 796.

[10] *King-Emperor v. Sadashiv Narayan Bhalerao*, (1947) LR 74 IA 89 (PC), AIR 1947 PC 82; *see Kedar Nath Singh*, *supra* note 8, at 796–97.

[11] INDIA CONST. art. 19, cl. 2; *Romesh Thappar v. State of Madras*, AIR 1950 SC 124, (1950) SCR 594, 601–02.

[12] *Romesh Thappar*, *supra* note 11, at 601; *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

[13] The Constitution (First Amendment) Act, 1951 (India); *see* LAW COMM'N OF INDIA, *supra* note 6, ¶ 4.16.

[14] *Tara Singh Gopi Chand v. State*, AIR 1951 Punj 27; *Ram Nandan v. State of U.P.*, AIR 1959 All 101 (FB); *see* LAW COMM'N OF INDIA, *supra* note 6, ¶¶ 4.15, 4.19.

[15] *Kedar Nath Singh*, *supra* note 8, at 808–09.

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to fall outside the offence unless it had that quality. The decision therefore saved the provision by narrowing it, and it remained the controlling authority for more than sixty years.

D. Later developments

In *Balwant Singh v. State of Punjab*, the Court held that casually raising slogans in support of a separate State, without any call to violence, did not amount to sedition.[16] In *Vinod Dua v. Union of India*, the Court quashed a first information report against a journalist and restated the *Kedar Nath* limits.[17] These cases show that the courts repeatedly corrected the application of the section, yet prosecutions continued. In *S.G. Vombatkere v. Union of India*, a bench on 11 May 2022 put the operation of Section 124A in abeyance, asked the Union and the States to refrain from registering fresh cases, and directed that pending proceedings be kept on hold while the Government re-examined the provision.[18] On 12 September 2023 the matter was referred to a bench of at least five judges.[19] The Law Commission of India in its 279th Report (2023) advised that the offence be retained with additional procedural safeguards.[20]

III. The framework of Section 152 of the Bharatiya Nyaya Sanhita

A. Text and essential ingredients

Section 152 appears in Chapter VII of the BNS, which deals with offences against the State.[21] It applies to a person who, "purposely or knowingly", by words spoken or written, by signs, by visible representation, by electronic communication, by the use of financial means 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". The same liability attaches to a person who "indulges in or commits any such act".

Read analytically, the offence has four ingredients. First, there must be an act or communication through one of the listed modes or any other mode. Secondly, that act must excite or attempt to excite the specified harms, encourage separatist feelings, or endanger sovereignty, unity or integrity. Thirdly, the accused must have acted "purposely or knowingly". Fourthly, the act must not fall within the protection given by the Explanation.

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[16] *Balwant Singh v. State of Punjab*, (1995) 3 SCC 214.
[17] *Vinod Dua v. Union of India*, 2021 SCC OnLine SC 414.
[18] *S.G. Vombatkere v. Union of India*, (2022) 7 SCC 433.
[19] *S.G. Vombatkere v. Union of India*, W.P. (C) No. 682 of 2021 (S.C. Sept. 12, 2023) (order); *see* Padmakshi Sharma, *Supreme Court Refers Sedition Law Challenge to Larger Bench, Says New Bill to Replace IPC Can't Affect Past Cases*, LIVELAW (Sept. 12, 2023), https://www.livelaw.in/top-stories/supreme-court-refers-sedition-law-challenge-to-larger-bench-says-new-bill-to-replace-ipc-cant-affect-past-cases-237574.
[20] LAW COMM'N OF INDIA, *supra* note 6, ¶¶ 10.2–10.6.
[21] The Bharatiya Nyaya Sanhita, *supra* note 2, ch. VII, § 152.

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B. Mental element and modes of commission

Section 124A said nothing about the accused's state of mind, and the requirement of an intention or tendency to cause disorder was supplied by the Supreme Court in *Kedar Nath Singh*.[22] Section 152 states a mental element on its face by using the words "purposely or knowingly". However, the BNS does not define either expression, so their content must be drawn from general principles of criminal liability. The modes of commission also reflect a modern reality, because the provision expressly mentions electronic communication and financial means. This extends the offence to online posts, messages and the funding of activities, which the older section could reach only through its residual words "or otherwise".

C. Explanation, punishment and procedure

The Explanation to Section 152 states that comments expressing disapproval of the measures, or administrative or other action, of the Government, made to obtain their alteration by lawful means and without exciting or attempting to excite the activities mentioned in the section, do not constitute an offence.[23] The punishment is imprisonment for life, or imprisonment which may extend to seven years, together with fine. The offence is classified as cognizable and non-bailable and is triable by a Court of Session, which is the same classification that Section 124A carried.[24]

D. Legislative intent

During the debates on the Bill, the Union Home Minister stated that the sedition offence was being removed, and the stated rationale was that the new law protects the nation rather than the ruling Government.[25] The Parliamentary Standing Committee on Home Affairs, which examined the provision as clause 150 of the Bill, welcomed the deletion of the term "sedition" as a progressive development, while noting that elements of the old offence had been retained in a milder form.[26] Whether the Government's rationale is borne out by the text is the subject of the comparison that follows.

IV. Comparative analysis of the two provisions

The principal similarities and differences are summarised in Table 1.

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[22] *Kedar Nath Singh*, *supra* note 8, at 809.

[23] The Bharatiya Nyaya Sanhita, *supra* note 2, § 152, expl.

[24] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, India Code (2023), sch. I (entry for § 152 of the Bharatiya Nyaya Sanhita); The Code of Criminal Procedure, No. 2 of 1974, India Code (1974), sch. I (entry for § 124A of the Indian Penal Code).

[25] Lok Sabha Debates, *supra* note 4.

[26] Department-Related Parliamentary Standing Committee on Home Affairs, *Two Hundred Forty-Sixth Report on the Bharatiya Nyaya Sanhita, 2023* ¶¶ 3.26.1, 3.26.3 (Rajya Sabha Secretariat, Nov. 10, 2023).

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Basis	Section 124A, IPC (repealed)	Section 152, BNS
Status	Repealed with effect from 1 July 2024; its operation had been put in abeyance by the Supreme Court in May 2022.	In force from 1 July 2024; validity under challenge before the Supreme Court.
Interest protected	Government established by law.	Sovereignty, unity and integrity of India.
Prohibited conduct	Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection.	Exciting or attempting to excite secession, armed rebellion or subversive activities; encouraging feelings of separatist activities; endangering sovereignty, unity or integrity.
Mental element	Not stated in the text; intention or tendency to cause disorder read in by *Kedar Nath Singh*.	"Purposely or knowingly", stated expressly but not defined.
Modes	Words spoken or written, signs, visible representation, or otherwise.	Words, signs, visible representation, electronic communication, use of financial means or otherwise.
Safeguard for criticism	Three Explanations protecting disapproval of government measures and administrative action.	One Explanation protecting criticism of government measures or action by lawful means.
Punishment	Imprisonment for life, to which fine may be added; or up to three years, to which fine may be added; or fine only.	Imprisonment for life, or up to seven years, and fine.
Procedure	Cognizable, non-bailable, triable by Court of Session.	Cognizable, non-bailable, triable by Court of Session.
Judicial gloss	*Kedar Nath Singh*: incitement to violence or public disorder required.	No binding interpretation yet; *Kedar Nath* principles are invoked by analogy.

Table 1: Section 124A of the IPC (repealed) compared with Section 152 of the BNS

A. Shift in the object of protection

The most visible change is the replacement of the Government with the State and its territorial unity as the object of protection. This answers a long-standing objection, since the earlier section could be used to shield those in office from criticism. The new focus also fits the text of Article 19(2), which expressly lists the sovereignty and integrity of India as a ground for restricting speech.[27] In this respect Section 152 has a firmer constitutional footing than a provision protecting the Government as such.

B. Conduct and threshold of liability

The language of hatred, contempt and disaffection has been removed. Section 152 instead refers to secession, armed rebellion, "subversive activities" and separatist feelings. These terms point

[27] INDIA CONST. art. 19, cl. 2.

to graver harms and, at first reading, raise the threshold of liability. Yet the words "encourages feelings of separatist activities" and "subversive activities" are not defined, and they could be applied to political demands or protest that stop well short of any threat to the Union. The offence of endangering sovereignty, unity or integrity is also framed without any requirement of proximity to violence.

C. Mental element, modes and punishment

An express mental element is an improvement over the silence of the earlier section, because it brings the statutory text closer to what the Supreme Court had already required. At the same time, the dual standard of "purposely or knowingly" allows liability on the basis of knowledge alone, which is a lower standard than intention. The extension to electronic communication and financial means recognises online speech and funding as vehicles of the offence. As to punishment, Section 152 prescribes no minimum sentence, but it removes the option of a fine alone and raises the maximum term of the alternative to life imprisonment from three years to seven, so that the lightest sentence available is harsher than under its predecessor.

D. Continuities

The offence remains cognizable and non-bailable, so arrest without a warrant and difficulty in obtaining bail continue to be possible. The Explanation carries forward the principle that lawful criticism of government measures is not an offence. It is shorter than the three Explanations of the old section. It also attaches the condition of lawful means to comments on administrative or other action, whereas the old second Explanation applied that condition only to comments on government measures. In practice, therefore, the commentators who see continuity with Section 124A can point to a shared structure of excitement-based liability, speech-based modes and similar procedure.[28]

V. CONSTITUTIONAL CONCERNS

A. Article 19(1)(a) and Article 19(2)

Speech that genuinely incites secession or armed rebellion may be restricted in the interests of the sovereignty and integrity of India. The constitutional difficulty lies in the reach of the restriction rather than its purpose. Restrictions must be reasonable, and the Supreme Court has consistently distinguished between discussion, advocacy and incitement. In *Shreya Singhal v. Union of India*, the Court held that only incitement, and not mere advocacy or discussion, can

[28] *See* Bawa, *supra* note 5 (reporting the petition's contention that Section 152 "reintroduces the colonial sedition law previously codified as Section 124A of the Indian Penal Code, 1860, under a new nomenclature").

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be curbed, and it struck down a provision for vagueness and for its chilling effect on speech.[29] By that test a provision that reaches the encouragement of separatist feelings without requiring a connection to imminent violence is open to challenge.

B. Vagueness and overbreadth

A penal provision must tell a person clearly what is forbidden. The expressions "subversive activities" and "separatist activities" have no statutory definition and can cover widely differing conduct, from armed insurgency to peaceful political advocacy for autonomy. In *Arup Bhuyan v. State of Assam*, a two-judge bench refused to punish mere membership of a banned organisation without incitement to violence,[30] but a three-judge bench overruled that reading of the membership offences in 2023.[31] The insistence on a real link to violence or disorder therefore rests on *Kedar Nath Singh* and *Shreya Singhal* rather than on *Arup Bhuyan*. It is likely that Section 152 can survive scrutiny only if it is read in the manner that *Kedar Nath Singh* read the earlier section, that is, as confined to words or acts that incite violence or create a tendency to public disorder.[32]

C. Proportionality and chilling effect

Punishment of up to life imprisonment, coupled with non-bailable arrest, creates a strong deterrent effect on journalists, academics and activists even where prosecutions eventually fail. The history of Section 124A shows repeated registration of cases against persons whose speech was later found to be protected.[33] A provision with a similar structure may reproduce that pattern unless safeguards are built into the statute and into the investigating procedure.

VI. Related provisions

Section 152 does not stand alone. Waging or attempting to wage war against the Government of India and conspiring to do so are separately punished in Chapter VII of the BNS.[34] Promoting enmity between groups and making assertions prejudicial to national integration are dealt with in the provisions corresponding to the former Sections 153A and 153B of the IPC, now found in Sections 196 and 197 of the BNS.[35] The Unlawful Activities (Prevention) Act, 1967 defines unlawful activity to include acts that question or disrupt the sovereignty and territorial integrity

[29] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, ¶¶ 13, 83.
[30] *Arup Bhuyan v. State of Assam*, (2011) 3 SCC 377.
[31] *Arup Bhuyan v. State of Assam*, Crim. Appeal No. 889 of 2007 (S.C. Mar. 24, 2023) (three-judge bench).
[32] *Kedar Nath Singh*, *supra* note 8, at 809; *Shreya Singhal*, *supra* note 29, ¶ 13.
[33] *See, e.g.*, *Balwant Singh*, *supra* note 16; *Vinod Dua*, *supra* note 17.
[34] The Bharatiya Nyaya Sanhita, *supra* note 2, §§ 147–148.
[35] *Id.* §§ 196–197; The Indian Penal Code, *supra* note 1, §§ 153A–153B.

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of India and punishes it under Section 13.[36] Since these laws already address violence and organised threats to the State, the additional value of a speech-based offence, such as Section 152, depends on whether it is limited to real incitement.

VII. Present Status of Judicial Scrutiny

The Supreme Court has been seized of the matter on two fronts. On 12 September 2023 the challenge to Section 124A was referred to a bench of at least five judges.[37] On 8 August 2025 a bench headed by the then Chief Justice of India issued notice on a petition by a retired army officer, S.G. Vombatkere, challenging Section 152 as a rebranded form of sedition that violates Articles 14, 19(1)(a) and 21, and tagged it with a pending matter.[38] On 21 May 2026 the Court clarified that trials, appeals and other proceedings involving a charge under Section 124A may be decided on their merits where the accused does not object.[39] As on 21 May 2026, the constitutional validity of neither provision had been finally decided.

VIII. Suggestions

First, Parliament should define "subversive activities" and "separatist activities", or replace them with terms tied to violence or unlawful means. Secondly, the section should state that liability arises only where the words or acts incite violence or are likely to create public disorder, thereby codifying the *Kedar Nath* standard instead of leaving it to judicial reading. Thirdly, the standard of knowledge in "purposely or knowingly" should be replaced by intention, or at least be accompanied by proof of a real and proximate danger. Fourthly, the registration of a case should require prior scrutiny by a senior police officer and prior sanction from a competent authority, so that frivolous prosecutions are filtered out at the threshold. Finally, the Explanation should be widened to expressly protect peaceful advocacy of political change, including demands for autonomy, made through constitutional means.

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[36] The Unlawful Activities (Prevention) Act, No. 37 of 1967, India Code (1967), §§ 2(1)(o), 13.

[37] *S.G. Vombatkere*, W.P. (C) No. 682 of 2021, *supra* note 19.

[38] *S.G. Vombatkere v. Union of India*, W.P. (C) No. 720 of 2025 (S.C. Aug. 8, 2025) (order issuing notice); *Found. for Indep. Journalism v. Union of India*, W.P. (Crl.) No. 316 of 2025 (S.C. Aug. 12, 2025) (order) (recording that notice was issued in W.P. (C) No. 720 of 2025 on 8 August 2025 by a bench presided over by the Chief Justice of India); Bawa, *supra* note 5.

[39] *Kamran v. State of Madhya Pradesh*, Diary No. 16320 of 2026 (S.C. May 21, 2026) (order clarifying *S.G. Vombatkere*, *supra* note 18); *see* Debby Jain, *Sedition | Courts Can Proceed With Trials/Appeals Involving S.124A IPC If Accused Doesn't Object: Supreme Court Clarifies*, LiveLaw (May 21, 2026), https://www.livelaw.in/top-stories/supreme-court-sedition-section-124a-ipc-clarification-high-courts-can-hear-appeals-on-merits-where-accused-have-no-objection-535114.

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IX. Conclusion

Section 152 of the BNS is not a simple reproduction of Section 124A. It changes the object of protection from the Government to the State, drops the vocabulary of hatred, contempt and disaffection, adds an express mental element, and recognises electronic and financial means. These are real changes and they answer some of the objections to the colonial offence. At the same time, the new section keeps the structure of excitement-based liability, retains a similar procedure, removes the option of a fine alone and raises the maximum of the lower tier of punishment from three years to seven, and uses undefined terms whose breadth may be as great as the language it replaced.

The final answer will depend on how the Supreme Court reads the provision. If the Court applies the incitement standard of *Kedar Nath Singh* and the clarity requirement of *Shreya Singhal*, Section 152 can be saved as a narrow offence against real threats to the Union. If it does not, the provision risks continuing the very problems for which sedition was criticised. Until the Court rules, clear drafting and restrained enforcement are the surest means of ensuring that the protection of national unity does not become a tool against lawful dissent.

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