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# Section 152 of the Bharatiya Nyaya Sanhita, 2023: Sedition Repealed or Sedition Repackaged?

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## ABSTRACT

*The enactment of the Bharatiya Nyaya Sanhita, 2023 was presented as a break from the Indian Penal Code, including the repeal of Section 124A on sedition. Yet Section 152 of the Sanhita criminalises purposeful or knowing acts that excite secession, armed rebellion or subversive activities, encourage separatist feelings, or endanger the sovereignty, unity and integrity of India. This paper examines whether the legislative change amounts to a genuine abolition of sedition or its functional repackaging in constitutional vocabulary. It traces the colonial genealogy of Section 124A, the competing approaches of the Federal Court and the Privy Council, the Constituent Assembly's rejection of "sedition" as an express restriction on speech, and the Supreme Court's saving construction in Kedar Nath Singh v. State of Bihar. It then analyses the 2022 suspension of Section 124A in S.G. Vombatkere, the recommendations of the Law Commission's 279th Report, and the architecture of Section 152, including its reference to electronic communication and financial means, its higher alternative punishment, and undefined expressions such as "subversive activities." The paper evaluates Section 152 under Articles 14, 19(1)(a), 19(2) and 21 through the doctrines of vagueness, overbreadth, proximity, incitement, proportionality and chilling effect. It also studies decisions of various High Courts, together with the pending constitutional challenge before the Supreme Court. The paper argues that Section 152 is not a textual reproduction of sedition: it shifts the protected interest from governmental loyalty to national sovereignty and contains an express mens rea requirement. Nevertheless, unless courts insist upon a direct and proximate nexus with violence, rebellion, secession or a demonstrable threat to national integrity, its broad terminology and process can recreate the constitutional dangers associated with Section 124A. The answer therefore lies less in legislative nomenclature than in constitutional construction, effective safeguards and disciplined enforcement.*

**Keywords:** *Section 152, Bharatiya Nyaya Sanhita, Sedition, Freedom of Speech, Sovereignty and Integrity, National Security, Constitutional Validity, Political Dissent*

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## **I. INTRODUCTION: THE RETURN OF AN OLD CONSTITUTIONAL QUESTION**

The replacement of the Indian Penal Code, 1860 by the Bharatiya Nyaya Sanhita, 2023 was projected as an important moment in the decolonisation of Indian criminal law. Among the most politically significant claims made during that process was that the colonial offence of sedition contained in Section 124A had been abolished. When the Bharatiya Nyaya Sanhita Bill was introduced in Parliament in August 2023, the Union Home Minister stated that the Government was repealing the sedition law, emphasising that in a democracy everyone has the right to speak, while separately criminalising conduct connected with armed rebellion, separatism and threats to the sovereignty and integrity of India. Parliament ultimately enacted the Bharatiya Nyaya Sanhita, 2023, and, with limited exceptions unrelated to Section 152, it came into force on 1 July 2024. Official parliamentary material similarly states that Section 124A was deleted, while a new offence concerning acts endangering the sovereignty, unity and integrity of India was introduced as Section 152 of the Bharatiya Nyaya Sanhita.

The formal claim of repeal, however, does not by itself answer the constitutional question. Section 152 provides that whoever, “purposely or knowingly,” by words, either spoken or written, or by signs, visible representation, electronic communication, use of financial means or otherwise, excites or attempts to excite secession, armed rebellion or subversive activities, encourages feelings of separatist activities, endangers the 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. Its Explanation provides that comments expressing disapprobation of the measures, or administrative or other action, of the Government with a view to obtaining their alteration by lawful means do not constitute the offence, provided that they do not excite or attempt to excite the activities referred to in the section. The offence is cognizable, non-bailable and triable by a Court of Session. These procedural characteristics matter almost as much as the eventual punishment, because arrest, investigation and prolonged criminal proceedings can themselves significantly burden political expression.<sup>1</sup>

The central inquiry is consequently more sophisticated than asking whether the words “sedition” or “disaffection” appear in the new Sanhita. Section 124A criminalised bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection

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<sup>1</sup> The Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (2023), § 152; The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, INDIA CODE (2023), sch. I (entry for § 152 of the Bharatiya Nyaya Sanhita: cognizable, non-bailable, triable by Court of Session); *see generally* M.P. JAIN, INDIAN CONSTITUTIONAL LAW (8th ed. 2023).

towards, the Government established by law. Section 152 does not use that language.<sup>2</sup> Its object is no longer expressly the protection of the Government from disaffection; instead, it protects sovereignty, unity and integrity against secession, armed rebellion, separatist activity and subversion. This is a genuine textual and conceptual alteration. Criticism of a government, political party, Prime Minister, Chief Minister or governmental policy is not, merely because it is vehement or unpopular, identical to an attempt to encourage secession or armed rebellion. The shift from the “Government established by law” to the sovereignty and integrity of India therefore cannot simply be ignored.

At the same time, Section 152 raises constitutional concerns that closely resemble those generated by Section 124A. Expressions such as “subversive activities,” “encourages feelings of separatist activities” and “endangers sovereignty or unity and integrity” are capable of considerable interpretive breadth. PRS Legislative Research, in its legislative brief on the Bill that became the Bharatiya Nyaya Sanhita, observed that although the offence of sedition had been removed, the new provision may have retained aspects of it, and that expressions such as “subversive activities” were not defined.<sup>3</sup> Unlike the formulation read into Section 124A by the Supreme Court in *Kedar Nath Singh v. State of Bihar*,<sup>4</sup> Section 152 does not expressly say that speech must incite violence or have a tendency to cause public disorder. Whether such a threshold must nevertheless be constitutionally read into the new provision is therefore one of the most important questions confronting Indian free-speech jurisprudence.

The issue is no longer theoretical. Section 152 has already been invoked in cases involving political statements, social-media posts, alleged support for Pakistan, claims of separatist sympathies, alleged espionage, and conduct concerning illegal immigration and false identity documents. High Courts have started delineating its scope, sometimes insisting upon a close nexus between the conduct of the accused and the statutorily specified threats, and in other contexts treating non-speech conduct as potentially falling within the provision.<sup>5</sup> More importantly, the constitutional validity of Section 152 is presently before the Supreme Court. In *S.G. Vombatkere v. Union of India*,<sup>6</sup> the Court issued notice on 8 August 2025 on a petition

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<sup>2</sup> GAUTAM BHATIA, OFFEND, SHOCK, OR DISTURB: FREE SPEECH UNDER THE INDIAN CONSTITUTION (2016).

<sup>3</sup> Rutvik Upadhyaya, Alaya Purewal & Mandvi Gaur, PRS LEGISLATIVE RESEARCH, *Legislative Brief: The Bharatiya Nyaya (Second) Sanhita*, 2023, at 1, 4 (Dec. 13, 2023), [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2023/Legislative\\_Brief\\_The\\_Bharatiya\\_Nyaya\\_\(Second\)\\_Sanhita\\_2023.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2023/Legislative_Brief_The_Bharatiya_Nyaya_(Second)_Sanhita_2023.pdf).

<sup>4</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

<sup>5</sup> See, e.g., *Tejender Pal Singh @ Timma v. State of Rajasthan*, S.B. Crim. Misc. (Pet.) No. 5005/2024, 2024:RJ-JD:34845, ¶ 12.4 (Raj. HC Dec. 16, 2024); *Sidul Mandal v. State of Karnataka*, Crim. Pet. No. 8790 of 2026, 2026:KHC:39308 (Kar. HC July 28, 2026); see generally Nivedita Saksena & Siddhartha Srivastava, *An Analysis of the Modern Offence of Sedition*, 7 NUJS L. REV. 121 (2014) (on the offence under Section 124A).

<sup>6</sup> *S.G. Vombatkere v. Union of India*, W.P. (C) No. 720 of 2025 (S.C. Aug. 8, 2025) (order issuing notice) [hereinafter *Vombatkere* (2025)].

seeking a declaration that Section 152 is unconstitutional under Articles 14, 19(1)(a) and 21. Related challenges, including petitions by the Foundation for Independent Journalism and the journalist Abhisar Sharma, were later tagged with the pending matters. As of 22 August 2026, no final judgment determining the vires of Section 152 has been delivered.

The debate, therefore, should avoid both extremes. It would be inaccurate to say that Section 152 is literally Section 124A under a new number, because its protected interests, statutory language and mens rea formulation are different. It would be equally premature to celebrate sedition as completely abolished if the new offence is interpreted so broadly that criticism, advocacy or unpopular political expression can again become the basis of a cognizable, non-bailable prosecution without a demonstrable connection to violence, rebellion or genuine threats to the State. The constitutional answer lies in the relationship between text, history, judicial doctrine and enforcement.<sup>7</sup>

## II. COLONIAL GENEALOGY OF SEDITION: FROM SECTION 124A IPC TO THE CONSTITUTIONAL REPUBLIC

The historical background of sedition is indispensable because Section 152 emerged after more than a century of controversy surrounding the criminalisation of political disloyalty. Thomas Macaulay's draft Penal Code contained an offence relating to sedition, but the Indian Penal Code enacted in 1860 did not initially include it. Section 124A was inserted in 1870. Its early judicial interpretation occurred within an openly colonial political order in which loyalty to the sovereign government was treated as an important object of the criminal law. In *Queen-Empress v. Jogendra Chunder Bose*,<sup>8</sup> arising from criticism published in the newspaper *Bangobasi*, the offence was interpreted around the concept of disaffection. The notorious prosecution of Bal Gangadhar Tilak in 1897 further strengthened a broad conception under which exciting feelings of hostility or disloyalty towards the colonial government could attract criminal liability even without proof of actual rebellion.<sup>9</sup>

The 1898 amendment elaborated the offence and incorporated the language of hatred, contempt and disaffection, while providing explanations intended to distinguish unlawful disaffection from lawful criticism. Yet the breadth of the provision allowed it to become one of the most recognisable legal instruments used against nationalist political expression. Tilak faced another

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<sup>7</sup> See generally ABHINAV CHANDRACHUD, *REPUBLIC OF RHETORIC: FREE SPEECH AND THE CONSTITUTION OF INDIA* (2017).

<sup>8</sup> *Queen-Empress v. Jogendra Chunder Bose*, (1892) ILR 19 Cal 35.

<sup>9</sup> *Queen-Empress v. Bal Gangadhar Tilak*, (1898) ILR 22 Bom 112; see also Mithi Mukherjee, *Sedition, Law, and the British Empire in India: The Trial of Tilak (1908)*, 16(3) *LAW, CULTURE & HUMAN.* 454 (2020), <https://doi.org/10.1177/1743872116685034>.

sedition prosecution in 1908. Mahatma Gandhi's 1922 prosecution under Section 124A became perhaps the most symbolically powerful episode in its history. Gandhi famously described Section 124A as the "prince among the political sections" of the Penal Code designed to suppress the liberty of the citizen, accepting responsibility for writings criticising British rule while challenging the legitimacy of the legal structure itself. The history is constitutionally significant not merely because famous nationalists were prosecuted, but because it reveals the original function of sedition: the protection of a non-democratic government from political disaffection.<sup>10</sup>

A major doctrinal conflict later arose between the Federal Court and the Privy Council. In *Niharendu Dutt Majumdar v. King Emperor*,<sup>11</sup> the Federal Court adopted a narrower understanding and connected sedition with public disorder or the reasonable anticipation of public disorder. Political criticism without such a connection could not readily justify criminalisation. The Privy Council, however, in *King-Emperor v. Sadashiv Narayan Bhalerao*,<sup>12</sup> rejected the necessity of public disorder and restored a broader interpretation based upon the statutory language of disaffection. This pre-constitutional disagreement later became central to the Supreme Court's attempt to save Section 124A from invalidation.

The Constitution radically altered the legal environment. Article 19(1)(a) guaranteed freedom of speech and expression to citizens. Significantly, "sedition" did not survive as an express ground of restriction in Article 19(2), despite having appeared during earlier stages of constitutional drafting. The omission reflected constitutional anxiety regarding the use of sedition against political dissent.<sup>13</sup> Early free-speech decisions such as *Romesh Thappar v. State of Madras*<sup>14</sup> and *Brij Bhushan v. State of Delhi*<sup>15</sup> adopted a strong conception of political expression under the original Article 19(2). The Constitution (First Amendment) Act, 1951 subsequently enlarged the grounds of permissible restriction to include, among others, public order and incitement to an offence. "Sovereignty and integrity of India" was later expressly inserted into Article 19(2) by the Constitution (Sixteenth Amendment) Act, 1963.

The constitutionality of sedition remained unsettled in the High Courts. In *Tara Singh Gopi Chand v. State*,<sup>16</sup> the Punjab High Court treated Section 124A as inconsistent with the newly

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<sup>10</sup> Siddharth Narrain, 'Disaffection' and the Law: The Chilling Effect of Sedition Laws in India, 46(8) ECON. & POL. WKLY. 33 (2011); see also A.G. NOORANI, INDIAN POLITICAL TRIALS 1775–1947 (2005).

<sup>11</sup> *Niharendu Dutt Majumdar v. King Emperor*, AIR 1942 FC 22.

<sup>12</sup> *King-Emperor v. Sadashiv Narayan Bhalerao*, (1947) 74 IA 89 (PC), AIR 1947 PC 82.

<sup>13</sup> See GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (1966).

<sup>14</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>15</sup> *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

<sup>16</sup> *Tara Singh Gopi Chand v. State*, AIR 1951 Punj 27.

guaranteed freedom of speech. The Allahabad High Court reached a similar conclusion in *Ram Nandan v. State*.<sup>17</sup> The Supreme Court ultimately resolved the issue in *Kedar Nath Singh v. State of Bihar*.<sup>18</sup> Rather than invalidate Section 124A, the Court construed it narrowly to bring it within Article 19(2). The Court accepted that the State could punish speech involving incitement to violence or having the intention or tendency to create public disorder, but held that mere criticism of the Government, however strongly worded, could not constitute sedition unless it crossed that constitutional threshold. In substance, *Kedar Nath* preferred the Federal Court's public-order orientation to the broad Privy Council conception.

That saving construction became the constitutional foundation on which Section 124A survived for six decades. Its importance is sometimes misunderstood. *Kedar Nath* did not hold that any speech producing hatred, contempt or disaffection towards the government was constitutionally punishable. Rather, those statutory terms survived only because they were confined to conduct linked with violence or serious public disorder. This distinction was reinforced in *Balwant Singh v. State of Punjab*,<sup>19</sup> where the casual raising of "Khalistan Zindabad" slogans by two persons following the assassination of Prime Minister Indira Gandhi was held insufficient for sedition in the absence of any meaningful public response, incitement or disturbance. The decision underscored that offensive or separatist-sounding expression does not automatically establish the constitutional harm necessary for the offence.

The historical lesson is therefore twofold. First, sedition originated as a colonial offence protecting the authority of the Government from political disaffection. Second, its survival under the Constitution depended upon a judicial reconstruction that transformed it into something closer to an offence against public order and the security of the State. Section 152 must consequently be evaluated not merely against the bare nineteenth-century wording of Section 124A but against the constitutionally restricted version that *Kedar Nath* permitted to remain in force.<sup>20</sup>

### III. JUDICIAL RECONSTRUCTION OF SEDITION: FROM *KEDAR NATH* TO *S.G. VOMBATKERE*

The period following *Kedar Nath* demonstrated a recurring problem in Indian free-speech law: the legal rule declared by constitutional courts and the offence invoked at the stage of police

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<sup>17</sup> *Ram Nandan v. State*, AIR 1959 All 101.

<sup>18</sup> *Kedar Nath Singh*, *supra* note 4.

<sup>19</sup> *Balwant Singh v. State of Punjab*, (1995) 3 SCC 214.

<sup>20</sup> Ayesha Pattnaik, *Loyalty, Liberty, and the Law: Analysing the Juxtaposition of Nation and Citizen in the Indian Sedition Law*, 31(6) SOC. & LEGAL STUD. 829 (2022), <https://doi.org/10.1177/09646639221086859>.

investigation did not always coincide. The Supreme Court repeatedly emphasised that robust criticism of the Government is constitutionally protected, but sedition charges continued to be registered in controversies involving journalists, activists, political workers, students and ordinary citizens.<sup>21</sup> This produced what may be described as the “process problem” of sedition. Even where a conviction would ultimately fail under *Kedar Nath*, the registration of a cognizable case, arrest, bail litigation and prolonged investigation could impose substantial costs on expression.

The Court’s broader Article 19 jurisprudence strengthened the doctrinal case for a narrow sedition threshold. In *S. Rangarajan v. P. Jagjivan Ram*,<sup>22</sup> the Supreme Court held, in the context of expression and public order, that the anticipated danger should not be remote, conjectural or far-fetched; it should have a proximate and direct nexus with the expression. In *Shreya Singhal v. Union of India*,<sup>23</sup> while striking down Section 66A of the Information Technology Act, 2000, the Court drew an influential distinction among discussion, advocacy and incitement. Discussion and advocacy, even of unpopular or disturbing ideas, remain within Article 19(1) (a); restriction becomes constitutionally defensible when expression reaches the level of incitement falling within Article 19(2). The judgment also highlighted the constitutional dangers of vague expressions that leave citizens uncertain about prohibited conduct and give enforcement authorities excessive discretion.

These principles are directly relevant to Section 152. A person may discuss separatism academically, report upon an armed insurgency journalistically, advocate constitutional change in the structure of the Union, express sympathy with a controversial political cause or criticise military or governmental policy without intending to produce secession or rebellion. A criminal provision using broad national-security terminology must distinguish these activities from purposeful encouragement of armed rebellion or secession. Otherwise, the constitutional distinction between discussion and incitement collapses.<sup>24</sup>

The Supreme Court returned specifically to sedition in *Vinod Dua v. Union of India*,<sup>25</sup> while considering criminal proceedings against a journalist. The Court reaffirmed that every journalist is entitled to the protection of *Kedar Nath* and that criticism of governmental measures cannot amount to sedition unless the constitutionally required element of incitement to violence or tendency to create public disorder exists. The judgment was important because it came at a time

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<sup>21</sup> See Narrain, *supra* note 10; Pattnaik, *supra* note 20.

<sup>22</sup> *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

<sup>23</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>24</sup> ANUSHKA SINGH, *SEDITION IN LIBERAL DEMOCRACIES* (2018).

<sup>25</sup> *Vinod Dua v. Union of India*, (2023) 14 SCC 286, 2021 SCC OnLine SC 414.

when political commentary increasingly occurred through digital media rather than through traditional newspapers or public meetings.

The decisive institutional development came in *S.G. Vombatkere v. Union of India*.<sup>26</sup> On 11 May 2022, while petitions challenging Section 124A IPC were pending and the Union Government had indicated that the provision would be reconsidered, the Supreme Court effectively suspended its operation. It expressed the hope that the Union and State Governments would refrain from registering fresh FIRs, continuing investigations or taking coercive measures under Section 124A while the reconsideration was underway. Pending trials, appeals and proceedings relating to the offence were kept in abeyance, with liberty to affected persons to approach the courts in the event of fresh proceedings. The order was extraordinary: a statutory offence that had previously survived constitutional review was effectively frozen because of the serious constitutional issues surrounding its continued operation.

The legislative process leading to the BNS followed soon thereafter. The Law Commission of India, in its 279th Report, *Usage of the Law of Sedition* (2023), notably did not recommend abolition. It recommended retention of Section 124A subject to reforms. Importantly, the Commission proposed incorporating into the text a requirement that the prohibited conduct possess a “tendency to incite violence or cause public disorder,” thereby seeking to express the *Kedar Nath* limitation statutorily. It also recommended a procedural safeguard: a preliminary inquiry by a police officer not below the rank of Inspector, to be completed within seven days, followed by permission from the Central Government or the State Government before registration of an FIR. It separately recommended increasing the alternative term of imprisonment from a maximum of three years to a maximum of seven years.<sup>27</sup>

The enacted BNS presents an interesting contrast with those recommendations. Section 152 adopts the seven-year alternative maximum, but it does not reproduce the Commission’s proposed formulation expressly requiring a tendency to incite violence or cause public disorder. Nor does Section 152 itself contain the preliminary-inquiry and prior-government-permission mechanism recommended in Report No. 279. This is significant because the Law Commission’s proposals recognised that constitutional protection requires attention both to the substantive definition of the offence and to the stage at which the criminal process is initiated.<sup>28</sup>

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<sup>26</sup> *S.G. Vombatkere v. Union of India*, (2022) 7 SCC 433 [hereinafter *Vombatkere* (2022)].

<sup>27</sup> LAW COMM’N OF INDIA, Report No. 279, *Usage of the Law of Sedition* ¶¶ 10.1–10.6, at 77–80 (2023), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/06/2023060150.pdf>.

<sup>28</sup> Compare Bharatiya Nyaya Sanhita § 152, with Report No. 279, *supra* note 27, ¶¶ 10.2–10.3, 10.6.

The legacy of the old Section 124A has not disappeared entirely. In May 2026, the Supreme Court clarified in *Kamran v. State of Madhya Pradesh*<sup>29</sup> that the 2022 *Vombatkere* arrangement continues to govern legacy Section 124A proceedings, although a court may proceed where the accused has no objection to the continuation of the trial, appeal or other proceeding. Thus, two legal regimes presently coexist in a limited temporal sense: legacy Section 124A cases remain affected by the Supreme Court's freeze, whereas acts committed after the BNS came into force may be investigated under Section 152. This transition makes the constitutional interpretation of Section 152 particularly urgent.

#### IV. SECTION 152 BNS: TEXT, STRUCTURE AND COMPARISON WITH SECTION 124A IPC

A comparison of the two offences reveals why the description “sedition repackaged” is simultaneously persuasive and incomplete. Section 124A<sup>30</sup> was centred on the relationship between the citizen and the “Government established by law.” Its prohibited consequences were hatred, contempt and disaffection. Section 152<sup>31</sup> instead centres upon the relationship between conduct and the constitutional security of India. It identifies secession, armed rebellion, subversive activities, separatist feelings and danger to sovereignty, unity and integrity. The conceptual object of protection therefore moves from governmental authority to the State and the constitutional nation.

That distinction should matter in practice. A democratic government must tolerate hostility towards those who govern. A citizen may demand the resignation of the Government, advocate its electoral defeat, accuse it of grave wrongdoing, organise mass protests or use harsh language against public officials.<sup>32</sup> None of those acts, without more, threatens the sovereignty of India. Indeed, the Explanation to Section 152 expressly protects disapprobation of governmental measures or administrative action aimed at securing change through lawful means, so long as the conduct does not excite the activities prohibited by the provision. To this extent, Section 152 can be seen as a conscious attempt to separate anti-government expression from anti-State conduct.

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<sup>29</sup> *Kamran v. State of Madhya Pradesh*, Diary No. 16320 of 2026 (S.C. May 21, 2026) (order clarifying *Vombatkere* (2022), *supra* note 26).

<sup>30</sup> The Indian Penal Code, No. 45 of 1860, INDIA CODE (1860), § 124A.

<sup>31</sup> *Bharatiya Nyaya Sanhita* § 152.

<sup>32</sup> Vaibhav Yadav, *The Sedition Conundrum in India: A Critical Examination of its Historical Evolution, Current Application and Constitutional Validity*, 61(2) INT'L ANNALS CRIMINOLOGY 188 (2023), <https://doi.org/10.1017/cri.2023.19>.

The mens rea language also provides a potential narrowing device. Section 152 begins with “purposely or knowingly.” These words should not be treated as ornamental. A prosecution ought to establish that the accused either acted with the prohibited purpose or with knowledge that the conduct possessed the relevant character.<sup>33</sup> Mere negligence, misunderstanding, ironic expression, casual forwarding of material or association with controversial political ideas should not ordinarily satisfy such a standard. The Rajasthan High Court has already emphasised the importance of this mental element in interpreting the provision.

Yet the breadth of the prohibited categories introduces new uncertainty. “Armed rebellion” and “secession” have relatively intelligible cores. “Subversive activities” is more elusive. Subversion could, in ordinary political rhetoric, be used to describe a wide spectrum of conduct, from violent attempts to undermine constitutional government to peaceful campaigns challenging established institutions. “Encourages feelings of separatist activities” is similarly problematic, because the provision speaks not merely of inciting a particular unlawful act but of encouraging “feelings.” Criminal law traditionally becomes constitutionally hazardous when it punishes emotional or ideological states without demanding a sufficiently proximate unlawful consequence.<sup>34</sup> “Endangers sovereignty or unity and integrity of India” is an important and constitutionally recognised objective, but unless “endangers” is linked with a real, proximate and demonstrable danger, the phrase can become a vehicle for subjective enforcement.

Section 152 is also broader than the classical sedition offence in its modes of commission. It expressly refers to electronic communication and the use of financial means, and then adds “or otherwise.” This enables the provision to reach conduct far beyond speeches or publications.<sup>35</sup> Financing an organisation engaged in armed separatism, knowingly facilitating secessionist operations, transmitting information as part of hostile activity or providing material assistance may potentially fall within its scope. Recent cases demonstrate that Section 152 is already being considered in non-speech settings. In *Sidul Mandal v. State of Karnataka*,<sup>36</sup> the Karnataka High Court considered charge-sheet allegations that the petitioner had assisted Bangladeshi citizens in obtaining Aadhaar and PAN documentation through fabricated materials. Although the investigating officer had not invoked Section 152, the High Court observed at the bail stage that the material prima facie had the effect of endangering the sovereignty, unity and integrity of India and that the investigating officer had prima facie erred in omitting the provision. Whatever

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<sup>33</sup> Bharatiya Nyaya Sanhita § 152; see *Tejender Pal Singh*, *supra* note 5, ¶ 12.1.

<sup>34</sup> Naveed Mehmood Ahmad & Ayushi Sharma, *The Enduring Colonial Legacy: The New Criminal Laws*, 59(11) ECON. & POL. WKLY. 21 (2024), <https://www.epw.in/journal/2024/11/commentary/enduring-colonial-legacy.html>.

<sup>35</sup> S.M. Aamir Ali & Pritha Mukhopadhyay, *Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?*, 62(2) INT’L ANNALS CRIMINOLOGY 406 (2024), <https://doi.org/10.1017/cri.2024.20>.

<sup>36</sup> *Sidul Mandal*, *supra* note 5.

the ultimate merits of that prosecution, the case illustrates that Section 152 is being understood as a national-security offence extending beyond political speech.

The Punjab and Haryana High Court's March 2026 bail decision in *Jyoti Rani alias Jyoti Malhotra v. State of Haryana*<sup>37</sup> provides another example. The prosecution alleged that the accused had transmitted sensitive information concerning strategic locations to persons associated with Pakistani intelligence, and cognizance had been taken under the Official Secrets Act, 1923 as well as Section 152 of the BNS. The High Court denied bail on the basis of the prima facie material and the seriousness of the allegations, while expressly clarifying that its observations were not an expression of opinion on the merits. Such cases show why Section 152 cannot be reduced entirely to a "speech offence": its statutory design also addresses conduct that might traditionally have been prosecuted under national-security, conspiracy or espionage laws.

Punishment nevertheless strengthens the analogy with sedition. Under the old Section 124A, the court could impose imprisonment for life, imprisonment up to three years, or fine, depending upon the statutory alternative chosen. Section 152 permits imprisonment for life or imprisonment extending to seven years, and in either case the offender is also liable to fine. Parliament has therefore removed the three-year alternative and adopted the seven-year figure recommended by the Law Commission. Combined with its cognizable and non-bailable classification, this creates a severe legal regime.<sup>38</sup> The severity may be justified where the accused intentionally facilitates armed rebellion or genuine secessionist violence, but the same severity becomes constitutionally troubling if the section is used at the margins of political advocacy.

The answer to whether sedition has been repealed is thus partly semantic and partly functional. In formal statutory terms, Section 124A is gone. In conceptual terms, the new provision is not identical. In functional terms, however, Section 152 occupies much of the national-security territory previously inhabited by sedition and can reproduce its chilling effects if interpreted without stringent limiting principles.

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<sup>37</sup> *Jyoti Rani alias Jyoti Malhotra v. State of Haryana*, Crim. Misc. No. M-68099 of 2025, 2026:PHHC:034750 (P&H HC Mar. 7, 2026).

<sup>38</sup> See Bharatiya Nyaya Sanhita § 152; Report No. 279, *supra* note 27, ¶ 10.6; see also Akshra Mehla, Letter, *New Criminal Laws: Postcolonial or Nationalist?*, 59(6) ECON. & POL. WKLY. 4 (2024), <https://www.epw.in/journal/2024/6/letters/new-criminal-laws-postcolonial-or-nationalist.html>.

## V. CONSTITUTIONAL VALIDITY: FREE SPEECH, VAGUENESS, OVERBREADTH AND PROPORTIONALITY

The constitutional challenge to Section 152 is principally located at the intersection of Articles 14,<sup>39</sup> 19<sup>40</sup> and 21.<sup>41</sup> Article 19(1)(a)<sup>42</sup> guarantees freedom of speech and expression, while Article 19(2)<sup>43</sup> permits reasonable restrictions in the interests of, among other things, the sovereignty and integrity of India, the security of the State, public order and incitement to an offence. Section 152 therefore unquestionably pursues objectives that the Constitution expressly recognises as legitimate. The constitutional difficulty is not whether Parliament may legislate against secession or armed rebellion; it plainly may. The issue is whether the breadth and operation of Section 152 maintain a constitutionally adequate relationship between those legitimate objectives and the expression being punished.

The first concern is vagueness. Criminal laws must give citizens adequate notice of the conduct prohibited and must constrain enforcement discretion. In *Shreya Singhal*, the Supreme Court treated vagueness as a serious defect where undefined expressions allowed different persons to reach radically different conclusions regarding criminality. Section 152 contains terms with identifiable legal cores but uncertain boundaries. “Subversive activities” is not defined in the BNS. “Encourages feelings of separatist activities” combines an act of encouragement with the unusually indeterminate concept of feelings. “Endangers” can denote anything from an immediate threat to a remote possibility unless judicially confined. The narrower terms, secession and armed rebellion, may help to inform interpretation through the principle of associated words, but that narrowing has yet to be authoritatively settled by the Supreme Court.<sup>44</sup>

The second concern is overbreadth. A statute may pursue a legitimate purpose yet prohibit substantially more expression than necessary. Academic discussion of secessionist movements, historical accounts of insurgencies, the reporting of interviews with separatist leaders, advocacy of greater federal autonomy through constitutional means, or critical commentary on territorial policy should not become criminal merely because the subject concerns separatism. The appropriate distinction must remain between discussion or advocacy and purposeful

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<sup>39</sup> INDIA CONST. art. 14.

<sup>40</sup> INDIA CONST. art. 19.

<sup>41</sup> INDIA CONST. art. 21.

<sup>42</sup> INDIA CONST. art. 19(1)(a).

<sup>43</sup> INDIA CONST. art. 19(2).

<sup>44</sup> Sampada Jagannath Kangane, *Recasting Sedition in Bharatiya Nyaya Sanhita, 2023 – Abolishing or Reinforcing Colonial Sedition Law in India?*, 16(8) J. RSCH. & DEV. 32 (2024), <https://doi.org/10.5281/zenodo.12705043>.

incitement or facilitation of the harmful activity itself.<sup>45</sup> *Shreya Singhal* offers a doctrinal structure for making this distinction.

Third is the requirement of proximity. *Kedar Nath* tied sedition to incitement to violence or a tendency to create public disorder. *S. Rangarajan* separately insisted that the anticipated danger to public order must not be remote or conjectural. The constitutional question is whether Section 152 can validly punish expression without a comparable nexus merely because the statutory text now uses “sovereignty” or “integrity.” Article 19(2) does contain those grounds independently of public order, and Parliament may legitimately address threats that do not fit the traditional analysis of riot or disorder. Nevertheless, a requirement of proximity remains crucial. Otherwise, virtually any controversial argument concerning borders, insurgency, self-determination or political autonomy could theoretically be characterised as indirectly affecting national unity.

Fourth is proportionality. Modern constitutional doctrine asks whether a restriction on a right pursues a legitimate aim, whether the measure is rationally connected to that aim, whether less restrictive means could achieve the purpose, and whether the burden upon the right is proportionate to the public benefit. Preventing armed rebellion and secession satisfies the legitimate-purpose requirement. The more difficult question concerns necessity and balancing at the outer edges of the section. Imprisonment for life, a seven-year alternative, non-bailable status and trial by a Court of Session constitute an exceptionally serious response to expression. Such a regime is easier to justify where there is intentional assistance to an armed movement than where liability rests on ambiguous language in a political post.<sup>46</sup>

Fifth is the chilling effect. The constitutional burden of a speech offence is not measured solely by convictions. Citizens respond to the possibility of arrest, seizure of devices, police interrogation, travel restrictions, bail proceedings and years of litigation. The experience of Section 124A showed that an eventual acquittal does not erase the burden imposed by the criminal process. For this reason, procedural safeguards are integral to the constitutional assessment. The Law Commission’s recommendation of a preliminary inquiry and prior governmental permission before the registration of a sedition FIR reflected recognition of this risk.<sup>47</sup> A carefully designed approval mechanism for Section 152, potentially requiring a senior

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<sup>45</sup> Chitra Singh, *A Critical Legal Analysis of Sedition: Section 152 of the Bhartiya Nyaya Sanhita and Section 124-A of the Indian Penal Code*, 3(1) ILE MULTIDISCIPLINARY J. 9 (2024).

<sup>46</sup> Karan Singh Gaur, Garima Yadav & Pawan Kumar Mishra, *Law Relating to Sedition in India: Issue and Challenges: A Study*, 73(4) J. ORIENTAL INST. 335 (2024).

<sup>47</sup> Report No. 279, *supra* note 27, ¶¶ 10.2–10.3; *see also* Kushagra Singh, *From Section 124A to Section 152: Evolution, Controversies, and Implications of India’s Sedition Laws*, 3(1) INT’L J. LEGAL STUD. & SOC. SCIS. 83 (2025).

officer to record why the speech satisfies the requirements of mens rea, proximity and Article 19(2), could materially reduce arbitrary use.

Article 14 adds the prohibition against arbitrary and standardless enforcement; Article 21 reinforces the requirement of a fair, just and reasonable procedure when liberty is threatened. The challenge in *S.G. Vombatkere v. Union of India*<sup>48</sup> specifically invokes Articles 14, 19(1)(a) and 21 in seeking to invalidate Section 152. The Supreme Court's official case record confirms that notice was issued on 8 August 2025. The eventual judgment may therefore determine whether the provision can survive as enacted, must be read down in a manner analogous to *Kedar Nath*, or requires additional procedural limitations.

The strongest constitutional approach would avoid assuming that every aspect of *Kedar Nath* mechanically governs Section 152, while nevertheless carrying forward its fundamental principle: the democratic State is distinct from the government of the day, and criminal liability for political expression requires a demonstrable connection with a constitutionally recognised harm. The terms “purposely or knowingly” should be strictly enforced; vague expressions should be read *ejusdem generis* with secession and armed rebellion; and expression should not be criminalised unless it possesses a direct and proximate relationship with the prohibited activity or a concrete danger to sovereignty and integrity.

## VI. EMERGING JUDICIAL APPLICATION OF SECTION 152, 2024–2026

The most important development since Section 152 came into force has been the emergence of High Court decisions attempting to define its limits. These decisions are not a substitute for an authoritative Supreme Court ruling, and several arise at the bail or FIR stage rather than after a full trial. They nevertheless reveal an identifiable judicial tendency to prevent the offence from becoming a general prohibition on objectionable political expression.

One of the earliest important interpretations came from the Rajasthan High Court in *Tejender Pal Singh @ Timma v. State of Rajasthan*.<sup>49</sup> The Court considered speech alleged to attract Section 152 and examined the relationship between the new provision and the old Section 124A. It noted the historical connection between the offences but emphasised that Section 152 requires purposeful or knowing conduct. More significantly, the Court insisted upon a direct and imminent connection between the impugned expression and the statutorily prohibited consequences. It warned against using the provision as an instrument against legitimate dissent and concluded that the statements before it did not satisfy the necessary threshold. The judgment

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<sup>48</sup> *Vombatkere* (2025), *supra* note 6.

<sup>49</sup> *Tejender Pal Singh*, *supra* note 5, ¶¶ 12.1–12.4, 19–21, 31.

is important because it treats mens rea and proximity as substantive constitutional safeguards rather than mere drafting details.

The Allahabad High Court has subsequently produced a growing body of Section 152 jurisprudence. In *Riyaz v. State of Uttar Pradesh*,<sup>50</sup> decided on 10 July 2025, the allegation involved an eighteen-year-old's Instagram story expressing support for Pakistan. At the bail stage, the Court held that merely showing support for a foreign country, without referring to any incident or to India, did not prima facie attract Section 152. The Court stressed that reasonable care must be exercised before invoking a serious national-security provision against expression. The case does not establish an unrestricted constitutional right to support a hostile foreign State in every factual context; rather, it reinforces the proposition that offensiveness or unpopular sentiment is not in itself equivalent to secession, rebellion or danger to sovereignty.<sup>51</sup>

In *Sajid Chaudhary v. State of Uttar Pradesh*,<sup>52</sup> decided in September 2025, the Allahabad High Court considered allegations concerning a “Pakistan Zindabad” social-media post. It observed that such a post might at most attract Section 196 of the BNS, but that Section 152 requires material connecting the conduct with secession, armed rebellion, subversive activities or the other harms enumerated in the statute. The applicant was granted bail. The reasoning recalls *Balwant Singh*: political slogans cannot be analysed in abstraction from context, audience, intention and likely consequences.

The same approach appeared in *Faizan v. State of Uttar Pradesh*,<sup>53</sup> decided on 6 January 2026. The allegations arose from online material described as pro-Pakistan or separatist. The Court emphasised the stringent nature of Section 152 and held that its invocation requires purposeful conduct directed to secession, armed rebellion, subversive or separatist activity, or threats to sovereignty and integrity. Bail was granted in view of the deficiencies in the allegations and the constitutional importance of personal liberty. The decision is particularly significant for digital expression because Section 152 expressly includes electronic communication, potentially making social-media cases one of the principal arenas in which the provision will be tested.

In *Abhishek v. State of Himachal Pradesh*,<sup>54</sup> decided in January 2026, the Himachal Pradesh High Court similarly applied *Kedar Nath*, *Balwant Singh* and *Vinod Dua* when considering

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<sup>50</sup> *Riyaz v. State of Uttar Pradesh*, 2025:AHC:109666 (All. HC July 10, 2025).

<sup>51</sup> Akhil Saxena & Ayush Saran, *A Critical Analysis of India's Evolving Sedition Laws (IPC 124A to BNS 150)*, 8(2) INT'L J.L. MGMT. & HUMAN. 5161 (2025).

<sup>52</sup> *Sajid Chaudhary v. State of Uttar Pradesh*, Crim. Misc. Bail Appl. No. 21835 of 2025, 2025 LiveLaw (AB) 368, ¶ 8 (All. HC Sept. 25, 2025).

<sup>53</sup> *Faizan v. State of Uttar Pradesh*, Crim. Misc. Bail Appl. No. 21838 of 2025, 2026:AHC:1858, ¶ 5 (All. HC Jan. 6, 2026).

social-media expression connected with Pakistan, Khalistan and criticism surrounding India–Pakistan hostilities. The Court distinguished mere criticism or expression favouring peace from actual incitement or conduct capable of producing the prohibited harm, and granted bail. This continuing reliance on pre-BNS sedition jurisprudence is doctrinally significant: High Courts appear unwilling to treat the enactment of Section 152 as erasing established constitutional principles governing political speech.

A particularly contemporary decision is *Simran Gupta v. State of Uttar Pradesh*,<sup>55</sup> decided by the Allahabad High Court on 1 May 2026. Registration of a case had been sought against Rahul Gandhi over his statement concerning a “fight” with the “Indian State.” The High Court declined to interfere with the refusal to direct registration of a Section 152 case on the basis of an isolated political phrase. It emphasised context, freedom of speech and the absence of material showing that the expression excited or attempted to excite secession, armed rebellion, subversive or separatist activity, or otherwise endangered sovereignty and integrity. Suspicion or imaginative inference, the Court reasoned in substance, cannot replace the statutory ingredients of a grave criminal offence.

These speech-protective decisions must be read alongside cases involving alleged concrete national-security conduct. In *Jyoti Rani alias Jyoti Malhotra v. State of Haryana*,<sup>56</sup> decided on 7 March 2026, the Punjab and Haryana High Court declined bail where the prosecution alleged transmission of sensitive information to Pakistani intelligence operatives and proceedings had been initiated under both the Official Secrets Act and Section 152. The Court relied only on the prima facie record and expressly avoided determining guilt. In *Sidul Mandal v. State of Karnataka*, decided on 28 July 2026, the Karnataka High Court considered alleged assistance in creating fraudulent identity documents for illegal immigrants and itself observed that Section 152 could prima facie be attracted even though the investigating officer had not invoked it.

Together, these cases demonstrate why a single label such as “new sedition law” may obscure important distinctions. Section 152 can be used against speech, but it is also capable of addressing purposeful material conduct alleged to endanger national security. The emerging judicial task is therefore to build a doctrinal boundary: political expression must receive the highest constitutional protection, whereas intentional assistance to secessionist, armed or

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<sup>54</sup> *Abhishek v. State of Himachal Pradesh*, Cr. MP (M) No. 2763 of 2025, 2026:HHC:98, ¶¶ 10–16 (H.P. HC Jan. 1, 2026).

<sup>55</sup> *Simran Gupta v. State of Uttar Pradesh*, Matters Under Article 227 No. 14562 of 2025, 2026 SCC OnLine All 3705 (All. HC May 1, 2026).

<sup>56</sup> *Jyoti Rani alias Jyoti Malhotra*, *supra* note 37.

demonstrably sovereignty-endangering conduct can legitimately fall within a national-security offence.<sup>57</sup>

## VII. THE PENDING SUPREME COURT CHALLENGE AND THE CASE FOR PROCEDURAL SAFEGUARDS

The constitutional future of Section 152 now substantially depends upon the Supreme Court. In 2025, *S.G. Vombatkere v. Union of India*<sup>58</sup> was instituted, challenging the new section as violative of Articles 14, 19(1)(a) and 21. The Supreme Court's official office report records that the petition seeks a declaration that Section 152 is void and inoperative and also seeks consequential relief concerning existing criminal proceedings. Notice was issued on 8 August 2025.

The challenge quickly became connected with cases arising from journalistic expression. On 12 August 2025, in *Foundation for Independent Journalism v. Union of India*,<sup>59</sup> the Supreme Court issued notice on the challenge to the vires of Section 152 and directed that the petition be tagged with the pending challenge to the provision. In August 2025 the Court also afforded interim protection from coercive action in relation to the proceedings against the Foundation's members. In *Abhisar Sharma v. Union of India*,<sup>60</sup> the Court on 28 August 2025 issued notice specifically on the challenge to the constitutional validity of Section 152 and tagged the matter with the pending challenges, while declining at that stage to entertain the challenge to the FIR itself.

The Supreme Court continued hearing the constitutional challenges in 2026. On 27 February 2026, while hearing *Azad Singh Kataria v. Union of India*, a petition challenging several provisions of the new criminal laws including Section 152, a Bench comprising Chief Justice Surya Kant and Justice Joymalya Bagchi orally observed that an earlier undertaking by the Union Government to reconsider sedition could not bind Parliament or prevent Parliament from enacting a new law.<sup>61</sup> The observation responded to an argument that the Government's position in the 2022 sedition proceedings should preclude the enactment of a comparable provision. Importantly, the statement concerned Parliament's legislative competence and institutional

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<sup>57</sup> Suraj Jangid, *Balancing Free Speech and National Security: Reforming Sedition Law in Contemporary India*, 8(4) INT'L J.L. MGMT. & HUMAN. 410 (2025).

<sup>58</sup> *Vombatkere* (2025), *supra* note 6.

<sup>59</sup> *Foundation for Independent Journalism v. Union of India*, W.P. (Crl.) No. 316 of 2025 (S.C. Aug. 12, 2025) (order).

<sup>60</sup> *Abhisar Sharma v. Union of India*, W.P. (Crl.) No. 338 of 2025 (S.C. Aug. 28, 2025) (order).

<sup>61</sup> *Azad Singh Kataria v. Union of India*, W.P. (Crl.) No. 461 of 2024 (S.C. Feb. 27, 2026) (oral observations at hearing), reported in *Centre's Undertaking to Reconsider Sedition Law Not Binding on Parliament, Says Supreme Court on BNS Challenge*, LIVE LAW (Feb. 27, 2026), <https://www.livelaw.in/top-stories/centres-undertaking-to-reconsider-sedition-law-not-binding-on-parliament-says-supreme-court-on-bns-challenge-524879>.

independence; it was not a final determination that Section 152 satisfies Articles 14, 19 and 21. The constitutional merits therefore remain open.

The Court's eventual decision should distinguish three separate questions that are sometimes collapsed in public debate. The first is legislative competence: Parliament plainly possesses the authority to create national-security offences even after repealing Section 124A. The second is legislative identity: whether Section 152 is precisely the same offence as sedition. Textually, it is not. The third, and constitutionally decisive, question is whether the new language satisfies fundamental-rights standards. Parliament's power to enact a replacement does not immunise that replacement from judicial review.

If the Supreme Court chooses to preserve Section 152 through a narrowing construction, several principles should be made explicit. "Purposely or knowingly" should require proof of a meaningful mental connection between the accused and the prohibited national-security consequence. "Subversive activities" should be read narrowly in the light of "secession" and "armed rebellion," so that peaceful democratic advocacy cannot be transformed into subversion merely because it challenges established policy. "Encourages feelings of separatist activities" should require more than abstract sympathy or intellectual discussion; the expression should intentionally promote concrete separatist activity or create a proximate danger of such activity. "Endangers sovereignty or unity and integrity" should require demonstrable endangerment, not speculative political apprehension.

The *Kedar Nath* incitement principle also requires careful adaptation. It may be argued that Section 152 protects constitutional interests broader than public order and therefore cannot be limited exclusively to street violence or riots. Financing an armed insurgency or transmitting sensitive strategic information, for example, may endanger sovereignty without immediately creating public disorder. The better formulation is therefore not that violence must invariably occur, but that there must be a direct and proximate nexus between the conduct of the accused and the prohibited threat, namely secession, armed rebellion, serious subversive activity, separatist action or concrete endangerment of sovereignty and integrity. In speech cases, incitement to violence or unlawful action should remain a central constitutional indicator.

Procedural safeguards are equally necessary. Before Section 152 is added to an FIR involving expression, a senior police officer could be required to record in writing the precise words or acts relied upon, the alleged prohibited activity, the evidence of purposeful or knowing intent, and the proximate link to national-security harm. A preliminary legal assessment by an officer of sufficient rank or by a prosecuting authority would reduce impulsive application based on a

phrase extracted from a speech or social-media post. The Law Commission's 2023 recommendation of a preliminary inquiry followed by governmental permission provides an existing model, even though Parliament did not incorporate it in Section 152 itself.

Such safeguards should not be mistaken for a weakening of national security. On the contrary, overbroad use of a grave offence can diminish its legitimacy and divert investigative resources from genuinely dangerous conduct. A legal provision intended for armed rebellion, secessionist mobilisation and serious threats to sovereignty acquires greater authority when courts and police resist employing it against ordinary dissent.

### **VIII. CONCLUSION: SEDITION REPEALED, REPACKAGED, OR CONSTITUTIONALLY RECONSTRUCTED?**

The question posed by the title cannot be answered satisfactorily by a simple “yes” or “no.” Section 124A IPC has unquestionably been repealed as a statutory provision. The expressions “hatred,” “contempt” and “disaffection” towards the Government established by law no longer form part of the offence. Section 152 BNS instead identifies national sovereignty, unity and integrity as the protected interests and focuses on secession, armed rebellion, subversive activities and separatism. It also requires that the accused act “purposely or knowingly.” These changes have real constitutional significance. A law protecting the State from armed disintegration is conceptually different from a colonial offence protecting the Government from disaffection.

Yet repeal in form does not automatically constitute abolition in function. Section 152 retains the architecture of a grave political offence capable of being triggered through words, written material, signs and visible representation, and extends it expressly to electronic communication, financial means and other conduct. Its undefined terminology is capable of expansive interpretation, the alternative maximum punishment has increased to seven years, and the offence is cognizable and non-bailable. If “subversive” is treated as a synonym for politically inconvenient, if “separatist feelings” are detached from actual separatist activity, or if vague assertions about national integrity are sufficient to criminalise harsh dissent, Section 152 could reproduce precisely the chilling effect that made Section 124A constitutionally controversial.

The emerging High Court jurisprudence offers a possible constitutional pathway. *Tejender Pal Singh*, *Riyaz*, *Faizan*, *Abhishek* and *Simran Gupta* collectively suggest that courts are demanding more than unpopular or provocative speech. Mens rea, context, specificity and a real relationship with the statutorily prohibited consequences are becoming important limiting principles. At the same time, decisions such as *Jyoti Rani alias Jyoti Malhotra* and *Sidul Mandal*

demonstrate that Section 152 may perform a legitimate national-security function where the allegations concern concrete conduct rather than political criticism.

The constitutional distinction between the Government and the State must remain central. Governments are temporary and contestable. The Constitution protects the citizen's right to oppose them, condemn them, campaign against them and demand radical lawful change. Sovereignty and territorial integrity, by contrast, constitute expressly recognised grounds under Article 19(2), and Parliament may criminalise purposeful efforts to produce armed rebellion, secession or comparable threats. Section 152 will remain constitutionally defensible only if law enforcement agencies and courts preserve that distinction.

As of 22 August 2026, the Supreme Court has not finally determined the validity of Section 152. Notice has been issued in *S.G. Vombatkere* and connected challenges, and the Court has continued hearing arguments concerning whether the new provision impermissibly revives the constitutional problems of the old sedition offence. The forthcoming authoritative interpretation has the potential to become for Section 152 what *Kedar Nath Singh* was for Section 124A: the decision that determines the constitutional boundary between national security and political liberty.

The Supreme Court should, however, go further than simply repeating the vocabulary of *Kedar Nath*. The digital environment has transformed the scale and speed of communication; a casual post can travel widely but can also be decontextualised with equal speed. Criminal liability should therefore require purposeful or knowing conduct, an objectively identifiable prohibited activity, and a direct and proximate relationship between the expression and genuine national-security harm. In pure speech cases, discussion and advocacy must remain protected unless they become incitement to, or intentional facilitation of, unlawful separatist or violent action. Senior-level scrutiny before prosecution would provide an additional safeguard against misuse.

The most defensible conclusion is therefore that sedition has been repealed in nomenclature and substantially altered in legal form, but its constitutional danger has not automatically disappeared. Section 152 is not simply Section 124A copied into the BNS; nor is it sufficiently different to make the history of sedition irrelevant. It is a new national-security offence carrying within it both a legitimate constitutional purpose and the possibility of reproducing an old constitutional vice.

Whether history ultimately records Section 152 as the abolition of colonial sedition or as sedition repackaged will depend less upon the section's title than upon the threshold Indian courts insist upon. If it is confined to purposeful or knowing conduct having a proximate

connection with secession, armed rebellion, serious subversive activity or actual danger to sovereignty, the provision can occupy a constitutionally defensible space distinct from the old offence. If it becomes a general weapon against provocative criticism, unpopular opinions or political dissent, the repeal of Section 124A will have changed the language of sedition without eliminating its substance. The constitutional Republic does not require citizens to be loyal to the government of the day; it may, however, legitimately protect itself against intentional attempts to destroy its sovereignty through unlawful means. Maintaining that distinction is the central constitutional task before Indian courts under Section 152.

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