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Regulating Speech in Modern India: A Critical Study of Free Expression under the New Criminal Law Regime

YUVASREE. A¹

ABSTRACT

Freedom of speech and expression is a fundamental right guaranteed under the Constitution of India, forming an essential pillar of democratic governance in India. At the same time, the Constitution permits reasonable restrictions on this freedom under Constitution of India in the interests of sovereignty, security of the State, and public order. This study examines the impact of the newly introduced criminal law framework—comprising the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhinyam—on the regulation of speech and political dissent in India.

The research particularly focuses on the replacement of the colonial-era sedition provision with the offence relating to acts endangering the sovereignty and integrity of India under Section 152 of the BNS. While the removal of the term “sedition” is presented as part of a decolonisation effort, the study analyses whether the new provision significantly alters the scope of speech regulation or largely continues earlier legal approaches in a different form. The research also evaluates the procedural and evidentiary changes introduced through the BNSS and BSA, especially the recognition of electronic records as primary evidence and the increased reliance on digital communication as proof in speech-related offences.

Further, the study considers constitutional doctrines such as vagueness, proportionality, and the chilling effect to assess whether the new framework adequately protects democratic freedoms. The findings suggest that although the reforms modernise aspects of criminal law, concerns remain regarding broad terminology, potential misuse, and the impact of digital evidence on free expression. Ultimately, the protection of freedom of speech will depend on careful judicial interpretation, responsible enforcement, and continued adherence to constitutional values.

Keywords: *Freedom of Speech, Bharatiya Nyaya Sanhita, Digital Evidence, Constitutional Restrictions, Political Dissent.*

¹ Author is an Advocate at Elangovan Associates, Tamil Nadu, India.

I. INTRODUCTION

Freedom of speech and expression is one of the most important pillars of a democratic society. It is guaranteed under Article 19(1)(a) of the Constitution of India and allows citizens to express their opinions, share ideas, and participate in public discussions. This freedom plays a vital role in ensuring transparency, accountability, and informed decision-making in a democracy.

Freedom of speech has long been regarded as the first condition of liberty and the bulwark of democratic governance. It facilitates the free exchange of ideas, dissemination of information, and the formation of public opinion on social, political, and economic issues.²

The Supreme Court of India, since the 1950s, has consistently adopted a broad and purposive interpretation of this right, characterising it as a “basic human right” and a “natural right.” It encompasses not merely verbal expression but also symbolic expression, including acts that convey nationalist or patriotic sentiments. In *Maneka Gandhi v. Union of India*,³ P. N. Bhagwati said that democracy works only when people can freely discuss and debate public issues. Such open discussion helps check and correct the actions of the government. Therefore, for people to truly take part in a democracy, they must have the freedom to talk about and debate public matters

A. Historical Development of Freedom of Speech

The Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789, specifically affirmed freedom of speech as an inalienable right. Article 11 of the Declaration states: Today, freedom of speech and expression is recognised in international and regional human rights law.

The right is enshrined in Article 19 of the International Covenant on Civil and Political Rights, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights, and Article 9 of the African Charter on Human and Peoples’ Rights.⁴

B. Meaning of speeches

² Report of the Second Press Comm., Vol.1,34-35

³ AIR 1978 SC 597(1978) 1 SCC 248.

⁴ [https://magazines.odisha.gov.in/Orissareview/2017/August/engpdf/36-41.pdf-\(last visited on 01 march 2026\)](https://magazines.odisha.gov.in/Orissareview/2017/August/engpdf/36-41.pdf-(last%20visited%20on%2001%20march%202026))

Political Speech

The right to political expression broadly includes: Thus, political expression operates as both a democratic safeguard and a constitutional guarantee, ensuring that governance remains responsive to public opinion while maintaining constitutional order.⁵

The right to political expression broadly includes:

1. **The right to cast votes**, which represents the formal exercise of political choice in a representative democracy;
2. **The right to protest**, enabling collective expression of approval or opposition to governmental action; and
3. **The right to criticise the government**, including the freedom to question policies, expose maladministration, and demand reform.

The Supreme Court in *Romesh Thappar v. State of Madras*⁶ recognised that freedom of speech includes freedom of propagation of ideas and is essential for the proper functioning of democracy

Dissent:

Dissent means expressing disagreement with a dominant idea, law, or policy. It is important in a democracy because it allows people to question and challenge decisions made by authorities. When a law is seen as unjust or against justice, equality, or human rights, people or groups may choose to oppose it.

In *Kedar Nath Singh v. State of Bihar*,⁷ the Court upheld the constitutionality of sedition but clarified that only speech involving incitement to violence or intention to create public disorder would fall outside constitutional protection.

Artistic Expression

Artistic freedom (freedom of artistic expression) is the right of artists to imagine, create, and share their work without censorship or interference. It gives artists the autonomy to produce art freely and also ensures that people can access artistic expressions and participate in cultural life, which is important for democracy.⁸

Digital Speech

⁵ <https://nyaaya.org/themes/freedom-of-speech-and-expression/#:~:text=What%20is%20the%20Freedom%20of,Right%20to%20Criticis e%20the%20Government-> (last Visited on 01 march 2026)

⁶ *Romesh Thappar v. State of Madras*, A.I.R. 1950 S.C. 124

⁷ *Kedar Nath Singh v. State of Bihar*, A.I.R. 1962 S.C. 955

⁸ Ole, Reitov (29 April 2013). "UN report on the right to artistic expression and creation". *Freemuse*. Archived from the original on 2 October 2019.

Any communication that takes place via digital channels, including emails, texts, social media posts, and online videos, is referred to as digital speech. The freedom of speech concept protects this kind of expression, underscoring the significance of free communication in online forums. People may instantly and extensively communicate their thoughts and opinions thanks to digital communication, which raises concerns about censorship, regulation, and striking a balance between harmful information and free speech.⁹

C. Background of Repeal of the IPC, CrPC and Evidence Act

The three Bills were introduced in Parliament in August 2023, referred to a Parliamentary Standing Committee for review, revised, and subsequently passed during December 2023. The new enactments came into force on 1 July 2024, marking a structural transformation of India's criminal law regime.

Significance for Free Speech

The repeal is important for freedom of speech because several speech-related offences under the IPC—such as sedition, promoting enmity, defamation, and public mischief— have long raised constitutional concerns. The replacement of sedition with a new offence under the Bharatiya Nyaya Sanhita creates questions about whether real reform has occurred.

Although the repeal is presented as a decolonising reform, its real impact will depend on how the new provisions work with the free speech protection in Article 19(1)(a) of the Constitution of India and the reasonable restrictions under Article 19(2) of the Constitution of India.

II. CONSTITUTIONAL FRAMEWORK OF FREE SPEECH

A. Article 19(1)(a)

Freedom of speech and expression under Article 19(1)(a) of the Constitution of India guarantees individuals the right to express their views and opinions through different forms such as speech, writing, printing, pictures, films, and other modes of communication. It also includes the right to publish and propagate ideas. The scope of this freedom is broad and covers various forms of creative and artistic expression such as painting, singing, dancing, and literature.

¹⁰However, this freedom is not absolute and is subject to reasonable restrictions under Article 19(2) in the interests of sovereignty and integrity of India, security of the State, public order, decency, morality, and other specified grounds.¹¹

⁹ [https://fiveable.me/key-terms/civil-rights-civil-liberties/digital-speech-\(last](https://fiveable.me/key-terms/civil-rights-civil-liberties/digital-speech-(last) visited on 01 march 2026)

¹⁰ Maneka Gandhi v. Union of India, AIR 1978 SC 597: (1978) 1 SCC 248; Usha Uthup v. State of West Bengal, AIR 1984 Cal. 268.

¹¹ Ministry of Information & Broadcasting v. Cricket Association, Bengal, AIR 1995 SC 1236: (1995) 2 SCC 161,

At the same time, free speech cannot be treated as a licence to make irresponsible or unfounded allegations, particularly against institutions such as the judiciary. The Constitution also recognises legislative privileges under Articles 105 and 194, which grant members of Parliament and State Legislatures the freedom of speech within the House. This privilege is wider in scope because speech made in the legislature is not subject to the restrictions under Article 19(2), and therefore, in situations of conflict, legislative privilege may take precedence over the general right to freedom of speech and expression.¹²

B. Expressive Autonomy

1. Right to Silence

The right to freedom of speech also implies the right to remain silent and the freedom not to be compelled to listen. Therefore, the use of devices such as loudspeakers, which force people to hear something they may not wish to hear, is not considered a fundamental right under Article 19(1)(a), but only an ancillary activity that can be regulated.¹³

2. Right to receive information

The right to receive information is considered an essential part of the freedom of speech and expression under Article 19(1)(a) of the Constitution of India. Although the Constitution does not explicitly mention a “right to information,” the has Supreme Court interpreted free speech broadly to include not only the right to express opinions but also the right to obtain and receive information necessary for forming informed views in a democratic society.

In *State of Uttar Pradesh v. Raj Narain*,¹⁴ the Supreme Court held that citizens have a right to know about the acts of public officials, emphasizing that transparency is fundamental in a democratic government.

This principle was further reinforced in *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*,¹⁵ where the Court stated that the right to speak also includes the right to receive and disseminate information.

The Court also recognized in *Union of India v. Association for Democratic Reforms and People’s Union for Civil Liberties v. Union of India*¹⁶ that voters have a right to know the background of electoral candidates, since voting is itself a form of expression that must be

et. seq.

¹² *P. V. Narasimha Rao v. State*, AIR 1998 SC 2120: (1958) 4 SCC 626; *supra*, Ch. I

¹³ *Noise Pollution V. In re 2005* 5 SCC 733: AIR 2005 SC 3136

¹⁴ *State of Uttar Pradesh v. Raj Narain*, AIR 1975 SCC 865,884: (1975) 4 SCC 428, Also see *Reliance Petrochemicals Ltd.V. Indian Express*, AIR 1989 SC 190: (1988) 4 SCC 592

¹⁵ *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*,AIR 1995 SC 1236

¹⁶ *People's Union for Civil Liberties v. Union of India* 2004 2 SCC 476: AIR 2004 SC 1442

informed for democracy to function effectively.

3. Institutional Expression

Freedom of Press

Although the Constitution of India does not explicitly mention freedom of the press, the Supreme Court has consistently held that it is an essential part of the freedom of speech and expression under Article 19(1)(a). The press plays a crucial role in a democratic society by informing the public, promoting political awareness, and ensuring governmental accountability.¹⁷

In *Romesh Thappar v. State of Madras*,¹⁸ the Court held that freedom of speech includes the freedom of circulation, and any restriction on the circulation of newspapers directly violates Article 19(1)(a).

The Supreme Court further strengthened press freedom in *Sakal Papers v. Union of India*¹⁹ and *Bennett Coleman & Co. v. Union of India*,²⁰ where it held that restrictions on the number of pages, price, or newsprint supply of newspapers indirectly restrict freedom of speech. The Court emphasized that freedom of the press also protects the public's right to receive information.

Similarly, in *Indian Express Newspapers v. Union of India*,²¹ the Court observed that taxation on newspapers should not be so excessive as to stifle press freedom. The Court also condemned prior censorship in *Brij Bhushan v. State of Delhi*²², holding that pre-publication restrictions on newspapers are unconstitutional except under the limited grounds mentioned in Article 19(2).

4. Electronic Media and Broadcasting

Freedom of speech and expression also extends to electronic media and broadcasting, including radio, television, and digital communication platforms. The Supreme Court has recognized that the right to impart and receive information through electronic media is protected under Article 19(1)(a).

In *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*,²³ the

¹⁷ M.P.Jain- Indian Constitutional Law – 7th edition – Lexis Nexis – pg- 1026 para 2

¹⁸ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124: 1950 SCR 594

¹⁹ *Sakal Papers v. Union of India*, AIR 1962 SC 305 at 314: (1962) 3 SCR 594

²⁰ *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106: (1972) 2 SCC 788

²¹ *Indian Express Newspapers v. Union of India*, AIR 1986 SC 515 AT 539 (1985) SCC 641 .

²² *Brij Bhushan v. State of Delhi*, 1950 SCR 605

²³ *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal* (1995) 2 SCC 161; AIR 1995 SC 1236

Court held that airwaves are public property and must be regulated in the public interest, but the State cannot claim an exclusive monopoly over broadcasting. The Court affirmed that the right to broadcast and disseminate information through electronic media forms part of freedom of speech, subject to the reasonable restrictions under Article 19(2).

C. Commercial and Artistic Speech

Advertisements

The constitutional protection of commercial advertisements was first examined in *Hamdard Dawakhana v. Union of India*,²⁴ where the Supreme Court held that purely commercial advertisements promoting trade, especially those relating to harmful drugs, may not fall within the scope of freedom of speech under Article 19(1)(a).

However, this view was later broadened. In *Indian Express Newspapers v. Union of India*,²⁵ the Court recognized that advertisements are essential for the financial survival of the press and restrictions on them may indirectly affect free expression. The position was finally clarified in *Tata Press Ltd. v. MTNL*,²⁶ where the Court held that commercial advertisements are a form of commercial speech protected under Article 19(1)(a) because they provide information to the public, though they remain subject to reasonable restrictions under Article 19(2).

D. Political Participation

1. Protest, Picketing and Demonstrations

Peaceful protests and demonstrations are recognized as forms of expression under Article 19(1)(a). In *Kameshwar Prasad v. State of Bihar*,²⁷ the Supreme Court held that peaceful demonstrations fall within freedom of speech and expression, though they may be subject to reasonable restrictions in the interest of public order. However, there is no fundamental right to strike, especially when it disrupts essential services or public order.

2. Bandh:

Courts have distinguished between a peaceful strike and a bandh. In *Bharat Kumar v. State of Kerala*,²⁸ bandhs were declared unconstitutional because they forcibly disrupt normal life and infringe the rights of other citizens. The judiciary has held that protests cannot interfere with the life, liberty, or property of others.

²⁴ *Hamdard Dawakhana v. Union of India* AIR 1960 SC 554: (1960) 2 SCR 671

²⁵ *Supra* – citation no 20

²⁶ *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, AIR 1995 SC 2438, 2446: (1995) 5 SCC 139

²⁷ *Kameshwar Pd. v. State of Bihar*, AIR 1962 SC 1166: 1962 Supp (3) SCR 369.

²⁸ *Bharat Kumar K.Palicha v. State of Kerala* AIR 1997 Ker 291

3. Voting

Voting is considered a form of political expression in a democracy. In *Union of India v. Association for Democratic Reforms and People's Union for Civil Liberties v. Union of India*, the Supreme Court recognized that voters have a right to know the background of electoral candidates, as informed voting is an essential part of freedom of speech and expression under Article 19(1)(a).

E. Expression and Privacy

Telephone Tapping

Telephone conversations are part of the freedom of speech and expression under Article 19(1)(a). In *People's Union for Civil Liberties v. Union of India*,²⁹ the Supreme Court held that telephone tapping is a serious invasion of privacy and can be permitted only through a lawful procedure with proper safeguards.

The protection of privacy was further strengthened in *Justice K.S. Puttaswamy v. Union of India*, where the Court recognized privacy as a fundamental right, noting that excessive surveillance can create a chilling effect on free speech.

F. Restrictions under Article 19(2)

Security of the State and Public Order

The constitutional validity of sedition under Section 124A of the Indian Penal Code was upheld in *Kedar Nath Singh v. State of Bihar*, but the Court interpreted it narrowly. It held that only speech that incites violence or has the tendency to create public disorder can be punished. Mere criticism of the government, however strongly worded, does not amount to sedition.

Friendly Relations with Foreign States

Incitement to an offence constitutes a separate ground under Article 19(2). While criminal law generally punishes abetment of offences, the Constitution expressly authorizes restrictions on speech that incites criminal acts. The term "offence" is broad and includes any act punishable by law. While fair and reasonable criticism of judicial decisions is permissible, statements that scandalise the court or obstruct the administration of justice may amount to contempt. The objective is not to silence criticism but to prevent erosion of the judiciary's authority and public trust.

Sovereignty and Integrity of India:

²⁹ *People's Union for Civil Liberties v. Union of India*, AIR 1997 SC 568 at 574-575: (1997) 1 SCC 301;

This ground was added by the Sixteenth Constitutional Amendment and allows the State to restrict speech that threatens the unity or territorial integrity of India. However, peaceful discussion or academic debate on constitutional issues is not prohibited unless it incites unlawful action.

Incitement to an Offence:

Article 19(2) allows restrictions on speech that directly incites the commission of crimes. Courts require a clear and close connection between the speech and the likelihood of the offence, and mere abstract advocacy is generally not punishable.

Contempt of Court

Freedom of speech is subject to restrictions relating to contempt of court to maintain public confidence in the judiciary. While fair criticism of judicial decisions is allowed, statements that scandalise the court or obstruct justice may be punished.

Overall Principle

Article 19(2) maintains a balance between free speech and societal interests, allowing only reasonable and proportionate restrictions with a clear connection between the speech and the harm sought to be prevented.

III. FREE SPEECH UNDER THE OLD CRIMINAL LAWS

A. Seditious: Section 124a

Section 124A IPC criminalised speech that brought hatred, contempt, or disaffection against the Government. Introduced during the colonial period, it was often used to suppress political dissent. After the Constitution came into force, its validity was questioned in light of Article 19(1)(a).

In *Kedar Nath Singh v. State of Bihar*,³⁰ the Supreme Court upheld the provision but limited its scope only to speech that incites violence or public disorder. The Court clarified that mere criticism of the government or expression of dissent does not amount to sedition. Thus, democratic criticism remains protected, while only speech threatening public order can be punished.

B. Promoting Enmity: Section 153a

Section 153A IPC criminalised speech or acts that promote enmity or hatred between different groups on grounds such as religion, race, language, or place of birth. The provision aimed to

³⁰ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955: 1962(2) CR LJ 103

prevent threats to public order and communal harmony in a diverse society. Courts have held that mens rea (intention) is an essential element, and casual remarks or statements without deliberate intent to incite hatred do not attract liability.

Judicial decisions have also emphasised that academic discussion, political criticism, or historical analysis does not fall within the offence unless it deliberately promotes hostility. In *Ramesh v. Union of India*, the Supreme Court held that depicting communal violence in the serial *Tamas* did not amount to promoting hatred under Section 153A.

C. Defamation: Section 499 And 500 of IPC

Section 499 IPC defines defamation as making or publishing statements that harm a person's reputation, while Section 500 prescribes punishment of up to two years' imprisonment, fine, or both. The provision also includes several exceptions, such as truth published for public good, fair criticism of public officials, and comments on matters of public interest. Defamation in India can give rise to both civil liability (damages) and criminal punishment.

In *Subramanian Swamy v. Union of India*³¹, the Supreme Court upheld the constitutionality of criminal defamation, stating that reputation is part of the right to dignity under Article 21 and may justify reasonable restrictions on speech under Article 19(2). However, courts have emphasised that defamation law should not be misused to suppress fair criticism, political dissent, or journalistic investigation.

D. Public Mischief (Section 505 IPC) Sub-Section (3)

Section 505 IPC dealt with statements, rumours, or reports that could create public fear, incite offences, or promote hostility between communities. The provision aimed to prevent speech that might disturb public order or provoke unrest. It also prescribed stricter punishment if such acts occurred in places of worship or religious assemblies, while protecting statements made in good faith with reasonable belief in their truth.

Courts have emphasised that mens rea and publication of the statement are essential elements. In *Balwant Singh v. State of Punjab*,³² the Supreme Court held that mere statements without intent to incite hostility or disorder do not attract liability. Thus, the provision aimed to control harmful rumours while ensuring that legitimate reporting and good-faith communication are not penalised.

E. Section 66A IT Act

³¹ *Subramanian Swamy v. Union of India* (2016) 7 SCC 221 or AIR 2016 SC 2728

³² *Balwant Singh v. State of Punjab* (1995) 3 SCC 214

Section 66A of the Information Technology Act, 2000 criminalised sending offensive, threatening, or false messages through electronic communication, including emails, text messages, blogs, and social media posts. The provision aimed to curb cyber harassment and harmful online communication.

However, in *Shreya Singhal v. Union of India*,³³ the Supreme Court struck down the provision as unconstitutional, holding that its vague terms such as “grossly offensive” and “annoyance” could suppress legitimate speech, including political criticism and public debate. The Court ruled that the law did not meet the standard of reasonable restrictions under Article 19(2).

IV. FREE SPEECH UNDER BHARATIYA NYAYA SANHITA (2023)

The transition from the Indian Penal Code, 1860 to the Bharatiya Nyaya Sanhita represents a major reform of India’s criminal law. This chapter examines how the new law redefines the limits of freedom of speech under Article 19(1)(a) while balancing it with the State’s interest in protecting sovereignty, unity, and integrity of the nation.³⁴

One significant change is the removal of the term “sedition” from the old law. However, many scholars argue that the substance of the offence continues under Section 152 BNS, which deals with acts endangering the sovereignty and integrity of India.

Evolution of the Offence

Under the Indian Penal Code, sedition focused on “disaffection” against the government. In the Bharatiya Nyaya Sanhita, Section 152 shifts the focus to acts endangering the sovereignty, unity, and integrity of India,³⁵ reflecting a move from protecting the government to protecting the State itself.

Expansion of Scope

The BNS also recognises electronic communication and financial means as possible tools for such offences. This reflects the role of social media and digital mobilisation, though it also raises concerns about monitoring and restricting digital dissent.

A. Hate Speech and Social Cohesion – Sections 196 & 197

The BNS largely retains earlier hate-speech provisions. Section 196 addresses promotion of enmity between groups, including through electronic means, and operates as a restriction on speech under public order in Article 19(2). Section 197 criminalises deliberate and malicious

³³ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

³⁴ See Constitution of India, Art. 19(1)(a) and the “reasonable restrictions” under Art. 19(2).

³⁵ Bharatiya Nyaya Sanhita, 2023, § 152.

acts intended to outrage religious feelings, while still requiring proof of intent.

Expansion of Scope

Although the language has been modernised, the objective remains similar to the earlier IPC provisions to prevent communal tension and maintain social harmony. At the same time, these provisions must be interpreted consistently with Article 19(1)(a) to ensure that legitimate democratic expression is not unnecessarily restricted.

B. Criminal Defamation: Retention and Reform

The Bharatiya Nyaya Sanhita retains the offence of criminal defamation under Section 356, despite global trends towards decriminalisation. A notable reform is the introduction of community service as a possible punishment,³⁶ reflecting a more reformatory approach to penalties.

The provision also retains the traditional exceptions from the IPC, including the defence of truth published for public good, thereby attempting to balance protection of reputation with freedom of expression.

C. Critical Analysis: Expansion or Dilution

Vagueness:

A major concern with the Bharatiya Nyaya Sanhita is the use of broad terms such as “subversive activities” and “encouraging separatist activities.” Since these terms are not clearly defined, they may give authorities wide discretion in interpreting speech-related offences, potentially creating a chilling effect on free expression.

Over-Criminalisation and Overlap:

Another issue is the possible overlap between different offences, particularly where acts disturbing public order may also fall within the definition of terrorist acts. This overlap could allow speech-related conduct to be prosecuted under stricter anti-terrorism provisions, raising concerns about proportionality³⁷

The Bharatiya Nyaya Sanhita, 2023 aims to modernise criminal law and introduces reforms such as community service as punishment. However, its broader provisions on national security and digital communication mean that the protection of free speech will largely depend on careful judicial interpretation and the application of reasonable restrictions under Article

³⁶ Law Commission of India, 276th Report on Legal Framework: Gambling and Sports Betting Including in Cricket in India

³⁷ Compare Bharatiya Nyaya Sanhita, 2023, § 113 with the Unlawful Activities (Prevention) Act (UAPA), 1967.

19(2).

V. PROCEDURAL SAFEGAURDS AND POLICE POWER UNDER BNSS (2023)

The Bharatiya Nagarik Suraksha Sanhita replaces the Code of Criminal Procedure with the aim of strengthening citizen security. In cases involving speech-related offences, which are often politically sensitive, procedural safeguards play an important role in protecting individuals from arbitrary state action.

A. FIR Registration for Speech Offences

Section 173

Under the Bharatiya Nagarik Suraksha Sanhita, several procedural practices have been formally recognised.

- Zero FIR (Section 173) allows a complaint to be filed at any police station regardless of jurisdiction, which can help journalists or activists facing threats.
- The law also permits electronic FIRs, though the informant must sign the complaint within three days for it to be officially recorded.³⁸
- Additionally, Section 173(3) allows the police to conduct a preliminary enquiry within 14 days for offences punishable with three to seven years before registering an FIR.
- While this may prevent frivolous complaints, it also gives authorities discretion that could potentially delay action in genuine cases.³⁹

B. Notice of Appearance (Section 35):

- Under the Bharatiya Nagarik Suraksha Sanhita, certain safeguards regulate arrests. Section 35 requires the police to issue a Notice of Appearance for offences punishable with less than seven years, meaning arrest should not be automatic if the person cooperates.⁴⁰
- However, for serious offences like acts endangering sovereignty under Bharatiya Nyaya Sanhita Section 152, which carries a minimum punishment of seven years, this safeguard does not apply and immediate arrest may occur.
- ⁴¹The BNSS also permits the use of handcuffs in certain serious cases under Section 43(3), including offences affecting sovereignty. However, the Supreme Court of India

³⁸ BNSS, 2023, SECTION 173(1).

³⁹ *Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1

⁴⁰ BNSS, 2023, Section 35; *See also Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

⁴¹ *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526 (Regarding the dehumanizing nature of

has held that handcuffing is generally inhumane and should be used only in exceptional situations with recorded reasons and judicial oversight.

C. Protection Against Misuse: Strengthening or Diluting Liberty?

Under the CrPC, police custody was limited to the first 15 days of arrest. The BNSS allows this 15-day custody to be taken in segments across the first 40 or 60 days (depending on the offence). The BNSS modifies this procedure. It adds that the police custody of 15 days can be authorised in whole or in parts at any time during the initial 40 or 60 days out of the 60 or 90 days period. This could lead to bail being denied during this period if the police argue that they need to take the person back in police custody.⁴²

Conclusion

The Bharatiya Nagarik Suraksha Sanhita presents a mixed framework. It introduces reforms such as Zero FIR and mandatory videography to improve transparency and protect citizens. However, it also expands state powers through segmented police custody and broader arrest powers for sovereignty-related offences. Ultimately, whether it protects liberty or strengthens police authority will depend on strict judicial scrutiny during remand proceedings

VI. DIGITAL SPEECH AND THE NEW EVIDENTIARY REGIME: BSA (2023)

The BSA introduces a major shift by classifying electronic and digital records as Primary Evidence. the issuance, service, and execution of summonses and warrants; Section 61: Explicitly states that an electronic or digital record shall have the same legal effect, validity, and enforceability as any other document.⁴³

A. Admissibility of Electronic Evidence:

- Under the **Bharatiya Sakshya Adhinyam**, electronic and digital records are recognised as primary evidence. The definition of evidence under Section 2(e) now includes statements given electronically, unlike the **Indian Evidence Act**, which recognised only statements made directly before the court.
- **Section 61** gives electronic records the same legal validity as other documents,
- **Section 57** treats them as primary evidence if produced from proper custody. However, **Section 63** still requires a certificate with details such as a **hash value** to verify that the

handcuffs).

⁴²https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023#_edn13, Compare § 167 CrPC (1973) with § 187 BNSS (2023); See also "The Bharatiya Nagarik Suraksha Sanhita, 2023 - PRS India" Legislative Brief.

⁴³ Statement of Objects and Reasons, Bharatiya Sakshya Adhinyam, 2023.

digital record has not been altered.⁴⁴

B. Social Media Speech as Evidence:

- The Bharatiya Sakshya Adhiniyam expands the definition of documents to include modern digital communications such as emails, server logs, smartphone records, GPS data, and voice mails.⁴⁵
- Screenshots and WhatsApp chats are admissible as evidence, but courts require a clear chain of custody and may rely on expert opinions under Section 39 to verify the authenticity of electronic evidence, especially due to risks like digital manipulation or deepfakes.⁴⁶

C. The Shifting Burden of Proof:

- Under the Bharatiya Sakshya Adhiniyam, the basic rule that “*he who asserts must prove*” is retained, meaning the prosecution must prove the guilt of the accused beyond reasonable doubt (Section 105).
- However, the Act also introduces presumptions for certain secure electronic records and digital signatures (Sections 81–93). In such cases, once the prosecution produces a secure digital record, the evidentiary burden may shift to the accused to prove that the account was hacked or the content was manipulated.⁴⁷

D. Digital Surveillance and Privacy Concerns

- The Bharatiya Sakshya Adhiniyam raises privacy concerns due to the easy admissibility of digital records. The term “proper custody” is not clearly defined, creating uncertainty when police obtain digital data without a warrant, potentially affecting the privacy principles recognized in Justice K. S. Puttaswamy (Retd.) v. Union of India.⁴⁸
- Additionally, while the Bharatiya Nagarik Suraksha Sanhita allows device seizure, the BSA makes the data easily admissible as evidence, increasing the state’s ability to monitor and prosecute speech.

The Bharatiya Sakshya Adhiniyam modernizes evidence rules by recognizing digital records and simplifying their admissibility in court. While safeguards like hash values help

⁴⁴ BSA, 2023, Schedule (Section 63(4)) - Form of Certificate.

⁴⁵ BSA, 2023, Section 2(d) - Definition of "Document."

⁴⁶ Digital Forensic Science and Evidentiary Standards," *ResearchGate* (2024)

⁴⁷ BSA, 2023, Section 86 (Presumption as to electronic records and signatures).

⁴⁸ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1

verify authenticity, the law does not fully address the challenge of interpreting the context and intent of speech, which remains essential for protecting freedom of expression.

VII. CONSTITUTIONAL VALIDITY & FUTURE LITIGATION: THE JUDICIAL LITMUS TEST

While the new criminal laws are presented as **decolonial reforms**, their validity ultimately depends on judicial review. Increased reliance on digital evidence and surveillance in speech-related offences may raise concerns about privacy and freedom of expression. Future challenges may examine whether these laws satisfy the reasonable restrictions under Constitution of India and meet the tripartite test of legality, necessity, and proportionality.

A. Potential Grounds of Challenge: Vagueness and Arbitrariness

- A major constitutional challenge to the Bharatiya Nyaya Sanhita is the Doctrine of Vagueness, which requires speech-related criminal laws to be clearly defined to prevent arbitrary enforcement. In *Shreya Singhal v. Union of India*,⁴⁹ the Supreme Court of India held that vague provisions can violate freedom of expression.
- It is stated that Section 152 BNS, which replaces sedition, uses broad terms like “subversive activities” and “encouraging separatist activities,” creating the risk of misuse against legitimate dissent.⁵⁰
- Unlike the earlier Indian Penal Code sedition provision that was limited by *Kedar Nath Singh v. State of Bihar* to speech inciting violence or public disorder, the broader wording of Section 152 may allow wider interpretation, including certain forms of non-violent political expression.

B. The Doctrine of Proportionality

- The Doctrine of Proportionality, recognised in *Modern Dental College v. State of Madhya Pradesh*⁵¹ requires that restrictions on fundamental rights must be reasonable and proportionate.
- Concerns arise under Bharatiya Nyaya Sanhita Section 152, where the minimum seven-year punishment for acts endangering sovereignty may be considered excessive if applied to non-violent expressions such as memes or editorials.

⁴⁹ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

⁵⁰ Compare with Law Commission of India, 279th Report on the Law of Sedition(2023).- (<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/06/2023060150.pdf>)- last visited on 11th march 2026

⁵¹ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353

- Similarly, Bharatiya Nagarik Suraksha Sanhita Section 187 allows segmented police custody within 60 or 90 days, which critics argue may disproportionately affect personal liberty under Article 21.⁵²

C. The Chilling Effect Doctrine

- The Chilling Effect Doctrine refers to situations where vague laws or harsh punishments cause people to self-censor out of fear of prosecution.⁵³
- Concerns arise because the Bharatiya Nyaya Sanhita specifically includes electronic communication in offences related to sovereignty and hate speech, while the Bharatiya Sakshya Adhiniyam makes digital evidence easier to admit in court.

In *Shreya Singhal v. Union of India*, the Supreme Court of India struck down Section 66A of the IT Act because it created such a chilling effect. Similar concerns have been raised about Section 152 BNS, as seen in *Imran Pratapgarhi v. State of Gujarat*,⁵⁴ where the Court stressed the need for preliminary enquiry under the Bharatiya Nagarik Suraksha Sanhita in speech-related cases to protect artistic and political expression.

D. Judicial Review Trends (2024–2026):

As of early 2026, courts have adopted a restorative interpretation of the new criminal laws.

- The Supreme Court of India and High Courts are reading down Section 152 of the Bharatiya Nyaya Sanhita so that it applies mainly to acts involving violence or armed rebellion.
- They are also strictly enforcing Section 35 of the Bharatiya Nagarik Suraksha Sanhita, stating that arrest for offences punishable up to seven years should be exceptional and justified in writing.⁵⁵
- Additionally, courts now require clear reasons before granting segmented police custody under Section 187 BNSS to prevent misuse or harassment.⁵⁶

The future constitutional validity of the Bharatiya Nyaya Sanhita will depend on judicial interpretation. Courts must ensure that these provisions protect national security and sovereignty without suppressing dissent, while upholding the constitutional value of

⁵² V. Senthil Balaji v. State, (2023) SCC OnLine SC 934

⁵³ S. Khushboo v. Kanniammal, (2010) 5 SCC 600

⁵⁴ Imran Pratapgarhi v. State of Gujarat, 2026 SCC OnLine SC [Pending Release

⁵⁵ Satender Kumar Antil v. CBI, 2026 SCC Online SC 162 (Clarifying mandatory notice under Section 35(3) BNSS).

⁵⁶ Allahabad High Court Guidelines on BNSS implementation (August 2024)

freedom of expression under the Constitution of India

VIII. BEYOND THE LEGAL TEXT – A CRITICAL EVALUATION

A. Whether the New Laws Truly Decolonised Speech Laws

The new criminal laws claim to decolonise speech laws by removing the term *sedition*, but Bharatiya Nyaya Sanhita Section 152 replaces it with offences relating to acts endangering sovereignty. Critics argue that broad terms like *subversive activities* may still allow restrictions on dissent, similar to the earlier Indian Penal Code sedition provision. In fact, the minimum punishment has increased from three to seven years, suggesting that the reform may be more of a restructuring of existing laws rather than a complete transformation in regulating speech.

B. The Fragile Balance: National Security vs. Civil Liberty

- The Bharatiya Nyaya Sanhita seeks to address modern security threats, but this creates tension with the freedom of speech under Constitution of India.
- By incorporating terrorist acts under Section 113, offences traditionally governed by special laws like the Unlawful Activities (Prevention) Act may overlap with the general penal code.⁵⁷
- The government seems to have created a redundant legal framework by passing provisions in the BNS that are similar to those in the UAPA. One can wonder if the BNS's similar provisions are meant to prepare for the possibility that the UAPA would be repealed or ruled unlawful by the courts in the future. Nonetheless, there have been assertions that specific laws like MCOCA, UAPA, and others will function in tandem with the BNS.⁵⁸

C. The Fear Factor: Political Misuse

- A major concern is the possible political misuse of the Bharatiya Nyaya Sanhita. Vague terms like “*subversive activities*” or “*encouraging separatist feelings*” may allow authorities to interpret speech broadly and potentially target dissenting voices.
- You might eventually be found innocent in court, but with the new BNSS rules on extended police custody, the months you spend in jail *waiting* for trial become your

⁵⁷ Analysis of Section 113 BNS: The Overlap with UAPA," *Indian Journal of Constitutional Law* (2025).

⁵⁸ Sobhana K. Nair, New Criminal codes will have no bearing on laws such as UAPA, MCOCA, The Hindu (August 10, 2023, 10:31 AM), <https://www.thehindu.com/news/national/new-criminal-codes-will-have-no-bearing-on-laws-such-as-uapa-mcoca/article67185401.ece>.

actual punishment.⁵⁹

D. Practical Impact: Journalists and Activists in the Digital Crosshairs

For journalists and civil society, the BNS–BNSS–BSA framework increases operational risk.

- Under the Bharatiya Sakshya Adhiniyam, digital communications such as emails or WhatsApp messages are treated as primary evidence, making journalists' sources and activists' internal communications more vulnerable in court and potentially creating a chilling effect on speech.
- Example: Imagine you are a journalist or a student activist. You have a story to tell or a protest to lead. But you know that under the BSA, every WhatsApp message or email you've ever sent is now "Primary Evidence" that can be used against you.⁶⁰
- In *Foundation for Media Professionals v. Union of India*,⁶¹ the Supreme Court of India⁶¹ has emphasized the need for clear, privacy-compliant rules for seizing digital devices to prevent arbitrary searches.

E. Final Thought

- The Bharatiya Nyaya Sanhita is presented as a step toward decolonising India's criminal law, replacing colonial-era provisions of the Indian Penal Code. However, critics argue that merely changing terminology does not ensure true decolonisation; real reform requires protecting citizens' ability to express dissent without fear.
- Ultimately, the word "Nyaya" means Justice. But justice is not found in the thickness of a law book or the severity of a 7-year sentence. Justice is found in the space the law leaves for a citizen to stand up and speak their truth without fear. If we lose that space, we haven't decolonized anything; we have simply polished the bars of the cage.
- Ultimately, the impact of the new framework on freedom of speech under Constitution of India will depend on careful judicial interpretation and responsible enforcement that balances national security with democratic liberties.

IX. CONCLUSIONS AND SUGGESTIONS

A. Key Findings

The right to freedom of speech and expression under the Constitution of India remains a key

⁵⁹ BNSS Section 187;

⁶⁰ Bharatiya Sakshya Adhiniyam, 2023, Section 57

⁶¹ *Foundation for Media Professionals v. Union of India*, (2025)

pillar of India's democracy, though it is subject to reasonable restrictions under Article 19(2). With the introduction of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam, India aims to modernise its criminal justice system. However, concerns such as broad terminology, potential misuse, and challenges posed by digital communication highlight the need for careful judicial interpretation to protect free speech.

Example: The BNSS introduces efficiencies (e-FIRs, Zero FIRs) but also creates vulnerabilities through "segmented custody" and broader arrest powers, which can be disproportionately used in speech-based offences.⁶²

The replacement of the offence of sedition under the **Indian Penal Code** with the offence relating to acts endangering sovereignty under **Bharatiya Nyaya Sanhita** reflects an attempt to modernise the legal framework governing speech. While the removal of the term "sedition" symbolically distances the law from its colonial origins, the new provision contains broad expressions such as "subversive activities" and "encouraging feelings of separatism." These terms may allow wider interpretation and could potentially affect legitimate political dissent, criticism of government policies, or academic discussion.

At the same time, recent judicial trends indicate that courts are likely to interpret the provision narrowly, often limiting its application to situations involving **incitement to violence or threats to public order**, consistent with the principle laid down in **Kedar Nath Singh v. State of Bihar**. Therefore, the practical impact of this change on political dissent will largely depend on how the judiciary continues to interpret and apply the provision.

Furthermore, Speech-related provisions under the new criminal law framework must satisfy the test of reasonable restrictions under **Constitution of India**, which permits limitations on freedom of speech in the interests of sovereignty, security of the State, public order, and similar grounds. Although the new framework attempts to address contemporary challenges such as digital communication and misinformation, concerns remain regarding the breadth of certain terms and the potential for misuse.

Judicial precedents, particularly **Shreya Singhal v. Union of India**, have emphasised that vague and overbroad speech restrictions may violate constitutional protections by creating a chilling effect on expression. As a result, the constitutionality of the new provisions will depend on their careful interpretation and application by courts. If enforced narrowly and in line with constitutional principles, they may satisfy the requirements of Article 19(2); however, broad

⁶² See BNSS Section 187; Compare with PRS Legislative Research, "Analysis of the BNSS, 2023."

or arbitrary application could raise constitutional concerns regarding freedom of speech and expression

B. Legislative Reforms Suggested

To better safeguard freedom of expression under the **Constitution of India**, speech-related laws should use clear and precise language. Vague provisions can create uncertainty and discourage legitimate criticism or debate. Therefore, offences related to sovereignty, public order, or communal harmony under the Bharatiya Nyaya Sanhita should be narrowly framed so that only speech that genuinely incites violence or threatens public safety is penalised.

Definition of “Subversive Activities”: Section 152 should clearly define *subversive activities* to ensure that peaceful protests, academic debate, and journalistic investigation are not criminalised.⁶³

Harm or Incitement Requirement: The provision should incorporate an “incitement to violence” standard, ensuring that mere expressions of dissent or separatist feelings without a call to violence remain protected speech.

Compensation for Wrongful Prosecution: A compensation mechanism may be introduced for individuals wrongfully accused of sovereignty-related offences, strengthening accountability and protecting civil liberties⁶⁴

C. Need for Judicial Guidelines

Judicial interpretation is crucial for protecting constitutional rights and ensuring that speech-related offences are applied consistently with democratic values. Clear judicial guidelines can prevent misuse of broadly worded provisions and protect legitimate criticism, academic debate, and journalism. Continued judicial oversight is therefore essential to balance state interests with individual liberties.

- **The “Preliminary Enquiry” Rule**

Building on the precedent in *Imran Pratapgarhi v. State of Gujarat*, courts may require a 14-day preliminary enquiry before registering FIRs in speech-related cases to prevent mechanical prosecution.

- **Bail as a Rule**

Courts should clarify that in sovereignty-related speech cases under the Bharatiya Nyaya

⁶³ Law Commission of India, *279th Report*, recommending precise definitions to prevent "vague and broad" interpretation of sovereignty laws.

⁶⁴ Targeted Justice: Compensating the Wrongfully Accused, (NLU Delhi Press, 2024).

Sanhita, where no violence is involved, bail should normally be granted to avoid the misuse of legal process as punishment.

D. Training and Awareness for Police Authorities:

- Proper training of police authorities is essential to protect freedom of speech. Officers handling speech-related complaints should be aware of the constitutional limits on restricting expression under the Constitution of India to avoid unnecessary arrests or investigations.
- Training should also focus on the chain of custody and technical safeguards like hash values under the Bharatiya Sakshya Adhiniyam to ensure digital evidence is handled properly and prevent manipulation.

E. Safeguards for Media and Public Discourse

- The media plays a vital role in a democracy by informing the public and ensuring accountability. Therefore, journalists and media organisations must be able to work without fear of unnecessary legal action.
- Strong legal safeguards and responsible enforcement of speech laws are essential to protect investigative reporting, political commentary, and public debate, thereby strengthening democratic participation and transparency under the Constitution of India

Final Conclusion

India's new criminal law framework seeks to modernise the justice system while addressing challenges such as digital communication and national security. However, the right to freedom of speech and expression under the Constitution of India remains a core democratic value that must be protected.

The introduction of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam represents an important reform. Yet, their real impact on free speech will depend on careful judicial interpretation and responsible enforcement to ensure that legitimate criticism and democratic debate are not suppressed. Maintaining a balance between national security and constitutional freedoms is essential for preserving the rule of law and democratic discourse.

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