

Colonial Legacy and Constitutional Tension: A Critical Study of Section 152 BNS

Sakshi Alang

Law College- UPES

Abstract

In this article, I will analyse how Section 152 of the Bharatiya Nyaya Sanhita is being used in India to restrict freedom of speech rights and maintain public order. I will look at the way that police have been ordered to maintain order through this section as part of providing a means for maintaining colonial state domination. As part of this analysis, I will describe the manner in which Section 152 has been drafted. I will provide a summary of the manner in which this section has been applied by police and the manner in which it has been interpreted by courts. The finding indicates that there is a significant risk to freedom of speech rights due to how broadly Section 152 is written and also, due to the significant restrictions on police that exist in relation to arrest made under this section and on arrest made under bailable offences. Historical enforcement patterns, case law and examples of enforcement in other countries indicate that there are a number of long-standing issues with the manner in which Section 152 has been interpreted, including the use of vague language, an absence of clarity regarding its intention and an increasing potential for abuse. The author additionally discusses the measures that will be necessary to achieve fairness and justice in this area, including clearer drafting of police powers, proper protections of rights for citizens, checks and balances to ensure adjudication of actions taken by police, and oversight of everyone involved in the exercise of police powers. The paper concludes by stating that while Section 152 supports national security objectives, it should only be used in conjunction with the constitutional rights vested to an individual and that these rights will only be upheld through the principles of fairness, proportionality, and the rule of law.

1. Introduction

Section 152 of the BNS framework is an important provision that finds itself in a very sensitive situation as it attempts to balance two major constitutional goals. These goals are the State's obligation to ensure public order and the individual's right to free speech. The provision has gone through various legal and administrative practices and ethical debates, which at times were very heated, since its very inception. Its original purpose to keep the State from being disordered and to ensure public peace makes it a typical regulatory goal. But, through its language, ways of enforcement, and judicial dealings, the provision has been slowly creating a scenario where public order regulation in its so-called legitimate form is colliding with the constitutional guarantees of speech, due process, and democratic participation. The paper begins with a very basic yet urgent normative statement that Section 152 will only be able to serve the public interest if its enforcement is very narrowly defined, highly protected by procedures, and very clear to both

the enforcers and the public. Without such restrictions, the provision will more than likely give the State the power to make random and extensive interventions in the public debate. This is a very real result and not just a theoretical one: the uncertainty of the law and the wide range of its enforcement lead to the actual chilling effects on dissent, unequal civil liberties protected, and ultimately, the loss of public trust in the order-maintaining institutions. The following introduction clarifies the aims of the manuscript, traces Section 152 through its legal and historical player, and finally sketches the analytical viewpoint and the contributions of the research. First, the paper discusses the background of S 152 and how the decisions made in the past have shaped the present understanding and the use of the section by means of broad prohibition language, low-level evidential standards, and restricted procedural safeguards.

The genealogical perspective of S 152 shows that numerous of the outlined structural characteristics derive from an old administrative method more concerned with oppressing dissent than with safeguarding constitutional liberties. Furthermore, the study adopts a doctrinal and jurisprudential view to assess how the courts have understood and shaped S 152. It also considers identifying and tracing trends in the case law concerning the following recurrent issues: the necessary mental fault (*mens rea*) for culpable conduct, the legal boundaries of content-based restrictions, the criteria for the assessment of immediacy and closeness of harm, and the kinds of remedies and reviews that are accessible. The analysis reveals that the courts have reached different conclusions for the same factual situations and that this division is often caused by the vagueness in the statutory language and the absence of a uniform proportionality test.

The empirical research into enforcement practices is finally augmented by some comparisons from jurisdictions where public order legislation similar to that of S 152 has undergone reforms. Quantitative and qualitative findings are combined to depict the use of Section 152 throughout administrative and criminal settings, exposing the characteristics of selective enforcement, criminalization of protest and political expression, and the use of procedural shortcuts that lead to the risk of losing one's freedom. Such cases are not presented as prescriptive patterns of action but rather as practical models demonstrating that clearer drafting, explicit *mens rea* requirements, and procedural safeguards can effectively counteract the influence of arbitrariness while simultaneously permitting the exercise of legitimate state authority. The study applies a methodology that consists of a combination of close statutory interpretation, systematic review of leading case law and targeted empirical analysis. Thus, the mixed method approach provides an avenue to connect doctrinal ambiguities with ground-level enforcement effects and to evaluate reform proposals against actual administrative incentives. Two principal contributions are made by the research. On the level of analysis, the study disentangles the doctrinal ambiguities responsible for the conflicting judicial outcomes and provides a principled framework for the constitutional interpretation of Section 152¹ within the proportionality specificity perspective. The article presents a variety of positive changes, mainly in the areas of rewriting the offence to narrow it down and making the mental elements of the offence clear, coming up with a proportionality test, and bringing in due process protections to a greater extent through notifying, allowing to argue one's case and a full and impartial review by a Judge.

The author concludes that the overlap of public order and constitutional rights is best solved by legislation that is well founded and thoroughly considered in the courts context and, at the same time, through reforms that create statutory definitions and processes that allow for rational enforcement to take place without

¹ Bharatiya Nyaya Sanhita, 2023, Section 152

impacting the steady maintenance of democratic discourse and the rule of law. Spanning in three sections; the statutory and historical context, the examination of current judicial decisions concerning these matters, and the proposed reforms.

2. Statement of the Problem

Section 152 of the Bharatiya Nyaya Sanhita Act privileges a new approach to crimes allegedly threatening to compromise the State's sovereignty, unity, and integrity crimes that were historically categorized under the rubric of sedition. While Section 152 has the same functional role as the sedition statute, its drafting style, types of liability, and categories of procedure create greater risk of arrest and pre-trial detention than the earlier sedition statute did. This paper will substantively and doctrinally assess how Section 152 strikes a balance between the State's public-order objectives and an individual's constitutional right to freedom of speech and expression and due process. The evaluative framework is shaped by several factors.

To begin with, the expansive nature of the *actus reus* language in Section 152 encompasses both communicative and non-communicative activities, thereby raising the issue of vagueness. This vagueness creates uncertainty for both the public and law enforcement and leads to confusion in judicial interpretation. The statutory *mens rea* is phrased in two ways ("purposely" or "knowingly") and is further clouded by the provisions regarding "excitement" or "attempting to excite" a riot or rebellion. It is unclear whether the standard for conviction under Section 152 is a specific intent to commit the act of secession/rebellion, or whether negligence/constructive knowledge would be sufficient for conviction. Third, the fact that the majority of the Sections 152 offences have been procedurally classified into cognizable and non-bailable² categories has only served to further increase the power of the police and prosecutors and thus to create a greater risk that the arrest of dissenters albeit indirectly might chill their practices even before the matter had been decided in court. Fourth, patterns of early enforcement and litigation disclose that the use of the law has not been consistent across different regions and even in cases involving different facts, thus it points to a situation where enforcement has been left to discretion and the norms of the judiciary were uneven.

Lastly, the comparative and doctrinal methods that are necessary to bring public order regulation in line with Article 19(1)(a)³ and procedural safeguards are still not fully developed in the literature and in court decisions, thus there is an interpretive gap at a time when judges are asked for clarification. The three discussed attributes are the foundation of problems that are closely intertwined and have a negative impact on the constitutional democracy: (a) legal indeterminacy that indicates that moot statutory wording brings about unpredictable enforcement; (b) disproportionate pre-trial sanctions that lead to arrest and tagging of political protest as non-cooperating; and (c) institutional incoherence where the provisions of the law, the incentives given to the prosecution, and the court's actions do not conform to a consistent framework of proportionality.

The analytical framework of this study is set up with several interrelated dimensions that mirror the conventions of research in law that is very meticulous. Initially, the goals of the research are posed as an in-depth analysis of the statutory structure of Section 152 together with its *actus reus*, *mens rea*, and explanatory clauses with the objective of uncovering doctrinal confusions that are influencing both

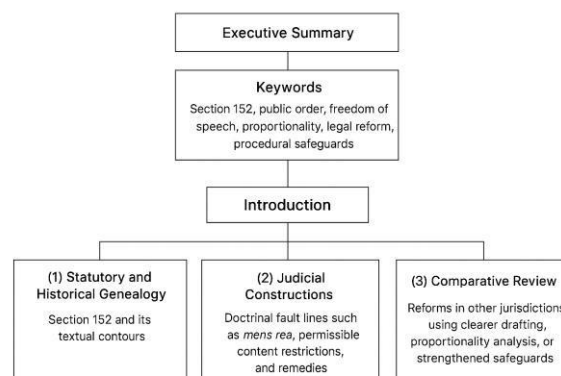
² Ministry of Home Affairs, *Bharatiya Nyaya Sanhita 2023 – Explanatory Notes*, Official Gazette.

³ Constitution of India, Articles 19(1)(a) and 19(2).

enforcement and adjudication. The study further seeks to inform about the empirical nature of enforcement via scrutinizing the recorded FIRs (First Information Reports), bail orders, and writ petitions and to observe and analyze the patterns of arrests, judicial review, and regional differences over time. Additionally, through analyzing how judges in the High Courts and new Supreme Court petitions dealing with enforcement respond, the study intends to highlight judicial trends regarding the factors of intent, imminence, and the limits of political expression that are acceptable.

Lastly, this project will survey comparable legal models to identify drafting methods, proportionality analyses, and protective measures that can potentially be adopted within the Indian context. The principal inquiries for this research will address the two aspects of culpability of Section 152: (1) the mental state required to be liable, and (2) the implications of being classified as both cognisable and non-bailable. Moreover, can the principles of proportionality, least restrictive option analysis, and precision in statutory drafting be applied to align Section 152 with the rights recognised in Article 19? Lastly, what insights can be gained from other jurisdictions, such as the Canadian proportionality analysis, the South African law enforcement jurisprudence, or European human rights, to inform how the interpretive task is to be undertaken under India's Constitution?

The research shall proceed based on several working premises. It works on the assumption that the scope of the legal definition, especially its two mental elements and wide-triggering clauses, lowers the bar for constructive liability and therefore, leads to high chances of arbitrary arrest. Moreover, it also argues that the procedural categorization of the offence has a significant impact on the dissent and hence, it favours enforcement over political expression. At the same time, it claims that a purposive judicial method based on the principles of proportionality and narrowly defined mental element can greatly lessen the overbreadth without losing the State's capacity to handle the actual threats. This research employs the methodology that is a combination of different approaches. The research will do a doctrinal analysis of the statutory text and judicial decisions and will at the same time support this with empirical observations drawn from reported enforcement actions. It conducts a comparative legal analysis to reveal the principled mechanisms that other jurisdictions have adopted in the mitigation of the conflict between public order and constitutional freedoms.



The examination focuses on the interaction between the old Section 152 and criminal procedure and constitutional review. The relevant parts of the BNS are marked whenever needed, but the question of the implementation of Section 152 still holds. One of the main problems is that there are no full official enforcement figures for the crimes of the BNS era, which is a problem that is made worse by the fact that the interpretation of the law is still changing as the Supreme Court has not yet ruled on a number of significant issues. Among other things, the article discusses various reforms like statutory redrafting to clear up the mental element and restrict the definitional scope of the prohibited acts; procedural safeguards improvements such as the early judicial supervision and presumption of bail in political expression cases; and judicial clarification of standards that require proportionality testing, proof of harm's immediacy, and the strict scrutiny of the State's assertions about national security. The study also discusses other alternatives such as oversight mechanisms, including the independent prosecutorial review and the data transparency requirement. The project aims to provide a clear doctrinal framework for evaluating Section 152 in line with constitutional requirements and to suggest empirically based reform proposals that can reconcile the needs of public order and the rights of democratic freedom through this analysis.

3. Argument & Analysis

Restatement of the Thesis and Analytical Frame

The goals and results of Section 152 are intended to promote and protect the state's integrity, sovereignty, and unity. While this is a legitimate constitutional aim, the language in Section 152 is overly broad, it lacks definition (*mens rea*) and it permits the authorities to arrest and detain persons without providing sufficient procedural safeguards to limit the infringement on individual freedom of expression, and thereby create the potential for arbitrary application. This study concludes that in order to comply with Article 19 of the Constitution, there needs to be a principled interpretation of Section 152, in light of the concepts of immediacy and proximity, and reform of the statute is necessary to refine the definition of *mens rea*, to create substantially smaller definitional parameters, and to put processes in place to limit the chilling effect that arrests are having on freedom of expression.

Textual Anatomy: The Statute as Written

The operative language criminalises conduct that "excites or attempts to excite" secession, armed rebellion or subversive activities and enumerates several modalities through which such conduct may be manifested, including speech, signs, visible representation, electronic communication and the use of financial means. By enumerating a number of modalities, this kind of drafting extends the reach of the provision beyond traditional violent conspiracies to a broad array of communicative and non-communicative acts implicated in democratic politics. The presence of an Explanation excluding "ordinary lawful criticism" does not, however, yield an operational rule for the Court: the text fails to indicate whether the exclusion is best conceived as an interpretive guideline, an evidentiary presumption or an affirmative defence, and hence, its protective value remains uncertain. The *mens rea* (criminal intent) of "purposely or knowingly" is a combination of two levels of intent - specific intent and general intent/knowledge. There is uncertainty about whether a person must act with specific intent⁴ to secede or whether they can act with a lesser degree of cognitive awareness. Even more confounding than these uncertainties in the law are the laws governing

⁴ Bhatia, Gautam. *Offend, Shock, or Disturb: Free Speech under the Indian Constitution*. Oxford University Press, 2016.

procedures for prosecution. Due to the classification of multiple "Sec. 152" crimes as cognizable and non-bailable, charges are afforded greater importance within the criminal justice system because police and prosecutors may arrest without prior judicial approval and have more power to contest the defendant's release on bail.

Doctrinal Pathologies and Constitutional Risk

This statute has been written in a way that will cause three issues for every judicial opinion concerning this statute if either an issue appears before an appellate court (1) an Issue of Overbreadth and a Separate Issue of Vagueness; (2) The Issue of Mensrea Stepping; and (3) The Issue of Strict Proximity

The fact that the language used in this statute is so broad will create difficulties because words/phrases like "encouragement of separatism" are not defined objectively, nor do they provide any boundaries; therefore, it may very well be interpreted to include the right to & defend the right to advocate for peaceful advocacy, engage in respectful debate (academic), and/or participate in all forms of political expression, including non-violent positions, therefore resulting in denial of constitutionally protected free speech in circumstances where there is no existing, realistic, reasonable threat of occurrence of public disorder.

On the other hand, when it comes to mensrea issues/concerns, the mental component contained in the definition of the mental element—"knowingly"—is so ambiguous that it may lead to what's referred to as "mensrea slipping". If "knowingly" is to be interpreted broadly (generally), any lawful, yet provocative "speech" would be viewed in a manner consistent with criminalized "intent to incite" (as if the act of committing an unlawful act were an unprotected category of free speech (expression)), thus negating existing constitutionally protected speech because there is no "proximate" or "imminent" relationship (nexus) between speech and actual public disorder.

The U.S. Supreme Court has consistently held to a "strict" "proximity" between speech and public disorder. In fact, in the case of *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574⁵, the Court stated that speech could only be lawfully restricted by the State if it could prove that the 'danger' of public disorder would have to be at "the time." The Court went on to clarify that "Freedom of Expression" cannot be limited or restricted in any way, ever, simply because it "may" create discomfort or some level of disagreement. The interpretation of this principle would imply the strict reading of section 152 and therefore would necessitate that the courts will have to be able to clearly identify and demonstrate that a person acted in a manner that could directly or imminently cause actual harm before criminalizing that person. The third effect of these procedural overlays, cognizability and non-bail restrictions, creates the "chilling effects" of arrests: the empirical evidence from "sedition-like" regimes, even in circumstances where an arrest and remand are made without a corresponding conviction, are likely to remain a significant deterrent to any person's involvement in public discussions because of the ongoing social and economic costs (both financially and reputation-wise) incurred as a consequence of an arrest and remand, notwithstanding the final adjudication of the arrest and remand. The effects of these pathologies lead to legal uncertainty, promote fragmentation of adjudication across jurisdictions, and result in a de facto suppression of expression before the court can ever determine guilt or innocence in a substantive manner.

⁵ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574

Normative Interpretive Strategy and Remedial Proposals

The resolution entails the idea of a simultaneous policy of judicial restraint and legislative clarification. In a judicial sense, courts need to interpret "excites or attempts to excite" in such a way that it will be a requirement for the impugned conduct to be linked through a demonstrable, objective, and proximate nexus to a realistic risk of secession, armed rebellion, or imminent large-scale disorder; mere offensiveness, rhetorical excess, or abstract potential to mobilize sentiment should not be enough. The men's rea should be interpreted in a way that the core culpable state is specific intent to cause the prohibited outcome with "knowingly" limited to cases where prosecution can prove the accused has knowledge of the imminent likelihood of incitement rather than just the knowledge of provocative content. The statutory Explanation excluding ordinary criticism should be operationalised as an evidentiary presumption favouring protected political expression, thereby placing the burden on the State to prove both specific intent and proximate danger before the presumption can be displaced. Procedurally, courts should insist on pre-trial gates that prevent arrest from becoming the default instrument of control: magistrates should be made to apply rigorous prima facie screening before authorising custodial arrest under Section 152, prosecutorial screening or supervisory signoff ought to be mandated for politically sensitive invocations, and mechanisms for expedited judicial review and early disclosure of material linking the accused to concrete plans of subversion ought to be introduced to avoid unnecessary pre-trial incapacitation. Legislative reform should pursue complementary aims. The changes to the current draft need to clearly distinguish between substantive violent or conspiracy-type actions directed against the state, and expressive types of conduct that form part of democratic contention. To effectuate this difference, the text must be explicit with respect to the intention of the legislature to capture financial or electronic facilitation by requiring evidence of an intentional facilitation of a close temporal basis to a violent or secessionist enterprise. Statutory/procedural reform should also be considered concerning statutory prosecutorial certification requirements for filings under §152, presumptions in favour of bail in cases primarily involving expressive conduct, and mandatory public reporting of filings and dispositions to facilitate oversight and empirical evaluation of the relevant statutes.

Enforcement Dynamics and Proportionality Considerations

Initial enforcement trends demonstrate swift application in both digital and physical settings: controversial posts on social media or occurrences of community unrest lead to the registration of a summary FIR followed by swift police action. The practical option of arrest with cognizance and being non-bailable implies that the very structure⁶ of investigation and detention is coercive in nature, thus influencing liberty even before trial. "An interim order issued by the Supreme Court in *S. G. Vombatkere v. Union of India*, (2022) 7 SCC 433⁷ (interim order, May 11, 2022) has supported these concerns. The Court, by almost putting a stay on the IPC Section 124A, recognized the danger of misuse and the need for stringent constitutional scrutiny. This rationale is directly relevant to BNS Section 152, where the broad wording and powerful procedural powers of the legislature extend similar risks unless narrowly interpreted." The penalties authorized by law that include life sentences or long jail terms lead to greater complexity regarding proportionality issues: the overlap of very high statutory limits and strong arrest practices guarantees that the judicial process can turn out to be the first and the most important form of social

⁶ The Indian Express. "Centre Introduces Bharatiya Nyaya Sanhita to Replace IPC." 2023.

⁷ *S. G. Vombatkere v. Union of India*, (2022) 7 SCC 433

sanction, thus imposing disproportionate costs on journalists, human rights defenders, and ordinary people involved in political expression. Proportionality requires that the criminal justice system only impose the most severe penalties on those who demonstrate clear and certain intent to commit violence, with an interim sanction imposed if intent to commit violence is demonstrated in a more limited way such as by entering a business (in which case there is more than one victim).

Accountability and Transparency Institutional

For actual safeguards with respect to constitutional principles, there is a need for institutions overseeing the whole process, ensuring transparency. Mandatory public reporting of Section 152 filings, prosecutorial screening decisions, and final dispositions will enable empirical oversight, facilitate legislative and civil society scrutiny, and allow the detection of patterns of selective enforcement. An institutionalized requirement for senior level or independent review of politically salient prosecutions would dampen frontline incentives to file cases opportunistically. Procedural safeguards, including statutory bail presumptions for expressive conduct, early disclosure obligations, and expedited judicial review of contested arrests, will reduce arrest driven suppression and restore a balance between public order objectives and individual constitutional rights.

Comparative note: IPC s.124A (sedition) v. BNS s.152

Section 152 of the Bharatiya Nyaya Sanhita is best read as a legislative reconceptualisation of the regulatory logic that operated under IPC Section 124A. In removing the colonial nomenclature "sedition"⁸ and framing the proscribed conduct as "acts endangering the sovereignty, unity and integrity" of the State, the BNS consciously eschews colonial legal legacies, but in functional terms carries forward the State's capacity to criminalise a wide spectrum of expressive and non-expressive conduct perceived to threaten constitutional order. Two structural features of s.152 merit emphasis. First, the statute enumerates in express terms contemporary modes of transmission and support electronic communications, "use of financial means," and other nonspeech conduits thereby pushing the statutory perimeter well beyond the words, signs and visible representations that dominated classic sedition prosecutions. Secondly, the provision employs disjunctive mens-rea formulations such as "purposely or knowingly", a drafting choice that risks broadening the culpability standard unless read in light of established limiting doctrines.

4. Comparative analysis and implications

In *Kedar Nath Singh v. State of Bihar*⁹ the Supreme Court upheld the constitutionality of s.124A¹⁰ only by reading that section narrowly: even mere criticism is protected, and only speech intended, or likely, to produce imminent violence or public disorder falls within the proscribable core. That judicially fashioned proximate harm test has been the principal constitutional safeguard against overreach. The BNS's textual adjustments, however, press on each limb of that safeguard. The enlargement of the catalogue of means raises the number of acts that could be examined and penalized; the disjunctive mens-rea endangers the treatment of mental states lower in the hierarchy. As an instance, the awareness of possible consequences is viewed as criminal and therefore, the heightened penalties and the class of crimes that are non-bailable and the conscious and cognizable ones, the classification that is aware of and not bailable, all these

⁸ Law Commission of India, Report on Sedition (Consultation Paper No. 267), 2018.

⁹ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

¹⁰ Indian Penal Code, 1860, Section 124A.

materially enhance the prosecutorial power during the investigation and pretrial phases. The outcome is not merely a larger statutory net on paper but also a real increase in coercive power through arrests, detention, and the social and economic burdens that the accused have to bear, which have frozen dissent long before any judicial determination on the merits historically. These shifts interlock three doctrinal risks. First, overbreadth and vagueness: capacious phrases such as “endangering the unity” or “encouraging separatist feelings” are susceptible to expansive interpretation and selective enforcement; absent judicially enforced limiting constructions they may sweep within penal reach legitimate advocacy, academic critique and programmatic political activity. Second, mensrea dilution: if courts treat “knowingly” as independently sufficient in speechimplicating cases, the result will be a significant erosion of the high threshold required to protect political expression under Article 19(1)(a).¹¹ Third, evidentiary and technological hazards: modern modes (digital communications and financial transfers) create specific evidentiary challenges provenance, chain of custody, metadata interpretation and probabilistic inference which, if left unregulated, create fertile ground for weak or arbitrary prosecutions based on unreliable technical traces rather than probative proof of intent to incite imminent unlawful violence. Whether s.152 ultimately narrows or widens constitutional protections will depend on institutional counter weights. The judiciary must do more than pay lip service to Kedar Nath Singh; it must operationalise its tests in relation to the enumerated modern modes, insist on a demonstrable and proximate causal nexus between the accused’s conduct and an imminent risk of violence or disorder, and construe ambiguous mensrea language in favour of the higher culpability standard where expression is implicated. Courts should also require particularised allegations in FIRs¹² and chargesheets that explain, with context, how the alleged acts met the statutory threshold; generic or boilerplate claims of “endangering the State” ought not to justify arrest or non-bailable custody. Procedurally, both judicial authorisation for intrusive investigative steps in politically sensitive matters and rigorous evidentiary safeguards for digital and financial material including clear chain of custody rules and independent verification mechanisms are essential to prevent technological modernisation from substituting for substantive proof. In case the aim is to discover a suitable legislative arrangement that would find a midpoint between the security and the rights of the citizens, then the first option of the legislator must be precision and not amplitude: a very accurate and specific drafting that delves into the particulars of culpability, that significantly distinguishes five criminal behaviors from the lawful advocacy and association, and that allows for putting in place procedural checks to stop investigative excesses. In this case, s.152 would not only be regarded as sedition's functional successor but it would also be seen as a successor with enhanced powers that still features sedition's historical traits like selective enforcement and chilling effect and meanwhile allowing the State a greater practical reach during the pre-trial period. To put it shortly, s.152 is a revamped statutory tool that meets the challenge of new kinds of harm and at the same time, due to its interpretative and procedural features, raises serious constitutional issues. The supreme court needs to keep a very attentive eye on the constitutional value of political speech and make sure that the enforcement of the tests of proximate harm and imminence is strict, also there will be a restrictive reading applied to disjunctive mensrea when speech is concerned, so the charging stage will need to be heightened particularity and, at the same time, there will be very robust digital and financial evidence safeguards which are all aspects that will be coupled with judicial gatekeeping. If these institutional constraints are not implemented, then the rebranded offense

¹¹ Constitution of India, Art. 19(1)(a) and Art. 19(2)

¹² Times of India, “Merely expressing support for Pak without India ref no offence: HC,” (Allahabad, 2024).

might aggravate the very problems that have been mentioned already in respect to sedition law: overreach, chilling of dissent and disproportionate pretrial coercion. Seditions were not much of an issue until the case of *Queen-Empress v. Jogendra Chunder Bose* (1892)¹³ came up, when the editors of a Bengali magazine faced charges of sedition for publishing a British rule the Americans had commented on. The High Court of Calcutta, very liberally and widely, regarded sedition as the very broadest legal category and hence ruled that writings causing "disaffection" even without inciting violence could be subject to persecution. The ruling was a reflection of a colonial practice that viewed political criticism as a possible threat to state authority. The case itself is a classic one to show how the courts resorted to using subjective and vague terms such as "hatred," "contempt" and "disaffection" towards the government, to reach a judicial position that usually equated dissent with an offense. This historical fact has significance due to the fact, as shown in the above Section 152 BNS, that the vagueness of that law and the extensive police discretion involved, whereby the threat of legitimate political dissent being stifled really do have the same rate interpretive paradigm first proposed in this case, are somehow the risks of criminalization associated with that law.

Policy Considerations and Strategic Directions

The goal here is to make Section 152's legitimate public order function compatible with constitutional protection for expression by operationalizing high level principles into draftable statutory text and enforceable institutional practice. The measures stated in the following sections are phrased in precise, operational language suitable for legislative drafting, prosecutorial rule making and judicial application.

Statutory recalibration- mens rea, causation and definitional clarity: amend the culpability clause so criminal liability attaches only where the accused acted "with the specific intent to incite or materially facilitate secession, armed rebellion, or imminent violent public disorder." Make proximate and imminent harm an explicit element of the offence by requiring proof that, in the particular factual matrix, the accused's conduct created a real, immediate risk of unlawful violence or public disorder causally linked to that conduct. Replace capacious terminology with narrowly defined statutory meanings for terms such as "endanger," "subversive activities" and "encourage," and expressly exclude protected forms of expression peaceful advocacy, academic argument, satire, artistic expression and bona fide journalism. Provide for a graduated response architecture that reserves criminal sanction for high intent, violence-linked conduct while authorising administrative or civil remedies (targeted fines, regulatory orders, notice-and take down procedures) for lower-level harms that do not meet the criminal threshold. Require elevated prosecutorial clearance (written sign-off by the State Advocate General or Attorney-General) before a Section 152 prosecution is commenced. Early judicial control and pretrial safeguards: require mandatory, time bound magistrate screening immediately after registration of a Section 152 FIR. The magistrate must undertake a prima facie review within a short statutory period (say, forty-eight hours), render written findings on why the proximate harm standard is met and record the factual basis that justifies any further custodial detention. Where the charged conduct is expressive, adopt a rebuttable presumption in favour of bail; detention may follow only where the prosecution leads admissible evidence to show specific intent and imminent risk. Enhance charge sheet particularity requirements so that prosecutors must specify the exact acts complained of, the contextual facts relied on, the causal link to alleged harm and the mens rea pleaded;

¹³ *Queen-Empress v. Jogendra Chunder Bose* (1892)

boilerplate or conclusory allegations must not suffice to justify custody or continued prosecution. Evidentiary standards and handling of modern modes: codify clear rules for digital and financial evidence. Statutory or procedural requirements must include documented chain of custody from the point of collection, forensic verification prior to reliance at the arrest stage where practicable, and explicit limitations on probabilistic or metadata only inferences without corroboration.

Specify admissibility safeguards requirements such as warrants, validated forensic processes, independent verification and require courts to assess digital evidence for reliability and provenance before allowing it to sustain coercive steps. Institutional capacity, guidance and operational protocols: publish model bench and prosecutorial guidelines that explain the high threshold for criminalisation specific intent and proximate harm the evidentiary standards required for online and financial material, and the preference for proportionate, non-criminal remedies where applicable. Put in place structured training programmes for police, prosecutors and magistrates on freedom of expression jurisprudence, contextual analysis of political speech, and technical standards for evidence collection and preservation. Ensure that the magistrates called upon to perform early screening receive specialized continuing judicial education to make decisions that are context sensitive and legally rigorous. Transparency, accountability and external review: compel periodic public reporting of all Section 152 FIRs, arrests, prosecutions and adjudicatory outcomes with disaggregation by region, subject matter and prosecuting agency. Establish an independent oversight body composed of legal practitioners, retired judges and civil society experts that audits enforcement patterns, identifies instances of selective or abusive use, and issues remedial recommendations to prosecutorial authorities and the legislature. In the case of politically delicate matters, a public justification of reasoned decision making should be demanded wherever custody rights are awarded. The drafting and execution then become a corporate affair: statutory provisions in brief, harm-focussed language, and procedural guidelines plus training tools to complement every textual alteration so that legal standards are not mere fantasies but realities. If administrative options are utilized, they should be listed and the channels for appeal and review should be established to ensure that the administration does not exercise its discretionary powers in an arbitrary manner. Furthermore, consider the possibility of sunset or review clauses for new evidentiary techniques to permit ongoing monitoring of their practical effects and burdening impacts.

5. Conclusion

The replacement of IPC Section 124A with BNS Section 152 is a huge step in the direction of India's constant search for legal protection of national security that is not at the same time a ramming of the constitutional right to speech down the people's throats. If the formal rejection of the word "sedition" is an abstract loosening of the colonial yoke, the issue at the heart of it remains the same: the threat of vagueness, the possibilities of executive abuses, and the constant battle between the affirmation of authority and the safeguarding of democratic dissent. The comparison points to the fact that the constitutional legitimization of such an offence is not dependent on its name but rather on the specificity of its elements, the strength of its procedural safeguards, and the ability of its institutional framework to restrict freedom of choice. The crime against public order in modern times must be based on standards of guilt that are narrow, very carefully designed and justifiable. A condition of special intention to provoke or materially help secession, armed uprising, or imminent violent disorder guarantees that liability includes only actions that are a concrete threat to the constitutional system, without including criticism, non-dominant speech, or unpopular political advocacy. The incorporation of a close injury condition turns the

rule from one that can quench only discontent into one that is tweaked to react only to real, urgent dangers. Likewise, lightly adjusted legal definitions and explicit exemptions for non-violent advocacy, academic investigation, satire, and journalism are crucial for preventing the very kinds of chilling effects that sedition enforcement historically encountered. However, the legal text is only one aspect of constitutional compliance, and the other is its implementation. The criminal process will not turn into a punishment by just making sure the early judicial screening is done, the evidentiary thresholds for digital and financial material are set higher, bail is presumed in cases of expressive conduct, and decisions are reasoned, reviewable ones. Regular public disclosures along with independent supervisory institutions grant systemic accountability and allow detecting misuse trends beforehand. The duo of regular public disclosures and independent control supports the entire system's accountability and the detection of misuse trends when they are still at their nascent stage. When these reforms are accompanied by the continuous training of police, prosecutors, and magistrates on freedom of expression law and the latest evidentiary methods, they help create an institutional culture that is aware of both the limits and the degree of a security-oriented offence. The aforementioned reforms in the doctrinal, procedural, and institutional areas have proved that Section 152 can deal adequately with the real threats to sovereignty without bringing back the historical disadvantages of sedition. A public order framework that is compatible with human rights is not a fantasy but rather a matter of legislative and administrative determination. The meticulously-designed Section 152, which is the state can protect itself without choking off the democratic space where the Constitution thrives. Thus, the revision of Section 152 not only entails repealing a colonial-era law but also the establishment of a new model that would bring about the right balance between security needs and the normative commitments of a constitutional democracy.

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Annexures

Annexure A: Full Text of Section 152, Bharatiya Nyaya Sanhita, 2023.

Annexure B: Interim Order (11 May 2022) in S. G. Vombatkere v. Union of India, (2022) 7 SCC 433.

Annexure C: Sample Enforcement Data — FIRs Registered under Section 152 BNS (2023–2024).