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Colonial Origin and Modern Interpretation of Sedition Law: A Constitutional Analysis of Freedom of Speech in India

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ABSTRACT
The study provides an in-depth investigation of India's sedition law through a complete constitutional examination of its origins which emerged from colonial times in Section 124A of the Indian Penal Code 1860 (IPC) and developed through Section 152 of the Bharatiya Nyaya Sanhita 2023 (BNS). The research uses multi-dimensional approach, incorporating doctrinal, historical, comparative and empirical methods to investigate how state security needs conflict with the fundamental right to free speech and expression which Article 19(1)(a) of the Constitution of India 1950 protects. The paper examines landmark jurisprudence, most notably Kedar Nath Singh v. State of Bihar (1962) that attempted to constitutionalize sedition by tethering criminal liability to an incitement to violence standard. The study analyzes three judicial decisions which include Balwant Singh v. State of Punjab (1995), Vinod Dua v. Union of India (2021) and the Supreme Court's unique 2022 ruling which suspended Section 124A abeyance pending legislative reconsideration. Through comparative analysis with the United Kingdom's 2009 seditious libel abolition with the United States' Brandenburg imminent lawless action standard to demonstrate that India's sedition laws under IPC and BNS face constitutional doubts while enabling executive abuse and violating essential democratic free speech rights. The paper uses NCRB data and Law Commission Report No. 279 (2023) and civil society research to present specific reform recommendations which include repealing Section 152 BNS or replacing it with a restricted "incitement to unconstitutional violence" offense that meets global human rights requirements.

Keywords: Sedition, Section 124A IPC, Section 152 BNS, Article 19(1)(a), freedom of speech, Kedarnath Singh, Constitutional Democracy, Chilling effect, BNS reform

1. Introduction

Only a few legal provisions exist in the Indian statute book which carry more historical and ideological weight than the law of sedition. The British colonial government created Section 124A of the IPC in 1870 to make it impossible for organized political groups to challenge their imperial authority. Bal Gangadhar Tilak was twice convicted under it, and Mahatma Gandhi famously accepted prosecution under it in 1922, referring to sedition as "the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen"[1]The British used it to silence figures who now hold the pantheon of Indian nationalism.

After independence, constitutional farmers encountered difficulties when trying to integrate existing sedition laws with their new fundamental rights-based constitution. The result was unsettling: Article 19(1)(a) protects free speech and expression rights but Article 19(2) permits legal restrictions on those

[1] Bhatia, 2016, p. 147

rights through "public order" and "the security of the State" justifications. These clauses created a contentious space for sedition.

In Kedar Nath Singh v. State of Bihar [2], the Supreme Court's Constitution Bench maintained Section 124A as a legitimate legislation by limiting its application to speech that incites violence and civil unrest. With this result, the legal war came to an end. According to the real facts, sedition prosecutions now surpass the Kedar Nath threshold, which provides legal protection by imposing restrictions that obstruct civil society activities, halt media operations, and silence critical voices.

The Union Government had to review Section 124A because the Supreme Court suspended its implementation in May 2022. The IPC was repealed by BNS Section 152, which went into effect in 2023. The new section expanded the existing law because it introduced a new element which authorities believed to be a rebranding of sedition under another name. The current change requires immediate assessment because it has developed into an important constitutional matter which needs evaluation of India's entire sedition law framework.

The paper presents content through a structured sequence of sections which begin with Section 2 that provides an overview of existing literature. The study implements its research methodology through the methods explained in Section 3. The main body of the work extends from Section 4 to Section 10 which presents research on various topics including colonial ancestry constitutional design judicial evolution current circumstances empirical facts and comparative viewpoints and normative evaluation. The contents of Section 11 present the analytical and discussion components while Section 12 contains proposed changes to be implemented.

2. Literature Review

The academic literature on Indian sedition law spans constitutional law and legal history and political science and civil liberties research. The paper needs to present its main research contribution after first explaining its major research areas.

2.1 Historical and Colonial Studies

According to Raghavan (2010) the development of Section 124A began with Macaulay's Initial draft of the IPC and progressed through two stages of revisions that followed Tilak's 1890s journalistic work and the Wahabi trials of the 1860s. The colonial authorities adopted sedition as their primary method of suppressing opposition to British rule which they used to prosecute people who made statements that created widespread public resistance against them. The colonial censorship system which controlled both the Press Act and the Vernacular Press Act was analyzed by Chandrachud (2020) through the examination of the sedition clause. Bhatia (2016)[3] provides the most complete constitutional analysis of Section 124A which he argues in Offend Shock or Disturb was unconstitutional since India gained independence because the Kedar Nath Supreme Court decision created an imperfect solution for constitutional issues.

2.2 Constitutional and Doctrinal Scholarship

The Constitution only allows reconciliation of sedition law through its application of incitement-to-violence standards according to Seervai's (1991) structural interpretation of Article 19(2). Jain (2018)[4]

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[2] Kedar Nath Singh v. State of Bihar AIR 1962 SC 955

[3] Bhatia, G. (2016). Offend, shock, or disturb: Free speech under the Indian Constitution. Oxford University Press.

[4] Jain, M. P. (2018). Indian constitutional law (8th ed.). LexisNexis.

shows that the Supreme Court and High Courts have developed their criteria for "tendency to disturb public order" through two opposing approaches which resulted in judges making decisions based on their current political situation. According to Singhvi's (2019) analysis of the relationship between the Kedar Nath threshold and the Shreya Singhal (2015) framework which makes a distinction between "discussion," "advocacy," and "incitement," Shreya Singhal indirectly tightened the constitutional criterion that applies to sedition.

2.3 Empirical and Policy Research

Article 14 database (2021) "A Decade of Darkness" shows that from 2010 to 2021, most sedition cases resulted from nonviolent protests and journalism work and political opposition activities instead of violent behavior promotion. The NCRB Crime in India Reports (various years) provide quantitative data about FIR registrations under Section 124A which show a significant rise that began after 2014. The People's Union for Civil Liberties (PUCL) and Amnesty International India were among the civil liberties organizations that sharply criticized the Law Commission of India Report No. 279 (2023), which controversially suggested keeping and, in some ways, strengthening the sedition offense.

2.4 Comparative Perspectives

Raza (2018)[5] conducted comparative research which shows how India differs from the United Kingdom and the United States because the United Kingdom removed seditious libel through the (Coroners and Justice Act 2009) [6]and the United States established the imminent lawless action test through (*Brandenburg v Ohio*)[7]. The present paper uses these comparative benchmarks to assess whether India meets normative standards through its existing legal system.

2.5 Gap in Literature

Previous research investigated legislative issues which did not consider Section 152 BNS as a distinct legal statute because it was studied before the BNS was enacted. The essay demonstrates the existence of constitutional problems from Section 152 which continue from its earlier version despite the removal of "sedition" from the text.

3. Research Methodology

The research study combines four research methods through its multi method doctrinal and socio-legal approach. The research uses historical analysis, doctrinal legal analysis, comparative legal analysis and empirical analysis to study its subject matter**.**

3.1 Doctrinal Legal Analysis

The primary research method which we will use for our work involves studying established legal doctrines. The article analyzes constitutional provisions through their original texts and their contextual meaning and judicial interpretations of Articles 19(1)(a) and 19(2) and Section 124A IPC and Section 152 BNS. The case law study begins with the Federal Court decision in Niharendu Dutt Majumdar v. Emperor which took place in 1942 and continues until the Supreme Court's sedition rulings which occurred between 2022 and 2026. The complete text of judgments is examined to determine the legal principles which include obiter dicta and ratio decidendi and the judicial interpretation methods used by different Benches.

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[5] Raza, M. (2018). Sedition law in comparative perspective: UK, USA and India.
NUJS Law Review, 11 (1), 1–44.

[6] Coroners and Justice Act 2009, c. 25 (UK).

[7] Brandenburg v Ohio*,* 395 U.S. 444 (1969)

3.2 Historical Analysis

The historical sources, which include legislative discussions, colonial letters and secondary legal histories demonstrate that sedition functioned as a political repression tool. The historical methodology traces Section 124A to its colonial roots through the examination of Macaulay's 1837 draft IPC the Elphinstone Code discussions the 1870 revision and the colonial prosecutions of Tilak Gandhi and Annie Besant. The historiographical sources which include legislative debates and colonial letters and secondary legal histories demonstrate that sedition functioned as a political repression tool which lacked content-neutrality.

3.3 Comparative Legal Analysis

The research study uses restricted comparative methods to analyze specific elements of the paper. The study uses two reference points which include the United Kingdom abolition of common law seditious libel and seditious conspiracy through the Coroners and Justice Act 2009 and the United States constitutional development from *Schenck v. United States* (1919) to *Brandenburg v. Ohio* (1969). The comparison evaluates how these jurisdictions provide lessons which can be applied to study the Indian constitutional system.

3.4 Empirical and Policy Analysis

The research utilizes quantitative data from NCRB Crime in India Reports (2014–2022) and the Article 14 sedition database to identify patterns showing both legal and illegal applications of the data. The study evaluates the policy environment through an examination of Law Commission Report No. 279 (2023) and the Union Government's Supreme Court affidavits and civil society organizations' submissions which were presented during the 2022 abeyance proceedings.

4. Colonial Genealogy of Sedition in India

4.1 Macaulay's Draft and the Absent Clause

The First Law Commission of India, presided over by Thomas Babington Macaulay, delivered its draft IPC in 1837. The final 1860 IPC which became effective in 1860 did not include the clause which Macaulay created to address "exciting disaffection" against the government. British legislators doubted whether the common law offense of seditious libel had a statutory equivalent which could survive legal examination according to Raghavan 2010. The omission created a perceived gap which existed because something was not present.

4.2 The 1870 Amendment: A Weapon Against Nationalism

The Indian Penal Code Amendment Act of 1870 introduced Section 124A as a legal measure to combat the expanding Wahabi movement and the emerging nationalist press. The provision, as enacted, penalized any person who, "by words, either spoken or written, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection towards the Government established by law in British India." Colonial courts used expansive definitions for the term "disaffection" which included all forms of "disloyalty and enmity" according to their interpretation in Queen Empress v. Bal Gangadhar Tilak[8].

4.3 Colonial Prosecutions and Their Political Purpose

The instrumentalization of the provision is demonstrated by three prosecutions:

4.3.1 Bal Gangadhar Tilak (1897 and 1908). Tilak received two guilty verdicts when the first one occurred

[8] Queen Empress v. Bal Gangadhar Tilak , ILR (1898) 22 Bom 112

in 1897 for newspaper articles he published in Kesari after British officers had been killed and the second one happened in 1908 for articles that allegedly praised revolutionary violence. The 1908 trial which Justice Davar presided over resulted in a six-year prison sentence. The court rejected Tilak's defense which claimed his writings represented political commentary protected by natural rights.

4.3.2 Annie Besant (1917). The Home Rule League leader faced internment under the Defence of India Act because she wrote articles supporting self-government in her journalistic work. Her case showed that authorities used sedition charges against people who followed constitutional rules but did not support violent revolution.

4.3.3 Mahatma Gandhi (1922). The trial of Gandhi before Judge Broomfield represents the most important colonial sedition trial which occurred during that period. Gandhi pleaded guilty, characterizing Section 124A as a provision that "a citizen has either to obey or to submit to the penalty of imprisonment." Judge Broomfield, while sentencing Gandhi to six years, expressed personal reluctance because he recognized the accused person held important political status. Gandhi's acceptance of his conviction changed sedition from a tool of oppression into a symbol of nationalistic pride.

4.4 Structural Features of Colonial Sedition

Colonial sedition law shared several features that would later become constitutionally contested: (a) it covered "attempts" to excite disaffection which allowed prosecution without proof of actual incitement to violence; (b) the defence of "comments expressing disapprobation" had a narrow scope which judges applied through strict interpretations; (c) seditious intent proof required proof through the verbal tendencies of words instead of evidencing their actual impact; and (d) the provision was enforced selectively against political opponents while loyalist inflammatory speech went unprosecuted.

5. The Constituent Assembly, Article 19, and Early Judicial Trends

5.1 Constituent Assembly Debates

The debate over sedition law during fundamental rights discussions by the Constituent Assembly between 1948 and1949. The original draft of Article 13 (now Article 19) included “sedition” as an explicit ground on which free speech could be restricted. The word was removed from the final text of Article 19(2) after K.M. Munshi and Alladi Krishnaswami Ayyar criticized its inclusion because they thought that listing sedition as a restriction would maintain colonial oppression. The Assembly created wider boundaries for permissible restrictions by accepting who public order and security of the State as acceptable limits[9].

Civil libertarians and some scholars interpret the deliberate exclusion of sedition from Article 19(2) as a constitutional signal that the Constituent Assembly intended to abolish colonial sedition which existed before. The Government of India Act 1935 had included sedition as a ground of restriction; the removal was therefore a conscious drafting choice.

5.2 The First Constitutional Amendment and Romesh Thappar

The early years of judiciary were turbulent. The Supreme Court overturned a Madras press restriction order in Romesh Thappar v. State of Madras[10] ruling that Article 19(2)'s definition of "public order" had a direct relationship to state security and could not be used for minor disturbances. The First Constitutional Amendment (1951) brought about new restrictions because it added "in the interest of" language and

[9] Constituent Assembly Debates, 1949, Vol. VII

[10] Romesh Thappar v. State of Madras, AIR 1950 SC 124

"public order" as a distinct reason for limitation within Article 19(2).

5.3 Niharendu Dutt Majumdar and the Violence Threshold

In Niharendu Dutt Majumdar v. Emperor [11]the Federal Court of India established a more protective interpretation of Section 124A which defined the main offense as inciting people to create disorder and commit violent acts instead of instigating disaffection. The incitement threshold for the offense required longer judicial history because it involved disruption and violent acts instead of basic disaffection. The incitement threshold for this ruling originated from earlier judicial decisions which existed in the legal system for two decades before the Kedar Nath reading.

6. Kedar Nath Singh and the “Incitement to Violence” Threshold

6.1 Facts and Constitutional Challenge

The case Kedar Nath Singh v. State of Bihar [12]serves as the primary constitutional authority that establishes sedition laws. The appellant, a member of the Forward Communist Party, had delivered a speech in Bihar in 1953 calling upon the people to rise against the government and overthrow it. He received a conviction through Section 124A. The case reached a Constitution Bench with reference concerning the constitutional validity of the provision.

6.2 Ratio Decidendi

The Constitution Bench delivered its decision through Chief Justice Sinha who confirmed the validity of Section 124A but determined most of its content should be removed. The Court established that the term "Government established by law" should be interpreted to refer to the permanent governmental authority which represents the State rather than the current ruling political party. The Court determined that Section 124A should only apply to acts or words that have the tendency or intention to create disorder or disturbance of public peace by resort to violence; or words or acts that incite people to violence against the government. The Court clearly defined the limit of the provision when it stated that "strong words used to express disapprobation of the measures of the Government with a view to their improvement or alteration by lawful means" should not enter its boundaries. All comments which do not create or tend to create disorder or violence receive constitutional protection under the law.

6.3 Significance and Shortcomings

Kedar Nath successfully executed a fundamental constitutional duty through his achievement of maintaining political criticism beyond the boundaries of sedition laws. The ruling has received disapproval because people point out multiple flaws in its judgment. The "tendency to incite" test provides broader coverage than direct-incitement requirements because it allows authorities to convict offenders whose violent conduct remains unplanned and unexecuted yet still establishes danger. The Court relied heavily on Strachey from Tilak trial which functions as a colonial authority according to his decision. The ruling established uncertainty which lower courts exploited because they omitted to resolve the relationship between Section 124A and Article 19(2) public order restriction. The Court applied reading down methods to the provision which resulted in a deterrent effect that decreased speech freedom even for non-violent speech

7. Post-Kedar Nath Jurisprudence: Narrowing and Inconsistency

[11] Niharendu Dutt Majumdar v. Emperor, AIR 1942 FC 22

[12] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955

7.1 Balwant Singh v. State of Punjab (1995)

The Supreme Court cleared the appellants in *Balwant Singh v. State of Punjab* [13]who had shouted "Khalistan Zindabad" and "Raj Karega Khalsa" after Indira Gandhi was killed. The Court ruled that the mere shouting of slogans by two people did not amount to sedition in the absence of proof that the chants provoked violence or disrupted public order. The Court will not expand sedition definition to include symbolic political speech according to Balwant Singh who used Kedar Nath standard to restate this principle.

7.2 Shreya Singhal v. Union of India (2015)

The case of *Shreya Singhal v. Union of India* [14]started with Section 66A of the Information Technology Act, 2000 but its constitutional framework creates major effects on sedition laws. The Court established three different categories which include "discussion" and "advocacy" and "incitement" while stating that only the last category can face limits under Article 19(2). The Court demands that speech must create direct links to disorder because the court considers this standard as the highest requirement needed to prove sedition. Post-Shreya Singhal scholarship has argued that the Kedar Nath "tendency" standard is constitutionally inadequate considering this framework[15].

7.3 Vinod Dua v. Union of India (2021)

The Supreme Court quashed a sedition FIR filed against a journalist in *Vinod Dua v. Union of India*[16] because the journalist's televised remark criticized the Central Government's response to the COVID-19 outbreak. The Court ruled that criticism of government policies does not constitute sedition and that all journalists are entitled to Kedar Nath's protection. The ruling is noteworthy not just for its conclusion but also for its emphatic reiteration that sedition cannot be used to shelter the government from criticism, expanding the media's safe haven.

7.4 The Pattern of Misapplication

The data shows that there is a consistent pattern of incorrect application which has occurred throughout the previous court decisions. Between 2010 and 2021, the Article 14 database recorded 405 sedition instances involving at least 690 people, with a disproportionate percentage of them being journalists, students, farmers, and political activists (Article 14, 2021). The extremely low conviction rate for completed sedition cases indicates that the legal provision functions primarily as a mechanism for pretrial harassment and detention instead of serving its purpose as a criminal law enforcement tool.

8. Contemporary Status: The 2022 Abeyance Order and Section 152 BNS

8.1 S.G. Vombatkere v. Union of India (2022)

The Supreme Court issued its order in *S.G. Vombatkere v. Union of India* [17]to suspend Section 124A IPC until the Union Government completes its review of the law. The Court identified that the law began during colonial times and its current existence would suppress democratic republic citizens from exercising their right to free speech. The order prohibited any new FIR registration under Section 124A while all investigations and trials and proceedings under the law had to remain suspended. The order

[13] Balwant Singh v. State of Punjab, AIR 1995 SC 1785
[14] Shreya Singhal v. Union of India, AIR 2015 SC 1523
[15] Singhvi, 2019
[16]Vinod Dua v. Union of India, AIR 2021 SC 414
[17] Vombatkere v.Union of India, Writ Petition (Civil) No. 682 of 2021, order dated May 11, 2022

established a new precedent that had never existed before in Indian constitutional law. The court issued this ruling without delivering a constitutional assessment, but the judges showed their opposition to the law which resulted in a practical suspension of Section 124A. The Court presented its argument to show that colonial-era laws no longer matched the current constitutional standards of contemporary society.

8.2 The Bharatiya Nyaya Sanhita, 2023 and Section 152

The Indian government, instead of repealing sedition outright, enacted the BNS in 2023, which replaced the IPC with effect from July 1, 2024. Section 152 BNS states that any person who through spoken or written words or through signs or visible representation or electronic communication or financial means or any other method creates or attempts to create secession or armed rebellion or subversive activities or creates separatist tendencies which endanger the sovereignty and unity and integrity of India will face a life imprisonment sentence or a maximum seven-year prison term and a financial penalty.

The word "sedition" does not exist in the text, but critics and legal scholars have established that Section 152 functions as an analytical equivalent to Section 124A [18]which extends its legal scope. The two sections differ from each other through three specific elements: (a) the new section adds "electronic communication" and "financial means" as new methods of operation (b) the new section defines "subversive activities" and "separatist activities" as operational concepts which lack definition compared to Section 124A's "disaffection" (c) the new section omits the explanatory notes which Section 124A used to support the Kedar Nath reading. Parliament removed those explanations which judges used to interpret the law narrowly because they abolished the specific textual elements that judges needed for their legal analysis. The government used the reference to "financial means" to create a threat against NGOs and activists who receive foreign funding because this connection ties sedition to the FCRA regulations which create serious problems. The new provision extends colonial logic through its digital expansion and financial control which decreases the protective measures that previous courts used for their judgments.

The Law Commission's Report No. 279 from (2023) recommended maintaining sedition laws because they protect state security, while the report proposed establishing arrest procedures that require ministerial approval before making an arrest. The organization PUCL and Amnesty International India conducted a joint analysis which showed that their existing procedures failed to solve both structural over-breadth issues and the provision's ability to suppress genuine speech (PUCL, 2023)[19]. The transition from Section 124A to Section 152 is therefore a case of old wine in a digitally reinforced bottle.

9. Empirical Picture: NCRB Data and the "Chilling Effect"

9.1 NCRB Data Analysis

The National Crime Records Bureau reports demonstrate an unexpected numerical pattern in their results. Between 2014 and 2019 the number of sedition FIRs increased from 47 cases to 93 cases which represented a significant growth pattern according to National Crime Records Bureau data from 2019[20]. The accused group includes journalists and academics and anti-CAA protesters and farmers and Kashmiri

[18] Prasad, A. (2023). From Section 124A to Section 152: Old wine in a new bottle? *Economic and Political Weekly*, *58*(34), 12–15

[19] People's Union for Civil Liberties. (2023). *Statement on Law Commission Report No. 279: Sedition law must be repealed, not retained.* PUCL

[20] National Crime Records Bureau. (2014–2022) *Crime in India* (annual reports). Ministry of Home Affairs, Government of India

students which shows that authorities use this provision as a political weapon instead of a valid public safety measure although the total number of arrests appears low when compared with total crime statistics. The main effects of sedition charges create pre-trial detention and damage to personal reputation because most cases end in not guilty verdicts according to the pattern of low conviction rates for completed cases.

9.2 The "Decade of Darkness" Report

The Article (14) report from 2021 established a systematic coding method for 405 sedition cases which used defendant attributes speech act types of case outcomes and political context as its coding criteria[21]. The findings show that one-third of all events involved attacks against political leaders and political parties while a substantial portion of attacks targeted journalists and the incidents spread across states which experienced intense political rivalry against the ruling party. The report described sedition as a political intimidation tool which law enforcement agencies used to enforce their authority.

9.3 The Chilling Effect

Sedition laws create a frightening effect which extends to multiple different areas. The phenomenon of direct chilling occurs when people who normally participate in political speech activities such as bloggers and journalists and activists choose to hold back their expressions because they want to steer clear of potential arrest and extended bail processes. Publishers, broadcasters, and social media platforms experience indirect chilling because they implement unofficial editing standards which lead to content removal that might result in sedition charges. The deterrent impact of self-censorship in the Indian press has been documented by academics through their research of surveys and case studies.

10. Comparative Perspectives: The United Kingdom and the United States

10.1 United Kingdom: Abolition of Seditious Libel

The United Kingdom abolished the common law offences of seditious libel, seditious conspiracy, and sedition under Section 73 of the Coroners and Justice Act, 2009. The Law Commission of England and Wales, which recommended abolition, reached its decision because the law enforcement authorities faced difficulties proving the existence of the offense while its proper execution required detailed rules which the public needed to follow. The UK Parliament determined that the current criminal laws together with public order laws and terrorism laws already supplied sufficient safeguards against dangerous speech without needing to include the legal framework of sedition. The Indian Law Commission's 2023 decision to recommend retention—in explicit contrast with the UK position—has been criticised as anomalous[22] . The originator of Section 124A must prove his case against the law because he considers its existence unjustifiable for Indian society.

10.2 United States: The Brandenburg Standard

The United States Supreme Court ruled in *Brandenburg v. Ohio* [23]that First Amendment rights protect all speech except for inflammatory speech which contains a direct aim to incite imminent criminal behavior. The two-part test which examines both imminent threats and actual probability of events happening provides more protection for free speech rights than the most stringent interpretation of Kedar Nath. The American experience is relevant in two respects. First, the trajectory from *Schenck v. United States* (1919, the "clear and present danger" standard) through *Dennis v. United States* (1951) to Brandenburg

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[21] Article 14. (2021). A decade of darkness

[22] Prasad, 2023

[23] Brandenburg v. Ohio, 395 U.S. 444 (1969)

demonstrates that judicial standards for political speech can evolve over time toward greater protection. The Brandenburg standard establishes a specific measurement which lets us assess Indian legal principles because Kedar Nath "tendency" standard fails to prove imminent dang

10.3 Evaluative Synthesis

The experiences of the US and the UK demonstrate that stable democracies can protect national security without using colonial-era sedition laws. The relevant comparison should not evaluate which speech restrictions are acceptable because Article 19(2) allows their enforcement. The particular mechanism of sedition, which has broad definitions and a history of being misused, cannot achieve public order and security objectives in a way that meets constitutional standards.

11. Normative Assessment: Sedition and Constitutional Free Speech

11.1 The Proportionality Framework

The Supreme Court of India and contemporary constitutional courts use proportionality analysis when evaluating fundamental rights restrictions. The analysis requires that restrictions must (a) pursue a legitimate aim and (b) establish a rational connection to that aim and (c) use the least restrictive means that exist and (d) avoid imposing excessive costs on rights-holders (Modern Dental College v. State of Madhya Pradesh[24]). Applied to Section 152 BNS

1. *Legitimate aim*: Protecting the unity and integrity of India is a legitimate constitutional aim.
2. *Rational connection*: A broadly worded sedition provision has a rational connection to this aim in the abstract.
3. *Least restrictive means*: Specific offences targeting terrorism, armed rebellion, and incitement to communal violence under the UAPA and BNS itself (Sections 57, 58, and related provisions) are available and potentially adequate. The broad sweep of Section 152covering “subversive activities” and “separatist feelings” is not the least restrictive means
4. *Proportionality stricto sensu*: Given the empirical evidence of misuse and the chilling effect on democratic expression, the costs imposed by Section 152 on free speech are disproportionate to the demonstrable public order benefit.

11.2 Sedition and the “Basic Structure”

Researchers maintain that political dissenting rights exist within India's constitutional system because they form part of its core foundational elements which protect this right from standard legislative processes [25](Jain, 2018). The constitutionally valid sedition law which prevents incitement towards violent constitutional overthrow requires precise development to safeguard its core constitutional free expression rights. The requirements of this need remain unfulfilled because Section 152 BNS uses the terms "subversive activities" and "separatist feelings."

11.3 The Democratic Legitimacy Argument

The argument about democratic legitimacy emerges as a separate normative argument. The democratic system requires people to have the right to criticize public officials who hold power because this right enables them to hold leaders accountable. The government uses sedition law to prosecute its critics which

[24] Modern Dental College v. State of Madhya Pradesh,(2016) 7 SCC 353
[25] Jain, M. P. (2018). *Indian constitutional law* (8th ed.). LexisNexis.

creates a legal system that benefits current officeholders. The existing democratic deficit requires more than procedural safeguards because it needs fundamental system improvements according to Bhatia 2016[26]. The appropriate remedy is the removal of the substantive offence, not the addition of ministerial veto over prosecutions which is itself subject to political manipulation.

12. Analysis and Discussion

The foregoing analysis permits several synthetic observations.

12.1 The Continuity of Colonial Form

The legal framework of Section 152 BNS operates as an extension of Section 124A IPC under a different name. The term "sedition" has been removed, however this has more cosmetic than substantive constitutional relevance. The provision's very broad definitional reach, lack of an imminence requirement, and susceptibility to abuse by existing administrations are the structural elements that render colonial sedition unconstitutional. The Section 152 provision extends its coverage to digital speech through its definition of electronic communication and financial means. The incitement requirement remains unchanged because the provision permits these two new modalities to be used without restrictions.

12.2 The Inadequacy of the Kedar Nath Settlement

The Kedar Nath reading-down was pragmatic constitutional accommodation, not a principled rights protective settlement. The "tendency to incite" standard creates vague criteria which prosecutors can use to expand their authority while the legal system permits authorities to ban political speech without demonstrating immediate danger. The explanatory notes that provided textual support for reading-down in Section 124A are absent from Section 152 BNS which creates more uncertainty about future judicial reading down processes.

12.3 Empirical Evidence and the Rule of Law

The empirical evidence showing abuse had constitutional effects because it existed as a matter of public policy. The legal system faces jeopardy when authorities apply criminal laws in ways that violate established legal standards which result in over ninety-five percent of cases ending with non-guilty verdicts or dismissals while most defendants face charges for peaceful political activities. The Constitution's due process requirements create a conflict with criminal laws which exist mainly to intimidate people and put them behind bars**.**

12.4 The Path Forward: Repeal, Amendment, or Replacement

Three reform options merit discussion:

Option 1*: Complete Repeal of Section 152 BNS.* The civil liberties organizations support this option which follows the United Kingdom legal system. The existing BNS and UAPA provisions already handle violent sedition, incitement to armed rebellion, and terrorism therefore Section 152 fails to serve essential security requirements. The repeal would eliminate the chilling effect while establishing a constitutional separation from colonial times.

Option 2*: Narrow Amendment. Section 152 BNS* needs direct evidence which shows(a) specific incitement which leads to(b) imminent violent actions against(c) constitutional order. The provision would need to be confined to speech acts, not “feelings” or “tendencies.” The approach protects residual rights while bringing India closer to the Brandenburg standard.

Option 3*: Judicial Reading Down of Section 152 BNS.* The Supreme Court will extend the Kedar Nath

[26] Bhatia, G. (2016). *Offend, shock, or disturb: Free speech under the Indian Constitution.*

framework to Section 152 because the Kedar Nath framework requires proof of incitement to imminent violence according to its interpretation of the statute. The legal system supports the inclusion of an imminence requirement since the Shreya Singhal case established this requirement. Judicial reading-down fails to provide a complete solution because it lacks explicit legislative language which creates a chilling effect through its apparent legal scope.

The paper endorses Option 2 as the most constitutionally sound and politically feasible reform, with Option 1 as the preferred normative outcome.

13. Conclusion

The research paper has tracked the development of India's sedition laws which began as a colonial instrument for political repression and transformed through their constitutional enforcement in the Kedar Nath Singh case and their disputed historical development and their present usage in Section 152 of the Bharatiya Nyaya Sanhita. The study has resulted in several conclusions.

First, the sedition law of India originated from colonial oppression but now functions as a public order statute that forbids specific types of expression. The structural components of Section 152 BNS maintain their status as an imperial control mechanism because the law lacks an imminence standard and enables government officials to control its application. Second, the Kedar Nath reading-down decision brought important results but failed to achieve a constitutional resolution of the matter at hand. The "tendency to incite violence" standard does not meet the constitutional standards which Article 19(1)(a) and post-Shreya Singhal doctrine establish. Third, the system has established its main operational procedures through systematic and documented evidence which proves the existence of misuse. The primary societal goal of sedition law is to crush and intimidate political opponents rather than to uphold public order, as evidenced by its low conviction rates, particular features of charged persons, and regional dispersion of legal measures against them.

Fourth, comparative experience in the United Kingdom and the United States conclusively demonstrates that secure democracies successfully ensure state security without needing to emphasize colonic subversive provisions. Fifth, the name of Section 152 BNS has changed but its constitutional problems from Section 124A IPC remain because it creates new constitutional issues. The Law Commission's recommendation to maintain and strengthen sedition laws conflicts with Indian constitutional principles and established international best practices. The paper recommends that Section 152 BNS should either face complete repeal or slight amendment to create legal responsibility only for direct incitement of upcoming unconstitutional violence which matches Kedar Nath through Shreya Singhal guidance and Brandenburg legal tests. The Supreme Court should extend its 2022 abeyance order to Section 152 until the case reaches its hearing because the court needs to conduct a complete constitutional evaluation of the case. Article 19(1)(a) guarantees speech freedom as a fundamental right which operates beyond mere theoretical existence. It serves as the essential requirement for democratic systems to function properly. Sedition law exists in all its legal forms as a permanent danger which undermines that essential element because it enables politicians to silence their opponents. India still retains a colonial-era law which should not exist within its constitutional framework.

References

1. Amnesty International India. (2019). Halt the use of sedition law to silence dissent. Amnesty International.
2. Article 14. (2021). A decade of darkness: How India used sedition law to silence dissent, 2010–2021. Article 14. https://article-14.com/post/ a-decade-of-darkness
3. Bhatia, G. (2016). Offend, shock, or disturb: Free speech under the Indian Constitution. Oxford University Press.
4. Chandrachud, A. (2020). Republic of rhetoric: Free speech and the constitution of India.
5. Constituent Assembly of India. (1949). Constituent Assembly debates, Volume VII (4th November 1948 to 8th January 1949). Lok Sabha Secretariat.
6. Coroners and Justice Act 2009, c. 25 (UK).
7. Jain, M. P. (2018). Indian constitutional law (8th ed.). LexisNexis.
8. Kumar, A. (2019). Chilling effect and self-censorship: An empirical study of sedition law in India Indian Law Review, 3 (2), 143–168. https://doi.org/10.1080/ 24730580.2019.1648765
9. Law Commission of India. (2023). Report No. 279: The law of sedition (Section 124A IPC). Government of India.
10. National Crime Records Bureau. (2014–2022). Crime in India (annual reports). Ministry of Home Affairs, Government of India.
11. People's Union for Civil Liberties. (2023). Statement on Law Commission Report No. 279: Sedition law must be repealed, not retained. PUCL.
12. Prasad, A. (2023). From Section 124A to Section 152: Old wine in a new bottle? Economic and Political Weekly, 58 (34), 12–15.
13. Raghavan, V. (2010). The origins of Section 124A IPC and colonial jurisprudence of sedition. Journal of Indian Law and Society, 1 (2), 74–99.
14. Raza, M. (2018). Sedition law in comparative perspective: UK, USA and India. NUJS Law Review, 11 (1), 1–44.
15. Seervai, H. M. (1991). Constitutional law of India (4th ed., Vols. 1–3). NM Tripathi.
16. Singhvi, A. (2019). Shreya Singhal and its implications for sedition: Advocacy, incitement, and the constitutional standard. NLSIU Law Review, 31 (1), 45–72.

Cases Cited

1. *Balwant Singh v. State of Punjab*, AIR 1995 SC 1785.
2. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
3. *Dennis v. United States*, 341 U.S. 494 (1951).
4. *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.
5. *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.
6. *Niharendu Dutt Majumdar v. Emperor*, AIR 1942 FC 22.
7. *Queen Empress v. Bal Gangadhar Tilak*, ILR (1898) 22 Bom 112.
8. *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.
9. *S.G. Vombatkere v. Union of India*, Writ Petition (Civil) No. 682 of 2021, order dated May 11, 2022 (Supreme Court of India).
10. *Schenck v. United States*, 249 U.S. 47 (1919).
11. *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.
12. *Vinod Dua v. Union of India*, (2021) 4 SCC 1.

Statutes
1. Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023 (India). Constitution of India, 1950.
2. Coroners and Justice Act, 2009, c. 25 (UK).
3. Indian Penal Code, 1860, Act No. 45 of 1860 (India).
4. Information Technology Act, 2000, Act No. 21 of 2000 (India).