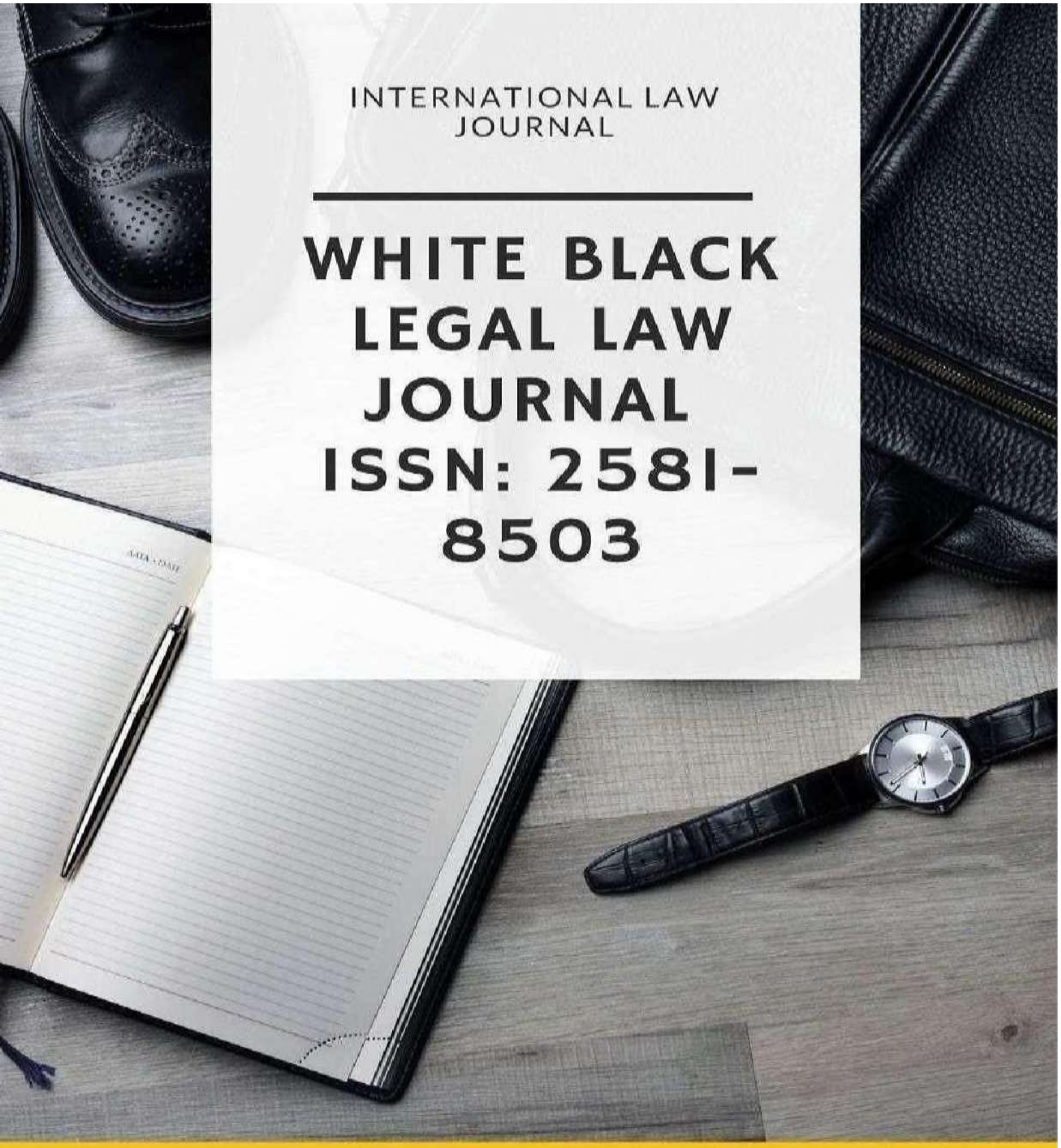

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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SEDITION: THE ROOTS AND RECENT DEVELOPMENTS[1]

AUTHORED BY - YASHASIVI MISHRA

Democracy must be nourished and maintained via belief, and criticism is essential to keep it from being crippled. Not to follow blindly is an old adage. We all have the freedom to speak our minds and make our own decisions since we live in a democratic nation. We should have the right to voice our opinions on the government we chose if we were involved in the electoral and participative process. This is what democracy is all about.

Unfortunately, for a considerable amount of time, the country's intellectuals, journalists, and human rights activists have all been the victims of an unnecessarily tedious and rigid system of law named sedition. The British government enacted this colonial law. In the current situation, both the central government and state governments had been frequently employing the law to restrict free speech. The terminology used to describe "disaffection" and the severity of the penalties attached to it are what make this law unique.

To protect the democratic system, a strong state is required. Democracy and Section 124-A of the Indian Penal Code[2] are inseparable. Previously, it was said that Section 124 cannot be deleted based solely on concerns that it may be used inappropriately. Subsequently, it was suggested that it would not be harmful to rewrite this section's provisions to better reflect the needs of modern civil society and freedom of expression. On this recommendation, which affects the entire criminal justice system, the government must be extremely clear. That is their purpose or tendency—to be reasonable persons.[3]

The Indian Penal Code's Section 124-A can be used in both situations where there is a potential risk to the public's safety and situations when there isn't one. Section 124-A of the Indian Penal Code restricts freedom of speech and expression in a way that serves interests other than public order by making any disaffection illegal.

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[1] Yashasivi Mishra, LLM 2nd Semester, Rama University, Kanpur.
[2] Indian Penal Code, § 124A (1860) (India).
[3] King Emperor v. Sadashiv Narayan Bhale Rao, (1947) 74 I.A. 89 (P.C.) (India).

The Indian Penal Code's Section 124-A has been used as evidence against a number of state opponents and civil rights campaigners. Even a futile attempt to incite discontentment in another person would result in punishment under Section 124-A of the Indian Penal Code, and this applies to inmates who have attempted to incite discontentment in others. In other words, both successful and unsuccessful attempts to arouse discontent are treated equally. A person cannot claim that their actions were an unsuccessful attempt to stir up opposition to the existing government. The offenses consist of provoking or attempting to provoke negative feelings toward the government in others. It is not intended to stir up mutiny, insurrection, or any other kind of real disturbance, no matter how minor.

The Bangobasi case, often known as the first trial for sedition, took place in 1891 and involved *Queen Empress* v. *Jogendra Chander Bose*[4]. This case raised the issue of the boundaries of acceptable criticism of government actions. The Bangobasi, a daily edited by Jogendra Chandra, cried out "religion in danger" in response to the age of consent bill's adoption (1891), accused the government of brutally Europeanizing India, and blamed it for the economic hardship experienced by Indians. But it was also said that neither Hindus believed in nor were capable of rebelling.

Was the Bangobasi's criticism of the government too harsh? was the topic of discussion in this case. The prosecution said that the goal was to have the populace in the mood of "we would rebel if we could" and that the enthusiasm for religion among the populace signified public tranquillity.[5] Defense attorneys claimed that just "European and native method of thought" were being contrasted and that there was no mention of "rebellion."

Chief Justice Eric Weston outlined the futility of Section 124-A in the context of modern politics in the case of *Tara Singh Gopi Chand* v. *The State*[6]. He claimed that India is now a democratic, independent nation. Governments can come and go without harming the underlying principles of the state. Due to the very nature of the shift that has occurred, a statute of sedition that was once considered vital during a time of foreign rule is now out of place. [7] Due to its adaptability and durability, an autonomous democracy was able to not only resist but also benefit from the vehement criticism and disagreement that comes from a diversity of

[4] Queen Empress v. Jogendra Chunder Bose, (1892) 19 I.L.R. Cal. 35 (India).
[5] *ibid*.
[6] Tara Singh Gopi Chand v. State, 1951 Cri. L.J. 449 (India).
[7] *ibid*.

viewpoints. According to Eric Weston, "the Section then must be held void." In actuality, critiquing the government is at the heart of democracy. Its only defense is the party system, which entails advocating for the overthrow of one Government and the installation of another; yet, such advocacy should be welcomed as it gives democracy life.

This stance was again advanced in two occasions eight years later. One was the case of Sabir Raja[8], in which it was determined that criticizing the chief minister of Uttar Pradesh did not constitute to sedition. In the Ram Nandan case, the Allahabad High Court overturned Ram Nandan's conviction for remarks he made before a gathering of peasants.

The Apex Court in *Secretary, Ministry of I and B* v. *Cricket Association of Bengal (CAB)*[9] held that the fundamental right to freedom of speech and expression involves the ability to effectively interact with a sizable community both domestically and overseas. There are no restrictions on communication due to distance. A citizen has a fundamental right to communicate using the greatest means possible, including the ability to access telecasting for that purpose. The most efficient form of communication today is through electronic media like TV and radio. [10] However, because they are public property, Airways must be used for the greater benefit. They are therefore constrained in some ways. The court ordered the government to set up an autonomous independent public authority that would represent all societal segments and oversee the usage of airways. The right to free speech and expression is incompatible with a monopoly on the electronic media. Public control must be exercised over the broadcasting media. In his concurring opinion, Justice Reddy recommended that the Indian Telegraph Act be amended appropriately to take into account current improvements in information and communication technology.[11]

In the landmark ruling of the Supreme Court in 2022 i.e. *SG Vombatkare* v. *Union of India*[12], it had suspended the functioning of Section 124-A of the IPC in the following terms:

> "c. If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into

[8] Sabir Raja v. State, Crim. App. No. 1434 of 1955 (India); Ram Nandan v. State, A.I.R. 1959 All. 101 (India).
[9] Sec'y, Ministry of Info. & Broad. v. Cricket Ass'n of Bengal, (1995) 2 S.C.C. 161 (India).
[10] *ibid*.
[11] J.N. Pandey, *The Constitutional Law of India* (46th ed. 2009) (Central Law Agency).
[12] S.G. Vombatkare v. Union of India, 2022 LiveLaw (SC) 470 (India).

> account the present order passed as well as the clear stand taken by the Union of India.
>
> d. All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.
>
> e. In addition to the above, the Union of India shall be at liberty to issue the Directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of Section 124A of IPC."[13]

It is interesting to note that the Government had allowed the Union of India to consider any directives for preventing misuse of Section 124-A of IPC so as to secure justice to the people of this country. The Court has directed the same keeping in mind the security interests and integrity of the state on one hand, and the civil liberties of citizens on the other. In court's words, "there is a requirement to balance both sets of considerations, which is a difficult exercise."

Further, it is also interesting to consider the observation by the Supreme Court which is as follows:

> "it is clear that the Union of India agrees with the prima facie opinion expressed by this Court that the rigors of Section 124A of IPC is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime. In light of the same, the Union of India may reconsider the aforesaid provision of law."[14]

In this light, it can be seen that the Sedition law has not been considered to be an apt provision in our legal code and that it's presence is more damaging than its existence. The SC in some senses also directed the Union to consider repeal or adequate modification of the law for the betterment of the society and the larger good so that a secure society and secure milieu can be offered to people. Despite the supreme court's ruling that Section 124-A of the Indian Penal Code should only be invoked when there is a risk of public disorder brought on by the use of violence or the incitement of violence, many cases against journalists, writers, and activists were nonetheless filed. Sedition-related laws were frequently used to intimidate journalists and

[13] *ibid*.
[14] *ibid*.

activists around the nation. Isn't it unfair to condemn someone for just using his First Amendment right to free speech by criticizing the government? Malaysia is one of many nations that have removed their Sedition Law. The controversy over the reach and constitutional legitimacy of the Sedition statute was put to rest by the Supreme Court's ruling, but the Sedition law still has a significant impact on political dissent in the nation.

The Law Commission report, although in contradistinction to the SC decision highlighted that the Sedition law is appropriate for its existence and that there is no need to repeal the law in its entirety.[15] Furthermore, the report not only seeks to keep this entire provision rather make its existence worse for the people by asking for an increase in the punishment from 3 to 7 years thereby creating a harsher and more suffocating environment for the people of this country. These steps will only scuttle the freedom of speech and expression, a value fundamental right, and drive it into darkness.

According to the Law Commission, it is "*who* wields power that determines *how* the legal provision for sedition is used— oppressive, in the context of a colonial government; necessary and proportionate in the hands of a democratic government." Although, by making a case to keep the draconian provision of sedition, democracy and its receptive nature to criticism is under cloud.[16]

Interestingly, As per the NCRB, the conviction rate in such cases also remains low, with the rate being 33.3% in 2020, 3.3% in 2019, 15.4% in 2018 and 16.7% in 2017. Many of these cases, such as that of journalist Siddique Kappan who was arrested for reporting on the Hathras rape and murder case, reveal the State's attempt to stifle criticism that it deems unwanted and potentially a threat to its regime.[17]

Recent Barnala court proceedings resulted in his acquittal because no evidence supporting the police's allegations or the contents of Bhai Bituu's speech could be found.[18] Similar to how

[15] Law Comm'n of India, 279th Report on *Usage of the Law of Sedition* (2023).
[16] *ibid*.
[17] Radhika Roy & Mariam Joseph, *Law Commission's Report on Sedition Ignores Free Speech Law and Indian Colonial History*, LiveLaw, June 10, 2023, available at https://www.livelaw.in/articles/sedition-law-india-enhanced-punishment-law-commission-report-124a-ipc-public-disorder-freedom-of-speech-expression-230432 (last accessed April. 6, 2025).
[18] '*Five Booked for Sedition by Barnala Police, Sikh Bodies Allege Misuse of S. 124A*, Sikh Philosophy Network, July 18, 2010, available at https://www.sikhphilosophy.net/threads/five-booked-for-sedition-by-barnala-police-sikh-bodies-allege-misuse-of-s-124a.31484/ (last accessed April. 20, 2023).

many people were charged under this Section in 2007, including Daljeet Singh Bituu, for taking part in a protest on June 6 in Amritsar, by the Amritsar police.[19]

Purshottam Dass, another important functionary at the ashram, Ram Pal, and a number of other followers, according to the police, have cases pending against them under several IPC sections.[20]

The 41st Law Commission Report[21] made the followingas to the possible changes that could be brought about in the Law of Sedition in India:

i. "In view of the controversy that has surrounded the role of intention in S.124A an amendment should be made that makes the casual link between the words and the Security and safety of the State. The Mens Rea should be expressed as "intending or knowing it (the words or representatives in question) to endanger the integrity or Security of India or of any State or to cause public disorder".

ii. The Law Commission was also in favour of the English rule where a verbal attackon the Constitution, Legislature and the administration of justice as brought under the purview of this Section. A new Section was also proposed to make desecrationof the National Flag and anthem and the Constitution an offence.

iii. The punishment Section that provides for either imprisonment for life or for imprisonment up to 3 years and nothing in between was thought to be odd by the Law Commission. It recommended a maximum punishment of up to 7 years with the option of imposing a fine."

The Law Commission of India discussed the flaws in section 124A in its 42nd Report.[22] They stated unequivocally that the clause is invalid under article 19(2) of the Constitution due to the Mens Rea exclusion.

It has been claimed that in the modern day, attempts to unseat ministers currently in office or

[19] *ibid*.
[20] PTI, *'Godman' Rampal Slapped with Sedition Charge*, The Indian Express, Nov. 20, 2014, available at https://indianexpress.com/article/india/india-others/godman-rampal-slapped-with-sedition-charge/ (last accessed May 1, 2025).
[21] Law Comm'n of India, 41st Report on *The Code of Criminal Procedure, 1898* (1969).
[22] Law Comm'n of India, 42nd Report on *Indian Penal Code* (1971).

any campaign for the repeal of a statute of parliament cannot qualify as seditious activity if no illegal means are used.

There would be no distinction between a democracy and a monarchy at all if voters were denied the ability to criticize their own representatives. Another factor that jeopardizes state security is the fact that sedition frequently manifests itself in forms of public unrest.

We have the right to freedom of speech and expression under Article 19(1)(a) of our Constitution, as well as the right to reasonable restrictions under Article 19(2). A substantive provision, Section 124-A reflects the permissible limitations listed in the Constitution. However, the restricted clauses in clauses (2) through (6) are all-inclusive and must be written precisely.

Even organizations and people who are offended by a government's policies have the right to incite opposition to that government and launch campaigns to overthrow it. In a democracy, the goal of opposition to the current administration is to sow discontent with it by highlighting its flaws, such as corruption, sellout to special interests, whether Indian or foreign, ineptitude, or a purported anti-people attitude.

Famous independence fighters including Mahatma Gandhi and Bal Ganga Dhar Tilak have been charged under the Sedition Law.The myriad legal defenses for the legislation against sedition currently focus on justifications for keeping the government in place rather than questioning whether it genuinely justifies defense.

On the examination of the Bharatiya Nyaya Sanhita[23] it is concluded that the offence of sedition has been completely taken off the books by the legislature of the country.

India must safeguard its fundamental components of free speech and expression because it is the largest democracy in the world. Sedition should not be applied to speech or ideas that are in opposition to the current administration's policies.

The Law Commission has rightly said, "an expression of frustration over the state of affairs

[23] The Bharatiya Nyaya Sanhita, 2023 (India).

cannot be treated as sedition".[24] It is important that a nation is receptive to constructive criticism; as otherwise, iron curtains would only adversely impact the nation and leave no difference between the pre-and post-Independence eras.

This is the exact same issue that was dealt with in the case of Shreya Singhal v. Union of India[25] where the test of over-breadth and chilling effect were used to declare the relevant provision ultra vires. Similarly, this provision is also fraught with overbreadth and thus very much liable to misuse.

However, this is not exactly the case as it may seem. The BNS has added the offence of terrorist activities and acts than endanger sovereignty, unity and integrity of the nation.[26] This offence has been added with an increased punishment which is in line with the recent Law Commission Report that advocated for increased punishment for the offence of sedition. Section 150 of the BNS reads as follows-

> "Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial means, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine."

The Bharatiya Nyaya Sanhita (BNS) supersedes the sedition offence by introducing a novel provision that penalizes actions threatening India's sovereignty, unity, and integrity. Section 152 of the BNS, which encapsulates this revised offence, effectively preserves the fundamental components of the erstwhile sedition law, concentrating on the incitement of insurrection or subversive conduct.

The Bharatiya Nyaya Sanhita (BNS) represents a significant change in the legal framework by replacing the outdated sedition law with a more modern and comprehensive provision focused on protecting India's sovereignty, unity, and territorial integrity. This shift moves away from

[24]Law Comm'n of India, Consultation Paper on Sedition (2018).
[25] Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1 (India).
[26] The Bharatiya Nyaya Sanhita Bill, 2023, § 150 (India).

the colonial-era sedition law, reflecting the need to address current national security concerns and emerging threats to the state's stability.

The BNS introduces a detailed framework where acts that threaten the core principles of the Indian state—such as its unity, democratic values, and internal stability—are considered criminal offenses. Section 152[27], which defines this provision, outlines a broad range of threats to national security, including both direct acts of rebellion and more subtle subversive activities that aim to disrupt the established order.

While the BNS moves away from the term "sedition," it continues to focus on acts that could destabilize or undermine the political and social structures of the nation. Like the previous sedition law, Section 152 criminalizes the incitement of rebellion, which is a direct threat to the state's integrity. However, it expands the scope to cover more complex forms of sedition, such as subversive actions that may not lead to violent rebellion but still harm the state's values and unity.

This new provision represents both continuity and change. It keeps the original focus on incitement, but it also broadens the types of threats it addresses, such as promoting separatism, supporting unconstitutional ideologies, and eroding public trust in government institutions. At the same time, the BNS seeks to strike a balance between national security and protecting individual freedoms, recognizing the need to maintain state stability while upholding constitutional rights.

Ultimately, the BNS, by replacing the sedition law, highlights the importance of addressing modern challenges while ensuring that actions to protect the state do not infringe on individuals' fundamental rights. This revised approach to sedition shows the government's commitment to preserving the unity and integrity of the nation amid rapidly changing political and ideological landscapes.

[27] The Bharatiya Nyaya Sanhita Bill, 2023, § 152 (India).