

VAGUE LAWS AND NEW BATTLES: SECTION 152 OF BNS AND THE LEGACY OF SECTION 66A OF IT ACT

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ABSTRACT

Section 152¹ of Bharatiya Nyaya Sanhita (Hereinafter referred to as BNS) is a newly drafted statute that states that whoever, by words, either spoken or written, or by, **electronic communication**, endangers the sovereignty or unity and integrity of India; shall be punished with imprisonment for life. This section aligns in its terms of context with provisions such as Section 66A of the Information Technology Act, 2000² which states that Any person who sends, by means of a computer resource or a communication device, any offensive information for the purpose of causing annoyance; shall be punishable with imprisonment for a term which may extend to three years (Now Unconstitutional), and Section 124A³ of the Indian Penal Code (IPC) which states that Whoever by words, either spoken or written, or otherwise, brings or attempts to bring into hatred or excite disaffection towards, the Government, shall be punished with [imprisonment for life], both these sections have been struck down, Section 66A was held to be unconstitutional in the landmark case of *Shreya Singhal v. Union of India*⁴ - as the proportionality between the right of expression and restriction upon it was not proportional. Section 66a⁵ of the IT Act was widely criticized for being used as a cover to arrest individuals for online posts, critical to the regime or public figures⁶. Similarly, Section 124A⁷ of the IPC definition of "disaffection" or "hatred" toward the government becomes too obscure, leaving the provision vulnerable to whimsical judicial discretion although with the advent of a new criminal statute (BNS) which seemed like it took away one of the draconian provisions⁸ Section

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¹ Bharatiya Nyaya Sanhita 2023, section 152

² Information Technology Act 2000, section 66a

³ Indian Penal Code 1860, section 124a

⁴ *Shreya Singhal v. Union of India* (2015) 5 SCC 1

⁵ Information Technology Act 2000, section 66a

⁶ HT Correspondent, '10 cases of arrests under section 66a of IT Act' *Hindustan Times* (New Delhi, 24 March 2015) <<https://www.hindustantimes.com/india/facebook-trouble-10-cases-of-arrests-under-sec-66a-of-it-act/story-4xKp9EJjR6YoyrC2rUUMDN.html>> accessed 19 September 2024

⁷ Indian Penal Code 1860, section 124a

⁸ Kaleeswaram Raj, 'Draconian law must go forever' *Indian Express* (New Delhi, 15 May 2022) <<https://www.newindianexpress.com/opinions/2022/May/15/draconian-laws-must-go-forever-2453638.html>> accessed 19 September 2024

124A⁹, out of the Indian diaspora, but Section 124A¹⁰ of IPC came out of a fickle with Section 152¹¹ of BNS. The similarity in vagueness across the three sections can be analyzed through various instances of ambiguity identified in seminal rulings by the Supreme Court of India, particularly, the ruling in *Shreya Singhal v. Union of India*¹². One of the crucial issues dealt with in *Shreya Singhal*'s case relates to the uncertainty surrounding the wording of phrases like "grossly offensive," "annoyance," and "hatred".¹³ Such uncertainty made it difficult for the Court to sustain Section 66A¹⁴ on the principles of vagueness and propensity to abuse. Section 66A¹⁵ and Section 124A¹⁶ application differ but the Ratio behind these sections is for curtailing or criminalizing certain forms of speech and expression although Section 152¹⁷ of BNS, with the issues of modern times such as electronic communications, seems to have similar problems. The application of the word- Electronic communication is broad, albeit it's left to remain vague, which creates the potential for misuse due to this ambiguity and indeed also reminiscent of the ambiguity of previous laws. The question raises great concern regarding the proportionality of the restriction imposed upon the freedom of speech, prima facie by Article 19(1)(a)¹⁸ and the permissible limitation described in Article 19(2)¹⁹ of the Indian Constitution. Thus, while Section 152²⁰ is a modern legislative provision, it risks becoming as vulnerable to challenge before courts as sections 66A²¹ and 124A²² are. Without clearer definitions and safeguards against misuse, it could face the same criticism, namely that it oversteps constitutional limits on free expression. The main focus of this article will be on how, an essence of dead law, Section 66A of IT Act, is being revived.

Keywords: Expression, Ambiguous, Vague, Freedom

⁹ Indian Penal Code 1860, section 124a

¹⁰ *Ibid*

¹¹ Bharatiya Nyaya Sanhita 2023, section 152

¹² *Shreya Singhal v. Union of India* (2015) 5 SCC 1

¹³ *Ibid*

¹⁴ Information Technology Act 2000, section 66a

¹⁵ *Ibid*

¹⁶ Indian Penal Code 1860, section 124a

¹⁷ Bharatiya Nyaya Sanhita 2023, section 152

¹⁸ Constitution of India 1950, art 19(1)(a)

¹⁹ Constitution of India 1950, art 19(2)

²⁰ Bharatiya Nyaya Sanhita 2023, section 152

²¹ Information Technology Act 2000, section 66a

²² Indian Penal Code 1860, section 124a

INTRODUCTION

Sec 66A²³ of IT Act, 2000 which penalized, sending any offensive information for the purpose of causing annoyance through a computer or with any other communication devices, was declared unconstitutional by the Supreme Court of India by Bench: R.F. Nariman, J. Chelameswar in the Landmark Judgement of *Shreya Singhal vs U.O.I* on 24 March 2015²⁴.

The Information Technology (IT) Act, 2000 was amended in 2009 and with the amendment it inserted a new section that was Section 66A, with an aim to tackle issues and cases of cybercrimes as the technology and internet were rapidly growing by then.²⁵

In Nov 2012, a woman residing in Maharashtra made a **post on Facebook** about the closure in Mumbai triggered by Bal Thackeray's death. She had a friend who liked this post. The police in Maharashtra detained them under Sec 66A of IT Act, 2000²⁶ which sparked uproar and prompted **Shreya Singhal**, a law student, to file a writ petition in the Supreme Court of India.

There were quite a few incidents prior to the *Shreya Singhal v. Union of India* case that exhibited how arbitrary and vague Section 66A of the Information Technology Act, 2000²⁷ was. Though such cases did not lead to legal battles often, they only created an opportunity for the challenge in a court of law and also there weren't many supreme court cases either directly dealing with the constitutionality of section 66A²⁸ of the ICT Act, but there were few significant cases heard by the Supreme Court on freedom of speech, its ambiguity with reasonable rules and restrictions under Article 19(2) constitution of India²⁹.

Here are a few relevant sets of notable cases and precedents that express how the section has arbitrarily been applied and also influenced Shreya Singhal's decision:

In the case of **Sanskar Marathe Vs State of Maharashtra**³⁰ And others, 2015, Bombay High Court, a political cartoonist Aseem Trivedi who was arrested for drawing cartoons against the Indian Constitution and even Parliament printed at one of the ant-corruption activists (Anna

²³ Information Technology Act 2000, section 66a

²⁴ *Shreya Singhal v Union of India* (2015) 5 SCC 1

²⁵ <https://prsindia.org/theprsblog/a-background-to-section-66a-of-the-it-act-2000?page=2&per-page=1#:~:text=The%20Act%20also%20penalizes%20various,of%20technology%20and%20the%20internet.>

²⁶ Information Technology Act 2000, section 66a

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ Constitution of India 1950, art 19(2)

³⁰ *Sanskar Marathe v State of Maharashtra* (2015) Cri LJ 3561

Hazare) fasts. The illustration was questionable for being Arbitrary-Artistic. The fact that his cartoons look like paintings of poetries, is the reason behind Aseem Trivedi was apprehended under IPC codes as one of the Section 66A³¹ input lie witness and other Acts that include his works which are political satire. This then fueled public anger even more because the use of Section 66A was then seen as an overreach in a rather sensitive country like India.

In the case of **Ambikesh Mahapatra & Ano vs The State of West Bengal & Or's**³² on 10 March 2015- A writ was filed in the High Court of Calcutta challenging the arbitrary arrest of Prof Ambikesh Mahapatra of Jadavpur University for an e-mail carrying a cartoon on Chief Minister of West Bengal, Mamta Banerjee. The cartoon was taken from an enacted popular scene of a movie that spoke mockingly of the chief minister.

He was prosecuted merely for uploading the cartoon under Section 66A³³, which indeed was an exercise in satire, a right guaranteed by Article 19(1)(a)³⁴ of the Indian Constitution. His arrest also gathered a lot of media attention towards the brazen misuse of section 66A, also serving as a tool for accomplishing political interests. The Calcutta high court ruled out all the charges made against Prof Ambikesh Mahapatra and held that the actions of the Bengal government were disproportionate, as there was no Substantia probatur, nor any basis of allegation made by the government of West Bengal. This case fueled public anger further since the use of Section 66A³⁵ was then seen as an overreach in a rather sensitive country like India.

These arrests provided a clear example of how section 66A³⁶ was used as a tool to suppress political criticism. The incident was a terrible example in which the law was misused against people who protested against political persons who had power.

In the case of **The Superintendent, Central Prison, Fatehgarh Vs Ram Manohar Lohia**³⁷, 1960, Supreme Court, the court said that the criticism or satire of political leaders, in itself, cannot form the basis to curtail a person's freedom of speech unless, as the statute clearly says, it manifests imminent real harm or hysteria in the society. Supreme Court pondered that there is need to be a clear and direct link between freedom of speech and an immediate threat or

³¹ Information Technology Act 2000, section 66a

³² *Ambikesh Mahapatra & Ano v State of West Bengal & Or's* (2015) Cri LJ 3622

³³ Information Technology Act 2000, section 66a

³⁴ Constitution of India 1950, art 19(1)(a)

³⁵ Information Technology Act 2000, section 66a

³⁶ Information Technology Act 2000, section 66a

³⁷ *Superintendent, Central Prison, Fatehgarh v Dr. Ram Manohar Lohia* (1960) AIR SC 633

disruption to public order, as speech is a fundamental right and the government cannot impose restraints unless there is an immediate threat or direct evidence of disruption of public order. The case set a precedent that a law that limits free speech needs to directly and clearly point out the specific harmful outcome it is aiming to fix.

One of the eminent criticisms of the 66A³⁸ provision has been its lack of clarity and definite language; the same principle was reiterated by the *Shreya Singhal* judgment when the 66A³⁹ legislation was interpreted as vague in nature.

In the case of **S. Rangarajan v. P. Jagjivan Ram** (1989)⁴⁰, The apex court had made the point that the degree of restrictions on free speech has to be what is proportionate and, on that basis, it has been said that the muzzle of the free speech must be reasonable, and there is a mere and immediate risk to the concern of the general public to be able to put them on the muzzle.

Relevance to section 66A⁴¹: Section 66A⁴² was dismissed as unordered, for it didn't provide enough safeguards for the freedom of expression. This court has pronounced definite and concrete rules that the restraints have to be formulated cautiously, to hinder the disguise, which is the reflection of *Shreya Singhal*.

Section 66A⁴³ of the IT Act and its Legacy

What happened as a result of Section 66A's⁴⁴ arresting parents, which hit the proverbial ceiling in 2012, involved two young women. One of them, Shaheen Dhada, posted on Facebook against the shutdown of Mumbai after the death of political leader Bal Thackeray. She suggested that the "bandh" was not needed. Her friend Rinu Srinivasan "liked" the post. Thereafter, both women had the police entangle them to Section 66A which punned to the maximum for sending electronic communication in a manner that is bothersome or offensive.

This case *Shreya Singhal v. Union of India* (2015)⁴⁵ generated plenty of outrage, with netizens aghast by the fact that the women were only talking about their personal views on the internet,

³⁸ Information Technology Act 2000, section 66a

³⁹ *Ibid*

⁴⁰ *Rangarajan v P. Jagjivan Ram* (1989) (2) SCC 574

⁴¹ Information Technology Act 2000, section 66a

⁴² *Ibid*

⁴³ Information Technology Act 2000, section 66a

⁴⁴ *Ibid*

⁴⁵ *Shreya Singhal v. Union of India* (2015) 5 SCC 1

thus threatening free speech. People felt that the government was overstepping its boundaries when they arrested the two women under Section 66A⁴⁶. This incident was the principal cause of questioning the constitutionality of Section 66A⁴⁷ of the ITA. Regarding the case on March 24, 2015, the Supreme Court of India invalidated Section 66A⁴⁸, saying that it was not constitutional due to its abstract language that allowed restraint on free speech in an arbitrary and disproportionate manner, contrarily to Article 19(1)(a)⁴⁹ of the Indian Constitution which protects the right to freedom of speech. The Court, moreover, adjudged that the clause was not a legitimate restriction on liberty under Article 19(2)⁵⁰. Long sentences mostly with adverbial words like "**offensive**" and "**menacing**" were part of the reason behind how the law was being abused, as proven by the arrest of the two women.

Justices Chelameswar and Justices Nariman opined that **freedom of speech and expression has three components**- discussion, advocacy, and incitement. Law enforcement could intervene only when the discussion or advocacy **incited public disorder or threatened the security of the State**.⁵¹ Core components of free speech are One of the elements that show the functioning of a democratic society is **discussion** and **advocacy**. This is the way people can tell others what they think about a lot of topics, like politics, governance, religion, and social issues. The Supreme Court declared that the freedom of speech and expression is the mainstay of an open and dynamic democracy. Discussion is about the free exchange of opinions and disagreements, while advocacy means the promotion of a particular perspective, idea, or cause. The Court underlined that the speech should not be censored as long as it is within the boundaries. Inciting Someone is a speech whose objective incite violence, civil turmoil, or illegal offenses. Instigating violence or activities that tend to be unreasonably hostile, fraudulent and terrorist offence against State security are the only grounds on which free speech can be suppressed according to Article 19(2)⁵², proving that does allow for reasonable restrictions in the interest of the public order, security, or sovereignty. Drawing a bright line between advocacy and incitement requires that we allow room for those ideas or positions

⁴⁶ Information Technology Act 2000, section 66a

⁴⁷ *Ibid*

⁴⁸ *Ibid*

⁴⁹ Constitution of India 1950, art 19(1)(a)

⁵⁰ Constitution of India 1950, art 19(2)

⁵¹ Gauri Kashyap, 'Section 66A: The Dead Law That Still Haunts India' (scobserver, 26 July 2021)

<<https://www.scobserver.in/journal/section-66a-the-dead-law-that-still-haunts-india/>> accessed 9 September 2024

⁵² Constitution of India 1950, art 19(2)

which may be radical or largely unpopular, but do not automatically enjoin other individuals to commit violent or illegal acts.

Subsequently, it was decided that Section 66A⁵³ severely violates the right to free speech and expression by imposing constraints throughout the advocacy and discussion phase. The Court's reasoning flows from the premise that the air of **free speech** must engender the manifestation of discourse, rebuking, and even radical views if they do not lead to social instability or weaken the state's well-being. The reason why section 66A⁵⁴ was ruled out is that it penalized words that merely "bothered," "discomforted," or "are offensive" without any necessity of violent incitement or public disorder.

Thus, the Court pronounced it as an out-of-proportion limitation of the free speech right, particularly in light of the danger of abuse. The contention led by the state that the use of vague and ambiguous terms in the provision was justified because it facilitated the dynamism of the internet and its users was refused.⁵⁵

Analyzing section 66A of IT Act 2000 with BNS,2023- the dead law which appears to be out of dormant after revised criminal law!

Sec 66A⁵⁶ IT Act 2000, (Now Unconstitutional)- India's Information Technology Act of 2000 was put into effect to tackle cybercrime. The Act was amended in 2009 to include cybercrimes that endanger public health, safety, the economy, and national security. Section 66A⁵⁷, which made it illegal to distribute "false and offensive messages" via any electronic means, was one of the most important punitive provisions imposed. Section 66A⁵⁸, for example, was criticized as it only penalized the transmission of information that is known to be **false** but did not define what would amount a false information or the intent element behind such falsity. However, it was not clear when such information had to be false or merely subjective. It opened the door to possible misapplication, as even satire dressed up as fact or criticism of opinions could be designated "**false.**"

⁵³ Information Technology Act 2000, section 66a

⁵⁴ *Ibid*

⁵⁵ *Ibid*

⁵⁶ Information Technology Act 2000, section 66a

⁵⁷ *Ibid*

⁵⁸ *Ibid*

What was the real motivation behind scrapping Section 66A⁵⁹ of the IT Act? "Offensive" or "Grossly Offensive"? When it comes to offensive speech, however, subjectivity is the name of the game because what one person finds offensive another may not. This ambiguity left a freewheeling, deeply unpredictable space for the authorities to apply the law in cases of speech that was critical, and dissenting, but not necessarily harmful.

There are various sections in BNS 2023 (Indian penal code) for offences related to electronic communications, such as-

Section 152⁶⁰- It encompasses all forms of communication, such as verbal words or written text, photo images or videos and also electronic communication.

Calls for criminalizing speech/actions: All expressions that could "endanger" sovereignty or unity are punishable by law. Although the word **endangered** is not defined.

Serious and harsh penalties are included in the punishments, with the possibility of imprisonment for life or up to seven years in prison along with a hefty fine.

Still, it differs from the IT Act of 2000⁶¹. The offense under Section 152⁶² is a non-bailable and cognizable offense, more repressive as compared to Section 66A⁶³ of the IT Act which was bailable and non-cognizable. An oppressive aspect of this provision is that it is categorized under non-bailable offenses which means that there is no automatic right to bail, and indeed, under this provision, people arrested can find themselves held for very long periods indeed in the absence of secure bail. This makes it particularly more oppressive as some of those arrested could have committed non-violent crimes of expression or speech that are perceived to "endanger" sovereignty or integrity. Since this is a cognizable offense, the police have the power to arrest without a warrant. This clearly indicates that law enforcement has a wider scope of discretionary power to arrest people based on the interpretation of endangering sovereignty or unity. It thus increases the risk of arbitrary arrests if it involves activists, journalists, or political dissidents.

⁵⁹ *Ibid*

⁶⁰ Bharatiya Nyaya Sanhita 2023, section 152

⁶¹ Information Technology Act 2000

⁶² Bharatiya Nyaya Sanhita 2023, section 152

⁶³ Information Technology Act 2000, section 66a

Section 152⁶⁴ of BNS: A New Challenge-

Section 152⁶⁵ BNS includes the use of electric communication- this can be used as leverage to constrain free speech and writing and against persons who show disaffection against the government. Section 152 is slack, as the inhibition for its use is impractical and it has not laid out the clear explanation of what amounts to "**endangering sovereignty**" or "**unity**". The government has used for years draconian provisions in the Indian Penal Code, 1860⁶⁶ (IPC) and the Code of Criminal Procedure, 1973⁶⁷ to arrest people under mandatory pre-trial detention laws, including on charges that are arbitrary and politically motivated.

The draconian manner in which this law punishes can become an instrument of authoritarian control and would enable the state to silence voices of dissent. People may have ultimately been found to be not guilty of any involvement in terrorism however the process itself was a punishment imprisoning people sometimes for years, prosecuting them for everything and nothing.

In the case of **Kedarnath Singh v. State of Bihar, 1962, S.C.**,⁶⁸ This precedent, setting matter came under Section 124A⁶⁹ (sedition) of the Indian Penal Code, where the Apex Court declared the constitutionality of the statute but specified that it could use only the public safety clause and the incitement to violence clause to charge someone with sedition. The Kedarnath Singh case was significant because it prohibited the application of the Sedition Act in situations where speech incited violence.

Shreya's sole case also dealt with the ambiguous wording of Section 66A⁷⁰, which resulted in misapplying it as it did not give a clear definition.

Section 152⁷¹ of BNS aligns with the ethos of section 66A⁷² of the IT Act which also made it an offence to send offensive texts through electronic means. The essence of the sections refers to effectively restricting certain forms of free speech in a digital realm. In a fast-paced growing world and a democratic country like India where people choose their leaders democratically if

⁶⁴ Bharatiya Nyaya Sanhita 2023, section152

⁶⁵ *Ibid*

⁶⁶ Indian Penal Code 1860

⁶⁷ Code of Criminal Procedure 1973

⁶⁸ *Kedarnath Singh v. State of Bihar* (1962) AIR 955, 1962 SCR SUPL. (2) 769

⁶⁹ Indian Penal Code 1860, section 124a

⁷⁰ Information Technology Act 2000, section 66a

⁷¹ Bharatiya Nyaya Sanhita 2023, section152

⁷² Information Technology Act 2000, section 66a

people are allowed to show affection towards a certain regime, then they must also be allowed to show disaffection towards it as was rightly said by Mahatma Gandhi in the infamous Great trial of 1922-

Affection cannot be manufactured or regulated by law. If one has no affection for a person or system one should be free to give the fullest expression to his disaffection.⁷³

Democracy endorses the opposing opinions of the general population, and it lies at its core. Albeit Section 66a⁷⁴ of the IT Act or Section 124A⁷⁵ of IPC, both these provisions were significantly used to curtail expression by political entities. In this fast-paced world when the majority of the population is online, social media has emerged as an efficacious tool to show discontent towards government endeavors as social media engages the population at large, driving people from across the country to disseminate outrage towards the government. In a political framework like India, the investigation carried out by the public agencies is somewhat aligned with the prospects of political interests of the ruling government and given this newly drafted Section 152⁷⁶ of BNS which is vague in its applicability, will be used to repress dissenting opinions with stringent punishments.

It is a point of view that the excessive rigour of Section 152⁷⁷ of the BNS, on account of its unclear language, severe punishment, informal trial, and non-recognizability status, is another major violation of freedom of expression even bigger than Section 66A of the Information Technology Act. So, it can be used to suppress an opinion's unjust mouthings, mainly targeting political opponents or silent criticism, such as amusingly, they have in the past sedition laws been abused. Section 152 is inadmissible and cognizable because there are high chances of torture, which makes the legal system oppressive wherein people can get arrested or can be punished by the police to fulfillment of the set amount of time simply for expressing their views. When the high-ranking officials let the mentioned process continue, it will be transformed into authoritarian use of torture and the democratic discourse will be.

⁷³ Ke Pi Kesavamenon, 'The great trial of Mahatma Gandhi & Mr. Sankarlal Banker' (first published 1922, Ganesh & Company, 1922)

⁷⁴ Information Technology Act 2000, section 66a

⁷⁵ Indian Penal Code 1860, section 124a

⁷⁶ Bharatiya Nyaya Sanhita 2023, section 152

⁷⁷ *Ibid*

Ways to address the concerns surrounding section 152 to make it clear and more specific-

- It is highly recommended that lawmakers re-word Section 152⁷⁸ to be more specific and clearer. In this way, it would not be open to further misuse or one-sided interpretation. Legislators. This is due to the fact that arbitrary interpretation and misuse by the police must be avoided. Any ambiguity in a legal provision has to be brought to its minimum to save free speech. For example – “**Endangering sovereignty**” and “**integrity**” can be altered in a more nuanced way by specifying actions that directly incite violence, or danger to the safety and integrity, as well as threatening the country’s security.

Also include a clause allowing free speech to be protected, as long as it doesn't direct incitement. But at the same time, it should enable some restrictions in specific situations. This would give a clear distinction between “**free speech**” and “**incitement**”.

- The courts are expected to interpret the meaning of Section 152⁷⁹ progressively to emphasize protection under the Constitution for freedom of speech. Judicial oversight might abate the abuse of this section by bringing reasonable fetters on its over-expansive wording.
- The balance has to be struck while considering that any restriction on speech must be proportionate; the restrictions should not be excessive to the extent that they violate fundamental liberties. Policymakers have to strike a proper balance between these two aspects.

CONCLUSION

However, like Section 66A⁸⁰ of the ITA, vagueness in the wording of Section 152⁸¹ out of proportion poses a severe threat to free speech. The use of vague words suppresses the voice of dissent and criticism against the government and invites arbitrary enforcement. Free expression is a basic freedom in a democratic setup like India, and doing so is believed to create a severe threat to civil liberties.

It, therefore, requires keen legal demarcation and protection against arbitrary use of authority. Progressive judicial interpretation shall, therefore, play a key role in the application of laws like Section 152⁸² stringently to cases that actually constitute a threat to security, without unduly restricting legitimate free expression. Public pressure, transparency in law enforcement,

⁷⁸ *Ibid*

⁷⁹ Bharatiya Nyaya Sanhita 2023, section152

⁸⁰ Information Technology Act 2000, section 66a

⁸¹ Bharatiya Nyaya Sanhita 2023, section152

⁸² *Ibid*

and rigorous checks on the application of the said laws will be required to make sure they do not turn out to be political repression.

In other words, although the security needs have to be met, they shall not be at the expense of suppressing democratic freedoms. The only way to ensure that this balance is maintained is to ensure that laws are specific and in proportion, with judicial oversight.

However, there are some similarities between Section 152⁸³ BNS 2023 with Section 66A⁸⁴ of the now unconstitutional section. But comparative to Sec 66A⁸⁵ BNS 2023, the former is considerably different in a number of aspects. Section 152⁸⁶ of the BNS 2023 is arbitrary in nature to the extent that can be manipulated and may provide arbitrary power to law enforcement in some aspects. It also contains more severe punishments because offences under it are non-bailable penalties; it, therefore, is feared to be used as a harsher weapon against dissent, similar to sedition laws of the past. Whereas Section 152⁸⁷ BNS is not undefined, as was Section 66a⁸⁸, its arbitrary nature has nonetheless rendered it a significant threat to free speech, and hence requires close monitoring with regard to application, also with the need for progressive judicial interpretation regarding the section.

⁸³ Bharatiya Nyaya Sanhita 2023, section 152

⁸⁴ Information Technology Act 2000, section 66a

⁸⁵ *Ibid*

⁸⁶ Bharatiya Nyaya Sanhita 2023, section 152

⁸⁷ *Ibid*

⁸⁸ Information Technology Act 2000, section 66a