SEDITION REPEALED OR REINVENTED? A CRITICAL ANALYSIS OF SECTION 150 BNS IN LIGHT OF DEMOCRATIC FREEDOMS AND CONSTITUTIONAL MORALITY

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ABSTRACT

The offence of sedition, codified under Section 124A of the Indian Penal Code, 1860, has long stood at the intersection of state authority and constitutional freedoms in India. With the introduction of Section 150 of the Bharatiya Nyaya Sanhita, 2023, the Government has claimed a historic departure from colonial legal frameworks. This chapter critically examines whether Section 150 truly represents a decolonisation of India's criminal law or merely a sophisticated reinvention of sedition under contemporary nomenclature. Anchored in the doctrine of constitutional morality and democratic free speech principles, the analysis juxtaposes the statutory language of Section 124A and Section 150, scrutinises judicial interpretations, assesses legislative intent, and draws comparative insights from jurisdictions like the United Kingdom, the United States, and South Africa. It argues that despite semantic changes, the essential dangers of vague and overbroad criminalisation of dissent persist. In closing, the chapter suggests avenues by which Section 150 of the BNS might better reflect the constitutional promise of civil liberties, particularly the right to dissent. It argues that safeguarding national security need not, and must not, come at the expense of foundational democratic freedoms. This exploration, rooted in constitutional jurisprudence and political philosophy, aspires to enrich the larger conversation about how India negotiates the tension between authority and dissent in the 21st century.

Keywords: Sedition, Freedom of Speech, Constitutional Morality, Democratic Dissent.

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INTRODUCTION

All the laws bequeathed to India by its colonial past, few have attracted as much persistent controversy as the law of sedition. Enacted in 1870he sedition was a legislative device conceived specifically to suppress political dissent and nationalist sentiment. Prosecutions under this provision against towering figures of the Indian freedom struggle, such as Bal Gangadhar Tilak and Mahatma Gandhi, reveal its core purpose:[1] the protection of an imperial government rather than the security of society at large[2]. Despite the attainment of independence and the adoption of a Constitution premised on the values of liberty, equality, and fraternity, Section 124A survived within the body of Indian criminal law. Although judicial interpretation in *Kedar Nath Singh v. State of Bihar*[3] sought to restrict its application to speech acts inciting violence or public disorder, the sedition law continued to be invoked against critics, journalists, and civil rights activists, frequently becoming a tool for political convenience. The wide language of Section 124A, coupled with its harsh punishments, perpetuated a chilling effect upon freedom of speech, leading many scholars to characterise it as an anachronism incompatible with the ideals of a constitutional democracy.

In an effort purportedly aimed at decolonising India's criminal statutes, the Government of India introduced the Bharatiya Nyaya Sanhita, 2023 ('BNS'), repealing the IPC in its entirety. Within this framework, Section 150 BNS[4] was introduced, replacing the offence of sedition with a new provision criminalising the acts that endanger the sovereignty, unity, and integrity of India.[5] The legislative shift was announced as a move away from colonial repression towards a framework more aligned with contemporary constitutional values. Yet, a comparative reading of Section 124A IPC[6] and Section 150 BNS[7] raises significant doubts as to whether a substantive change has occurred, or whether the offence of sedition has been merely rebranded under a new title.

This chapter seeks to critically examine the continuity and change embedded within Section 150 BNS. This chapter undertakes a layered examination of whether Section 150 of the Bharatiya Nyaya Sanhita (BNS) genuinely signals a normative departure from colonial-era

[1] R.C. Majumdar, *History of Freedom Movement in India* (Vol. III, Oxford University Press, 1963) 212-215.
[2] Bipan Chandra, India's Struggle for Independence 198 (Penguin, New Delhi, 1989).
[3] *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.
[4] Bharatiya Nyaya Sanhita, 2023, Section 150.
[5] Bharatiya Nyaya Sanhita, 2023, Section 150.
[6] Indian Penal Code, 1860, Section 124A.
[7] Bharatiya Nyaya Sanhita, 2023, Section 150.

sedition laws or merely rebrands their coercive legacy in constitutional clothing. Central to this investigation is the doctrine of constitutional morality, a principle that compels the state not only to adhere to the formal text of the Constitution but to actively uphold its emancipatory vision. The analysis draws from the Supreme Court's evolving interpretation of Article 19(1)(a)[8], particularly in landmark rulings such as *Shreya Singhal v. Union of India* and *Vinod Dua v. Union of India*,[9] where the boundaries of lawful restriction and democratic expression were carefully delineated. To contextualise India's legislative shift, the paper also considers comparative frameworks: the UK's statutory repeal of sedition in 2009,[10] the United States' constitutional absolutism under the First Amendment and South Africa's jurisprudence under a post-apartheid rights-based constitutional order. At its core, the inquiry seeks to determine whether the BNS reforms reflect a genuine constitutional reckoning or if they continue to obscure the suppression of dissent behind reworded provisions.

CONCEPTUAL FOUNDATIONS

Sedition, in its classical conception, crystalises the uneasy balance between sovereign power and civic dissent. Under colonial rule, it operated not as a tool of public order but as an instrument of political subjugation; any articulation of discontent was treated as insubordination to the Crown's authority. The law's purpose, therefore, was not simply to regulate violence or unrest, but to discipline thought and suppress resistance to imperial control. In the framework of a modern constitutional democracy, however, such logic is antithetical to the ideals of deliberative pluralism and participatory citizenship. The continued presence of such an offence, even under a new statutory guise, raises profound constitutional questions about the compatibility of state power with democratic dissent.

At the heart of any discussion surrounding sedition lies the broader inquiry into the role of free speech within a democratic polity. The framers of the Indian Constitution, well aware of the colonial abuse of sedition laws, sought to guarantee to every citizen the right to freedom of speech and expression under Article 19(1)(a)[11]. This right, however, was not framed in absolute terms. Article 19(2)[12] permits reasonable restrictions on grounds such as sovereignty, integrity of India, security of the state, and public order. The constitutional imagination was thus

[8] The Constitution of India, art. 19(1)(a).
[9] Shreya Singhal v. Union of India, (2015) 5 SCC 1; Vinod Dua v. Union of India, 2021 SCC OnLine SC 414.
[10] The Coroners and Justice Act, 2009 (UK), s. 73.
[11] Constitution of India 1950, Article 19(1)(a).
[12] Constitution of India 1950, Article 19(2).

premised on a calibrated balance: liberty on the one hand, and societal stability on the other. Yet, as the Supreme Court's evolving jurisprudence demonstrates, this balance is tilted heavily in favour of liberty unless compelling state interests justify intervention[13]. In *Kedar Nath Singh,*[14] the Court distinguished between the "advocacy" of a political cause and the "incitement" of disorder, insisting that only the latter could constitutionally attract penal consequences. In *Shreya Singhal*[15]*,* the Court underscored the necessity of the "clear and present danger" test, observing that vague and subjective standards invite arbitrary state action and imperil the democratic process itself.

In this doctrinal backdrop emerges the notion of **constitutional morality**, a jurisprudential principle that demands fidelity to the animating spirit of the Constitution rather than a mere mechanical compliance with its textual mandates. As articulated by the Supreme Court in cases such as ***Navtej Singh Johar v Union of India***[16]. Constitutional morality requires that laws must embody the values of dignity, equality, liberty, and fraternity, ensuring that governance remains anchored in principles transcending transient political majorities[17].

Constitutional morality, thus understood, elevates the discourse on sedition beyond narrow legalism. It compels the question: can a provision that criminalises amorphous notions such as "subversive activities" or "feelings of separatism," without a proximate connection to violence or public disorder, survive constitutional scrutiny merely by invocation of state security? Or does such an offence, by its very vagueness, undermine the participatory ideals enshrined within the constitutional framework? The new Section 150 of the BNS must be assessed against this normative standard. Its language, while ostensibly more modern, appears to retain the same elasticity that rendered Section 124A susceptible to overreach. The absence of an articulated threshold for criminality, such as an imminent incitement to violence, raises the spectre of the same constitutional infirmities that plagued the colonial sedition law.

The comparative experiences of other democracies further illuminate the stakes involved. The United Kingdom, through the Coroners and Justice Act 2009, acknowledged that sedition offences were "anachronistic" and "unnecessary in a modern democracy," leading to their formal abolition. The United States' First Amendment jurisprudence, particularly

[13] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.
[14] Ibid.
[15] Shreya Singhal v. Union of India, (2015) 5 SCC 1.
[16] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[17] Ibid.

Brandenburg v. Ohio[18]sets a high bar for penalising political speech, demanding not only incitement but also the likelihood of imminent lawless action. South Africa's post-apartheid constitutional order, with its deep commitment to freedom of expression, severely restricts the state's capacity to criminalise dissent[19].

Viewed through these prisms, it becomes evident that the mere substitution of nomenclature from "sedition" to "acts endangering sovereignty" cannot suffice unless accompanied by substantive doctrinal realignment. In the absence of such realignment, Section 150 risks perpetuating the colonial legacy under the veneer of national security imperatives. Thus, the conceptual foundations laid down by constitutional text, judicial interpretation, and comparative democratic experience establish the framework within which the new offence must be scrutinised. Only a law that is narrowly tailored, precisely worded, and constitutionally attuned can legitimately regulate political expression without extinguishing the vital spirit of democratic dissent.

DOCTRINAL ANALYSIS: FROM SECTION 124A IPC TO SECTION 150 BNS

The criminalisation of acts perceived as undermining the authority of the state has historically found legal expression through Section 124A of the Indian Penal Code, 1860.[20] The provision, couched in expansive language, penalised any words, signs, or visible representations that "bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection" towards the government established by law in India. Crucially, the term "disaffection" was defined broadly to include feelings of enmity, disloyalty, and hostility, leaving vast interpretative space to criminalise a wide range of speech acts. The punishment prescribed ranged from life imprisonment to a three-year term, with or without a fine.

Judicial attempts to narrow the ambit of Section 124A are well-documented. In ***Kedar Nath Singh v State of Bihar***,[21] the Supreme Court upheld the constitutional validity of sedition, but significantly read down its scope, holding that mere criticism of the government, however vigorous or vituperative, would not constitute sedition unless it incited violence or had the tendency to create public disorder. Despite this judicial effort, the elasticity of the statutory

[18] Brandenburg v. Ohio, 395 U.S. 444 (1969).
[19] South African Constitution, 1996, s. 16.
[20] *Indian Penal Code, 1860, Section 124A.*
[21] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

language ensured that the provision remained susceptible to misuse, often becoming a convenient tool for the suppression of dissent.

In contrast, Section 150 of the Bharatiya Nyaya Sanhita, 2023[22], attempts a textual reconfiguration of the sedition offence. The new provision criminalises acts that "purposely or knowingly excite or attempt to excite secession or armed rebellion or subversive activities, or encourage feelings of separatist activities," or acts that "endanger sovereignty, unity and integrity of India[23]." The punishment prescribed mirrors the earlier section in terms of gravity, extending up to life imprisonment or a term which may extend to seven years, along with a fine.

At first glance, the shift in language from "disaffection" and "hatred" to "secession," "armed rebellion," and "subversive activities" suggests a narrowing of the offence to acts more directly linked with threats to the state's territorial integrity and security. Unlike "disaffection," terms such as "secession" and "armed rebellion" are ostensibly more specific and anchored in tangible threats. This, if interpreted strictly, could represent a doctrinal progression towards harmonising the offence with constitutional guarantees of free speech. However, the drafting of Section 150[24] reveals persistent ambiguities. Notably, the inclusion of "subversive activities"[25] and "feelings of separatist activities"[26] introduces vague and subjective elements into the statutory text. Neither term is defined within the BNS, leaving it to the courts, and more worryingly, to law enforcement agencies at the first instance, to determine their scope. In the absence of precise statutory definitions or guiding standards, there is a significant risk that expressions of dissent, particularly those advocating regional autonomy or criticising governmental actions perceived as undermining federalism, could be swept within the provision's ambit.

Moreover, the architecture of Section 150 continues to rely upon the "tendency" standard, criminalising not merely incitement to rebellion but also acts which "attempt to excite" separatist sentiments. This recalls the infirmity of Section 124A, where the mere creation of disaffection was penalised regardless of its proximity to actual violence or disorder. Although an Explanation appended to Section 150 clarifies that comments expressing disapproval of

[22] Bharatiya Nyaya Sanhita, 2023, Section 150.
[23] Ibid.
[24] Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023), s. 150.
[25] Parliamentary Standing Committee Report on Bharatiya Nyaya Sanhita, 2023.
[26] Ibid.

government measures, without exciting secession or rebellion, do not constitute an offence, this caveat is substantially identical to the Explanation to Section 124A, whose practical utility in preventing misuse has been negligible.

In doctrinal terms, therefore, Section 150 appears to effect only a cosmetic change rather than a substantive realignment of the sedition offence. By retaining broad and indeterminate categories, and by criminalising tendencies towards separatism without requiring imminent incitement to violence, the new provision risks offending the same constitutional safeguards that necessitated a narrow construction of Section 124A.

The deeper jurisprudential concern is that in a constitutional democracy premised on free political discourse, the yardstick for criminalising speech must be strictly limited to situations where expression poses a clear and present danger to public order or national security. Section 150 of the BNS, despite its rewording, does not meaningfully transcend the structural anxieties embedded within its colonial predecessor. While the removal of terms like "disaffection" may suggest a semantic departure from the vocabulary of imperial governance, the normative framework continues to prioritise sovereign authority over democratic contestation. The essence of the offence, punishing expressions perceived as hostile to the state, remains largely intact, albeit clothed in constitutionally palatable language. Such continuity in purpose, even under linguistic innovation, risks entrenching the very tensions that postcolonial legal reform was meant to resolve.

JUDICIAL LANDSCAPE: A DOCTRINAL TIMELINE

Judicial engagement with sedition law in India has reflected an uneasy balancing act—one that seeks to reconcile constitutional promises with the anxieties of political order. Across decades, the courts have vacillated between preserving democratic freedoms and deferring to the imperatives of state control. Landmark rulings in this area do more than interpret statutory language; they illuminate how the judiciary has navigated the ideological battleground between expressive liberty and governmental restraint. These precedents now serve not only as legal milestones but also as touchstones to assess the constitutional viability of Section 150 BNS.

In ***Kedar Nath Singh v. State of Bihar***[27]**,** the Supreme Court faced the formidable task of reconciling a colonial penal provision with the values of a post-independence Constitution.

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

Rather than strike down Section 124A of the IPC, the Court chose a path of doctrinal restraint, preserving the law while narrowing its scope. Only those expressions that incite or tend to incite violence and public disorder, the Court held, would qualify as sedition. Mere dissent, even if couched in harsh or provocative language, was placed outside the ambit of criminal sanction. This interpretive recalibration established what came to be known as the "incitement to violence" test, allowing the judiciary to retain the provision without abandoning its constitutional fidelity. Notwithstanding the authoritative dictum of ***Kedar Nath Singh*****,** lower courts and law enforcement authorities continued to apply Section 124A in a manner inconsistent with its limited scope. Charges of sedition were frequently slapped against individuals for political dissent[28], artistic expression, and journalistic critique, often without any demonstrable link to violence or public disorder. This divergence between judicial interpretation and executive application highlighted the inherent dangers of retaining overbroad penal provisions, even when judicially trimmed.

The Supreme Court's decision in ***Shreya Singhal v Union of India***[29] further deepened the constitutional scrutiny of laws restricting speech. While dealing primarily with the constitutionality of Section 66A of the Information Technology Act, 2000, the Court articulated the "clear and present danger" test[30], emphasising that restrictions on speech must bear a proximate connection to public disorder, not a remote or speculative one. Vague and subjective standards, the Court warned, imperil the foundational democratic value of free and uninhibited discussion. Though ***Shreya Singhal***[31] did not directly concern sedition, its reasoning fortified the doctrinal edifice within which any offence penalising speech must operate.

In ***Vinod Dua v. Union of India,***[32] the Court had yet another occasion to revisit sedition jurisprudence. The petitioner, a senior journalist, faced multiple FIRs under Section 124A IPC for criticising the government's handling of the COVID-19 pandemic. Reiterating the principles laid down in ***Kedar Nath Singh***, the Court categorically held that mere criticism, however harsh or unpalatable, could not be criminalised unless it incited violence or had a direct tendency to create public disorder. Importantly, the Court underscored the vital role of the press

[28] Law Commission of India, Consultation Paper on Sedition (2018), para 7.1.
[29] Shreya Singhal v. Union of India, (2015) 5 SCC 1.
[30] Brandenburg v. Ohio, 395 U.S. 444 (1969).
[31] Shreya Singhal v. Union of India, (2015) 5 SCC 1.
[32] Vinod Dua v. Union of India, (2021) SCC Online SC 414.

in a democracy and the chilling effect that criminal prosecutions could have on public discourse.

Yet, despite these judicial guardrails, the spectre of sedition misuse persisted. In 2022, while hearing a batch of petitions challenging Section 124A, the Supreme Court took the unprecedented step of putting the provision in abeyance[33]directing the Union and state governments to refrain from registering fresh sedition cases and to keep pending cases in suspension. Such judicial reinterpretation, while pragmatic, revealed an underlying unease with the provision's breadth and its susceptibility to executive misuse. It was a doctrinal compromise, a recognition that the text of the law stood uneasily beside the evolving architecture of constitutional rights.

Viewed against this jurisprudential trajectory, the advent of Section 150 under the BNS invites critical scrutiny, not merely for what it includes, but for what it fails to reform. While the semantic shift from "disaffection" to "secession" and "subversive activities" might suggest an attempt to align with judicially evolved standards, the absence of explicit statutory safeguards replicates the very dangers that the judiciary has repeatedly cautioned against. In the absence of an explicit legislative requirement that links liability under Section 150 to imminent incitement of violence, the provision risks eroding the doctrinal safeguards that have evolved through sustained constitutional adjudication.

The arc from *Kedar Nath Singh* to *Vinod Dua* reflects a sustained judicial insistence that freedom of speech is not conditional upon governmental tolerance but is a structural pillar of India's constitutional order. Any restriction on this right, the courts have repeatedly affirmed, must withstand the highest threshold of necessity and proportionality. Any new criminal statute dealing with offences against the state must internalise this doctrinal legacy if it seeks to withstand constitutional scrutiny.

LEGISLATIVE INTENT AND STANDING COMMITTEE ANALYSIS

The repeal of Section 124A of the Indian Penal Code[34] and its replacement by Section 150 of the Bharatiya Nyaya Sanhita was projected by the Union Government as a monumental step towards decolonising Indian criminal law. During parliamentary debates[35]The Home Minister

[33] S.G. Vombatkere v. Union of India, Writ Petition (Criminal) No. 217 of 2021.
[34] The Indian Penal Code, 1860 (Act 45 of 1860), s. 124A.
[35] Lok Sabha Debates, Bharatiya Nyaya Sanhita, 2023, Official Report.

proclaimed that the new legislation marked a "historic shift" intended to uphold constitutional freedoms while safeguarding national security. The narrative advanced was that the archaic sedition provision, associated with colonial repression, had no place in a modern democratic republic. Yet, a careful examination of legislative records and Standing Committee reports suggests that the transformation may be more rhetorical than substantive.

The deliberations of the Parliamentary Standing Committee[36] on Home Affairs concerning the Bharatiya Nyaya Sanhita Bill, 2023, furnish a nuanced but troubling picture of legislative intent. While the Committee outwardly welcomed the formal repeal of Section 124A of the Indian Penal Code, it simultaneously endorsed the insertion of a restructured offence under Section 150 BNS, framed in ostensibly modern language but retaining the punitive logic of its predecessor. However, it simultaneously noted that threats to national sovereignty and unity continued to pose serious challenges, justifying the retention of a reconfigured offence targeting secessionist and subversive activities. The Committee, significantly, did not recommend the incorporation of any explicit safeguards, such as requiring a clear link between speech and incitement to imminent violence, or providing a narrow statutory definition of "subversive activities."

Several members of the Committee, particularly from opposition parties, voiced dissent[37]. They expressed concerns that the terminology employed in Section 150 remained vague and could perpetuate the misuse historically associated with sedition prosecutions. Among the most trenchant objections raised by commentators was the linguistic elasticity of Section 150's phraseology, particularly its invocation of "feelings of separatist activities" which could render expressions of regional discontent, federal critique, or autonomy-oriented discourse susceptible to criminal sanction. In a democracy, where dissent is the diagnostic of vitality, such semantic looseness is not a feature but a flaw. Such apprehensions were compounded by the absence of clear definitions or doctrinal thresholds within the text of the Bill.

Furthermore, the Explanatory Memorandum[38] accompanying the Bharatiya Nyaya Sanhita Bill reveals a striking ambivalence. The Explanatory Memorandum accompanying the BNS Bill performs a curious rhetorical sleight-of-hand: it simultaneously exults in the symbolic dismantling of the colonial sedition law while justifying the retention of a similarly potent

[36] Parliamentary Standing Committee Report on Bharatiya Nyaya Sanhita, 2023
[37] Ibid.
[38] Bharatiya Nyaya Sanhita, 2023, Explanatory Memorandum.

substitute without delineating how the new language marks any substantive doctrinal rupture. This ambivalence leaves the door ajar for interpretive abuse.

In stark contrast to reform processes in other mature democracies, such as the United Kingdom, where the abolition of sedition was preceded by robust public consultation, the Indian legislative exercise unfolded behind closed doors. The hearings of the Standing Committee occurred without public oversight, and engagement with civil society actors was conspicuously minimal, rendering the process procedurally insular and democratically impoverished. The Committee's near-uncritical adoption of the executive's framing, that the imperative to protect sovereignty overrides the need for speech-protective safeguards, signals not merely oversight but institutional acquiescence. In a constitutional order premised on the separation of powers, such abdication of scrutiny carries democratic costs that far outweigh legislative convenience.

Read cumulatively, the statutory drafting, the opaque procedure, and the absence of definitional clarity suggest a pattern: one that points less to principled decolonisation and more to a lexical reframing of state power. The path from Section 124A to Section 150 thus appears to be less a bridge to constitutional modernity and more a cul-de-sac of continuity.

In sum, the legislative journey from Section 124A IPC to Section 150 BNS reflects an opportunity missed, an opportunity to align India's criminal law more closely with its constitutional vision of a free and democratic society. Without substantive doctrinal shifts and procedural safeguards, the rebranding of sedition under a different nomenclature risk perpetuating the very harms the reform ostensibly sought to redress.

COMPARATIVE JURISPRUDENCE: GLOBAL EXPERIENCES WITH SEDITION AND POLITICAL DISSENT

Across constitutional democracies, the regulation of political dissent has undergone significant evolution, moving towards greater protection of free expression and narrowing the grounds on which speech may be criminalised. A comparative engagement with global jurisprudence, particularly jurisdictions like the United Kingdom, the United States, and South Africa, reveals that the offence of sedition has largely been relegated to the legal periphery, regarded as incompatible with the ethos of modern constitutional democracies. These jurisdictions have, over time, developed speech frameworks that presume liberty, not loyalty, as the normative starting point.

In the UK, the offences of sedition and seditious libel were formally expunged from statute by Section 73 of the Coroners and Justice Act 2009,[39] following recommendations by the Law Commission that these provisions were obsolete in a constitutional democracy and redundant in the presence of modern public order laws[40]. The Law Commission of England and Wales[41] had earlier recommended such repeal, observing that the offences were "arcane" and "redundant in a modern constitutional democracy."[42] It was recognised that existing provisions dealing with incitement to violence and public disorder sufficed to address legitimate threats without necessitating a separate offence targeting disaffection towards the government. The legislative consensus reflected a mature understanding that robust political critique, even if strident or unpopular, is an essential attribute of democratic governance. The UK's experience underscores a crucial lesson: that the stability of a democratic state depends not upon the criminalisation of dissent, but upon its tolerance and accommodation within constitutional limits.

The United States presents an even more stringent constitutional regime safeguarding political speech. The First Amendment jurisprudence, as crystallised in ***Brandenburg v. Ohio,***[43] sharply curtailed the state's power to penalise speech. Under the "imminent lawless action" test laid down in *Brandenburg*, advocacy of the use of force or law violation is protected unless it is directed to inciting or producing imminent lawless action and is likely to incite or produce such action[44]. Mere abstract advocacy, however distasteful, remains immune from penal sanction. Earlier sedition prosecutions under the Alien and Sedition Acts of 1798, and later during the early 20th century under the Espionage Act, had prompted substantial scholarly and judicial critique, leading to the modern jurisprudential emphasis on the necessity of a direct, immediate, and substantial threat to public order before speech may be curtailed. The American model thus provides perhaps the most robust affirmation of the idea that in a democracy, the antidote to bad speech is not censorship but more speech.

South Africa's constitutional experience offers a further instructive perspective. Emerging from the dark history of apartheid, the South African Constitution [45]enshrines freedom of

[39] Coroners and Justice Act, 2009 (UK), Section 73.
[40] Law Commission of England and Wales, Abolition of the Common Law Offences of Sedition and Seditious Libel, Report No. 300 (2009) 8–10.
[41] Law Commission of England and Wales, Report No. 300, 2005.
[42] Ibid, 9.
[43] Brandenburg v. Ohio, 395 U.S. 444 (1969).
[44] Ibid.
[45] Constitution of the Republic of South Africa, 1996, Section 16.

expression as a fundamental right, permitting limitations only under strict conditions aimed at preventing incitement to imminent violence or advocacy of hatred based on race, ethnicity, gender, or religion that constitutes incitement to harm. In jurisdictions shaped by histories of political repression, the journey toward dismantling sedition laws has been neither swift nor simplistic, but it has been firm. In South Africa, for instance, the constitutional court has articulated with clarity that the legitimacy of a democratic state cannot be divorced from its willingness to absorb and respond to dissent. Far from eroding authority, robust public criticism of leaders, policies, and institutions has been framed as a catalyst for accountability and participatory governance. The offence of sedition, once a tool of apartheid-era suppression, has faded from serious prosecutorial use, reflecting a shift in normative priorities: from preserving obedience to enabling deliberation.

India's legislative pivot, embodied in Section 150 of the Bharatiya Nyaya Sanhita, appears less assured in its constitutional anchoring. Although it gestures toward safeguarding sovereignty and integrity, the provision is curiously bereft of doctrinal precision. Phrases such as "subversive activities" or "feelings of separatist activities" are left undefined, inviting the very interpretive elasticity that the Constitution was designed to guard against. In place of specificity, we find abstractions, in place of restraint, a discretionary expanse. Unlike the United Kingdom, which abolished sedition through a formal legislative process in 2009, or the United States, where the Brandenburg test tightly circumscribes speech restrictions to cases of incitement to imminent lawless action, the Indian approach appears to preserve the moral anxieties of a post-colonial sovereign without embracing the democratic assurances of a rights-based republic.

To be clear, constitutional transplants are rarely seamless. Each jurisdiction brings to bear its own sedimented experiences of conflict, identity, and state formation. What works in Pretoria may not be feasible in Patna. But there remains a jurisprudential minimum, a constitutional core, that affirms the foundational role of dissent in sustaining democracy. When political expression is criminalised absent a direct and immediate threat to public order, the state risks not only violating individual liberty but also eviscerating the very process through which democratic legitimacy is renewed.

Section 150, therefore, cannot be judged merely by its text or intent. It must be assessed by the degree to which it enables or inhibits the civic courage necessary for a pluralistic republic. Constitutional democracy, as envisioned by the framers and rearticulated by successive courts,

is not a terrain of consensus but of contestation. It thrives not in the silence of conformity, but in the audacity of citizens who refuse to speak the state's language—and insist, instead, on their own.

CRITICAL REFLECTIONS: SEDITION REBRANDED OR TRULY REPEALED?

The substitution of Section 124A IPC with Section 150 of the Bharatiya Nyaya Sanhita invites serious interrogation, not merely for its linguistic departure from colonial vocabulary but for the continuity it appears to maintain in operational logic. Although the rewording introduces terms such as "secession" and "armed rebellion," it does little to recalibrate the underlying legal framework that historically targeted dissent. Instead of embodying a doctrinal shift rooted in the Constitution's transformative ethos, Section 150 may merely repackage state anxiety around political speech in a modernised statutory format.

In a constitutional democracy, however, the government is accountable to the people; it derives legitimacy not from coercive power but from the informed consent of the governed. Political dissent, far from being a threat, constitutes the very lifeblood of democratic legitimacy. Any law that criminalises expressions of dissent — however unorthodox, provocative, or unsettling — must therefore be viewed with extreme constitutional suspicion.

While the revised provision discards expressions like "disaffection," it introduces nebulous formulations— "subversive activities" and "feelings of separatist activities"—without accompanying statutory clarity. Such formulations permit wide interpretive discretion, potentially converting constitutionally protected critique into an actionable offence. Absent a precise legislative mandate that demands a demonstrable and proximate threat to public order, this ambiguity risks reactivating the chilling effects long associated with its predecessor.

These are not speculative dangers. Historical precedent reflects a discernible pattern in which vague criminal statutes disproportionately target dissenters, particularly from marginalised communities and oppositional politics. The trajectory of sedition jurisprudence in India has repeatedly shown that, in the absence of judicially enforced thresholds and narrowly tailored criteria, legal instruments with expansive scope are prone to misuse and selective application.

The proportionality principle, now integral to Indian constitutional jurisprudence, mandates that restrictions on fundamental rights must be closely aligned with legitimate state aims, be the least restrictive, and necessary in a democratic setup. In its current incarnation, Section 150

fails to satisfy these benchmarks. The availability of targeted provisions for incitement elsewhere in the penal code further weakens the case for such a broadly phrased offence. Less restrictive means, such as penalising actual incitement to violence under other provisions, already exist within the Indian Penal Code and other special laws. The necessity of retaining a broadly worded offence that criminalises tendencies or feelings, rather than concrete actions leading to imminent disorder, remains constitutionally suspect.

In comparative perspective, India's retention of a quasi-sedition offence places it at odds with the trajectory of mature constitutional democracies, which have progressively dismantled or severely restricted similar offences in favour of protecting robust political discourse. While national security is undoubtedly a legitimate state interest, the lessons from jurisdictions like the United Kingdom, the United States, and South Africa affirm that the vitality of a democracy is measured not by its ability to suppress dissent but by its willingness to tolerate, even embrace, vigorous contestation of authority.

Ultimately, the legislative project embodied in Section 150 appears to have fallen short of the transformative constitutionalism envisioned by the framers of the Indian Constitution. Rather than reimagining the relationship between the State and citizenry in democratic terms, it reasserts the colonial logic of distrust, cloaked in the language of sovereignty and unity. In doing so, it risks undermining not merely the right to free expression, but the very foundations of constitutional democracy itself.

RECOMMENDATIONS: TOWARDS CONSTITUTIONAL ALIGNMENT

In light of the doctrinal concerns and comparative insights discussed above, it is imperative that any statutory framework addressing threats to national sovereignty and integrity must be crafted with the utmost fidelity to constitutional principles. Section 150 of the Bharatiya Nyaya Sanhita, while a putative replacement of colonial sedition law, fails to embody this necessary constitutional evolution. A set of specific, structured reforms can bridge this gap, ensuring that national security is preserved without sacrificing the democratic right to dissent.

First and foremost, the language of Section 150 must be re-drafted to incorporate clear and precise definitions of terms such as "subversive activities" and "feelings of separatist activities.[46] Vague and indeterminate language inevitably invites arbitrary enforcement and

[46] Bharatiya Nyaya Sanhita, 2023, Section 150.

creates a chilling effect on free speech. In the constitutional scheme, precision in penal drafting is not a luxury—it is a requirement embedded in Article 14. Penal statutes must contain intelligible standards, lest they devolve into instruments of arbitrary governance. Ambiguous terms that lack definitional clarity empower executive discretion at the expense of constitutional predictability.

Further, legislative reform must embed the "imminent incitement to violence" threshold, long recognised in comparative jurisprudence and adopted by Indian courts in *Shreya Singhal v. Union of India* and guided by the U.S. decision in *Brandenburg v. Ohio*. This standard ensures that penal consequences attach only to speech directly linked to immediate and tangible disorder, not to abstract or unpopular expression. Without this doctrinal anchor, Section 150 risks criminalising abstract advocacy or unpopular political beliefs, thereby undermining the very fabric of democratic discourse.

Third, procedural safeguards must be built into the enforcement mechanism. Prosecutions under Section 150 should require prior sanction from a high-ranking official, such as the State's Advocate General or an independent judicial officer, to prevent frivolous or politically motivated prosecutions. Furthermore, courts must be statutorily required to conduct a preliminary inquiry into the proximity and severity of the alleged speech act's threat to public order before framing charges. Such preconditions would act as important bulwarks against misuse and would reinforce the principle that criminal law must operate as the ultima ratio, the last resort[47] rather than a tool of governance by suppression.

Fourth, the punishment framework needs recalibration. The current provision, which permits life imprisonment for offences under Section 150, is manifestly disproportionate when judged against the constitutional guarantee of proportionality. The penal consequences must be rationally linked to the gravity of the harm caused, not merely to the emotive weight of the terms used. A graded system of penalties, tied to the actual impact or imminence of harm, would better align with both retributive and rehabilitative theories of criminal justice.

Fifth, a robust program of constitutional education and sensitisation among law enforcement agencies[48] is essential. Historical experience shows that misuse of penal provisions often stems less from malice than from ignorance or misapprehension of constitutional boundaries. Regular

[47] Andrew Ashworth, Principles of Criminal Law (7th edn, Oxford University Press, 2013) 35–40.
[48] Centre for the Study of Developing Societies (CSDS), Status of Policing in India Report 2019.

training modules, mandatory certification courses, and accountability mechanisms for officers misapplying Section 150 would institutionalise respect for constitutional rights at the ground level, where the first encounter between citizen and state typically occurs.

Finally, an institutional framework for periodic review of sedition-type prosecutions must be established. A standing committee comprising members of the judiciary, legal academia, and civil society organisations could monitor cases filed under Section 150, publishing annual reports on patterns of enforcement. Transparency and public oversight would act as powerful deterrents against executive overreach and ensure that national security is not wielded as a pretext for silencing dissent.

These reforms, if implemented with sincerity and constitutional fidelity, would transform Section 150 from a continuation of colonial sedition laws into a genuine instrument of democratic governance. They would reaffirm the constitutional commitment that security and liberty are not mutually exclusive, but mutually reinforcing pillars of a resilient and vibrant republic.

CONCLUSION

The evolution from Section 124A of the Indian Penal Code to Section 150 of the Bharatiya Nyaya Sanhita was heralded as a watershed moment in India's constitutional journey, a symbolic breaking away from colonial legal legacies. Yet, a closer and more critical examination reveals that the essential structure of criminalising political dissent remains largely unaltered, concealed behind a modern vocabulary of national integrity and sovereignty. In evaluating Section 150 of the Bharatiya Nyaya Sanhita, what emerges is less a legislative severance from colonial jurisprudence and more a calibrated continuity under altered semantics. The language may have evolved, but the architecture of control remains largely undisturbed. Beneath the surface of reform, one discerns the lingering impulse to conflate state sovereignty with ideological obedience, a pattern at odds with the radical pluralism envisioned by the Constitution.

Indian courts, from *Kedar Nath Singh* to *Vinod Dua*, have underscored that any curtailment of free expression must be anchored in the necessity of averting direct and imminent harm. The insertion of undefined categories like "subversive activities" without corresponding procedural safeguards undermines that doctrinal clarity. Without express thresholds, statutory precision, and judicial review mechanisms, the danger is not hypothetical; it is jurisprudentially

proximate. Political dissent, particularly when voiced from the margins, may once again become subject to penal sanction through the backdoor of discretionary enforcement.

International legal systems that have grappled with the legacy of sedition, whether through abolition, reinterpretation, or doctrinal dilution, affirm a consistent principle: that democratic legitimacy rests not in the suppression of critique, but in its accommodation. Democracies that endure are those that permit dissent not because it is agreeable, but because it is essential. That ethos must guide the future course of India's speech law.

A statute that seeks to criminalise expression must not only satisfy formal legality; it must pass through the crucible of constitutional morality. In that crucible, Section 150, as it stands, risks being found wanting. The promise of liberty cannot rest on linguistic innovation alone—it must be built upon substantive guarantees of freedom, dissent, and democratic disagreement.

The health of a constitutional polity is measured not by its capacity to suppress dissent but by its resilience in accommodating and responding to it within the framework of law and deliberative reason. Reform, therefore, cannot be cosmetic. It must be substantive, principled, and anchored in the spirit of constitutional morality. Precision in drafting, stringent doctrinal thresholds for criminalisation, procedural safeguards against misuse, and a continuous culture of rights-based governance are indispensable if India is to truly shed the colonial vestiges embedded within its criminal law.

Ultimately, the Constitution of India[49] aspires to nurture not a fragile state fearful of criticism but a robust democracy where the contestation of ideas is celebrated as the highest form of patriotism. It is through fearless speech, relentless critique, and the constant interrogation of power that the sovereign dignity of the people, and not merely the might of the state, finds true expression. If Section 150 is to fulfil its constitutional promise, it must be reimagined not as an instrument of control but as a guardian of the republic's democratic soul.

[49] Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press, 1966).