



## SECTION 152 OF BHARATIYA NYAYA SANHITA (BNS) – POLITY

**NEWS:** In *Tejender Pal Singh v. State of Rajasthan (2024)*, the Rajasthan High Court cautioned against using Section 152 of the Bharatiya Nyaya Sanhita (BNS) as a tool to stifle legitimate dissent.

### WHAT'S IN THE NEWS?

#### 1. Rajasthan High Court Judgment (2024):

- The judgment highlights concerns that the provision could be misused to suppress free speech, similar to how Section 124A (sedition) of the Indian Penal Code (IPC) was historically misused.

#### 2. Suspension of Section 124A (Sedition) in 2022:

- In 2022, the Supreme Court suspended all pending trials and proceedings under Section 124A (sedition) of the IPC, pending the government's reconsideration of the law.
- The Union Home Minister verbally announced that sedition would be repealed as an offense, but Section 152 of the BNS has retained many elements of the sedition law under a different name.

#### 3. Provisions Under Section 152 BNS:

- Section 152 criminalizes acts that excite **secession, armed rebellion, and subversive activities**.
- It also penalizes acts encouraging **feelings of separatism** or endangering the **sovereignty, unity, and integrity of India**.
- Though the term 'sedition' is absent, concerns have been raised that the section could function as a sedition-like provision.

### Problems with Section 152

#### 1. Vagueness and Ambiguity:

- The term '**endangering the sovereignty, unity, and integrity of India**' is not explicitly defined in the statute, leaving room for broad and subjective interpretations.
- In the current sociopolitical climate, even legitimate criticism of political figures or historical personalities could be construed as threatening the unity or integrity of India.
- The lack of clear boundaries increases the potential for abuse and misuse, especially to suppress dissenting voices.

#### 2. Lower Threshold of Criminal Liability:



- The inclusion of the term '**knowingly**' significantly lowers the bar for establishing criminal intent.
- A person can be held liable for sharing content on social media, even if they lack malicious intent, as long as they are aware that the content could provoke activities prohibited under Section 152.
- This provision is **cognizable and non-bailable**, meaning accused individuals can be arrested and prosecuted even without strong evidence of a causal link between their actions and any harm caused.

### 3. Chilling Effect on Free Speech:

- The absence of safeguards to prima facie establish the impact of speech before prosecution could instill fear among individuals, deterring them from expressing their opinions freely.
- Past data from the **National Crime Records Bureau (NCRB)** shows that Section 124A IPC (sedition) was often misused. Between **2015 and 2020**, out of 548 arrests for sedition, only 12 resulted in convictions.
- Section 152 is broader and more ambiguous than Section 124A IPC, increasing the likelihood of misuse.

## Judiciary's Interpretation of Free Speech and National Interest

### 1. Balancing Free Speech with National Security:

- Courts have consistently emphasized the need for a **consequentialist interpretation**, focusing on the actual impact of speech rather than its content.

### 2. Key Judicial Precedents:

- **Balwant Singh and Anr v. State of Punjab (1995)**: The Supreme Court differentiated between casual sloganeering and its consequences, requiring a direct causal nexus between speech and its impact to establish sedition.
- **Javed Ahmad Hazam v. State of Maharashtra and Ors (2024)**: The Court stated that the effect of speech must be judged by the standards of strong-minded individuals, not by those of weak or easily swayed individuals.
- **Kedar Nath Singh v. State of Bihar (1962)**: The Court distinguished between disloyalty toward the government and strong criticism of government policies, holding the latter as legitimate free speech.



What is the Difference Between Section 124A of IPC and Section 152 of BNS?

Section 124A Of IPC	Section 152 of BNS
<p><b>Sedition-</b>—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.</p> <p>Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.</p> <p>Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.</p> <p>Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.</p>	<p><b>Act endangering sovereignty, unity and integrity of India -</b> Whoever, <b>purposely</b> or <b>knowingly</b>, by words, either spoken or written, or by signs, or by visible representation, or by <b>electronic communication or by use of financial mean</b>, 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 <b>imprisonment for life</b> or with imprisonment which may extend to <b>seven years, and shall also be liable to fine.</b></p> <p>Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.</p>

**What is Section 197 of BNS ?**

- This section criminalizes the act of issuing or signing any certificate that is either:
- Required by law to be given/signed, OR
- Related to facts that are legally admissible as evidence when the person knows or believes the certificate contains materially false information.
- The punishment for this offense is the same as giving false evidence (perjury), as it's considered equally serious to falsify official documentation that the law relies upon for evidence.



- The key elements required to establish this offense are:
  - The certificate must be one required by law or legally admissible as evidence
  - The person must have knowledge or belief that the certificate contains false information
  - The false information must be "material" (significant/important) to the certificate's purpose
  - This section aims to maintain the integrity of official documentation and prevent the creation of false evidence that could mislead legal proceedings or official matters.

## The Way Forward

### 1. Judicial Safeguards and Guidelines:

- The judiciary should provide clear **guidelines for the enforcement authorities** to interpret and apply Section 152 of the BNS.
- This can be modeled on the Supreme Court's guidelines in **D.K. Basu v. State of West Bengal**, which laid down specific procedures for arrests to prevent abuse.

### 2. Requirement for Causal Nexus:

- Courts should ensure that enforcement of Section 152 requires a **direct and demonstrable causal link** between the speech and its alleged consequences.

### 3. Marketplace of Ideas:

- The concept of the '**marketplace of ideas**', as envisioned by Justice Holmes in *Abrams v. United States*, should guide the approach to free speech.
- Freedom of expression should be protected, allowing competing ideas to thrive and find acceptance in a democratic society.

### 4. Need for Legislative Clarity:

- The government should revisit Section 152 to provide precise definitions of key terms such as 'endangering sovereignty' and 'unity and integrity,' and incorporate safeguards to prevent misuse.

## Conclusion

Section 152 of the BNS, though not formally labeled as sedition, retains many elements of its predecessor, Section 124A IPC. Without adequate safeguards, the provision risks being misused to suppress legitimate dissent, free speech, and criticism. Judicial intervention, legislative clarity, and adherence to the principles of democracy and free expression are essential to ensure that Section 152 does not undermine the fundamental rights guaranteed by the Constitution.



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**Source:** <https://www.thehindu.com/opinion/op-ed/section-152-of-bns-should-not-become-a-proxy-for-sedition/article69081250.ece>



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