

# **SEDITION IN THE AGE OF TWEETS AND HASHTAGS: CONSTITUTIONAL CHALLENGES OF ONLINE POLITICAL EXPRESSION**

**DIKSHA TANEJA,  
Assistant Professor,  
Faculty of Juridical Sciences, Rama University**

## **ABSTRACT**

The law of sedition under Section 124A of the Indian Penal Code represents one of the most enduring colonial legacies in India's criminal jurisprudence. Originally enacted to suppress anti-colonial dissent, the continued application of sedition in independent India raises serious constitutional concerns, particularly in the context of online political expression. The advent of social media platforms such as Twitter (X), Facebook, Instagram, and encrypted messaging services has transformed political discourse by enabling instantaneous, borderless, and mass communication. However, this digital expansion of speech has also led to increased state surveillance and frequent invocation of sedition charges against online dissenters, journalists, students, and activists.

This paper critically examines the constitutional challenges posed by the application of sedition law to online political expression in India. It analyses whether digital speech—often symbolic, hyperbolic, or dissent-oriented—can legitimately be equated with incitement to violence or public disorder as required under the Supreme Court's interpretation in *Kedar Nath Singh v. State of Bihar*. Further, the paper explores the chilling effect of sedition prosecutions on freedom of speech under Article 19(1)(a), especially when combined with vague standards of “tendency” and “public order.”

Additionally, the study engages with the intersection of sedition, national security, and the right to privacy in the digital era, in light of increasing online surveillance and data monitoring by the State. By analysing judicial precedents, contemporary cases, and comparative international practices, the paper argues for a constitutional recalibration of sedition law to ensure that online political expression is not criminalised merely for being critical or inconvenient to the State.

**Keywords:** Sedition, Digital Speech, Article 19, Online Dissent, National Security, Privacy

## **INTRODUCTION**

The law of sedition has long occupied a deeply contested space within India's constitutional and democratic framework. Originally enacted during colonial rule to suppress political dissent and nationalist movements, the offence of sedition symbolized the coercive power of the colonial state to criminalize opposition and enforce loyalty to authority. Although Section 124A of the Indian Penal Code historically embodied this offence, the enactment of the Bharatiya Nyaya Sanhita,

2023 has not entirely dismantled the architecture of sedition but has instead rearticulated offences concerning acts endangering the sovereignty, unity, and integrity of India.<sup>1</sup> Despite India's evolution into a sovereign, democratic republic governed by a written Constitution that guarantees freedom of speech and expression under Article 19(1)(a),<sup>2</sup> the persistence of sedition-like provisions under the new criminal law framework raises renewed concerns regarding their legitimacy, scope, and application in contemporary India. The continued criminalization of political dissent through broadly worded national security offences has therefore led to the characterization of sedition as a "black law," reflecting the uneasy coexistence of colonial legal logic within a constitutional democracy committed to civil liberties and political pluralism.<sup>3</sup>

In recent years, the debate surrounding sedition has acquired heightened urgency due to the rapid expansion of digital platforms that have fundamentally transformed the nature of political expression. Social media platforms such as Twitter (now X), Facebook, Instagram, and encrypted messaging services have emerged as primary arenas for political discourse, dissent, mobilization, and critique of state action. Political expression today frequently manifests through tweets, hashtags, memes, and symbolic online campaigns, enabling citizens to engage in public debate instantaneously and on an unprecedented scale. While this digital transformation has democratized access to speech, it has simultaneously intensified state anxieties relating to national security, misinformation, and public order. This has resulted in an increased tendency to invoke national security offences under the Bharatiya Nyaya Sanhita against online expression perceived as critical, provocative, or destabilizing, even in the absence of tangible threats to public order or violence.<sup>4</sup>

The central constitutional challenge lies in reconciling the protection of online political speech with the state's authority to impose reasonable restrictions in the interests of sovereignty, security, and public order under Article 19(2) of the Constitution.<sup>5</sup> The Supreme Court's landmark decision in *Kedar Nath Singh v. State of Bihar* sought to constitutionally confine the scope of sedition by limiting its application to acts involving incitement to violence or public disorder.<sup>6</sup> However, the relevance of this judicial safeguard in the context of the Bharatiya Nyaya Sanhita remains uncertain, particularly when sedition-like offences are framed under broader and less determinate formulations. The continued invocation of such provisions against digital speech often characterized by emotive, symbolic, or hyperbolic expression—raises serious concerns regarding vagueness, overbreadth, and disproportionality. The subjective interpretation of online content, combined with the viral nature of digital communication, has blurred the distinction between constitutionally protected dissent and criminalized incitement, thereby producing a chilling effect on free speech.<sup>7</sup>

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<sup>1</sup> Bharatiya Nyaya Sanhita, 2023, §§ 150–152 (offences relating to acts endangering sovereignty, unity, and integrity of India).

<sup>2</sup> Constitution of India, art. 19(1)(a).

<sup>3</sup> A.G. Noorani, *Article 19: Freedom of Speech and Expression under the Indian Constitution* 45–47 (Oxford Univ. Press 2011)

<sup>4</sup> Law Commission of India, Consultation Paper on Sedition, (2018).

<sup>5</sup> Constitution of India, art. 19(2).

<sup>6</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

<sup>7</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

Moreover, the regulation of online political expression through national security offences intersects significantly with issues of privacy and state surveillance in the digital era. The increasing reliance on digital monitoring, data collection, and online content tracking as tools of governance and security has intensified apprehensions of a surveillance-driven state, potentially undermining the fundamental right to privacy recognized by the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.<sup>8</sup> In this evolving legal landscape, sedition no longer operates merely as a penal offence but forms part of a broader framework of digital control that threatens constitutional values of liberty, dissent, and individual autonomy.<sup>9</sup>

Against this backdrop, this paper critically examines the application of sedition-like offences under the Bharatiya Nyaya Sanhita to online political expression in India, with particular emphasis on tweets, hashtags, and digital dissent. It analyses whether existing constitutional safeguards and judicial interpretations are sufficient to protect freedom of speech in the digital age, or whether the continued criminalization of dissent under the guise of national security represents a disproportionate and unconstitutional response to contemporary political expression. By situating sedition within its historical, constitutional, and technological contexts, the paper argues for a constitutional recalibration of national security laws in a manner consistent with constitutional morality and democratic principles in the digital era.

## **SEDITION AS A COLONIAL BLACK LAW IN INDIA**

The offence of sedition in India traces its origins to the colonial imperative of maintaining imperial authority rather than preserving public order in a democratic sense. Introduced into the Indian Penal Code in 1870, the sedition provision was absent from Macaulay's original draft of the Code and was later incorporated to curb the growing nationalist resistance against British rule.<sup>10</sup> The language of the provision criminalised any act, speech, or representation that brought or attempted to bring "hatred," "contempt," or "disaffection" towards the government established by law. These expressions were deliberately framed in vague and expansive terms, enabling colonial authorities to suppress political criticism, nationalist writings, and public mobilisation without the necessity of demonstrating actual violence or disorder. Sedition thus functioned not as a public order offence but as a mechanism of political control, designed to ensure unquestioned allegiance to the colonial state.

The deployment of sedition law against prominent freedom fighters underscores its inherently oppressive character. Leaders such as Bal Gangadhar Tilak and Mahatma Gandhi were prosecuted for their speeches and writings that challenged colonial governance and inspired political consciousness among Indians.<sup>11</sup> Gandhi famously described the sedition provision as "the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen," capturing its symbolic role as a tool of repression rather than justice.<sup>12</sup> These prosecutions reveal that sedition was never intended to address imminent threats to peace but to delegitimise

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<sup>8</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

<sup>9</sup> Gautam Bhatia, *Offend, Shock or Disturb: Free Speech under the Indian Constitution* 132–138 (Oxford Univ. Press 2016).

<sup>10</sup> Ratanlal & Dhirajlal, *The Indian Penal Code* 204–206 (LexisNexis 36th ed. 2020).

<sup>11</sup> *Queen-Empress v. Bal Gangadhar Tilak*, (1897) ILR 22 Bom 112; *Emperor v. Tilak*, (1909) ILR 31 Bom 381.

<sup>12</sup> M.K. Gandhi, *Young India*, Sept. 1922, reprinted in *The Collected Works of Mahatma Gandhi*, Vol. 23, at 163.

dissent and criminalise the aspiration for self-rule. The colonial use of sedition thus stands in stark contrast to the democratic values later enshrined in the Indian Constitution.

Despite the attainment of independence and the adoption of a Constitution committed to liberty, equality, and democratic governance, the sedition framework was retained in post-colonial India. This continuity reflects a deeper constitutional contradiction: the survival of colonial legal instruments within a republican legal order. While the framers of the Constitution initially excluded “sedition” as a ground for restricting free speech, the First Constitutional Amendment introduced broader limitations under Article 19(2), paving the way for the continued relevance of sedition jurisprudence.<sup>13</sup> The Supreme Court’s early encounters with the law reveal judicial unease with its breadth, yet its eventual constitutional validation in *Kedar Nath Singh v. State of Bihar* sought not to dismantle sedition but to domesticate it by reading it narrowly.<sup>14</sup> Nevertheless, the colonial logic underlying the offence—wherein the state equates criticism with disloyalty—has remained largely intact in practice.

The enactment of the Bharatiya Nyaya Sanhita, 2023, while formally repealing the Indian Penal Code, has not entirely eradicated the conceptual framework of sedition. Instead, the Sanhita introduces offences relating to acts endangering the sovereignty, unity, and integrity of India, thereby reconstituting sedition in a modernized form. Although the new provisions avoid the explicit terminology of “sedition,” their broad phrasing and potential applicability to expressive conduct raise concerns about continuity rather than rupture. This legislative transition illustrates how colonial legal anxieties regarding dissent persist under the guise of national security in independent India, particularly when applied to political expression that challenges dominant narratives.

The characterization of sedition as a “colonial black law” therefore remains relevant in contemporary India, not merely as a historical critique but as a constitutional warning. Its continued resonance lies in the manner in which dissent—especially political dissent—is perceived as a threat rather than a democratic necessity. In the digital era, where political expression has become more visible, decentralized, and immediate, the colonial inheritance of sedition poses even graver risks. Understanding sedition’s colonial genealogy is thus essential to evaluating its constitutional compatibility and its application to online political expression in modern India.

## **CONSTITUTIONAL FRAMEWORK OF FREE SPEECH IN INDIA**

The Constitution of India guarantees the fundamental right to freedom of speech and expression under Article 19(1)(a). This right is foundational to the democratic ethos of India and is central to ensuring accountability, transparency, and citizen participation in governance. Free speech encompasses verbal, written, symbolic, and digital forms of expression, and it is especially significant in the political domain, where dissent and criticism of government actions are crucial for the health of democracy. In the digital era, platforms such as social media, blogs, and messaging applications have become primary forums for political discourse, making it essential to understand the constitutional parameters that govern such expressions.

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<sup>13</sup> Constitution (First Amendment) Act, 1951; see also Constituent Assembly Debates, Vol. IX.

<sup>14</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

### **A. Article 19(1)(a): Scope of Political Expression**

Article 19(1)(a) states that all citizens shall have the right to freedom of speech and expression. The Supreme Court of India has consistently emphasized that this right is not limited to mere trivial or academic discussions but extends broadly to political speech, which forms the lifeblood of democracy. Political expression includes the right to criticize government policies, engage in public debates, demand accountability, and participate in collective advocacy.

In the landmark case of *Romesh Thappar v. State of Madras*, the Supreme Court held that freedom of speech is the "very essence of democracy" and that any restriction on it must be examined with strict scrutiny.<sup>15</sup> The Court observed that citizens must be allowed to voice dissent against government policies without fear of punitive action, emphasizing the importance of public criticism in a democratic society.

Similarly, in *Bennett Coleman & Co. v. Union of India*, the Court recognized that freedom of the press is a natural extension of Article 19(1)(a), stating that the press acts as a watchdog of democracy and a platform for public debate.<sup>16</sup> This principle has contemporary relevance in the digital era, where social media platforms often serve as modern public squares for political debate, campaigning, and dissemination of ideas.

The scope of political expression has further been reinforced in *Shreya Singhal v. Union of India* (2015), where the Supreme Court struck down Section 66A of the Information Technology Act, 2000.<sup>17</sup> The Court held that the provision was vague and overbroad, thereby stifling legitimate online political expression. This case was a watershed moment for digital speech, clarifying that constitutional protections extend equally to online platforms, including social media, blogs, and other forms of digital communication. The Court underscored that the right to criticize the government, even sharply, is a core component of political expression and cannot be curtailed merely because it is expressed digitally.

In addition, judicial pronouncements have established that free speech protects not only expressive conduct and verbal criticism but also symbolic and performative expression, such as protests, marches, and campaigns, which now increasingly occur through digital means.<sup>18</sup> Consequently, tweets, hashtags, memes, and viral campaigns fall within the ambit of protected political expression, provided they do not incite violence or public disorder.

### **B. Reasonable Restrictions under Article 19(2)**

While Article 19(1)(a) guarantees freedom of speech, **Article 19(2)** provides the State with the authority to impose reasonable restrictions in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation, or incitement to an offence. The jurisprudence surrounding

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<sup>15</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>16</sup> *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106.

<sup>17</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>18</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

reasonable restrictions is rooted in a delicate balancing act between protecting democratic discourse and safeguarding national and public interests.

Sedition, codified under Section 124A of the Indian Penal Code, is a prominent example of such a restriction. Historically, sedition was enacted during the colonial period to suppress dissent against the British Raj. Post-independence, the Supreme Court in *Kedar Nath Singh v. State of Bihar* upheld its constitutionality but narrowed its scope, ruling that only acts that incite violence or public disorder constitute sedition. Mere criticism of government policies, even if harsh or offensive, does not amount to sedition.

The advent of social media has complicated the application of sedition and other restrictions under Article 19(2). In the digital era, a single tweet or post can potentially reach millions instantly, raising concerns about the impact of speech on public order and national security. However, courts have emphasized that mere annoyance or dissent does not justify curtailing free speech. In *Shreya Singhal*, the Supreme Court invalidated Section 66A for its vagueness, stating that online expression cannot be curtailed merely because it is “offensive” or “annoying”; the restriction must meet the “clear and present danger” standard.

Further, the courts have consistently underscored that the digital medium does not diminish the constitutional protection of speech. In fact, digital platforms are increasingly recognized as vital for the exercise of political rights, especially by marginalized or dissenting **voices** that might lack access to traditional forums. Therefore, any restriction imposed under Article 19(2) must be precisely defined, proportionate, and necessary to meet a legitimate objective.<sup>19</sup>

However, the constitutional framework faces a modern dilemma: the State’s attempts to curb online misinformation, hate speech, or politically sensitive content sometimes blur the line between legitimate restriction and suppression of dissent.<sup>20</sup> This raises critical questions about the scope of sedition in the age of digital activism, the right to privacy in online communications, and the need to recalibrate reasonable restrictions to reflect contemporary realities while upholding democratic freedoms.

In conclusion, the constitutional framework for free speech under Articles 19(1)(a) and 19(2) provides a robust protection of political expression, including online expression. While the State can impose restrictions in the interests of national security and public order, judicial interpretation has consistently emphasized that legitimate dissent, political criticism, and digital activism cannot be stifled unless they present a clear and imminent threat. This framework establishes a delicate equilibrium between safeguarding free expression and addressing state interests, a balance that is continuously tested in the digital era.

## **JUDICIAL INTERPRETATION OF SEDITION**

Judicial interpretation has been instrumental in defining and limiting the scope of sedition in India, particularly in reconciling the offence with the constitutional guarantee of freedom of speech and

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<sup>19</sup> *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221

<sup>20</sup> *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (digital communication, public order, and fundamental rights).

expression under Article 19(1)(a). Although the Bharatiya Nyaya Sanhita, 2023 has repealed the Indian Penal Code, the constitutional concerns surrounding sedition have not disappeared. Instead, they have been reframed under Section 152 of the BNS, which criminalizes acts endangering the sovereignty, unity, and integrity of India. Judicial precedents developed under the IPC regime continue to hold significant interpretative value, as the BNS provision substantially draws from the same conceptual foundations, albeit with modified language.

The judiciary's role has therefore shifted from merely testing the constitutionality of Section 124A IPC to examining whether Section 152 BNS preserves constitutional safeguards against misuse, especially in an era marked by digital political expression and heightened State surveillance.

### **A. Kedar Nath Singh v. State of Bihar**

The decision in *Kedar Nath Singh v. State of Bihar* remains the bedrock of sedition jurisprudence in India, and its interpretative principles continue to guide the application of sedition-like offences under the Bharatiya Nyaya Sanhita. The Supreme Court was called upon to examine whether the offence of sedition was compatible with the fundamental right to free speech. While the challenge arose under Section 124A IPC, the constitutional reasoning employed by the Court transcends statutory frameworks and retains relevance under Section 152 BNS.

The Court upheld the constitutionality of sedition but significantly curtailed its scope, holding that only speech or expression that incites violence, leads to public disorder, or threatens the security of the State could be penalized. Mere criticism of the government, however strongly worded, was held to be constitutionally protected. The Court clearly distinguished between “the Government established by law” and “the State”, clarifying that democratic governance necessarily permits robust criticism of those in power.

This judicial reading-down introduced the incitement standard as a constitutional threshold, ensuring that sedition does not operate as a tool to suppress dissent. The Court emphasized that the restriction must bear a proximate and direct nexus with public disorder or violence, rejecting speculative or remote dangers as grounds for criminal liability.

In the context of Section 152 BNS, these principles acquire renewed importance. Although the BNS reframes sedition as acts threatening sovereignty, unity, and integrity, the constitutional test articulated in *Kedar Nath Singh* mandates that intent, tendency, and imminent harm remain essential ingredients. Without such a restrictive interpretation, Section 152 risks replicating the same constitutional infirmities historically associated with colonial sedition law.

### **B. Subsequent Judicial Developments**

Subsequent judicial decisions have consistently reinforced the narrow construction of sedition, thereby strengthening constitutional protections for political expression. In *Balwant Singh v. State of Punjab*, the Supreme Court held that the mere raising of slogans critical of the State, without any incitement to violence or public disorder, does not constitute sedition.<sup>21</sup> The judgment

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<sup>21</sup> *Balwant Singh v. State of Punjab*, (1995) 3 SCC 214.

underscored that emotive or symbolic expressions of dissent, even if unpopular or provocative, cannot be criminalized in a democracy governed by the rule of law.

In *Bilal Ahmed Kaloo v. State of Andhra Pradesh*, the Court reiterated that mens rea and incitement are indispensable elements of the offence. The decision clarified that political speech must be assessed in its broader social and political context, and isolated expressions cannot be construed as threats to national integrity in the absence of tangible consequences.

With the expansion of digital political discourse, judicial scrutiny of speech-related offences has intensified. In *Shreya Singhal v. Union of India*, the Supreme Court invalidated Section 66A of the Information Technology Act for being vague and disproportionate, while emphasizing that only speech amounting to incitement or imminent lawless action could justify restriction. Although the case did not directly concern sedition, its reasoning is directly applicable to Section 152 BNS, particularly in evaluating online political expression such as tweets, hashtags, and digital campaigns.

In *Vinod Dua v. Union of India*, the Supreme Court reaffirmed that criticism of government policies or actions, even during sensitive periods, is protected speech unless it incites violence.<sup>22</sup> The Court explicitly relied on *Kedar Nath Singh*, reaffirming that sedition jurisprudence continues to shield journalists and citizens from arbitrary prosecution.

Judicial concern regarding the misuse of sedition culminated in *S.G. Vombatkere v. Union of India*, where the Supreme Court effectively stayed the operation of the erstwhile Section 124A IPC and acknowledged its colonial legacy and chilling effect on free speech.<sup>23</sup> While the introduction of Section 152 BNS represents a legislative shift, the constitutional apprehensions articulated by the Court remain relevant. The judiciary's emphasis on proportionality, necessity, and narrow interpretation serves as a constitutional check against the potential misuse of the new provision.

Collectively, these judicial developments indicate a clear constitutional trajectory: sedition, whether under the IPC or the BNS, cannot be invoked to silence dissent or criminalize digital political expression. In a digital democracy, the judiciary continues to play a crucial role in ensuring that laws framed in the name of national security do not erode the foundational values of free speech, constitutional morality, and democratic participation.

## **NATURE OF ONLINE POLITICAL EXPRESSION**

The transformation of political discourse in the digital age has fundamentally altered the manner in which citizens engage with the State, participate in democratic processes, and articulate dissent. Online political expression, facilitated by social media platforms, instant messaging applications, and digital forums, has emerged as a dominant mode of political participation. Unlike traditional forms of expression, digital speech is instantaneous, interactive, decentralized, and far-reaching, enabling individuals to communicate political ideas beyond geographical and institutional boundaries. This shift has significant constitutional implications, particularly when such

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<sup>22</sup> *Vinod Dua v. Union of India*, (2021) 1 SCC 1.

<sup>23</sup> *S.G. Vombatkere v. Union of India*, (2022) SCC OnLine SC 778.

expression intersects with laws relating to sedition under Section 152 of the Bharatiya Nyaya Sanhita, 2023.

Digital political expression must therefore be understood not as an inferior or informal mode of speech, but as a constitutionally protected extension of Article 19(1)(a). Courts have increasingly recognized that online platforms serve as essential spaces for democratic engagement, especially for marginalized voices and political minorities.

### **A. Digital Platforms as Democratic Spaces**

Digital platforms such as Twitter (now X), Facebook, Instagram, YouTube, and messaging applications have assumed the role of modern public forums where political debate, mobilization, and dissent occur. These platforms enable citizens to engage directly with political representatives, challenge State narratives, and organize collective action. In doing so, they perform functions traditionally associated with town halls, newspapers, and public assemblies.

The Supreme Court has acknowledged the importance of digital communication in a democratic society. In *Anuradha Bhasin v. Union of India*, the Court recognized that access to the internet is integral to the exercise of freedom of speech and expression, and any restriction on internet access must satisfy the tests of legality, necessity, and proportionality. This recognition underscores the idea that digital platforms are not merely technological conveniences but constitutional spaces for democratic participation.

Furthermore, digital platforms democratize political discourse by lowering entry barriers. Individuals who may lack access to traditional media can use social media to articulate political views, critique governmental policies, and mobilize public opinion. This democratization, however, also places such platforms under heightened State scrutiny, particularly in the context of national security and public order. The challenge lies in ensuring that regulation of digital spaces does not devolve into suppression of dissent under the guise of maintaining sovereignty or unity as contemplated under Section 152 BNS.

The judiciary has consistently emphasized that the medium of expression cannot determine the level of constitutional protection. Political speech expressed digitally is entitled to the same safeguards as speech delivered through conventional means. Any attempt to treat digital platforms as inherently dangerous spaces risks undermining the democratic promise of Article 19(1)(a).

### **B. Tweets, Hashtags, Memes, and Symbolic Speech**

Online political expression often takes unconventional forms, including tweets, hashtags, memes, emojis, videos, and other symbolic representations. These forms of expression are characterized by brevity, symbolism, satire, and emotional resonance. While they may appear informal or irreverent, they constitute powerful tools of political communication, particularly in shaping public opinion and mobilizing collective sentiment.

The constitutional protection of symbolic speech has long been recognized by Indian courts. In *Maneka Gandhi v. Union of India*, the Supreme Court adopted a liberal and expansive

interpretation of fundamental rights, affirming that freedom of expression extends beyond literal speech to include all forms of communicative expression. This principle applies with equal force to digital symbolic speech, including memes and hashtags that convey political messages through imagery, humor, or satire.

The danger arises when such expressions are interpreted out of context and subjected to penal consequences under sedition-like provisions. A tweet criticizing governmental policy, a hashtag calling for political accountability, or a meme satirizing State authority may be provocative, but provocation alone does not amount to incitement. As clarified in *Shreya Singhal v. Union of India*, only speech that has a direct and imminent tendency to cause violence or public disorder can justify restriction.

Memes and hashtags often function as collective symbolic resistance, allowing individuals to participate in political discourse without engaging in detailed argumentation. Criminalizing such forms of expression risks creating a chilling effect, where citizens refrain from online participation due to fear of surveillance or prosecution. This is particularly concerning in light of Section 152 BNS, which, if interpreted broadly, could encompass a wide range of online political speech.

Judicial safeguards developed in sedition jurisprudence, especially the incitement threshold articulated in *Kedar Nath Singh* and reaffirmed in subsequent cases, must therefore guide the interpretation of online symbolic speech. Without such safeguards, the State risks equating dissent with disloyalty, thereby eroding the constitutional distinction between criticism of the government and threats to national security.

In essence, tweets, hashtags, memes, and other forms of digital symbolic speech are not trivial expressions but central instruments of contemporary political participation. Their constitutional protection is essential to preserving democratic values in the digital age. Any restriction imposed on such expression must be narrowly tailored, proportionate, and justified by a clear and present danger, failing which it would violate the core of Article 19(1)(a).

## **CONSTITUTIONAL CHALLENGES OF APPLYING SEDITION TO ONLINE SPEECH**

The application of sedition-like offences under Section 152 of the Bharatiya Nyaya Sanhita, 2023 to online political expression presents profound constitutional challenges. While the State possesses a legitimate interest in protecting sovereignty, unity, and national security, the digital nature of contemporary political speech complicates the assessment of harm, intent, and impact. Online speech is often instantaneous, symbolic, and context-dependent, making it particularly vulnerable to misinterpretation and over criminalization. When sedition is applied to such speech without rigorous constitutional safeguards, it risks undermining the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a).

### **A. Vagueness and Overbreadth**

One of the foremost constitutional concerns in applying sedition to online speech is the vagueness and overbreadth of statutory language. Section 152 BNS criminalizes acts that endanger the

sovereignty, unity, or integrity of India, expressions which, if left undefined or broadly interpreted, can encompass a wide spectrum of legitimate political discourse. Vague laws fail to provide clear standards of conduct, thereby violating the principle of legal certainty, which is intrinsic to the rule of law.

The Supreme Court has consistently held that vague penal provisions are constitutionally impermissible as they confer unfettered discretion on law enforcement authorities. In *Shreya Singhal v. Union of India*, the Court struck down Section 66A of the Information Technology Act on the ground that expressions such as “annoyance” and “inconvenience” were inherently subjective and lacked definitional precision.<sup>1</sup> The Court emphasized that such vagueness has a disproportionate impact on political speech, particularly in digital spaces where expressions are brief, symbolic, and open to multiple interpretations.

Although Section 152 BNS does not replicate the exact language of Section 124A IPC, the risk of overbreadth persists if terms like “endangering unity” or “threatening sovereignty” are not judicially confined to acts involving incitement to violence or public disorder. Without such confinement, online expressions such as tweets criticizing governmental policies, hashtags advocating political reform, or memes satirizing State authority may be subjected to criminal prosecution, thereby diluting the constitutional protection of dissent.

## **B. Chilling Effect on Free Speech**

The second major constitutional challenge is the chilling effect that the application of sedition laws has on free speech, particularly in the digital domain. A chilling effect occurs when individuals refrain from exercising their constitutional rights due to the fear of legal consequences. In the context of online political expression, the fear of surveillance, arrest, or prolonged criminal proceedings often leads to self-censorship, even when the speech in question is lawful and constitutionally protected.

The Supreme Court has repeatedly cautioned against laws that deter free expression by creating an atmosphere of fear. In *S.G. Vombatkere v. Union of India*, the Court acknowledged that sedition laws have historically been misused to suppress dissent and observed that such misuse undermines democratic values. Although the decision preceded the enforcement of the BNS, its reasoning remains relevant in assessing the constitutional validity of Section 152 when applied to online speech.

Digital platforms amplify this chilling effect due to the permanent and traceable nature of online expression. Unlike traditional speech, digital content can be archived, shared, and scrutinized long after it is posted. When sedition laws are applied to such content, individuals may avoid participating in online political debates altogether, thereby impoverishing democratic discourse. This chilling effect is particularly severe for journalists, academics, activists, and ordinary citizens who rely on digital platforms to express dissenting views.

### **C. Proportionality and Reasonableness**

The application of sedition to online speech must also satisfy the constitutional requirements of **proportionality and reasonableness** under Articles 19(2) and 14 of the Constitution. The doctrine of proportionality requires that any restriction on fundamental rights must pursue a legitimate aim, be suitable to achieve that aim, be necessary in the absence of less restrictive alternatives, and maintain a proper balance between the severity of the restriction and the importance of the objective sought to be achieved.

In *Modern Dental College v. State of Madhya Pradesh* and later in *Anuradha Bhasin v. Union of India*, the Supreme Court affirmed that proportionality is an essential component of constitutional adjudication. Applying sedition under Section 152 BNS to online speech often fails this test, as criminal prosecution is an extreme measure that may not be necessary or proportionate to address the alleged harm. Less restrictive alternatives such as counter-speech, civil remedies, or targeted regulation of unlawful content may suffice in many cases.

Furthermore, reasonableness under Article 19(2) demands that restrictions on speech be narrowly tailored and context-sensitive. Online political expression, by its very nature, is often hyperbolic, satirical, or symbolic. Treating such expression on par with acts involving actual violence or armed rebellion disregards the contextual nuances of digital speech and results in disproportionate State action.

In conclusion, the application of sedition under Section 152 BNS to online political expression raises serious constitutional challenges relating to vagueness, chilling effect, and disproportionality. Unless guided by strict judicial standards rooted in *Kedar Nath Singh*, *Shreya Singhal*, and the doctrine of proportionality, the enforcement of sedition in the digital realm risks eroding the core democratic value of free speech. The constitutional framework demands that national security concerns be addressed without sacrificing the fundamental right to dissent, particularly in an era where digital platforms constitute the primary arena of political engagement.

## **SEDITION, NATIONAL SECURITY, AND DIGITAL SURVEILLANCE**

The intersection of sedition, national security, and digital surveillance represents one of the most pressing constitutional challenges of the contemporary era. With the expansion of digital political expression, the State has increasingly relied on surveillance technologies to monitor online activity in the name of maintaining public order and safeguarding national security. While such measures are often justified as necessary to combat threats to sovereignty and integrity under Section 152 of the *Bharatiya Nyaya Sanhita, 2023*, they raise serious concerns regarding the erosion of civil liberties, particularly the right to privacy and freedom of expression. The convergence of sedition laws and digital surveillance mechanisms has the potential to transform the democratic State into a **permanent surveillance regime**, where dissent is monitored, recorded, and penalized.

### **A. Expanding State Surveillance**

The rapid growth of digital communication has enabled the State to deploy advanced surveillance tools to track online behavior, monitor social media activity, and collect metadata from digital

platforms. Surveillance mechanisms such as lawful interception, content monitoring, and algorithmic tracking are often justified on grounds of national security and prevention of anti-State activities. However, when such surveillance is coupled with broadly worded sedition provisions, it creates an environment where every act of digital political expression is potentially suspect.

The Supreme Court has acknowledged that national security is a legitimate ground for restricting fundamental rights, but it has also emphasized that such restrictions must be exercised within constitutional limits. In *Anuradha Bhasin v. Union of India*, the Court recognized that State actions impacting internet access and digital communication directly affect freedom of speech and must therefore satisfy the tests of necessity and proportionality. The judgment implicitly cautioned against excessive surveillance and blanket restrictions that lack procedural safeguards.

Expanding digital surveillance poses a unique challenge because it operates largely in opacity, often without the knowledge or consent of the individuals being monitored. Unlike traditional policing, digital surveillance enables the State to retrospectively scrutinize online speech, creating the possibility of selective targeting of dissenters. When online political expression is continuously monitored, the threshold between legitimate security measures and unconstitutional intrusion becomes increasingly blurred.

In the context of sedition, surveillance transforms online speech into a pre-emptive ground for criminal liability, even before any tangible harm has occurred. This preventive logic undermines the constitutional requirement that restrictions on speech be based on imminent threats, as emphasized in sedition jurisprudence. Instead, it risks normalizing the criminalization of dissent through anticipatory surveillance.

## **B. Right to Privacy in the Digital Era**

The constitutional implications of digital surveillance must be examined in light of the right to privacy, which has been recognized as a fundamental right under Article 21 of the Constitution. In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court held that privacy is intrinsic to dignity, autonomy, and freedom of expression. The Court emphasized that surveillance and data collection by the State must meet the standards of legality, necessity, proportionality, and procedural safeguards.

Privacy is closely intertwined with freedom of speech, particularly in the digital context. The awareness that one's online activities are being monitored can deter individuals from expressing dissenting views, thereby producing a chilling effect on free speech. This concern is magnified when surveillance data is used to initiate prosecutions under sedition-related provisions such as Section 152 BNS. The absence of robust data protection and oversight mechanisms exacerbates the risk of misuse.

Furthermore, digital surveillance often involves the collection of metadata, location data, and communication patterns, which can reveal intimate details about an individual's political beliefs and associations. Such intrusive practices, when justified solely on vague national security grounds, threaten the constitutional balance between State power and individual liberty. As

observed in *Puttaswamy*, national security cannot become a \**“mantra to justify all invasions of privacy.”* \*

The convergence of sedition law and digital surveillance thus raises a fundamental constitutional question: whether the State’s pursuit of security can justify continuous monitoring of political expression. In a constitutional democracy, the answer must be grounded in the principle that security measures cannot extinguish the core freedoms they seek to protect. Judicial oversight, transparency, and strict adherence to proportionality are essential to prevent the transformation of surveillance into a tool for silencing dissent.

In conclusion, the application of sedition laws in an environment of expanding digital surveillance poses significant threats to both privacy and free speech. While the State has a legitimate interest in safeguarding national security, constitutional democracy demands that such interests be pursued without compromising the fundamental rights of citizens. The challenge lies in ensuring that sedition under Section 152 BNS is not enforced through an architecture of surveillance that erodes privacy, suppresses dissent, and undermines democratic participation in the digital age.

## **NEED FOR LEGAL REFORM AND CONSTITUTIONAL SAFEGUARDS**

The evolving nature of political expression in the digital age necessitates a comprehensive re-evaluation of sedition laws and their constitutional implications. While the State undeniably bears the responsibility of safeguarding national security, sovereignty, and public order, these objectives must be pursued in a manner consistent with the foundational values of constitutional democracy. The introduction of Section 152 of the *Bharatiya Nyaya Sanhita, 2023*, though intended to move away from the colonial legacy of sedition, continues to raise concerns regarding its potential misuse against online political expression. This underscores the urgent need for legal reform and robust constitutional safeguards to prevent the erosion of fundamental rights in the digital sphere.

At the foremost, statutory clarity and precision are essential. Section 152 must be narrowly interpreted or suitably amended to explicitly incorporate the judicially evolved threshold of incitement to violence or imminent public disorder, as articulated in *Kedar Nath Singh v. State of Bihar*. Without codifying this standard, the provision risks being applied expansively to penalize dissent, satire, or political criticism expressed online. Legislative reform should therefore ensure that vague expressions such as “endangering unity” or “threatening sovereignty” are clearly defined and limited to acts involving demonstrable harm.

Secondly, procedural safeguards must be strengthened to prevent arbitrary invocation of sedition-related offences. Mandatory prior sanction by a high-ranking, independent authority before registering an offence under Section 152 BNS can act as an effective check on misuse. Judicial oversight at the pre-trial stage, including reasoned orders demonstrating the presence of incitement or imminent threat, would align enforcement with constitutional principles of fairness and due process. The Supreme Court’s concerns in *S.G. Vombatkere v. Union of India* regarding the chilling effect of sedition prosecutions highlight the necessity of such safeguards.

Another crucial area of reform lies in the application of the proportionality doctrine. Criminal prosecution for online speech should be treated as a measure of last resort. In line with the proportionality framework laid down in *Modern Dental College v. State of Madhya Pradesh* and reaffirmed in *Anuradha Bhasin v. Union of India*, the State must demonstrate that no less restrictive alternative such as counter-speech, content moderation, or civil remedies could adequately address the perceived harm. This approach is particularly vital in the digital context, where speech is often hyperbolic, symbolic, or transient.

The integration of privacy safeguards is equally imperative. Digital surveillance practices employed to detect sedition-related activities must comply with the constitutional standards set out in *Justice K.S. Puttaswamy v. Union of India*. Any monitoring of online speech must be authorized by law, proportionate to the objective sought, and subject to transparent oversight mechanisms. Without such safeguards, surveillance risks becoming a tool for profiling political dissenters rather than addressing genuine security threats.

Judicial sensitization and consistent interpretative guidance also play a vital role in safeguarding constitutional freedoms. Lower courts and law enforcement agencies must be guided by binding precedents that clearly distinguish between anti-State activities and anti-government expression. Periodic judicial reiteration of the narrow scope of sedition-like offences would help reinforce constitutional morality and prevent erosion of free speech rights.

Finally, the broader commitment to constitutional morality must inform all reforms relating to sedition and digital expression. As emphasized by the Supreme Court, constitutional morality requires the State to respect individual autonomy, dignity, and democratic dissent, even when such dissent is uncomfortable or politically inconvenient. In a digital constitutional democracy, the strength of the State lies not in suppressing dissent but in accommodating diverse voices within the framework of law.

In conclusion, meaningful legal reform and constitutional safeguards are indispensable to ensure that sedition under Section 152 BNS does not become a contemporary instrument of repression. By embracing statutory clarity, procedural safeguards, proportionality, privacy protections, and constitutional morality, India can reconcile the demands of national security with the imperatives of free speech and democratic participation in the digital age.

## **CONCLUSION**

The evolution of political expression in the digital age has fundamentally altered the relationship between the citizen and the State. Tweets, hashtags, memes, and other forms of online communication have emerged as powerful instruments of political participation, dissent, and collective mobilization. Within this transformed landscape, the application of sedition laws now embodied in Section 152 of the *Bharatiya Nyaya Sanhita, 2023* raises critical constitutional questions concerning the scope of free speech, the legitimacy of State restrictions, and the preservation of democratic values.

This paper has demonstrated that while the State possesses a legitimate interest in protecting national security, sovereignty, and public order, such interests cannot be pursued at the cost of

constitutional freedoms. Judicial interpretation, particularly from *Kedar Nath Singh v. State of Bihar* to *Shreya Singhal v. Union of India* and *S.G. Vombatkere v. Union of India*, has consistently emphasized that dissent, criticism, and political disagreement do not amount to sedition unless they incite violence or pose an imminent threat to public order. These principles remain constitutionally binding even under the restructured framework of the Bharatiya Nyaya Sanhita.

The paper has further highlighted that the digital nature of political speech intensifies the risks of vagueness, overbreadth, and chilling effect when sedition laws are applied without adequate safeguards. The convergence of sedition provisions with expanding State surveillance mechanisms poses a particularly grave threat to both freedom of expression under Article 19(1)(a) and the right to privacy under Article 21. In an environment where online expression is continuously monitored and retrospectively scrutinized, the fear of criminal sanction can silence legitimate democratic engagement.

Ultimately, the strength of a constitutional democracy lies not in the suppression of dissent but in its ability to accommodate and protect diverse voices, even those critical of the State. The challenge before India is to ensure that sedition laws are not transformed into instruments of digital authoritarianism but are restrained by constitutional morality, proportionality, and judicial oversight. By reaffirming the primacy of free speech, safeguarding privacy, and enforcing narrow, precise, and rights-respecting interpretations of Section 152 BNS, the legal system can strike a principled balance between national security and democratic freedom.

In conclusion, sedition in the age of tweets and hashtags must be reimagined through a constitutional lens that recognizes digital dissent not as a threat, but as a vital expression of democratic citizenship. Only then can the law remain faithful to the transformative promise of the Indian Constitution in an increasingly digitized political sphere.