

“Potentiality of Abuse” Under Section 152 of BNS

The Supreme Court of India has questioned whether the "potentiality of abuse" by the state under Section 152 of the Bharatiya Nyaya Sanhita (BNS) is a sufficient ground to declare the law unconstitutional. The query was raised during a hearing in August 2025 concerning a plea by journalists challenging the provision, which is widely seen as a successor to the colonial-era sedition law, Section 124A of the Indian Penal Code.

Background of the case

- The court heard a petition filed by journalists Siddharth Varadarajan and Karan Thapar, and the Foundation for Independent Journalism, after the Assam police filed an FIR against them under Section 152 and other BNS provisions.
- The journalists' plea argues that Section 152 is vaguely worded and prone to misuse, violating their fundamental rights under Articles 14 (equality), 19(1)(a) (freedom of speech), and 21 (right to life) of the Constitution.
- The Supreme Court granted the journalists protection from coercive action by the Assam police while agreeing to examine the constitutional challenge to Section 152.

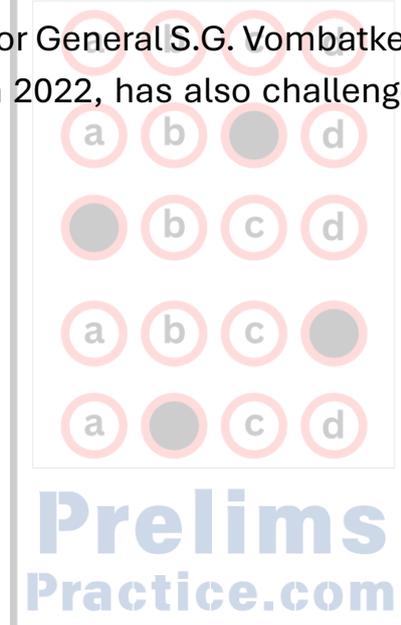
Key court observations and arguments

- **Court's skepticism:** A bench of Justices Surya Kant and Joymalya Bagchi raised the central question, stating that it is a settled legal principle that a law cannot be struck down merely because of the possibility of its misuse. Justice Kant remarked, "Any good law, declared constitutional by SC, can be misused or abused by police authorities. Should that be a ground to declare the law unconstitutional?".
- **Journalists' counter-argument:** Senior advocate Nitya Ramakrishnan argued that while the term "sedition" was dropped, Section 152 is essentially "repackaged sedition" that criminalizes vague and broad categories of speech. She noted its similarity to Section 66A of the Information Technology Act, which the Supreme Court had struck down for its ambiguous language.
- **Vagueness and broadness:** The petition argues that the sweeping language of Section 152, which penalizes anyone who "excites or attempts to excite secession or armed rebellion or otherwise endangers the sovereignty, unity, or integrity of India," fails the constitutional test for being too vague and having a "chilling effect" on free speech.

- **Lack of safeguards:** Critics point out that while Section 124A of the IPC had some judicial safeguards developed over time, Section 152 lowers the bar for intent and lacks precise definitions for terms like "subversive activities." It is also a cognizable and non-bailable offense, which gives police significant power and increases the risk of arbitrary arrests.

Wider context and precedents

- **Kedar Nath Singh ruling:** The Supreme Court cited its 1962 landmark decision in Kedar Nath Singh, which upheld the constitutionality of the sedition law but limited its application to acts involving an incitement to violence or public disorder. Petitioners argue this important distinction is weakened by the broad terms in Section 152.
- **Earlier challenge to sedition:** Section 152 is now part of a larger legal challenge. Retired Army officer Major General S.G. Vombatkere, who successfully challenged the IPC's sedition law in 2022, has also challenged the validity of Section 152 of the BNS.



Practice Questions:

1. The Supreme Court's questioning of the "potentiality of abuse" under Section 152 BNS is based on concerns regarding which fundamental rights?
- a) Article 14 (Right to Equality) and Article 21 (Right to Life and Personal Liberty)
 - b) Article 19(1)(a) (Freedom of Speech and Expression) and Article 21 (Right to Life and Personal Liberty)
 - c) Article 14 (Right to Equality) and Article 19(1)(a) (Freedom of Speech and Expression)
 - d) Article 14 (Right to Equality), Article 19(1)(a) (Freedom of Speech and Expression), and Article 21 (Right to Life and Personal Liberty)

Answer: d

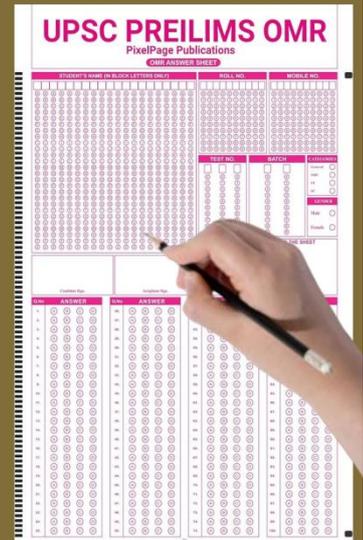
Explanation: The Supreme Court's concern over the potential misuse of Section 152 relates to its possible violation of multiple fundamental rights. **Article 19(1)(a):** The ambiguous wording and lowered threshold for prosecution can have a "chilling effect" on free speech and dissent. **Article 14:** The subjective interpretation enabled by vague terms like "subversive activities" could lead to arbitrary and unequal enforcement, violating the right to equality. **Article 21:** The cognizable and non-bailable nature of the offence, combined with the potential for misuse, poses a risk to personal liberty through unwarranted arrests and detentions.

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