



Freedom of Speech and Archaic Law on Sedition

17 Sep, 2012 [Dr M N Buch, Centre for Governance and Political Studies, VIF](#) [View3478](#) [Comments 0](#)

The Chambers Twenty-first Century Dictionary defines sedition in the following words: "Public speech, writing or action encouraging especially rebellion against the government". The word itself comes from the Latin word *seditio*, or growing apart. In a way it is connected to seduce, one meaning of which is to lead astray or to tend into wrong doing. The Indian Penal Code has section 124-A which makes offence with the full section reading as under:

Section 124-A IPC—Sedition:: "Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings 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 both."

Explanation 1. The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2. Comments expressing disapprobation of the measure of the Government with a view to obtain their alteration by law, exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under the section.

Explanation 3. Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt, do not constitute an offence under the section."

The offence of sedition carries imprisonment for life as a sentence in its extreme form and rigorous imprisonment for up to three years in its less serious form. This gives an enormous leeway to a court in the matter of sentencing. The seriousness of the offence is mitigated by circumstances. This gives an enormous leeway to a court in the matter of sentencing. In itself can be called into question for permitting excessive judicial discretion to a court. For example, under section 302 IPC the offence of murder is punishable with a death sentence or imprisonment for life and a trial court has to give one or the other sentence. The Supreme Court has laid down guidelines in the matter of sentence by directing that it is only in the rarest of rare cases that the death penalty should be imposed. Unlike in a case of culpable homicide not amounting to murder the court may impose a penalty of imprisonment for life where the act which in the ordinary course could be fatal, or imprisonment of up to ten years if such act was committed without any intention to cause death. In section 124-A IPC no such guidelines are provided by the law and, therefore, a judge would be able to pass a sentence which could be quite harsh. The Indian Penal Code is one of the laws which govern this country within the framework of the Constitution. Under Article 13 a law which is in derogation of the fundamental rights would be void. The Preamble to the Constitution mandates liberty of thought, expression, belief, and Article 19 (1) (a) gives citizens the right to freedom of speech and expression. No doubt Article 19 (2) and (3) permit the Legislature to impose reasonable restrictions on the rights given in Article 19, but the operative word here is "reasonable". In other words, the free expression is almost absolute and a restriction thereon is an exception which has to be imposed after very great thought and only in the interest of the peace and tranquility.

Chapter VIII of the Code of Criminal Procedure relates to security for keeping the peace and for good behaviour and in case the said person does not provide adequate security, then under sections 107, 108 and 109 Cr.P.C. the person may be kept in jail for up to one year and under section 107 for up to three years. Section 108 applies to persons disseminating seditious matters. In other words, the Police and the Executive Magistracy can prevent the dissemination of information which is seditious. Then we have Chapter X Cr.P.C. which relates to maintenance of public order and tranquillity. The Police, the Magistracy, and on requisition the armed forces may cause an unlawful public assembly to disperse, if necessary, by use of force to maintain public order. In other words, acts which could be deemed to be seditious can in fact be prevented by pre-emptive action.

Section 124-A speaks of bringing into hatred or contempt the lawfully constituted government. The word "contempt" is defined by the Chambers Twenty-first Century Dictionary as either disregarding or disobeying the orders of a court of law or despising a court or a lawfully constituted authority. Contempt of Court Act is sufficient to uphold the dignity of the courts and, therefore, the law relating to sedition would not be applied in cases where the government is concerned, despite the fact that the Judiciary is one of the three pillars of the State. Hatred is defined as intense dislike, enmity or ill-will. Chapter X in the Indian Penal Code, Chapter X, which deals with matters relating to contempt of the lawful authority of public servants. Unlike in a case of a public servant obstructed in the discharge of his public functions the offender can be punished. Under section 188 IPC if the order is promulgated by a public servant, then disobedience of such an order is liable both to imprisonment and a fine. Chapter XI of IPC relates to offences against public justice. An insurrection against government amounts to waging war against government under section 121 IPC can 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 both."

words, jeopardizing the security of the State to an extent where it is tantamount to armed rebellion is also subject to the most stringent by law. Section 124-A relating to sedition aims at preventing and punishing the exciting of disaffection towards government; the purpose would be to bring about a downfall of government. Now it so happens that we are living in a democracy whose Constitution, in its Preamble, declares India to be a sovereign, socialist, secular, democratic republic. So long as the Preamble exists, the said Preamble being immutable, is denied to the people. What is more, the opening words of the Preamble are "We, the People of India ..." In India sovereignty vests in the monarch or in Parliament. Parliament is only the instrumentality through which in a representative democracy people exercise their right. The citizen is supreme and the government is an organisation through which citizens exercise their supremacy through the executive power of the President and the Governors. Therefore, the right to criticise government and to call government to account is far superior to the right to protect itself against sedition. The words 'treason' and 'sedition' have to be used with great care and caution in a democracy.

Article 14 of the Constitution guarantees for every citizen equality before law and equal protection of laws. This makes India a society where any action of government has to be within the framework of law. This includes depriving a citizen of his liberty through the operation of exactly what Article 21 says. Article 21 reads, "No person shall be deprived of his life or personal liberty except according to the procedure established by law". The chapter on Fundamental Rights apart, Part IV of the Constitution lays down the Directive Principles of State Policy. Article 38 seeks to secure a social order for the promotion of the welfare of the people. Supposing the State is in neglect of this principle? Do the citizens not have the right to be critical of the government, even stridently critical, even critical to the point of calling the government useless and worthless, if it fails to establish such a social order? Would criticism by people who accuse it of not doing its duty amount to sedition? After all, if a government is corrupt, unwilling to look after the welfare of the people, incompetent and negligent of its duties, the people have every right to call for the removal of such a government but through due process.

Under Part V, Chapter 2 of the Constitution and in particular Article 79 it is constitutionally mandated that there will be a Parliament. The House of the People is directly elected from territorial constituencies by the electorate consisting of every citizen of India not less than eighteen years of age on the date prescribed by law in this behalf. As per Article 326 of the Constitution the basis of election is universal adult suffrage. Every citizen of the age of eighteen is, therefore, an integral part of the process of constituting the Parliament of India. Under Article 83 the normal duration of the House of the People is five years from the date of its first meeting after an election. Every five years the citizens of India, therefore, constitute the House of the People through a process of elections in which there is adult franchise. The executive government is conducted by the President on the advice of the Council of Ministers which, under Article 75(3), is collectively responsible to the House of the People. Therefore, every citizen is a part of the constitution of the Council of Ministers on whose advice the President of India conducts the executive government of the Union. Through participation every five years in the process of constituting Parliament, through the constitutional requirement of collective responsibility of the Council of Ministers to the House of the People, every citizen of India has a say in how the duly constituted Government of India will conduct its business. The government cannot try and silence a citizen and accuse him of sedition if he criticizes the government.

When an election takes place contending parties do not fight it on the basis of praise of the party in power. It is the job of the opposition to point out its shortcomings and ask the people to defeat the ruling party at the polls and place before the people its own alternative government. The objective of such a campaign is to convince the people that the government in power is so worthless as not to merit its re-election. The objective is to create in the public mind such a feeling of disappointment about how they have been governed and in fact to arouse dissatisfaction with the ruling party that it is defeated at the polls. Because the ruling party and government are virtually one, till the ruling party is defeated, it is not an amount to sedition? Incidentally, propaganda against the ruling party and government does not begin only after the election is announced. It is a process in which government would be liable to criticism in the Legislature, by the press and electronic media, through public meetings, rallies and movements and through the expression of the right to free speech by individual citizens. Does all this amount to sedition?

Let us try another tack. Parliament frames laws, almost all of which are drafted by the Executive and, because the ruling party has a majority, it is the will of the Executive. High Courts and the Supreme Court quite often strike down such laws as being inconsistent with the Constitution. When strictures are passed. In cases involving government very often the courts are stridently critical of executive action. Can this be construed as sedition? What about the Comptroller and Auditor General of India appointed under Article 148? Under Article 151 the audit reports prepared by him are laid before Parliament by order of the President after CAG submits them to him. Generally audit reports are critical of government, up to and including comments on transactions which virtually accuse the government of wrongdoing which may be tantamount to corruption. Is this sedition? Is a government based on an audit report an act of sedition? Is a movement which says that corruption be rooted out an act of sedition because it is in the eyes of the public, paint the government to be worthy of contempt because of its own actions?

The Constitution permits criticism of government to the point where the people are so fed up with it that they call for a change of government at the next process of election. What the Constitution does not permit is the overthrow of government by violence or by means other than those permitted by the Constitution. The Constitution enjoins government to govern for the welfare of the people; it does not state anywhere that a government must govern with a view to its own preservation. It says is that every five years the people of India will judge the performance of government and will decide whether there should be a change of government. To take care of a situation where people are trying to unlawfully overthrow the government, apart from section 121 IPC, which provides for the punishment of waging war, whereby if the security of India or any part thereof is threatened by war, external aggression or armed rebellion and this gives rise to a state of emergency, the President may issue a Proclamation of Emergency and assume extraordinary powers to deal with the Emergency. Similarly, if it is found that there is failure of the constitutional machinery in a State he may issue a proclamation under Article 356 and pro tem take over the administration of the State. During the Proclamation of Emergency operation of Article 19 can be suspended and enforcement of the Fundamental Rights may be suspended. This, however, is possible only in a situation in which the very existence of India is jeopardised. Indira Gandhi misused the provisions of the Constitution and went through a two-year period of virtual dictatorship. The Constitution and the people proved themselves to be stronger than arbitrary power.

was defeated in 1977 and the supremacy of the Constitution, constitutional government and the people of India were restored, however, it was breached again. When we have all these provisions in the Constitution why do we need section 124-A IPC?

I am no great supporter of Binayak Sen. I am totally against violence against people and the State and I do feel that Naxalite terrorism is run with a heavy hand. If Binayak Sen supported the Naxalites and it can be proved that he and the Naxalites were part of a criminal conspiracy under section 120-A IPC or had a common intention under section 34 IPC to commit acts which led to culpable homicide amounting to murder I would have Binayak Sen charged with these offences and suitably punished. But to accuse him of sedition under section 124-A is ridiculous, just charge Aseem Trivedi, a cartoonist, of sedition because he substituted three wolves for three lions and the legend 'satyameva jayate' in a symbol which was an obvious caricature. For material which is libelous, or is otherwise defamatory we have Chapter XXI of the Constitution which provides remedies. Certainly a charge under section 124-A IPC is not justified. In fact I am now of the confirmed view that taking into account the need to criticise government, the duty of the citizens, the Legislature, the courts and the other constitutional authorities to call government to account, the freedom of speech that we all enjoy, there is no justification for the existence of section 124-A IPC which defines sedition and provides punishment against it. The offence of sedition as defined by section 124-A IPC is similar to laws of blasphemy as operated in the medieval Europe in some countries such as Pakistan which claims to be Islamic theocracies. Allah, Jehovah, God, Parmatma, call Him what you will, is threatened by a puny mortal who blasphemes. The Indian State is too powerful to be threatened by a seditious individual because normally the state neutralises active sedition. Therefore, Section 124-A IPC needs to be immediately repealed.

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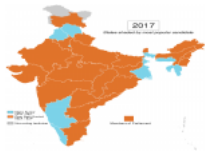
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