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THE SEDITION DEBATE

Relevant for: Indian Polity & Constitution | Topic: Judiciary: Structure, Organisation & Functioning

Rulers everywhere tend to treat trenchant criticism as attempts to excite disaffection and disloyalty. That is perhaps the only reason that **Section 124-A of the Indian Penal Code**, enacted under colonial rule, remains on the statute book. There have been repeated instances of its misuse. Regimes at the Centre and the States have often been shown in poor light after they invoked the section against activists, detractors, writers and even cartoonists. Since Independence, many have seen the irony of retaining a provision that was used extensively to suppress the freedom struggle. Despite all this, Section 124-A has tenaciously survived all attempts by successive generations to reconsider it, if not repeal it altogether. The Law Commission, for the third time in five decades, is now in the process of revisiting the section. Its consultation paper calls for a thorough reconsideration and presents the various issues related to it before the public for a national debate. In particular, it has raised the pertinent question: how far is it justified for India to retain an offence introduced by the British to suppress the freedom struggle, when Britain itself abolished it 10 years ago? In an earlier report in 1968, the Law Commission had rejected the idea of repealing the section. In 1971, the panel wanted the scope of the section to be expanded to cover the Constitution, the legislature and the judiciary, in addition to the government to be established by law, as institutions against which 'disaffection' should not be tolerated. The only dilution it mooted was to modify the wide gap between the two jail terms prescribed in the section (either three years or life) and fix the maximum sanction at seven years' rigorous imprisonment with fine.

Sedition and the government

The foremost objection to the provision on sedition is that its definition remains too wide. 'Overbroad' definitions typically cover both what is innocuous and what is harmful. Under the present law, strong criticism against government policies and personalities, slogans voicing disapprobation of leaders and stinging depictions of an unresponsive or insensitive regime are all likely to be treated as 'seditious', and not merely those that overtly threaten public order or constitute actual incitement to violence. In fact, so mindless have some prosecutions been in recent years that the core principle enunciated by the Supreme Court — that the incitement to violence or tendency to create public disorder are the essential ingredients of the offence — has been forgotten. However, as long as sedition is seen as a reasonable restriction on free speech on the ground of preserving public order, it will be difficult to contain its mischief. There can only be two ways of undoing the harm it does to citizens' fundamental rights: it can be amended so that there is a much narrower definition of what constitutes sedition, but the far better course is to do away with it altogether.

Junk the precedent; taking aid from countries for disaster relief is no sign of weakness

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