

When Writing Is Crime

Subhash Gatade

Whether the police commissioner of a city and his colleagues are an incarnation of the state itself?

Any sane person would reply in the negative.

Perhaps the (newly appointed) honourable police commissioner of Ahmedabad has a different take on the whole issue. It is not for nothing that he has filed a case of 'sedition and treason' against the Ahmedabad edition of the *Times of India* supposedly for carrying a series of articles which questioned his alleged links with a Mafia Don. According to the complaint filed by the Commissioner, the said articles 'gave the impression that state police officers were in league with criminals'. It is learnt that these reports are based on the statement given before the CBI by a henchman of the Don in which he had claimed that the present commissioner was once on the Don's 'payroll'. (*The Hindu*, 2nd June 2008).

The honourable police commissioner has every right to feel offended over such charges and if needed he can take recourse to legal action to seek redressal. Normally in all such cases case(s) are filed under the charges of defamation. But as they say it, in Gujarat they do things differently.

While the police commissioner's complaint vis-a-vis the newspaper have underlined the scant respect with which the fourth estate is viewed by the Supercops in a saffron regime, another incident involving a leading intellectual of present times underline the challenges which lie before anyone who loves to exercise her/his right to freedom of expression under such dispensation. The case involves a leader page article (Blame The Middle Class, 8th January 2008, *Times of India*) written by Prof Ashish Nandy, a leading political psychologist and sociologist. According to a report which appeared in a section of the media (*Indian Express*, 31 May 08), the Gujarat Police has registered a criminal offence against Professor Ashish Nandy, a political psychologist and sociologist, for writing an alleged inflammatory article in the second week of January 2008 in an English daily.

...The case was registered on a complaint filed by advocate — activist V K Saxena, the president of the Ahmedabad-based National Council for Civil Liberties.

The complaint registered under Section 153 (A) (B) of the Indian Penal Code said that the article was prejudicial to national integration and intended to cause friction and promote enmity between different communities on grounds of religion, race, language and place of birth.

Nandy's article, the complaint said, was highly intemperate, vituperative and showed Gujaratis in a low light.

Surprisingly, the state government gave the permission for filing the case through a notification on April 15. While granting permission for filing the criminal case against Nandy, the government notification said "there is prima facie evidence against the accused for his involvement in the commission of offences under sections of the IPC".

The particular article had tried to analyse the election results of the Gujarat assembly held in December 2007 which had once again given a mandate to Mr Narendra Modi. Apart from delineating the plight of the Muslims who are condemned to a life of second class existence and the growing marginalisation of the 'secular formations/ideas' it had tried to focus its attention on the 'state's urbane middle class' which has remained 'mired in its inane versions of communalism and parochialism'.

It concluded with the observation that :

Recovering Gujarat from its urban middle class will not be easy. The class has found in militant religious nationalism a new self- respect and a new virtual identity as a martial community, the way Bengali babus, Maharashtrian Brahmins and Kashmiri Muslims at different times have sought salvation in violence. In Gujarat this class has smelt blood, for it does not have to do the killings but can plan, finance and coordinate them with impunity. The actual killers are the lowest of the low, mostly tribals and Dalits. The middle class controls the media and education, which have become hate factories in recent times. And they receive spirited support from most non-resident Indians who, at a safe distance from India, can afford to be more nationalist, bloodthirsty, and irresponsible.

While the state government can console itself over the fact that it has not been consulted over the case filed against the *Times of India*, it would be height of innocence to say that it has not been party to the decision which saw filing of criminal charges against Prof Nandy. And it is not very difficult to understand the growing displeasure of the Saffron lobby over Prof Nandy - who has at times been very critical of the left/secular intellectuals/formations as well. Perhaps the manner in which Prof Nandy has castigated the 'Sangh Parivar's contribution to the growth of radical Islam' in India has hit them below the belt.

Events like the desecration of Wali Gujarati's grave have pushed one of India's culturally richest, most diverse, vernacular Islamic traditions to the wall. Future generations will as gratefully acknowledge the sangh parivar's contribution to the growth of radical Islam in India as this generation remembers with gratitude the handsome contribution of Rajiv Gandhi and his cohorts to Sikh militancy. (Quoted in *Times of India*, 8th January, 'Blame The Middle Class'.)

Looking at the unsustainable charges against the leading newspaper and the condemnation it is receiving for throttling the right to freedom of expression, one can expect that wiser sense would prevail and the state government would itself intervene to rectify the mistakes. But looking at the past history of the government the chances seem remote.

It was only two years back that an editor of an evening paper from Surat, Gujarat was charged with 'anti-national activities' including 'instigating people against a duly elected government' and was put behind bars by the same government. As reported in a section of the media, the law and order people had felt offended when Manoj Shinde, editor of 'Surat Samna' the said evening paper in an editorial '..[a]ttacked several officials and BJP leaders for mishandling of the release of water from the Ukai dam resulting in the flooding of the city and causing colossal losses to the people'. (*The Hindu*, 30th August 2006, Delhi). The complaint against Shinde on behalf of the government of Gujarat was lodged under Section 124A (sedition: anyone who by words or

expression of any kind brings or attempts to bring or provoke a feeling of hatred, contempt or disaffection towards government established by law shall be punished with life imprisonment) 292, 293, 294(b) (dealing with obscene publication), 500 (defamation), 501 (printing and aggravating matter against union territory or Chief Minister) and 502 and 505(1) (circulation of false statement against the public peace) under the Indian Penal Code.

Despite nuanced opinion of human rights activist that “Shinde’s editorial doesn’t amount to sedition as the comments were against an individual. The tendency here is that the CM considers himself to be Gujarat. It is not sedition even if he is called Hitler. It may amount to defamation but not sedition.” (*Indian Express*, 31st August, 2006) The government went ahead with the case.

The arrest of the journalist under charges of sedition two years back and the filing of similar charges against the leading newspaper raise another pertinent question as well which question the presence of such draconian provisions in the statute books of a sovereign democratic set up which helps the powers that be to apprehend anyone under its pretext.

To further elaborate about the leeway it gives to ruling elite one can have a look at a few cases during last few years where it can be clear to even lay persons that the ‘offenders’ were engaged in activities not even remotely connected with sedition.

Post 9/11 when the anti war movement took shape all over the world to oppose machinations of the USA for world hegemony, a section of its participants in Delhi had a tough experience at the hands of the then BJP regime. Six students belonging to Delhi university were charged with ‘sedition’ and were arrested for the “crime” of distributing anti-war leaflets and denouncing the communal-fascist war mongering stand of the Vajpayee government. It is a different matter that faced with large scale criticism at the hands of the media and civil society the government had to retrace its arbitrary move.

During Mayawati’s third stint of power in Lucknow with due support of the BJP, peace activist and Magasaysay award winner Sandeep Pandey and his fellow activists also faced charges of ‘sedition’ and ‘inciting communal violence.’ Interestingly a poster put up by them on the dharana site in Faizabad (UP) which was organised to demand peaceful resolution of the Ayodhya issue was declared inflammatory. (20 March 2003) The poster in question had a quote from a poem by Laxmi Shankar Vajpayee and said “ Oh God, Please don’t accept the temple which is built on the foundations of the dead and has blood stained walls.”

Human Rights Watch in its report of 1999 narrates the violation of dalit rights which is done with impunity. Under the heading ‘Criminalisation of Social Activism’ the report reveals the story of one Tirumavalavan, a dalit rights activist from Tamilnadu and other members of his movement who are targeted by the police for organising Dalits to claim their rights. According to the testimony of Tirumavalavan he is “[o]ften arrested under Indian Penal Code sections 153(a) [for promoting enmity between different groups] and 120(b) [for criminal conspiracy], and also under the Sedition Act and the National Security Act”.

A cursory glance at the genesis of the ‘crime of sedition’ would make it that it has its roots in an era when statesmen and political leaders were considered to

be largely above reproach by the common man. It was a time when coups and revolutions were a constant threat and the resort to political violence a common phenomenon. Coming to Indian case one can see that while the British colonialists imposed it supposedly to rein in the natives but as an offence it originated in UK. Prior to 1606, treason (an offence similar to sedition) was punishable under the Statute of Treasons of 1352. The offence of seditious libel was first created in 1606 by the infamous Star Chamber decision in *de Libellis Famosis*¹⁸ and continued to exist at common law as a species of libel.

One can say that the rationale for incorporating sedition act has come in for criticism on two counts. Firstly its clear espousal of methods adopted by the colonial rulers to discipline the 'natives' and secondly its core concept which seems clearly antithetical to the underlying premises of modern democracy. A mere look at the 'Sedition Act' embodied under Indian penal Code section 124 A would make it clear what one wants to convey :

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..

It is symptomatic of its anachronism that in most of the mature democracies, the law of sedition has now either formally been rescinded or is largely defunct. A considered observation of 'Global Campaign for Free Expression' is worth quoting in full : Pronouncements by courts and law reform commissions in a number of common law jurisdictions support the contention that the law of sedition serves no useful purpose, is anachronistic, is palpably undemocratic, and is an unconstitutional encroachment on the right to freedom of expression.

Whether India the 'largest democracy in the world' is ready to pay heed to the voices in the other mature democracies? □□□