

**Bill No.     of 2012**

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2012

BY

SHRI BAIJAYANT PANDA, M.P.

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BILL

*further to amend the Indian Penal Code, 1860.*

BE it enacted by Parliament in the Sixty-third Year of the Republic of India  
as follows:—

1. (1) This Act may be called the Indian Penal Code (Amendment) Act,  
2012.

Short title and  
commencement.

(2) It shall come into force on such date as the Central Government may,  
by notification in the Official Gazette, appoint.

2. For section 124A of Indian Penal Code 1860, the following section shall be substituted, namely:-

Substitution of new section for section 124A.

“124A. Whoever, knowingly or wilfully, by words, either spoken or written, or by signs, or by visible representation or otherwise, advocates the overthrow of the Government or an institution established by law, by the use of force or violence or by assassinating or kidnapping any employee of such Government or institution or any public representative or provokes another person to do such acts shall be punished with imprisonment which may extend to seven years, or with fine or with both.

Advocating overthrow of Government by force or violence.

Explanation.- Mere criticism or comments expressing disapproval of the Government or any act of the Government shall not constitute an offence under this section.”.

## STATEMENT OF OBJECTS AND REASONS

The debate around section 124A of the Indian Penal Code, 1860 (IPC) is not new. This section penalizes sedition and was first introduced by the then British colonial regime in the year 1870 to deal with people spreading disaffection against the Government. Mahatma Gandhi described it as the “prince among the political sections of the IPC designed to suppress the liberty of the citizen.” Gandhiji himself was charged with sedition many a times under this section. Other victims of this law include renowned nationalists like Bal Gangadhar Tilak and Annie Besant.

Several members of the Constituent Assembly, in particular K.M. Munshi and T.T. Krishnamachari, had questioned the relevance of such a law in a modern democracy. Even Pandit Nehru had termed it as “highly objectionable and obnoxious”. However, section 124A not only remains in the statute book, but continues to be used regularly. There are several instances when this section has been misused by authorities and applied frequently against innocent civilians, activists, journalists and political opponents.

Recently, the arrest of anti-corruption activist and cartoonist Assem Trivedi on charges of sedition for making caricatures of Parliament, Constitution and the national emblem created huge public outcry. It is important to note that this was not a one-off incident. Previously, the sedition law had been applied to civil rights activist Binayak Sen and writer Arundhati Roy.

This raises serious questions about the relevance of this law in a modern constitutional democracy. Mahatma Gandhi, during his trial in 1922 had said, “Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite violence.” The Supreme Court has also taken a similar stand while evaluating the constitutional validity of this section in the Kedar Nath vs State of Bihar case, wherein the Court clearly laid down that the section should be applicable only for acts that incite violence or public disorder. The problem thus lies at the lower courts and the investigating authorities that continuously disregard Supreme Court’s interpretation of the law.

If we compare the said provision in our statute book with other countries, we find that in most developed countries, the crime of sedition has either been abolished or narrowed down in their statute books. United Kingdom and New Zealand have abolished it. Australia has also narrowed it down considerably. It has been used rarely in the United States and the courts have given wide protection to persons giving political speech, except in cases where it leads to lawlessness. The offence of sedition is considered unnecessary and inappropriate in modern liberal democracies, where the right of the citizen to criticize and challenge Government structures and processes is well accepted.

Thus, this Bill seeks to replace section 124A of the Indian Penal Code with a new section that allows for exchange of ideas, however unpopular or radical they may be. It specifically excludes criticism of the Government from the ambit of the section. However, it imposes some reasonable restrictions on the exercise of this freedom by penalizing people who advocate the overthrow of Government by force or violence or by the assassination or kidnapping of Government employees or public representatives. The maximum punishment is also reduced from life imprisonment to seven years.

These changes are aimed at safeguarding the right of the citizens to freedom of expression, while at the same time ensuring that unfettered freedom of some does not lead to violence or disorder for others.

Hence this Bill.

NEW DELHI;  
November 5, 2012.

BAIJAYANT PANDA

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(Shri Baijayant Panda, M.P.)

ANNEXURE

Extract from the Indian Penal Code, 1860

(45 of 1860)

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124. 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, or with fine. Seditious.

Explanation 1 – The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2 – Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.].

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

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