Secession: A Short Story On Its Long History

Anuradha Kumar*

When a state or a part of a union seeks secession, can it be termed a seditious act? In the US, while Constitutional rulings guide the relationship of States to the Union, peaceful demands for separation have long been a feature of the country's history.

*** Independent scholar, author and historian. Email: anukumar0811@gmail.com**

The US Government's White House website, 'We the People'(https://petitions.whitehouse.gov) set up in September 2011, to invite petitions on numerous issues received, in its very first year, several from different states on a subject that drew signatories in the thousands. The subject: Secession from the Union. The original petitions came from Louisiana, Texas, Georgia, Tennessee, South Carolina and gave various reasons, ranging from a distant federal government too far to consider local needs, to principles laid down by the 1776 'Declaration of Independence', in support of a peaceful secession from the union and permission to form independent governments in these states.

Though such petitions haven't been given much traction by experts and even by most people, secession demands have appeared often and even before this, in American history. In the light of recent events in India, such issues in the US, and if their mere voicing could constitute sedition in any way, may be worth visiting.

Constitutional Definitions

As constitutional experts in the US are agreed, the question of secession and if states had the right to secede was established soon after the Civil War (1861-65). The Civil War in the US was waged primarily on the issue of secession (on their defence of slavery). The then president, Abraham Lincoln believed it was unconstitutional on the part of states to secede, as Virginia and South Carolina did first, in 1861, for the Constitution had clearly established a 'perpetual union' between states.

The Fourteenth Amendment of 1868, and the US Supreme Court's ruling in Texas v White (1869) have since then served as the basis on issues of secession. In effect, this meant that the union had been created, as stated in the Declaration of Independence, by the consent of the states and hence secession *after* this was unconstitutional, illegal and not an option.

As for the White House petitioning website, since petitions that drew more than 25,000 signatories were assured a response by a government official, it reiterated, in its answer (January 2013) titled, 'Our States Remain /United' (https://petitions.whitehouse.gov/petition/peacefully-grant-state-texas-withdraw-united-states-america-and-create-its-own-new), the above principles,

that the union was perpetual and since it was created with the will of the people, leaving it was not an option. Debate, however, made a democracy more viable and was necessary for its healthy functioning.

Despite this, secession demands – whether for independence or for constituent units within states to form their own separate states within the union – have been a regular feature of US history. Apart from petitions, historically there have been movements pleading for separation from the union. In 2013, some counties in western Maryland pleaded for their own separate state as rural interests were being ignored by the state government; as did certain counties in Colorado which traditionally had benefited from the gas and oil sector and saw themselves now threatened by new emerging environmental concerns.

As recently as 2009, in Texas, then governor Rick Perry raised questions on the viability of Texas remaining in the union. In 2005, Thomas Naylor, an academic turned consultant (who had even been consulted by Boris Yeltsin on the USSR's future) published a work advocating the peaceful separation of Vermont from the union – as reflected in its long history and culture. There had been a Vermont republic in place from 1777 to 1791, and Naylor envisaged Vermont as a "Switzerland of North America" complete with its cantons, small communities and small farms.

Secessionist demands not Seditious

Demands for secession, being peaceful, have not even been considered seditious by a wide margin in the US. Sedition, though an offence under US constitution and laws, however has been rarely evoked, more so since from the 1920s onward, the US Supreme Court has upheld the First Amendment, assuring freedom of expression and speech to all citizens.

As Geoffrey Stone's 2005 book, *Perilous Times: Free Speech in Wartime* (http://books.wwnorton.com/books/Perilous-Times) that details how First Amendment has journeyed from the US Sedition Act of 1798 to the war on terrorism, makes clear . There have been six occasions in American history when the Freedom of Expression rights assured by the amendment have been infringed.

Though sedition and seditious conspiracy remain outlawed (and the Court also upheld the Smith Act enacted in 1940 to act against Nazi and communist subversion), the Court has upheld free speech and protected political free speech rights. On this, the guiding precedent has been the 1927 ruling on Whitney v California, when Justice Louis Brandeis in his concurring opinion wrote that even if a person advocates violence, his free speech shall not be infringed as long as "advocacy falls short of incitement" and nothing indicates "that the advocacy would be immediately acted on".

Prosecutions under seditious conspiracy remain rare in the US. As defined in 1919 by Justice Oliver Wendell Holmes Jr (1919), the "clear and present danger" of violence and other "substantive evils that Congress has a right to prevent" being a distinct possibility and resulting from such speech, must be conclusively established.

The war on terrorism means that the liberty vs security debate continues to rage in the US. The Patriot Act 2001 that authorises the president to seize properties of individuals and organisations believed to engage in war/hostilities against US citizens has led to criticisms of greater surveillance by government agencies such as the National Security Agency. The instance of Edward Snowden and his revelations of citizens' privacy being infringed and more recently Apple's stand-off against the FBI over issues of encryption in its phones, are cases in point.

At the same time, leading intellectuals and scholars have publicly made criticized the government action post 9/11 and such dissent is not of course regarded as sedition. Phil Scraton's 2002, edited book, *Beyond September 11: An Anthology* (Pluto Press) includes contributions by noted opponents to the US and its Allies' military efforts in Afghanistan and later Iraq, including John Pilger, Noam Chomsky, Robert Fisk and others.

Secessionist issues have featured in Canada, north of the US. The province of Quebec after a long, at times violent separatist struggle on issues of language and culture, secured constitutional assurances for these in the 1970s. The separatist party, Parti Québécois, the second largest in the provincial assembly, stands for sovereignty, but a unilateral declaration is illegal under Canadian constitutional law. It has to be agreed on by the union and province.

Such a provision is also written into Australia's Constitution where Western Australia held and secured a referendum for its independence in 1933. In Germany, the Bavaria Party that still stands for a separate province within the EU, holds a few seats in the province's assembly. While its demands are not seen as unconstitutional in any way, a debate currently rages in Germany, where the parliament's upper house has appealed to the supreme court to ban the National Democratic Party for its anti-immigration, far right stance, and that it poses a "threat to democratic order".

For the world's mature democracies then, violence and its advocacy is the clearest defining point for any action/speech to be deemed seditious. This is in marked contrast to, for example, Russia's action against the Chechens and China's against the Uighurs in Xinjiang and the Tibetans, where sedition laws are in place to oppose any calls for secession.