Overdue review

Supreme Court's remarks on sedition cases bode well for its inevitable invalidation

It is gratifying to note that the Supreme Court, while indicating its intention to reconsider the sedition provision in the IPC, has raised the question most relevant to the issue: "Why does Section 124A continue in the statute book even after 75 years of independence?" The Chief Justice of India, N.V. Ramana, has also pointed to its rampant misuse by the police across the country, and reminded the Government that it was a legal provision that the colonial regime had used to suppress the freedom movement. The issues flagged by the CJI may set the tone for what would be a comprehensive reconsideration of a section that has been frequently and wrongfully used, especially in the last few years, to suppress dissent, criminalise strident political criticism and taint opponents with the tag of being 'anti-national'. Even though it is often argued that the misuse of a law alone does not render it invalid, there is a special case to strike down Section 124A because of its inherent potential for misuse. There is a pattern of behaviour among all regimes that indicate a proclivity to invoke it without examining its applicability to the facts of any case. Recent cases show that sedition is used for three political reasons: to suppress criticism and protests against particular policies and projects of the government, to criminalise dissenting opinion from rights defenders, lawyers, activists and journalists, and to settle political scores, sometimes with communal hues.

It is not to be forgotten that the section was upheld in 1962 by a Constitution Bench mainly by reading down the import of the terms "bring into hatred or contempt", or "to create disaffection towards the government established by law" and limit its scope to only those instances of speech or writing that show a pernicious tendency to create public disorder. Without this attenuated interpretation, the restriction imposed on free speech by Section 124A would have been declared unconstitutional. The Court is now seized of several cases that seek a reconsideration of the 1962 verdict, citing more recent judgments expanding the scope of fundamental rights and doctrines that have been subsequently evolved. In particular, the "chilling effect" that a law may have on free speech and the vague and 'overbroad' definition of sedition that renders both provocative and innocuous speeches or writings equally liable for prosecution, are points to be examined. In 2016, the Government itself admitted in Parliament that the definition of sedition is too wide and requires reconsideration. The Law Commission's consultation paper in 2018 had said: "In a democracy, singing from the same songbook is not a benchmark of patriotism... People should be at liberty to show their affection towards their country in their own way." While issuing fresh guidelines and safeguards is one way of quelling the potential for its misuse, it will be more helpful if Section 124A is struck down altogether.