

Sedition Law Stalemate - A tip of Policy Paralysis (PP) Iceberg

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THE Supreme Court's order to suspend sedition provision of Indian Penal Code (IPC) is invaluable. This is because it offers the Nation an opportunity to spot and end policy paralysis (PP) across all domains during **Amrit Kaal**.

The ubiquitous PP would become as clear as sunlight when we consider specific instances in several areas later in this column.

Both NDA Government and its predecessor UPA failed to fulfil their ostensible intent to amend Section 124A of IPC. The duo has thus frittered away a decade of new opportunity beginning 2012 to revise this Section to facilitate rational criticism of misgovernance.

Section 124A is popularly known as sedition law (SL). It was incorporated into IPC, 1860 by British rulers in 1870 to terrorise freedom fighters.

After Independence, SL has served as a handy tool for the ruling parties at the Centre and the States to rein in criticism against them. Accountability-seekers nowadays perceive Section 124A as Damocles sword on their heads.

"Anybody who speaks against the Government established by the law can be booked under the sedition law", admitted Mr. Kiren Rijiju, as Minister of State for Home Affairs, in Rajya Sabha on 16th March 2016. He was replying to supplementary queries emanating from starred question on '**Review of Sedition Law**'.

Mr. Rijiju deserves to be applauded for his courage to acknowledge that the sedition charge is often "**found to be violative of the provisions of Article 19(1)(a) (of the Constitution), that is, the Freedom of Speech and Expression**".

Mr. Rijiju added: "**we would like to see that the Law Commission takes step as early as possible so that the concerns raised in the country are addressed**".

As the Law Minister, Mr. Rijiju now wants citizens to not breach Lakshman Rekha of criticism. His advice to citizens came after the Supreme Court put on hold Section 124A in its order dated 11 th May.

The delay in amending SL can be traced to earlier regimes. Congress Government, for instance, mulled enacting sedition law in the eighties. On 18th May 1985, the Minister for Home Affairs S B Chavan told Lok Sabha: "

On matters of sedition, we wanted to bring forward a Bill before this House, but it took some time and that is why it has not been possible for us to bring that Bill. But we would like to take immediate action in the matter".

If we go back further, we find Mr. Jawaharlal Nehru, as the First PM, giving a personal call for removal of section 124A. Moving the Constitution (First Amendment) Bill in Provisional Parliament on 29 th May 1951, Mr. Nehru stated: "

Now so far as I am concerned that particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better".

Ironically, this bill, as an enactment, helped the Government make redundant Punjab High Court verdict declaring 124A as unconstitutional in November 1950.

Seventy years later, Mr. Narendra Modi has done a Nehruvian act through an affidavit filed in the Supreme Court on 9 th May 2022. As put by the affidavit, "

The Hon'ble Prime Minister of India has been cognizant of various views expressed on the subject and has also periodically, in various forums, expressed his clear and unequivocal views in favour of protection of civil liberties, respect for human rights and giving meaning to the constitutionally cherished freedoms by the people of the country".

It continues: "

The Hon'ble PM believes that at a time when our nation is marking 'Azadi Ka Amrit Mahotsav' (75 years since independence) we need to, as a nation, work even harder to shed colonial baggage that has passed its utility, which includes outdated colonial laws and practices".

The affidavit marked a U-turn on the Government's previous-day stance against tinkering with 124A. Affidavit claimed that the Government "***has decided to re-examine and re-consider the provision of Section 124A of the Indian Penal Code which can only be done before the Competent Forum***".

As put by the affidavit, the Supreme Court thus "

may not invest time in examining the validity of Section 124A once again and be pleased to await the exercise of reconsideration to be undertaken by the Government of India before an appropriate forum where such reconsideration is constitutionally".

Notwithstanding this sermon, the Apex Court has decided to resume hearing anti-sedition law PIL in July 2022. This is perhaps due to the fact that frequent strictures by the judiciary against misuse of SL has not deterred the ruling parties at the Centre and the States in targeting bitter criticism.

Even voicing genuine grievances against covid mismanagement resulted in FIRs against the critics. No wonder a Supreme Court Judge took a dig at misuse of SL during the second covid wave in mid-2021.

Indian Express quoted Justice D.Y. Chandrachud as saying: "

A news report yesterday showed that dead bodies were being thrown in a river. I don't know if a sedition case has been filed against the news channel yet or not."

It is here pertinent to also quote UP's BJP MLA Rakesh Rathore. While speaking on state of healthcare facilities in the State during covid 2nd wave, Mr. Rathore reportedly said: "***If we speak too much, then we will have to face sedition charges***".

Mr. Modi himself mocked Congress party for proposing in its poll manifesto to repeal SL if it is voted to power. At a rally held on 10th April 2019, PM reportedly observed: "

Congress is now saying that they will repeal the sedition law. Can we expect this from a 125-year-old party?"

What Mr. Modi overlooked was the fact that Congress was merely articulating 'repeal 124A' demand made by his ministerial colleague Arjun Meghwal. As an Opposition MP, Mr. Meghwal had moved IPC amendment bill dated 9 th November 2011 in Lok Sabha to omit 124A.

In the 'statement on objects and reasons' for this private member's bill, he had invoked Nehru's 1951 speech against 124A. Mr. Meghwal penned: "

There is no place in a democracy for a law that conflates disaffection with disloyalty and regards trenchant criticism as a form of treason. What was once an instrument by British colonialism to suppress the freedom struggle cannot be retained by the State to silence the voices of its people. It is high time that section 124A is omitted from the Code".

This shows that the successive regimes have played sedition politics as football both inside and outside the Parliament over the decades.

Both NDA and UPA have liberally used the ordinance route to either amend existing laws or enact new ones. Both, however, shunned ordinance option when it comes to reforms that directly impact the art of governance and their accountability. Both regimes thus chose circuitous and time-consuming route on amending 124A.

On 27th November 2012, Government told Lok Sabha that Home Ministry has urged Law Ministry to request Law Commission to study the usage of 124A and suggest amendments, if any.

The trigger for this review was the public outcry against UPA regime over slapping of sedition charges against cartoonist Aseem Trivedi. He was jailed for anti-establishment drawings. A major offending cartoon was one that depicted Parliament as sewage system to which were

connected a series of polling booths (shown as toilet seats with flush tanks).

BJP had then leaped to defence of the cartoonist. BJP endorsed the cartoon depicting Parliament as hub of toilet system, reminding UPA that it was responsible for the washout of the monsoon session.

A news story quoted BJP spokesperson Shah Nawaz Hussain as saying: "

If a cartoonist makes a cartoon on the lowering of the dignity of Parliament due to this, then the government has an objection to it and a case is filed against him. You are in power, that does not mean you impose an undeclared emergency in the country.
• Mr. Hussain wondered how a cartoonist exercising his right to freedom of speech could become a threat to national security.

The Government of the day often refers prickly issues to Law Commission (LC) to avoid taking a public stance. Is the Government not capable of building safeguards in 124A to prevent its misuse, pending review of the Section?

After coming to power in 2014, NDA Government clubbed review of 124A with comprehensive review of IPC by LC, thereby creating a further excuse for the delay in amending 124A. It worsened policy paralysis on this count by more than four-years delay in constituting 22nd LC. The term of 21st Law Commission ended on 31st August 2018.

LC issued a consultative paper (CP) on sedition on 30th August 2018. CP wished for emergence of "***a public friendly amendment***" to SL through national discourse.

As put by CP "

Expression of frustration over the state of affairs, for instance, calling India 'no country for women', or...are critiques that do not 'threaten' the idea of a nation. Berating the country or a particular aspect of it, cannot and should not be treated as sedition. If the country is not open to positive criticism, there lies little difference between the pre- and post-independence eras. Right to criticise one's own history and the right to offend are rights protected under free speech".

The two proposals to amend 124A and IPC were treated as a Government Assurance (GA) by a Lok Sabha Panel named Committee on Government Assurances (CoGA).

The Committee last year dropped both proposals as GAs after repeated requests from the Government. GAs emanating from two separate Lok Sabha questions put in 2016 – one exclusively on 124A and another on IPC including 124A.

A GA arises when a minister gives an assurance, undertaking or promise to pursue an issue raised in Lok Sabha while replying to questions, resolutions, etc. Whether a ministerial statement is an assurance is separately tracked by both Lok Sabha Secretariat and the Ministry of Parliamentary Affairs. Their separate findings are reconciled and later the Ministry concerned is apprised of CoGA's decision to treat a statement as an assurance. CoGA has set a timeline of three months for implementation of GAs.

According to CoGA, The Ministries "

are under obligation to seek extension of time required beyond the prescribed period for fulfilment of the Assurance. Where a Ministry/Department is unable to implement an Assurance, that Ministry/Department is bound to request the Committee for dropping it. The Committee consider such requests and approve dropping, in case, they are convinced that grounds cited are justified. The Committee also examine whether the implementation of Assurances has taken place within the minimum time necessary for the purpose and the extent to which the Assurances have been implemented".

In its report released on 12th March 2020, CoGA first turned down Law Ministry's request to drop assurance to review and consider amendments to 124A. In its subsequent report presented on 13th February 2021, it dropped GA pertaining to review and amendment of IPC including 124A.

CoGA cited the Ministry of Home Affairs (MHA) communication dated 24 September, 2019. MHA claimed: "

The comprehensive report from the Law Commission covering all aspects of Criminal Law so that comprehensive amendments can be made In the various laws viz. Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act, etc. is still awaited from the

Commission. The Law Commission on 11.12.2014 had intimated that the Commission has identified certain focus areas and formed sub-groups to

deliberate on such areas. The Commission is actively pursuing the issue and will finalize its views as early as possible. The position was reiterated by the Commission on 11.03.2016".

MHA continued: "

It is further stated that a legislation to completely overhaul the Codes is a complex and lengthy exercise given the spectrum of divergent views of stakeholders i.e. State Governments, etc. The proposed amendments have to be debated and deliberated intensely to arrive at a required consensus. The entire procedure is, therefore, a long drawn out one and no time-limit can be fixed or given for the legislative process".

This statement is as good as admitting that PP is a deemed core component of governance. Delay in amending Section 124A to prevent its misuse is not an isolated case of PP. The list of PPs runs into hundreds.

PPs list includes delays in 1) framing rules under a law such as Citizenship Amendment Act (CAA), 2) in enacting or amending new laws such as one on Comptroller and Auditor General (CAG), 3) in formulation of policies such as National Tribal policy, 4) in completing probes into revenue leakage and money laundering in areas such as over-invoiced coal imports and 5) in undertaking many sectoral reforms. The duration of PPs in many cases has persisted for more than a decade in spite of their monitoring by CoGA.

This panel should actually serve as a mirror for all rulers who liberally self-certify their rule as good governance. Its reports should be debated both inside and outside the Parliament to check PP and to minimize growth opportunities.

CoGA presented a record 101 reports during 16th Lok Sabha (2014-2019). This milestone is expected to be crossed during the present 17 th Lok Sabha. It has so far presented 61 reports during the current 17 th tenure of Lok Sabha.

Of the total 13409 GAs given in all terms of Lok Sabha, 1143 GAs were pending as on 17th May 2022. Some of them are pending for more than a decade. CoGA acceded to ministries' plea to drop 891 assurances.

PP is evident in the fact that the ministries try to convince CoGA to either not treat a ministerial statement as GA or drop it due to long-drawn decision-making process.

Add to this situation the fact that CoGA has not reckoned many statements as GAs. A few instances are: 1) failure to unveil a functional definition of poverty, 2) failure to either implement national litigation policy announced during July 2010 or to formulate a fresh one and 3) failure to unveil National Employment Policy drafted by UPA in its tenure.

(Please also read [Mr. Modi Creates Policy Paralysis that he once Detested](#))

The PP scenario becomes scary if one factors in standing orders and guidelines that are not complied with by the Government of the day. A case in point is presidential order on Inter-State Council issued in May 1990. It would have been laid on table of both houses of Parliament during that period. The Order stipulates that ISC should meet at least three in a year - a directive ignored by successive regimes. ISC has so far met only once under Modi Government.

It is here pertinent to recollect that the ministries delay taking action on CAG's audit objections. All such dimensions of PP should be brought under the ambit of CoGA. It should also be authorised to track delays in Government approving projects financed with concessional loans from multilateral institutions such as the World Bank.

CoGA should also monitor delays in implementing accepted recommendations of numerous committees and commissions. Parliament should thus upgrade CoGA's role as a holistic institution for monitoring multi-faced PP that extends from ground zero right up to Prime Minister's office and Rashtrapati Bhavan.

Reining in PP is the key to improving economic efficiency and in accelerating socio-economic development. Decline in PP would automatically get reflected in hyped Ease of Doing Business and Ease of Living.