Assessing AFSPA, Sedition and Defamation Laws

What is the issue?

- Recent happenings across the country against individual rights and free speech have questioned the relevance and validity of certain laws.
- In this backdrop, here is a look at three significant and controversial ones - the sedition law, the defamation law and the AFSPA.

What is the contention with sedition law?

- **Meaning** - Sedition is dealt in Section 124A of the Indian Penal Code.
- Sedition refers to anything written, spoken or done that brings hatred or contempt against the Government established by law in India.
- It is a cognisable, non-compoundable, and non-bailable offence.
- Under it, sentencing can be between 3 years to imprisonment for life, along with a fine.
- **Concern** - Since its introduction in 1870, meaning of the term, as well as its ambit, has changed significantly.
- Previously, it was used by the British to target and suppress the nationalist leaders.
- Mahatma Gandhi famously called the defamation law the “prince” among criminal laws which thwarted free speech in the country.
- After Independence, there were discussions in the Constituent Assembly around the subject.
- Yet, the section continued to remain in force.
- Successive governments have been accused of misuse of the provisions in sedition law.
- **Revision** - In 1962, the Supreme Court, while curtailing the extent of its application, upheld its constitutionality.
- The objective was to punish those who jeopardise the safety and stability of the state and create public disorder.
- But since then, the courts in the country have repeatedly observed that the section cannot be used to curb criticism of the government.
- It can only be used as a measure for maintaining public order.
- Given its misuse, there are proposals to revise Section 124A. Click here to know more.

How is the defamation law handled?

- **Provisions** - It is dealt in Section 499 of the Indian Penal Code.
- Anything written, spoken or done intending to harm the reputation of a person is said to defame that person.
- India is one of the few countries where defamation is both a civil and a criminal offence.
- As a criminal offence, it is bailable, non-cognisable and compoundable.
- It is punishable with imprisonment up to 2 years, or with fine, or with both.
- Once charged in a criminal trial, the accused may prove that they are covered under any of the 10 exceptions to the section.
- This range from an imputation which is truthful, to one which is made in good faith; otherwise s/he stands accused.
- **Elsewhere** - The English common law has different punishments for libel (written) and slander (spoken).
- India does not make this distinction, and both are being covered under the meaning of Section 499 itself.
- In the US, a distinction has been made between private and political defamation.
- More burden of proof is placed on the prosecution if it is political defamation.
- **Changes** - Like sedition, many governments have been accused of misusing the criminal law of defamation for suppressing legitimate criticism.
- There are thus proposals for a revision of the law, especially following some recent defamation cases. Click here to know more.
- If removed from the IPC, defamation would no longer remain a criminal offence.
- It would then continue as a civil wrong, which in India is not stipulated by legislation and is guided by judge-made law.

What is the case with the AFSPA?

- **Purpose** - Armed Forces Special Powers Act (AFSPA) was passed in 1958 for the North-East and in 1990 for Jammu & Kashmir.
- The law gives armed forces special powers to control “disturbed areas”.
- The government designates this when a region is in a disturbed condition necessitating the use of armed forces in aid of civil power.
- **Provisions** - Under its provisions, the armed forces are empowered to
    i. open fire
    ii. enter and search without warrant
    iii. arrest any person who has committed a cognisable offence
- Notably, the armed forces have immunity from being prosecuted for these acts.

- **Currently**, AFSPA is implemented in Jammu & Kashmir, Assam, Nagaland, and parts of Arunachal Pradesh and Manipur.
- The law has been repealed where insurgencies have subsided, and when governments have gained confidence of managing the region using the police force.
- Tripura became AFSPA-free in 2015, and in 2018 the Centre also removed Meghalaya from the list.
- It also restricted AFSPA's use in Arunachal Pradesh.
- **Contention** - Critics both in India and abroad have criticised government agencies for acting with impunity under AFSPA.
- Manipuri activist Irom Sharmila had been on a 16-year hunger strike in protest against AFSPA.
- The Jeevan Reddy Committee formed in 2004 has recommended a complete repeal of the law.
- There is a need to strike a balance between the powers of security forces and the human rights of citizens.
- It would thus be fair to remove immunity to armed forces for enforced disappearances, sexual violence, and torture.

Source: Indian Express

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