SC on Rafale Deal Documents - Freedom of Press

Why in news?

The Supreme Court rejected the Centre's argument that the Rafale Deal documents published in The Hindu and The Wire were 'Privileged'.

What is the case all about?

- The Supreme Court gave its verdict on the Rafale aircraft acquisition deal in December, 2018. Click here to know more.
- Much in line with the government, the Court held that there was no substance to the allegation of "commercial favouritism" in the deal.
- In a few days, certain documents revealing the incongruities in the Rafale deal had been published by The Hindu and The Wire news website.
- Relying on these documents, the petitioners again sought a review of the court's December, 2018 judgment.
- But the Centre had maintained that the "privileged" documents were procured by the petitioners in an illegal way.
- It said the documents had been removed from the Ministry of Defence without authorisation.
- The Attorney General (AG), representing the government, raised three specific questions -

i. relying on the documents was violative of the Official Secrets Act
ii. the documents could not be accessed under the Right to Information Act
iii. the government was entitled to privilege under the Evidence Act

- The Centre thus raised objections that documents on which it claimed "privilege" cannot be relied upon to re-examine the verdict.
- However, in the recent verdict, the Supreme Court has dismissed these preliminary objections raised by the government.

What is the court's rationale?

- The court emphasised at the very beginning that the issue before the court is not about freedom of the press.
- But the petitioners had relied upon articles published on various media platforms.
- So it acknowledged the case to be an appropriate occasion to recall the views

of the Court on the critical issue of freedom of the press.

- It observed that the "right of such publication would seem to be in consonance with the constitutional guarantee of freedom of speech".
- In earlier judgement too, the court had held that the freedom of press was at the foundation of all democratic organisations.
- The imposition of pre-censorship on a journal is a restriction on the liberty of the press, an essential part of the right to freedom of speech and expression.
- Moreover, no law of the Parliament that specifically bars or prohibits the publication of such documents has been brought to the court's notice.
- Also, there is no provision in the Official Secrets Act or any other statute to restrain publication of documents marked as secret.
- It is neither prohibited from being placed before a court of justice.
- In the process, a judge also mentioned four broad social purposes that Freedom of expression serves -
    1. it helps an individual to attain self fulfilment
    2. it assists in the discovery of truth
    3. it strengthens the capacity of an individual in participating in decision making
    4. it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change
- The court also maintained that how a piece of evidence is obtained is immaterial, as long as it is relevant to adjudicating an issue.
- So in line with all the above principles of law and justice, the court allowed the published documents to be relied upon by the petitioners.
- The review petitions filed against earlier orders will now be taken up on merits.

What is the significance?

- The Court's unanimous verdict is a firm and necessary rejection to the government's attempts to de-legitimise investigative journalism.
- The judgement will certainly help provide clarity on several aspects of the controversial Rafale deal.
- More importantly, the decision has significance beyond the Rafale issue.
- It rejuvenates the rights of a free press and underscores the principle that it is public interest that would decide the worth of such rights.

Source: Indian Express, The Hindu



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