



Draconian move

Tamil Nadu's Raj Bhavan must be made aware of the risks of the misuse of Section 124

Journalists have been hauled up in the past for writing allegedly objectionable articles. But the arrest of R.R. Gopal, Editor of the Tamil magazine *Nakkheeran*, Chennai, on a trumped-up charge under a rarely used section of the Indian Penal Code is an extraordinary instance of abuse of power. The Tamil Nadu Governor's office had complained to the police, seeking to book Mr. Gopal under Section 124 of the IPC, citing some articles published in the magazine. This section, seldom used even in colonial times, applies to assaulting high constitutional functionaries such as the President and the Governor with "an intent to compel or restrain the use of any lawful power". It is plain as day that it was never intended to cover writing articles but rather cases where these functionaries are prevented from exercising their power through criminal force, attempts to overawe, or wrongful restraint. Whether the articles in question were in bad taste is the subject for a separate debate. The point is that, however offensive or derogatory, they did not attract Section 124. In an environment where the lower judiciary reflexively signs remand orders, the Metropolitan Magistrate in Chennai must be commended for realising the absurdity of the prosecution's case and declining to jail Mr. Gopal.

Governor Banwarilal Purohit is no stranger to Section 124, having threatened a few months ago to use it when the DMK staged black flag demonstrations at sites where the Governor held meetings with district-level officials. It is doubtful whether a black flag demonstration can be construed as an attempt to "overawe" the Governor in a manner that restrains his office from exercising power. Overawe, at the very least, would suggest the commission of an offence that poses a real danger to the exercise of authority. Of course, to extend the meaning of "overawe" to a work of journalism is simply ridiculous. So is the claim in the police complaint prepared by the Deputy Secretary to the Governor that the offending articles express an "intention of inducing or compelling the Governor... to refrain from exercising his lawful powers". The articles had linked Mr. Purohit's name to the controversy surrounding assistant professor Nirmala Devi, who is in jail for allegedly trying to lure students into sex work. If Mr. Purohit believed they were unfounded and damaged his reputation, there were other forms of legal redress available to him. By citing them to seek registration of a Section 124 case against the magazine's Editor, journalists and employees, the Governor's office has only turned the spotlight on itself unnecessarily. He would do himself a favour by withdrawing the complaint; it is unlikely the Tamil Nadu police will take such a decision on its own.

Deadly roads

Data on fatalities and injuries must jolt the government into action

The *Road Accidents in India* report of the Ministry of Road Transport and Highways for 2017 comes as a disappointment. By reiterating poorly performing policies and programmes, it has failed to signal the quantum shift necessary to reduce death and disability on the roads. It expresses concern at the large number of people who die every year and the thousands who are crippled in accidents, but the remedies it highlights are weak, incremental and unlikely to bring about a transformation. The lack of progress in reducing traffic injuries is glaring, given that the Supreme Court is seized of the issue and has been issuing periodic directions in a public interest petition with the assistance of the Justice K.S. Radhakrishnan Committee constituted by the Centre. Little has been done to fulfil what the Road Transport Ministry promises: that the Centre and the States will work to improve safety as a joint responsibility, although enforcement of rules is a State issue. That nothing much has changed is reflected by the death of 1,47,913 people in accidents in 2017. To claim a 1.9% reduction over the previous year is statistically insignificant, more so when the data on the rate of people who die per 100 accidents show no decline. Even more shocking is the finding that green commuters – cyclists/pedestrians – now face greater danger on India's roads, with a rise in fatalities for these categories of users of 37% and 29% over 2016, respectively.

Road safety data is a contested area in India. The figures of death and injury from accidents are viewed as an underestimate by scholars; the Transportation Research and Injury Prevention Programme at IIT Delhi, for instance, estimates that cumulatively, road traffic injuries recorded by the police are underestimated by a factor of 20, and those that need hospitalisation by a factor of four. If this is correct, the number of people who suffered injuries in 2017 far exceeds the 4,70,975 reported by the Ministry. It is welcome that greater attention is being paid to the design and safety standards of vehicles, but such professionalism should extend to public infrastructure: the design of roads, their quality and maintenance, and the safety of public transport, among others. The Centre has watered down the national bus body standards code in spite of a commitment given to the Supreme Court, by requiring only self-certification by the builders. Relaxing this long-delayed safety feature endangers thousands of passengers. There is little chance of the NDA government, now in the last year of its tenure, making a paradigm shift. Valuable time has been lost in creating institutions for road safety with a legal mandate, starting with an effective national agency. The Road Safety Councils at the all-India and State levels have simply not been able to change the dismal record, and the police forces lack the training and motivation for professional enforcement. The urgent need is to fix accountability in government.

Polls and polarisation politics

The Opposition parties have to press ahead with political adjustments to counter the dominant narrative



ZOAYA HASAN

The political discourse, as Assembly elections approach, is slipping to new lows. Addressing a rally in Madhya Pradesh recently, the president of the Bharatiya Janata Party (BJP), Amit Shah, once again described infiltrators as "termites". Earlier, speaking at a rally in Rajasthan, he said that he was confident that the BJP would win every election despite incidents of mob lynching, naming Mohammed Akhlaq. At the party's national executive meeting last month, he had declared that if the BJP comes to power in 2019, it would stay put in office for another 50 years.

A clear strategy

But what is the basis of this self-confidence in the face of the poor record in office and the unravelling of the party's own carefully constructed social constituency? This self-assurance stems from the belief that a politics of polarisation will pay dividends. Development and corruption were two major poll issues in 2014 when Narendra Modi projected himself as the harbinger of development. Both these issues have lost their appeal as non-Hindutva supporters who backed the BJP on the promise of development are disenchanted. The BJP appears to be refurbishing its strategy with greater prominence given to Hindutva, reflected in the high-pitched communal rhetoric of the past few months.

That this strategy is driven from the top is evident from the manner in which the BJP president has been focussing on the National Register of Citizens (NRC) issue, which is ideally suited to create polarisation. Mr. Shah has set the pace for this. While raising the issue of the NRC in a rally in Ganganur town in Sawai Madhopur, he said that 'crores of illegal infiltrators' have entered the country like 'termites' and should be 'uprooted.' He has been sticking to this theme in several speeches, warning for instance: "BJP sarkar ek-ek ghuspaitiye ko chun-chun kam matdata suchi se hatane ka kaam karegi (the BJP government will remove every infiltrator from the voters' list)."

The 'chun-chun ke nikalenge' threat to the illegal Bangladeshi immigrants becomes clearer when viewed together with the proposed Citizenship (Amendment) Bill of 2016. This Bill would permit Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Pakistan and Bangladesh to be eligible for Indian citizenship, but not Muslims, and if passed would violate Article 14 guaranteeing equality before law. Through this, the BJP is aiming to polarise Indians to convince them that what is rightfully theirs is being snatched away by 'outsiders'. Hence, Mr. Shah is bringing up the issue in rally after rally to target minorities. At a public meeting in Kolkata, on August 11, he asked: "Are the Bangladeshi infiltrators a security threat to this country or not?"

Such acidic comments are echoed by other BJP leaders in their mobilisation campaigns. The sharpened focus on Bangladeshi



immigrants, the NRC, the 2106 surgical strikes on Pakistan, to name a few such issues, are an indication of the tone and tenor of the BJP's combative political strategy for 2019. The NRC issue is particularly important for its political agenda as it signals the shifting relationship between the Indian state and its diverse citizens and communities on questions of citizenship, equality and democracy.

Several commentators point out that the BJP has begun to forego a combative strategy because of the growing feeling that the ruling dispensation is unlikely to repeat the 2014 performance. At the same time, it's important to remember that polarisation has been an indispensable part of its campaign strategy, and is embedded in its ideology. For the BJP, creating a Hindu-Muslim divide is at the heart of its quest for a Hindu consolidation. Many State elections after 2014 have witnessed aggressive pitching of divisive issues rather than development. This happened during the Gujarat and Uttar Pradesh elections in 2017. Same was the case in Bihar in 2015 and Karnataka in 2018. Moreover, this type of campaign is always conducted at the grass-root level by the RSS-BJP cadres even when

on occasion the top leadership is speaking a less divisive language. Whether the communal dimension should be highlighted by the leaders in their speeches depends on the assessment of the ground situation and its intensity varies from phase to phase of the election campaign.

Among the lynchings

From Independence, India's politics had taken the form of a consensus pertaining to issues about nationhood and majority-minority relations. Clearly, that consensus has broken down, with the BJP keen to break away from the traditional national discourse. In the past too, religion wasn't divorced from politics since it is part of the political landscape, but it is certainly more strident now. One important reason for the democratic regression is the majoritarianism promoted by the BJP as the dominant ideology since it came to power. The second reason is growing incidents of mob lynchings, which have emerged as a critical element of the new political order. It is not conventional Hindu-Muslim violence but targeted violence that is no longer episodic but a continuum, with lynching of Muslims on issues ranging from allegations of cow slaughter to love jihad to petty theft. Most of these incidents are perpetrated by vigilante militias and are the direct result of the communal atmosphere that the Hindu right has created, leaving little scope for recourse to justice against persons who commit these hate crimes.

But it is not only Muslims who are the targets of violence, most marginalised groups and anyone who speaks on their behalf or for

justice is generally under attack, while those who make up a lynch mob have actually been feted by a Union minister. Also, anybody who is critical of Hindutva or the politics of the current establishment is branded as anti-national. This labelling draws sustenance from a conflation of communalism and nationalism since nationhood under the BJP government is defined more by what it excludes than what it includes. It is a well-thought-out strategy: speak against the government and you're anti-national and anti-Hindu.

Threat to plurality

The polarisation strategy is an attempt to remove political plurality and in a sense pave the way for a one party, one leader-centric system which will weaken the foundations of our vibrant democracy. The job of the Opposition parties, in particular the Congress, in these circumstances is cut out: it has to press ahead with political adjustments to counter communal polarisation. Besides bringing together disparate parties, the Opposition must build a narrative that can hold some political interest for voters. The ideological thrust of this counter-narrative has to focus on safeguarding fundamental constitutional principles which have become points of contention and contestation, for example, nationalism, secularism and social justice. The Left has to play a leading role in building this narrative and any hesitation on its part will be damaging to both itself and to the country.

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Next steps after the 377 judgment

It is time that marital rape is criminalised



PRADEEP CHHIBBER & NIRVIKAR JASSAL

The Supreme Court's verdict on Section 377 should be celebrated for ejecting an ugly Victorian norm from the Indian criminal justice system. The landmark decision breaks new ground by removing restrictions that made consensual sexual relations between members of the same sex and the transgender population a crime. The judgment of the Supreme Court will, however, likely have unintended negative consequences for one group that has used Section 377 to protect itself from sexual violence – women.

What data show

While Section 377 has indeed been used as a tool to vilify and arbitrarily punish members of the LGBTQ community, it may be surprising for most to learn that an overwhelming majority of those who utilise the section at police stations are abused and physically tormented married women. Utilising new data as well as research conducted at police stations across Bihar, Uttar Pradesh, and Haryana, we find that female complainants invoked most cases of

Section 377 in the context of Section 498A (wherein the husband or his relative subjects a wife to cruelty, often within the framework of harassing her for additional dowry post-marriage). Nirvikar Jassal's analysis found that for every hundred Section 377 cases, more than half are filed by women in the context of Section 498A.

Incidentally, Section 498A was diluted by the Supreme Court last year, making it more difficult for women to utilise the one law that had some teeth in deterring husbands from causing harm to their wives. In the Indian criminal justice system, Section 498A has a connotation as a "minor" gendered crime. This is partly why the Supreme Court suggested that first information reports should not be registered immediately after such a case comes before a police officer. The court mandated that no arrests or coercive action based on the law should be carried out until "family welfare committees" had looked into a case under Section 498A, and reconciliation centres had made an effort to resolve the couple's differences. In other words, woman and spouse would be "counselled" before the case was handled by the justice system.

However, most dowry harassment cases are anything but "minor" crimes, and invariably involve the vilest and most degrading forms of physical abuse that the legalese of Section 498A is not able to capture on its own. The



legal problem is that India, as in large parts of West Asia and Africa, does not recognise marital rape as a crime.

In POCSO too

This is where Section 377 comes in. Women who register spousal abuse, especially in the form of Section 498A, often do so as a case of last resort. As we found, in extreme circumstances, women encourage police officers to register an additional case of Section 377 against their husbands. They do this to elevate the "heinousness" of Section 498A, i.e., to signal to the police that their abuse is not simply "cruelty" but also one of sexual abuse. Section 498A has the lowest conviction rate of any law in India, and by tacking on Section 377, women are potentially able to increase the likelihood of the husband being punished. In a legal context in which marital rape is not recognised, Section 377 emerges as a tool for married women to highlight the "unnatural"

abuse they face. Interestingly, the media in Kerala have found that the use of Section 377 is often added to the Protection of Children from Sexual Offences (POCSO) Act to increase POCSO's stringency. We too have found such evidence.

In its recent judgment, the Supreme Court appears to have been conscious of the fact that Section 377 has been used to protect women but implied that as Section 375 (rape) already criminalises non-consensual acts, Section 377 is redundant when applied to women. The court also implied that Section 377 was obsolete because the Criminal Law (Amendment) Act, 2013 broadened the scope of Section 375 to include non-penile-vaginal penetration, "thereby plugging important gaps in the law governing sexual violence in India".

However, this is not entirely accurate. There remains a significant gap. An exemption in Section 375 says, "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape." This is why police officers have to pin Section 377 to many dowry harassment cases that involve sexual violence because those registering a case would not be able to utilise Section 375 if the violation was carried out by the husband.

While Section 377 will now apply to minors and in cases of bestiality, it is unclear whether abused married women will be

able to use the law in quite the same way as they did before.

More importantly, they really should not have to. If physically abused by their husbands, wives should be able to register a case without having to use the circuitous paths of employing laws with anachronistic language when they are essentially being raped. A far more effective and progressive strategy would be for the state to now criminalise marital rape. This could be done by passing a new law or merely removing the exemption in Section 375.

In its judgment on Section 377, the Supreme Court stated, "The constitutional courts have to recognize that the constitutional rights would become a dead letter without their dynamic, vibrant and pragmatic interpretation. Therefore, it is necessary for the constitutional courts to inculcate in their judicial interpretation and decision making a sense of engagement and a sense of constitutional morality."

We fully agree with this sentiment and urge both the political class and the court to give married women full restitution of their rights under the Constitution by making marital rape a heinous crime.

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LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

Exodus and influx

While incidents in Gujarat which have led to migrant labour leaving the State are disturbing, it is a fact that there is a marked increase in labour migrating from Bihar, Uttar Pradesh and West Bengal to other parts of India. Besides the construction industry, one can also see a sizeable number of migrants in the service industry especially in metros such as Chennai, and where the demand for them only seems to be growing rapidly for various reasons. Given this fast-changing scenario, the chances of friction and misunderstandings with the local populations are only bound to increase. It is the duty of the respective State governments to ensure their safety and also weed out elements, if any, among them found to be indulging in illegal or criminal acts. But most importantly, U.P.,

Bihar and West Bengal should now seriously introspect and ensure suitable job opportunities for their obviously huge numbers of unemployed youth. Mere empty and unfulfilled election promises are no real solutions to tackling such serious and major issues which involve the very survival of large sections of a totally neglected people. Sadly, they are left with no other option but to leave their homes to earn a livelihood in faraway parts of the country (Editorial, "Arrest the exodus", October 10).

A. MOHAN,
Chennai

A day in court

The circumstances which led to the arrest of the Editor of *The Hindu* and Chairman of the company, N. Ram, who he spotted among those who were present in the court. The magistrate deserves special praise for his learned and forthright interpretation and striking a blow for the freedom of the press.

V.N. GOPAL,
Chennai

I would like to congratulate Mr. Ram, whose opinion was crucial in appealing against Mr. Gopal's arrest – one which was conducted in an autocratic manner and for the reasons best known to the police. The honourable magistrate who rendered perfect justice after hearing both sides also deserves

praise. Rulers must learn that mere pursuit of power cannot involve trampling upon fundamental rights guaranteed under the Constitution.

M. XAVIER M.,
Vallioor, Tirunelveli, Tamil Nadu

Climate change crisis

The special report of the Intergovernmental Panel on Climate Change, on global warming of 1.5°C over pre-industrial era levels, can prove to be a blessing in disguise for India. As we are under severe threat, policymakers can speed up the process of inducting electric vehicles, the use of biofuels and the promotion of solar energy. If the IPCC has warned of the need to observe carbon emission targets, we need to pick up the pace now before it is just too late (Editorial – "Target 1.5" and Editorial page – "Another warning on warming", both October 10).

SOHRAB KHAN,
Shopian, Jammu & Kashmir

The report only shows that the onus lies on world leaders to take immediate steps to pull humanity back from the brink of extinction. There is no escaping the fact that nobody is immune from nature's destructive power, irrespective of the level of development. On this issue, global leaders must speak in one voice and fulfil their responsibilities towards future generations.

RAHUL SANKHYAN,
Nalagarh, Solan, Himachal Pradesh

Rafale deal

Defence Minister Nirmala Sitharaman's argument that getting 36 Rafale jets in a flyaway condition – in the

place of 18 Rafale jets that was agreed upon under the UPA's agreement – as a big achievement by the NDA government only raises more questions (OpEd page, "The Wednesday Interview" – "If the Opposition wants to go on a wild goose chase, so be it", October 10). The Supreme Court's directive, on Wednesday, on how it needs the details about the decision-making process in the deal underlines this. The grey role of a prominent industrialist only raises more doubts.

B. PRABHA,
Varkala, Kerala

MORE LETTERS ONLINE:
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CORRECTIONS & CLARIFICATIONS:

"Cutting corners on medicine" (Oct. 7, 2018), a Being page story, erroneously gave the venue of the conference on "Medicine Quality & Public Health (MQPH)" as London. It should have been Oxford.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail: readerseditor@thehindu.co.in; Mail: Readers' Editor, The Hindu, Kasturi Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communications must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com