Sedition and the Misuse of Laws

ALOK PRASANNA KUMAR

The true state of fundamental rights in India cannot be determined by reading the judgments of the Supreme Court or the high courts that, though called "constitutional courts," are not the "only" "constitutional courts" in India. The magistrates and civil judges, despite called the "subordinate courts," are just as important but receive much less attention in conversations about fundamental rights.

Alok Prasanna Kumar (*alok.prasanna@vidhilegalpolicy.in*) is a senior resident fellow at Vidhi Centre for Legal Policy and is based in Bengaluru.

The Supreme Court's order on 11 May, "putting in abeyance" Section 124A of the Indian Penal Code (IPC), 1860, which prescribes punishment for "sedition," has been greeted with a measure of relief in various sections. Former attorney general and senior advocate Mukul Rohatgi called it "bold and historical" (Sharma 2022); Akhil Gogoi, having faced numerous sedition cases himself, said it would "strengthen (the) democracy in our country, and will also uproot a colonial legacy" (Zahan 2022), and the *Hindu* (2022a) in an editorial called it a "substantial blow in favour of free speech."

Others were relatively cool to the order (Suryam 2022; *Scroll.in* 2022).[1] Legally, the order does not stay the operation of Section 124A itself—it puts proceedings in abeyance, "hope(s) and expect(s)" that the union and state governments will not invoke it during the pendency of the petition, and gives liberty to the accused to approach courts and get bail. Much of the order depends on the concerned authorities and individual litigants to take advantage of its terms—without couching it in such terms that the disobedience of the order would not invite contempt of court.[2]

The Court's approach is informed, to an extent, by the petitioners' principled argument against the sedition law, which seems to equate dissent with armed rebellion, and the Attorney General of India, K K Venugopal's pragmatic concerns over its misuse. It is notable that the only instance of "misuse" that finds mention in the order is by the Maharashtra government against the member of Parliament Navneet Rana and her husband, member of the legislative assembly (MLA), Ravi Rana for their attempt at reciting the *Hanuman Chalisa* outside the residence of the chief minister of Maharashtra (*Economic Times* 2022).

Whatever one's take on the Supreme Court's order related to sedition, it is hard to shake off the feeling that the whole discussion is tangential or entirely irrelevant to the reality on the ground. The focus on the interpretation and meaning of the words of Section 124A, as determined by the Supreme Court, quite misses the point. The reality is that this interpretation is discarded, without consequences, by police authorities when they choose to, and the same is condoned by the judicial authorities—the judicial magistrates and sessions judges—charged with keeping the police honest.

This deeper problem is well-illustrated by the recent legal troubles of Jignesh Mevani, an MLA from Gujarat Congress, representing Vadgam.

Perverse Police Action

Mevani's troubles began with a tweet. Specifically the one which was aimed at Prime Minister Narendra Modi.

The tweet was withheld by Twitter and removed, but his troubles did not end there (*News Minute* 2022). Assam Police filed a first information report (FIR) against him at Kokrajhar police station based on a complaint made against him by a local Bharatiya Janata Party leader alleging that his tweet has the propensity to disturb public tranquility. Even though no actual outbreak of violence or disturbance took place, it did not stop the Assam Police from travelling across the breadth of the country to arrest him in Palanpur, Gujarat.

Produced before the magistrate, he was sent to three days in police custody. Subsequently, Mevani was granted bail by the judicial magistrate but not before spending one more day in judicial custody (Kalita 2022). That, however, was not the end of his problems. He was immediately rearrested by the Assam Police on the basis of an FIR filed against him at Barpeta police station.

This time though the FIR's allegations went completely into the territory of "absurd." The allegation was that Mevani had "assaulted" and "outraged the modesty" of a woman police officer who was escorting him in the police van and preventing her from doing her duty. How a man, who is in police custody

with multiple male police officers around him, managed to do that, was not quite explained in the FIR. Yet, this was enough to send him to five days in police custody (*News18* 2022).

Sanity eventually prevailed when the district and sessions judge of Barpeta, Aparesh Chakravarty granted him bail soon after, noting the clear abuse of process being indulged in by the Assam Police. Judge Chakravarty noted, somewhat caustically, in his order that

> no sane person will ever try to outrage the modesty of a lady police officer in presence of two male police officers and there is nothing in the record to hold that the accused Shri Jignesh Mevani is an insane person. (Parashar 2022)

As things stand, both these cases are pending against Mevani in remote courts in Assam, and it is quite likely that any petition he files to quash the two FIRs will be successful. This sequence of events highlights two important things—the ease with which the police can manufacture accusations (without consequences) and the mechanical way in which the magistrates function.

Interrogating the Judiciary

While the observations of Judge Chakravarty have been "stayed" by the Gauhati High Court without affecting Mevani's bail (*Hindu* 2022b), it is nonetheless a damning indictment of the Assam Police's behaviour. Judge Chakravarty's clear voice of sanity not only indicts the police but also his junior colleague—the magistrate who granted police remand to Mevani in the second FIR without sufficient reasons.

What Mevani's saga in Assam tells us is that there is a vast gap between what the Supreme Court lays down as "law" in its judgments and what happens within the judiciary at the level of the magistrate and the police. The police are incentivised to ignore the law in two ways—one, due to the indulgence of the executive, which demands and rewards such illegal behaviour, and two, through the lowest levels of the judiciary that acts in a mechanical and unthinking manner. That the executive misuses the police machinery for its own needs is too well-understood and seems to enjoy multipartisan support across the political spectrum. What is more mystifying is why the subordinate judiciary—under the control and supervision of the high court[3]—is so amenable to condoning police excesses.

Mevani, one could argue, escaped relatively lightly, given the media attention and the fact that he was, at some point, able to access quality legal assistance. He was perhaps not as lucky as Arnab Goswami, who was able to get the Supreme Court to intervene when arrested by the Maharashtra Police (Dharmadhikari 2020), but his time in jail was still limited.

Consider the fate of Gopisetty Harikrishna, who spent an additional year and a half in the jail despite being granted bail by the Supreme Court because the magistrate refused to release him from custody on, frankly, perverse grounds (Roy 2022). Or consider the tragic fate of P Jayaraj and J Bennix who, despite being visibly injured and bleeding, were remanded by the magistrate to police custody for the crime of keeping their kiosk open for half hour after the lockdown was imposed (Chhibber 2020).

Though the judiciary claims to treat all litigants equally, instances such as these show the vast disparity between the kind of treatment well-resourced and well-networked individuals get, and the fate of those without, either resources or networks. The average accused in a criminal case rarely gets the kind of speedy indulgence from higher courts that someone with access to top lawyers gets.

Such basic discrimination persists for three broad reasons: a systemic failure to remove discretionary listing and hearing of cases, the disproportionate influence wielded by a small number of "grand advocates," and the absence of serious efforts to make legal aid available to the accused. Any attempt at understanding the nature of the criminal justice system must take these realities into account.

Let alone conviction or bail, the simple act of remanding an accused to police custody shows us the vast gap between the Supreme Court's "law" and what happens in the judiciary itself. The Court has repeatedly said that remand cannot be done mechanically and must involve the magistrate being convinced that there are good reasons to remand the accused to police or judicial custody (*Gautam Navlakha v National Investigation Agency* 2021). Magistrates are supposed to check on the status of those in custody and ensure that they are being treated properly. This is a function that is so important that it has been enshrined into the Constitution as a fundamental right. Yet, magistrates continue to pass orders of remand

BIRLA INSTITUTE OF TECHNOLOGY AND SCIENCE (PILANI)

Hyderabad Campus

DEPARTMENT OF ECONOMICS AND FINANCE

Admission to the Ph.D Programme for First Semester, Academic Year 2022-23 is now open.

ADMISSIONS

Applications are invited for admission to the Ph.D Programme (Full-time and Part-time) in Economics and Finance, at BITS Pilani, Hyderabad Campus.

FINANCIAL ASSISTANCE

Full-time PhD students admitted into the PhD programme are eligible to be considered for fellowship of ₹28,000 or ₹31,000 per month as per intake qualifications.

APPLICATION PROCEDURE:

For applying and other details regarding PhD programme like, eligibility, course fee, visit admissions website: **https://www.bitsadmission.com/phdtest/index.aspx** For specific clarifications please write to Dushyant Kumar (**dushyant@hyderabad.bits-pilani.ac.in**). The last date for submitting the online application form is 5th July 2022.

To know more about the Department of Economics and Finance click here: **https://www.bits-pilani.ac.in/hyderabad/Economics/Economics**

Next cycle of admissions for the Ph.D. Programme will take place in the month of Dec-Jan, 2022-2023.

with little or no application of mind and facing little consequences for doing so.

In this context, the debate and discussion over the constitutional validity of Section 124A of the IPC seem entirely alien to the realities of the criminal justice system. Even if the provision is held unconstitutional, it may continue to exist as a zombie provision like Section 66A of the Information Technology Act, 2000, which, years after being held unconstitutional by the Supreme Court, kept getting invoked by the police and courts (Ojha 2022).

While Mevani's case did not involve an invocation of the sedition provisions of the IPC, it does illustrate the problems of talking about "misuse" without understanding the particular ways in which the criminal justice system is broken. The implicit assumption—that any interpretation or declaration or even guidelines and instructions can be transmitted through the criminal justice system smoothly and largely followed—is simply untrue. Legal reforms, so long as they are limited to the text of the law, will fail again and again if the fundamental breakdown in the criminal justice system is not acknowledged.

NOTES

1 See, for instance, Suryam (2022) and *Scroll.in* (2022).

2 See order of the Supreme Court dated 11 May 2022 in *S G Vombatkere v Union of India*, WP (Civil) 682 of 2021, viewed on 16 May 2022 https://www.livelaw.in/pdf_upload/470-sg-vombatkere-v-union-of-india-11-may-2022-417199.pdf.

3 Article 235 of the Constitution.

REFERENCES

Chhibber, Maneesh (2020): "Don't Just Question Police for Custodial Killings of Jayaraj-Bennix, Courts also Responsible," *Print*, 1 July, viewed on 16 May 2022, https://theprint.in/opinion/dont-just-question-police-for-custodial-killings-of-jayaraj-bennix-courts-also-responsible/451971/.

Dharmadhikari, Sanyukta (2020): "Arnab Goswami Gets Bail from Supreme Court after a Week in Custody," *News Minute*, 11 November, viewed on 16 May 2022, https://www.thenewsminute.com/article/arnab-goswami-gets-bail-supreme-court-after-week-custody-137409.

Economic Times (2022): "Mumbai Cops Issue Notice to MLA Ravi Rana, Wife over Their Plan to Recite Hanuman Chalisa Outside CM's House," 22 April, viewed on 16 May 2022, https://m.economictimes.com/news/politics-and-nation/mumbai-cops-issue-notice-to-mla-ravi-rana-wife-over-their-plan-to-recite-hanuman-chalisa-outside-cms-house/articleshow/91002692.cms.

Gautam Navlakha v National Investigation Agency (2021): SCC Online SC 382.

Hindu (2022a): "Frozen Sedition," 12 May, viewed on 16 May 2022, https://www.thehindu.com/opinion/editorial/frozen-sedition-the-hindu-editorial-on-supreme-court-freezing-the-sedition-law/article65405302.ece.

— (2022b): "Gauhati High Court Stays Lower Court's Observations in Jignesh Mevani Case," 3 May, viewed on 16 May 2022, https://www.thehindu.com/news/national/other-states/gauhati-high-court-stays-lower-courts-observations-in-jignesh-mevani-case/article65376654.ece.

Kalita, Prabin (2022): "Jignesh Mevani Gets Bail in Tweet Case, Re-arrested for 'Assaulting' Woman Officer in Assam," *Times of India*, 25 April, viewed on 16 May 2022, https://timesofindia.indiatimes.com/india/jignesh-mevani-gets-bail-in-tweet-case-re-arrested-for-assaulting-woman-officer-in-assam/articleshow/91074161.cms.

News18 (2022): "Jignesh Mevani Gets Bail in Policewoman 'Assault' Case," 29 April, viewed on 16 May 2022, https://www.news18.com/news/politics/jignesh-mevani-gets-bail-in-police-woman-assault-case-5080591.html.

News Minute (2022): "Jignesh Mevani Arrested for Tweet Saying 'PM Modi Considers Godse as His God,'" 21 April, viewed on 16 May 2022, https://www.thenewsminute.com/article/jignesh-mevani-arrested-tweet-saying-pm-modi-considers-godse-his-god-163102.

Ojha, Srishti (2022): "'This Cannot Continue,' Supreme Court Issues Notice to States, UTs, High Court Registrars on Plea Against Continued Use of 66A IT Act," *Live Law*, 1 August, viewed on 16 May 2022, https://www.livelaw.in/top-stories/66a-it-act-supreme-court-shreya-singhal-judgment-continued-use-pucl-contempt-police-judiciary-178623.

Parashar, Utpal (2022): "'He Isn't Insane': Assam Judge Questions Police Charges against Jignesh Mevani," *Hindustan Times*, 29 April, viewed on 16 May 2022, https://www.hindustantimes.com/india-news/he-isn-t-insane-assam-judge-questions-police-charges-against-jignesh-mevani-101651245589660.html.

Roy, Debayan (2022): "Accused Languishes in Jail after Trial Judge Misinterprets Supreme Court Bail Order; SC Calls for Action," *Bar and Bench*, 14 May, viewed on 16 May 2022, https://www.barandbench.com/news/accused-languishes-in-jail-after-trial-judge-misinterprets-supreme-court-bail-order-sc-calls-action.

Scroll.in (2022): "Why Experts Are Sounding a Cautionary Note about the Supreme Court's Sedition Order," 12 May, viewed on 16 May 2022, https://scroll.in/article/1023779/why-the-supreme-courts-sedition-order-may-not-really-give-cause-for-cheer.

Sharma, Aditi (2022): "Sedition Hearing: 'SC Order Is Bold and Historical', Says Former Attorney General Mukul Rohtagi," 11 May, *Zee News Media*, viewed on 16 May 2022, https://zeenews.india.com/india/sedition-hearing-sc-order-is-bold-historical-says-former-attorney-general-mukul-rohtagi-2462592.html.

Suryam, Shagun (2022): "[Sedition] Can't 'Expect' from Government; Supreme Court Should Have Passed Detailed, Reasoned Order: Saurabh Kirpal," *Bar and Bench*, 14 May, viewed on 16 May 2022, https://www.barandbench.com/news/sedition-cant-expect-from-government-supreme-court-should-have-passed-detailed-reasoned-order-saurabh-kirpal.

Zahan, Syeda Ambia (2022): "Sedition Law: 'Historic Judgement,' Says Akhil Gogoi as Assam Intelligentsia Rejoice SC Move," *Outlook India*, 13 May, viewed on 16 May 2022, https://www.outlookindia.com/national/sedition-laws-historic-judgement-says-akhil-gogoi-as-assam-intelligentsia-rejoice-sc-move-news-196323.

EPWRF India Time Series
(www.epwrfits.in)

Agricultural Wages in India

The **EPW Research Foundation** has added a module on Agricultural Wages in India to its online database, EPWRF India Time Series (EPWRFITS).

This module provides month-wise data on Agricultural wages for:

- Agriculture Operations
  - Ploughing
  - Sowing
  - Weeding
  - Reaping
  - Harvesting
- Rural Skilled Labour:
  - Carpenter

❖ Contains data for 21 major states for men and women

❖ Presents quarterly and annual series (calendar year, financial year and agricultural year), derived as averages of the monthly data

With this addition, the EPWRFITS has 27 modules covering a wide range of macroeconomic, financial and social sector indicators of the Indian economy.

For subscription details, visit **www.epwrfits.in** or write to us at **its@epwrf.in**

EPWRF India Time Series is an e-ShodhSindhu consortium approved online database.