

OVERZEALOUS THREAT: ON BIHAR POLICE CIRCULAR ON SOCIAL MEDIA POSTS

Relevant for: Developmental Issues | Topic: Important Aspects of Governance, Transparency & Accountability including Right to Information and Citizen Charter

The warning by the Bihar police of legal action being taken [against users of social media for “offensive” posts targeting the government](#), its Ministers and officials, betrays both hypersensitivity and ignorance of the law. It represents an unacceptable combination of low tolerance for criticism and a zeal to cow down the public. The Economic Offences Wing, which also deals with cyber-crime, has sent a circular to the department secretaries that they could inform the wing about such “offensive posts” so that it could act against them, terming such actions as “against prescribed law”. Presumably, the action contemplated is for an alleged cyber-crime. Even though the letter from the Inspector General of Police concerned makes no mention of any specific penal provision, it is a possible reference to Section 66A of the IT Act, as there is no other section that deals with “offensive” remarks. Section 66A, which dealt with “Punishment for sending offensive messages through communication service, etc.” was struck down by the Supreme Court in 2015, as being too broadly defined. The Act’s remaining penal provisions pertain only to other offences — sending obscene or prurient messages, hacking, stealing computer resources, identity theft, personation, and violation of privacy. There is nothing specific in the law that would render strong, even offensive and intemperate, criticism of the government a cyber-offence.

The tenor of the warning suggests that the cyber-crime wing may initiate proceedings against those who post offensive messages. However, it ought to be remembered that the police cannot register FIRs for defamation, as the offence can only be dealt with by way of criminal complaints before magistrates, and cannot be the subject of a police investigation. The government, indeed, has the power to institute criminal defamation cases through public prosecutors, if the alleged defamation is in respect of the official duties of public servants, but such measures do not exactly shore up a regime’s popularity. In response to criticism, the State government has clarified that the proposed action would only be against rumour-mongering and insulting language. RJD leader Tejashwi Yadav has reacted by daring the government to jail him for exposing its wrongdoing. CM Nitish Kumar has not helped his cause by claiming that the government’s good work is not reaching the people because of criticism on social media. There is much on social media that can be seen as crimes (hate speech, inflammatory and insulting remarks or defamation), but it ill-behoves an elected government to take note of these, unless the offenders are influential enough to cause major social divisions and foment violence. The government would do well not to act on the police circular, lest it be seen as an attempt to suppress its critics and those who make allegations of corruption.

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