Unacceptable fetters: on the Rajasthan ordinance

The **Rajasthan ordinance making it a punishable offence** to disclose the names of public servants facing allegations of corruption before the government grants formal sanction to prosecute them is a grave threat to media freedom and the public's right to know. In recent times, the legislative mood is consolidating towards adding more layers of protection to officials from corruption cases. While no one can object to genuine measures aimed at insulating honest officials from frivolous or motivated charges of wrong-doing, there can be no justification for the Vasundhara Raje government to prescribe a two-year prison term for disclosing the identity of the public servants concerned. Section 228-B, the newly introduced Indian Penal Code offence that relates to acts done in the course of discharging official functions, is a direct threat to the functioning of the media and whistle-blowers. It is a patently unreasonable restriction on legitimate journalism and activism against venality. In addition, the Criminal Laws (Rajasthan Amendment) Ordinance, 2017 fetters judicial magistrates from ordering an investigation without prior sanction, as an additional shield for public servants who already enjoy the protection of Section 197 of the Code of Criminal Procedure, and Section 19 of the Prevention of Corruption Act, 1988, which make prior sanction mandatory before a court can take cognizance of a case. It may even paralyse an impending probe, as no investigating agency can approach a sanctioning authority without gathering any material.

This is the first time a section prescribing punishment for disclosure is being introduced in India, though provisions barring investigation or prosecution without prior sanction are also in force in Maharashtra. However, the time limit for the sanctioning authority to act is 180 days in Rajasthan, and 90 days in Maharashtra. The Union government, too, has a set of amendments to the Prevention of Corruption Act pending since 2013, including a proviso for prior sanction. The Supreme Court verdict of May 2014 striking down a statutory provision for prior government clearance for a Central Bureau of Investigation probe against officials of the rank of joint secretary and above is the touchstone against which the constitutionality of the pre-investigation sanction requirement will be tested. The court had observed that such a provision destroys the objective of anti-corruption legislation, blocks the truth from surfacing, thwarts independent investigation and forewarns corrupt officers. Anti-corruption legislation in India seems to be in a state of unacceptable flux. Amendments, including those redefining criminal misconduct among public servants so that *bona fide* decisions by officials do not result in corruption charges, are yet to be passed. **The Lokpal Act** is yet to be operationalised. It is time the Centre enforced a strong body of legislation that punishes the corrupt, protects the honest, and ensures time-bound public services and whistle-blower safety. Nothing less will behove a government ostensibly keen on bringing down the edifice of corruption.

Rajasthan's ordinance shields the corrupt, threatens the media and whistle-blowers

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