

Colonial Rajasthan

Rajasthan's legislative assembly was adjourned yesterday amidst an uproar caused by the government's attempts to convert the "Criminal Laws (Rajasthan Amendment) Ordinance, 2017" into law. The ordinance, which was promulgated by the governor of Rajasthan last month, shields public servants from being investigated by the police on charges of corruption, unless the investigation is authorised by the government. The ordinance also contains a peculiar provision which makes it an offence for any person to disclose the identity of a public servant against whom a complaint of corruption has been made until the government gives its sanction for launching an investigation. This provision, a throwback to colonial times, violates the most basic principles of the law of free speech.

The ordinance imposes what is referred to in law as a "prior restraint" on the press. A prior restraint is a form of censorship which is imposed before, not after, something is published. In colonial India, for instance, in 1799, Governor General Richard Wellesley introduced regulations which said that no newspaper could be published at all until it was previously inspected by the government. The regulations were enacted because Wellesley was worried that newspapers would report troop movements to Tipu Sultan during the Fourth Mysore War. When Rahul Gandhi criticised the Vasundhara Raje government on Twitter, and said, "It's 2017, not 1817", he was not wide off the mark.

Even Wellesley's regulations were repealed in 1818, though prior restraints continued to be imposed in British India thereafter, from time to time. The most famous protest against prior restraints in England was contained in a pamphlet called *Areopagitica* written by the poet John Milton in 1644, when he said: "[when] complaints are freely heard, deeply considered and speedily reformed, then is the utmost bound of civil liberty attained, that wise men look for."

Prior restraints have been held to be constitutionally valid by the Supreme Court of India. In March 1950, the Chief Commissioner of Delhi imposed a prior restraint on the RSS's English weekly in Delhi, the *Organiser*, on the ground that it was publishing "highly objectionable matter constituting a threat to public law and order". The *Organiser* was directed to submit for prior scrutiny "all communal matter and news and views about Pakistan including photographs and cartoons". The Supreme Court held that a prior restraint would be valid so long as it was designed to fall under the exceptions to free speech contained in Article 19(2) of the Constitution. In other words, if a prior restraint seeks to prevent, say, defamation or contempt of court from taking place, then it will be considered valid, since those are enumerated exceptions to the right to free speech under the Constitution.

The Rajasthan ordinance amends the Criminal Procedure Code, 1973, and says that unless the government gives its sanction, no police officer can conduct an investigation, and no magistrate can order an investigation, of a judge, magistrate or public servant, in relation to any act done by that person in his official capacity. This means that if a government official is accused of bribery in Rajasthan, the offence cannot even be investigated unless the government gives its approval. It has six months to give its approval, failing which its approval is automatically deemed to have been given.

The Rajasthan ordinance also contains a provision which says that no person can "print or publish or publicise in any manner" the identity of a judge, magistrate or public servant against whom a complaint has been made until the government gives its sanction for launching an investigation. This provision may be intended to protect public servants from baseless defamatory attacks in the press, and to protect judges from false allegations of bribery, which is contempt of court. However, the ordinance has been drafted in a manner which is far too broad, and includes within its ambit news reports which do not, in any manner, engage in defamation or contempt of court.

For example, let us say that somebody in Rajasthan files an absolutely false complaint that a government official called "Mr X" is corrupt. A newspaper, under the Rajasthan ordinance, would be barred from writing a story saying that the allegations against Mr X are absolutely false and reckless. A newspaper would also be barred from publishing a neutral story which merely sets out that such allegations have been leveled against Mr X, without commenting on whether they are true or false. Worse, if the government refuses to give its sanction for investigation, a newspaper cannot even simply report that the sanction to investigate Mr X was refused. Thus framed, the Rajasthan ordinance is clearly unconstitutional.

Of course, the Supreme Court has also held that if a newspaper publishes the photographs of a person accused of an offence before an identification parade is constituted (where witnesses may identify the accused from a line-up), or if it publishes statements which "outrightly hold" that the accused is guilty, then this is contempt of court, as it violates the "sub judice" rule against media trials. However, the Rajasthan ordinance prohibits even newspaper reports which, in no manner, brand the accused as guilty before the trial.

In colonial India, it was unfairly assumed that censorship of the press was justifiable because Indians lacked the intelligence of Englishmen. What is surprising is that such ideas continue to hold currency in independent India. For instance, while defending censorship in Parliament, one of India's founding fathers, Pandit Thakur Das Bhargava, said that in India, "it is very easy to mislead our people as they are apt to believe readily whatever appears in print." It is time that the Vasundhara Raje government and others in power give more credit to the intelligence of their fellow countrymen.

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