

## *A Judicial innovation*

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Card playing clubs of Hyderabad have managed to persuade the High Court of Andhra Pradesh to give them unusual orders. Their grouse is that the police raid the club, seize the playing cards, and either book cases against them for gambling, or order the closure of the club on the same ground. The clubs are aggrieved because their members are, they say, only playing the inoffensive game of rummy, and not three cards as alleged by the police.

The origin of this dispute can be traced to the time when the Supreme Court found the leisure to distinguish rummy from three cards and declare that rummy being a game of skill, playing that game for money does not amount to gambling, whereas playing three cards for money does, since three cards is not a game of skill. Clubs from that time have been contending that their members play only rummy, whereas the police - at least when it suits them - say that they are in fact playing three cards.

So where does the High Court come in? The problem is that both rummy and three cards are played with the same pack of 52 cards. So after the police break up the game and seize the cards, how is any one to know what the club members were playing when the police came? The police of course get a *panchnama* done and signed by *panchas*, but we all know how police *panchnamas* are done and where they get their witnesses from. Moreover, since the Supreme Court has also said that if you are found with the instruments of gambling, a presumption arises that you are indeed gambling, it is most unjust and unfair, the clubs say, that the respectable middle classes are deprived of innocent recreation – with a little thrill just short of gambling added – on the basis of the unverifiable suspicion of the police. Unverifiable because once the playing cards are seized there is no knowing what use they were put to, the cards being innocent objects in themselves.

And so they ask the High Court to appoint a Commissioner who will sit by the side of their members while the game is going on and observe what they are playing. He may, if so ordered, even prepare a report each day, as a sort of a *panchnama* prepared before hand, so that when the police come raiding the club on suspicion, the suspects will have a witness and a *pancha*, and that too one whose credibility is high because he is appointed by the Court, ready with them.

I am not objecting. The proclivity of the police to abuse power in the name of investigating offences is so widespread that any check devised by the Courts can only be welcomed. And so what may otherwise seem odd, namely that the Court is providing a potential offender with a judicially consecrated witness/*pancha* before hand to establish his innocence when called upon, may well be a reasonable innovation. What makes the orders unusual is that they are at such

variance with the common response of the Courts to complaints of police harassment or in the course of investigation and prevention of crime, when the complaint comes from less privileged classes of suspects. The normal response is that the Courts cannot dog the steps of the police in the performance of their day to day job, and the only protection they can afford innocent suspects comes at the end of the whole thing, when the Court acquits the suspect if the prosecution fails to prove the offence, or awards compensation in the case of gross abuse of power.

There are others in society who face a similar problem on a much more severe scale, not with the instruments of pleasure, but with their instruments of life. Just as a pack of cards is in itself an innocent instrument of pleasure, tools of masonry and smithy are in themselves innocent instruments of production. Just as the pack of cards can be used for committing the offence of gambling when games of chance are played with it for stakes, the instruments of masonry and smithy can be used for committing housebreak or dacoity.

And people of the *waddera*, *uppara* and *kammari* communities are frequently subjected to raids in which the police seize their instruments of work and charge them of being in possession of instruments of housebreak and making preparations for dacoity. It is common knowledge that the police suspect these communities *en masse* of being dacoits, just as they seem to suspect card players *en masse*, if the comparison will be excused, of being three cards players. A community of iron smiths who speak some North Indian dialect and live on the outskirts of habitations is a common sight in the Telangana districts. They face very severe harassment from the police on this count – some years ago, one of them brought to Hyderabad from Adilabad died after six months of torture at the Central Crime Station - but nobody protests because the local people suspect them as much as the police. Of course, it can be nobody's case that all such people are innocent, just as it can be nobody's case that all club members play only rummy. And yet the principle that the innocent shall not be subjected to unreasonable harassment in the interests of the investigation and prevention of crime should be equally applicable to all.

Can such *wadderas*, *upparas* and *kammaris* as are unfairly suspected of being dacoits ask the High Court to provide them with a Commissioner who will observe them while at work, and perhaps keep their instruments in his custody outside working hours, so that when the police come raiding to book them for making preparations for a dacoity, they will have a witness and a *pancha* ready? Not only evenhandedness and fairness, which must always inform judicial wisdom, but also Article 14 of the Constitution of India would seem to require this, since the late H.M Seervai, to whose legal acumen all practitioners of law defer, believed that the fundamental right of equal protection of the law applies to judicial actions as much as to executive and legislative actions. Perhaps some *waddera* victim of police abuse should move the Court and help the High Court of Andhra Pradesh establish firmly this novel extension of its supervisory jurisdiction over the police that card playing clubs have brought into being.

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