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# High Time to revisit to open Rowdy Sheet and to affix the Photos of Innocent Individual at Public Places

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## ABSTRACT

*As we all know that we have written our constitution so that the preamble of the constitution starts with “We the People of India”. Though the people have said to be written their constitution, still there is a lack of enforcing or giving liberty to exercise their fundamental rights. In this article, firstly the authors would like exegesis of how are the police opening the rowdy sheet by leaving aside the main culprit and secondly, how it will violate the fundamental rights of suspected criminals or criminals by affixing photos and surveillance? And finally, the authors would like to suggest to make amendments to the appropriate provisions to curb these inveterate actions.*

## I. INTRODUCTION

As we all know that we have a written constitution and the preamble of the constitution starts with “We the People of India”. There is a great lacuna in it and even after several decades people still fight for their fundamental rights and the Constitution lacks enforceability in many aspects. The people are generally good, there are two reasons as to why they turn bad. The first reason is a person either involving himself or doing immoral acts that are not acceptable to society and the second reason is a person being projected as anti-social by the enforcing agencies. There is a vast difference between the above two reasons. For the first reason, a person actively involves himself in the act. But in the second case, he is projected as an anti-social by the enforcing agencies though actually, he is not so. Elaborating the second reason, we have to read the mindset of the common people. A person who is painted as anti-social is ultimately found to be a good citizen, people still look at him as an unwanted element and their mindset thus not change with the changing nature. This is a matter of great concern. There is also a famous saying which says Once a criminal is always a criminal, but this notion will not fit in the present scenario because the reason behind is that there are persons who had changed from criminal mindset to normal mindset by the method of rehabilitation. This article discusses the opening of a rowdy sheet against the innocent and affixing photos of suspected criminals

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or criminals which violate the fundamental rights at length.

## **II. OPENING OF ROWDY SHEETS**

According to Merriam Webster Dictionary word “ Rowdy” means Coarse or boisterous in behavior<sup>3</sup> and common parlance rowdy is a person whose behavior is rough and rude, does criminal or immoral activities like threatening, stealing, murder, etc. and is a person who solves the disputes in his locality. In recent years, rowdyism has drastically reduced compared to the past few decades because of the tremendous improvement of technology and educating people in the right way. The literacy rate has increased and people have become more aware that eventually if the main culprit escapes from the law, his associates who are coerced to do the illegal act are caught by the clutches of law. The authors are concerned with the people who are innocent but being penalized by publishing their names and photos and portraying them as rowdy elements. Rowdy sheeters’s list is opened according to the prescribed guidelines in the respective State Police Manual. The Andhra Pradesh State Police Manual has given conditions to which the person can be listed under Rowdies and Rowdy sheet and they have to follow Form No. 80 under the order of Superior authorities such as SP/DCP and ACP/SDPO.

1. Persons who habitually commit, attempt to commit or abet the commission of, offences involving a breach of the peace, disturbance to public order and security, besides offences under chapter VIII, XV, XVII, XVIII, and XXII of IPC.
2. 2 Persons bound over u/s 106, 107, 108 (1) (i) and 110 (e) and (g) of Cr.P.C.
3. 3 Persons who have been convicted more than once in two consecutive years or under section 3, clause 12, of the AP Towns Nuisances Act,1889
4. 4 Persons who habitually tease women and girls and pass indecent remarks, including offences u/s 354A, B, C & 354D IPC.
5. 5 Persons who have been charge-sheeted under the offence of Rape(375,376 of IPC)
6. Persons who have been charge-sheeted under the offences of POCSOAct,2012 and Acid attacks(326A and 326B of IPC)
7. 7 Rowdy sheets for the rowdies residing in one Police Station area but found frequenting the other PSs area can be maintained at all such Police Stations.
8. 8 Persons who intimidate by threats or use of physical violence or other unlawful means to part with movable or immovable properties or in the habit of collecting money by extortion from shopkeepers, traders and other residents including ‘loan sharks’
9. Persons who incite, instigate, and participate in communal/caste or political riots.

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<sup>3</sup> Merriam Webster, Rowdy, <https://www.merriam-webster.com/dictionary/rowdy>.

10. Persons detained under the “AP Prevention of Dangerous Activities of bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986” or other Preventive Detention laws for a period of 6 months or more.

11. Persons on whom charge sheets filed under the offence of assault on public servants, under Arms Act & such other offences punishable with imprisonment of 2 years or more.

12. Persons on whom charge sheets filed under the offence of Murder and attempt to murder(302 and 307 of IPC).

13. Persons on whom charge sheets filed under the offence of Chain snatching.

14. Persons who are convicted under the Representation of People Act,1951for rigging, carrying away, damaging ballot paper, boxes, and polling material<sup>4</sup>and in the state of Tamil Nadu requirements are as follows:

In Tamil Nadu history sheets for rowdies are opened as per Form 112, where some persons to be classified as rowdies, the orders of the Superintendent of Police or concerned Sub-Divisional Officer have to be obtained and based on the information and facts ascertained by the Station House Officer, and his men.<sup>5</sup>

(a)Persons who habitually commit, attempt to commit, or abet, the commission of offences involving breach of peace or

(b) Persons bound over under Section 106 and 107 of Criminal Procedure Code

(c) Persons who have been convicted under Section 75 of the Madras City Police Act or twice in two consecutive years, under Section 3 Clause 12 of the Town Nuisance Act, or

(d) Persons either convicted under Section 49-A of the Madras City Police Act, 1888 (Madras Act III of 1888) or under Section 4 of the Madras Gaming Act, 1930 (Madras Act III of 1930), or reasonably suspected to be habitually committing or abetting the commission of the offences, are classified as rowdies. Clause 4 of Police Standing Order 749, enjoins a duty on the police to enter the names of history-sheeted rowdies in the station register and that rowdy should be watched regularly by beat Police Constable, Constables in rural Police Stations and by rowdy patrols in large towns also known as Sub-Inspectors (Law and Order). The watching, however, should be discretely done by the method of inquiries and not in the manner of domiciliary checks. Opening and retention of History Sheets in relation to the nature of offences are stated in Police Standing Order 749(2)(a) to (d), makes it explicit that a duty is

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<sup>4</sup> AP Police Station House Management Manual Part-I Volume-II B, <http://training.appolice.gov.in/wp-content/uploads/2017/10/Final-Vol-2B.pdf>.

<sup>5</sup>G. Raman @ Ramachandran v The Superintendent of Police, Karur District & Others, W.P(MD)No.12272 of 2012.

cast on the Sub-Inspector of Police, Station House Officer/ Inspector of Police and his men to collect, verify and ascertain as to whether a person is known or believed to be addicted to or aid and abet, the commission of the crime and that there should be active criminality, affecting breach of peace or law and order. Criminality, as conceived in the Police Standing Orders, is a commission of offences by the individual or aiding commission of offences or, by inducing/instigating commission of offences by other some person.

The above-said guidelines need to be followed before opening a rowdysheet against any person. The role of the police has been elucidated in the case of Pooja Pal vs Union of India<sup>6</sup> where it has been stated that Police role is to the protection of life, liberty, and property of citizens and foremost duty is to investigate the offence and the main work of the police has been fully discussed by the Apex Court. We the authors have huge respect for the Police Department. As we all know that how they act in COVID 19 situations though there are many impediments, they strive to protect us from the pandemic by making awareness about it and imposing strict fines to the people who are violating the rules so that others will not repeat the same and to maintain peace and Corona free society. Thus, the authors would like state that, the police department should be independent as stated in the case of Juhunu Das vs the State of Tripura<sup>7</sup>, where the Tripura High court held that by concerning about the actions of Tripura state police officials, the police is always looking over their shoulders to take approval from some authorities instead they have to act independently of any extraneous influence whatsoever. And further, the authors would like to state that the police have to deal with two C's namely Crimes and Criminals. But they need to remember while doing their duty they need to at the same time respect and protect the fundamental rights of a person. The sacred text i.e; Constitution of India is for all the people and it does not discriminate between any people or sect. Punishment is the same for anyone who violates the law, he is either rich or poor. Once the Rowdy list is opened what happens to such a person has to take into main concern, such a person loses his dignity and reputation in society and it adversely affects his family members also besides himself. Article 3 of The Universal Declaration of Human Rights provides that Everyone has the right to life, liberty, and security to the person and Article 9 says that "No one shall be subjected to arbitrary arrest, detention, and exile". The famous case of Maneka Gandhi Vs Union of India<sup>8</sup>, the apex court held that the word personal Liberty in Article 21 of the Constitution of India covers the variety of rights and includes right to human dignity and

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<sup>6</sup>Pooja Pal vs Union of India (2016) 3 SCC 135.

<sup>7</sup>Juhunu Das vs the State of Tripura (2014 SCC Online Tri 355).

<sup>8</sup>Maneka Gandhi Vs Union of India 1978 SCR (2) 621.

in *Bandhua Mukti Morcha vs Union of India*<sup>9</sup> it has been held that right to life includes right to live with human dignity and free from any exploitation also in case of *Smt. Gain Kaur vs The State of Punjab*<sup>10</sup> has been held that such right can be exercised up to the end of natural life. In the case of *S. Nambi Naryana vs Siby Mathews and Ors*,<sup>11</sup> it is held that the reputation of an individual is an inseparable facet of right to life with dignity. The authors would like to quote a case where the balancing verdict has been delivered by Karnataka High court in the case of *Sri Chandraka vs State of Karnataka*<sup>12</sup> where the court opined that Mere registration of criminal case cannot be used as a weapon to name the person in the rowdy list and further held that the liberty was given to the state if that person's acts fall under the ambit of Karnataka Police Manual then he can be listed. In the case of *Nadhiparwala Ajaysingh vs Commr. of Police, Twin Cities*<sup>13</sup> the then combined Andhra Pradesh High court and now called as Telangana High Court held that by the perusal of A.P Standing Order No.742 if the person involves more than two cases which are said to be lawless activities then it will attract the order and hence the rowdy sheet can be opened against such person and it further states that the reason behind is to prevent the commission of any offences by such person following to this and in another case *Mohd. Quadeer vs Commr. Of Police*<sup>14</sup>, the Telangana High court held that opening of rowdy sheets will infringe the fundamental rights given under Article 21 of the Constitution of India as it violates Right to reputation and privacy except procedure established by law and the same Telangana High Court in *B.Satyanaryana Reddy vs State of AP*<sup>15</sup> held that by reading the then A.P Police Standing Order No. 742 it can be understood that A solitary case resulting in the breach of the peace is not a valid reason or ground to list the person in Rowdy sheet as if he is a habitual offender. The word "Habitually" has been defined in the case of *Vijay Narain Singh V/s. State of Bihar*<sup>16</sup>, another three judge Bench of the Supreme Court held that the expression 'habitually' would mean 'repeatedly' or 'persistently' implying a thread of continuity, stringing together similar repetitive acts, and a single act or omission would not characterize such act as 'habitual'.

In the case where the offender is habitual committing offences for more than 6 years and there is no much gap between one crime to the another it is said that such person can be listed under the rowdy sheet, such act is to the interest of keeping public peace and tranquility as opined in

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<sup>9</sup>*Bandhu Mukti Morcha vs Union of India* (1989) 4 SCC 62.

<sup>10</sup> *Smt. Gain Kaur vs The State of Punjab* (1996) SCC(2) 648.

<sup>11</sup> *S. Nambi Naryana vs Siby Mathews and Ors* AIR2018SC5112.

<sup>12</sup> *Sri Chandraka vs State of Karnataka* Writ Petition No. 16177/2013 (GM- Police).

<sup>13</sup> *Nadhiparwala Ajaysingh vs Commr. of Police, Twin Cities* (1998) 1 AP LJ 341.

<sup>14</sup> *Mohd. Quadeer vs Commr. Of Police* (1999) 1 AP LJ 102(SN).

<sup>15</sup> *B.Satyanaryana Reddy vs State of AP* (2004) 1 AP LJ 379 (DB).

<sup>16</sup> *Vijay Narain Singh V/s. State of Bihar* AIR 1984 SC 1334.

Mutyala Venkatachalam vs Govt of AP<sup>17</sup>.

### **III. AFFIXING PHOTOS OF SUSPECTED CRIMINALS OR CRIMINAL IN PUBLIC PLACES:**

Affixing of photos in Public Places such as Police Stations, Bus Stand, Railway Station as a person is suspected criminal will violate the fundamental rights of the individual. The term "Public Place" can be defined as a place where the public at large can access or have the right to access the place. If the person who is suspected as criminal and who is found missing then it is not proper to affix the photos and details of that particular individual at public places. Later if he is found and tried and ultimately found not guilty then what is the remedy to the particular individual who lost his reputation, job, etc. both in society as well as among his relatives who shunned him. This loss of reputation cannot be given back to him by anyone including the state. While acting under their own or by influence, the police department should also think about the ramifications that will occur to the suspected criminal. The authors would like to state that, the suspected criminal name and details along with photos shall not be revealed to the public until and unless the person is found guilty by the court. There is a famous saying that "A person is said to be innocent unless and until he is found to be guilty".

Article 11 of The Universal Declaration of Human Rights states that "Everyone charged with a penal offence has the right to be presumed innocent until proved to be guilty according to the law in a public trial at which he has all the guarantees necessary for his defense<sup>18</sup>." The same principle has also been laid down in Art. 14, paragraph 2 of The International Covenant on Civil and Political Rights which states that "Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.". The presumption of innocence is also expressly regulated in Art. 66 of the Rome Statute of Criminal Court, according to which "Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.<sup>19</sup>" In the present day, the above principle is followed in the opposite. A person is presumed guilty until he is proved to be innocent by a court of law. Every person has the right to privacy guaranteed under the Constitution of India and it cannot be interfered with except according to the procedure established by law. Taking pictures of individuals without their consent/knowledge will also amount to a violation of the right to privacy. The authors would like to note the aspect of surveillance on Suspected criminals or

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<sup>17</sup>Mutyala Venkatachalam vs Govt of A.P (2000) 1 AP LJ 171.

<sup>18</sup> United Nations, Universal Declaration of Human Rights, <https://www.un.org/en/universal-declaration-human-rights/>.

<sup>19</sup> Rome Statute of the International Criminal Court, [https://legal.un.org/icc/statute/99\\_corr/cstatute.htm](https://legal.un.org/icc/statute/99_corr/cstatute.htm).

criminals, by taking surveillance as a tool, the police have deprived the basic and natural rights of the citizens. It is not that police cannot make surveillance on suspected criminals or criminals but the authors are concerned about the police who tend to harass and gather private or personal information of the individuals. Normally a person's name will be entered in surveillance register only when he/she has a previous criminal record and they must also be a habitual offender, or a previous offender or previous convict or they must be placed on security for good behavior. When a person's name is entered in that register, the police can watch the movements of the person to prevent that person from committing another crime and also to ensure peace in society. Of course, the police have the duty to keep peace in society and at the same time, they need to prevent the occurrence of crimes. But doesn't it violate a person's right to privacy and his free movement given under Article 21 and Article 19 (1) (d) of our Constitution of India? It is important to note the famous case of *Kharaksingh Vs State of U.P.*<sup>20</sup> where the Hon'ble Supreme Court has struck down a regulation authorizing domicile visits to the houses of suspected criminals as unconstitutional. In para 14 of the judgment, it has been said that "The question that needs to be considered is whether the intrusion into the residence of a citizen and the knocking at his door with the disturbance to his sleep and ordinary comfort which such action must necessarily involve, constitute a violation of the freedom guaranteed by Article 19(1)(d) or "a deprivation" of the "personal liberty" guaranteed by Article 21. Taking first Article 19(1)(d) the "freedom" guaranteed herein is a right "to move freely" throughout the territory of India". The meaning of the word "freely" will be that everyone has the right to go anywhere within the territory of India and it also gives the right that the movement cannot interfere unless any valid law is made which will restrict the movements. Simply by a knock at the door, or by arousing one from his sleep, his locomotion is not hampered in any manner. Mere convictions in criminal cases where nothing imperils the safety of the society cannot be regarded as arranging surveillance under the relevant regulations, however broadly and in whatever language the regulation might have been couched. In either case-whether the regulation is statutory or non-statutory-domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security, and there can be no routine follow-up at the end of a conviction or release from prison in every case. As seen from various decided cases of this Court, the opening of history sheet or rowdy sheet can be justified only when it is proved before the Court by the State that based on the relevant material the competent police officer has applied mind with due care and considered all aspects in the light of the law and then ordered the opening of history sheet or rowdy sheet or ordered continuation or

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<sup>20</sup>*Kharaksingh Vs State of U.P.*, AIR 1963 SC 1295.



retention of the history sheet. At the beginning of this Judgment, all the relevant decisions of this Court have been referred to and those principles may also have to be kept in mind."In the case of *Sunkara Satyanarayana Vs State of Andhra Pradesh, Home Department and others*<sup>21</sup>, it was held in para 23 of the judgment, Surveillance by the police makes very serious inroads into the life of a person and it also causes a violation of the right to privacy which is a fundamental right guaranteed under Article 21 of Constitution of India. Obtrusive surveillance does not leave a citizen alone. With the subtle methods of telephone tapping, telescope watching, remote-controlled audio, and video recording gadgets, a citizen subjected to surveillance can never have mental peace and thus his life and liberty at every movement would be restricted. A person with a lot of restrictions cannot be expected to lead a dignified life and exercise his right to liberty and other freedoms. A citizen's life would become miserable. Such a situation is worse than animal existence, for these reasons it can be said that there is a 'right' against surveillance. The Delhi High court in the case of *Sarjeet Singh vs Commissioner of Police And Ors*<sup>22</sup> has drawn some principles for surveillance and entry in the register, those principles are (a) Opportunity of hearing must be given to the concerned person before his name is entered in the register (b) it is not necessary that person concerned must be convicted of certain offences but in that event, the reason must be recorded specifically to bring the name of such a person on the registers referred to above (c) it is the satisfaction of the concerned officer and unless the order so passed in mala fide is without application of mind or his contrary to the strict provisions of Rules and the Act, the High Court would not interfere. (d) however, the High Court in cases where ingredient of (c) above is not satisfied would be within its powers to quash such orders (e) a person must have informed if his name is to be entered in the register and if it may be used against that person. (f) The person concerned has the right to represent and even show that he has since improved his conduct and that his name is deleted from the concerned register (g) in any case there should be a period review of the entries every six months from the date the entry is made.

#### **IV. CONCLUSION**

The authors would like to wind up by stating that, there should be judicial scrutiny to maintain transparency in opening the rowdy sheet against the individual. This will help in unnecessary breach of one's life and stature in society and desist from tarnishing one's image in society. There should be an amendment to the appropriate provisions in the law to regulate the affixing of photos of criminals or suspected persons in crime in public places as soon as he is accused

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<sup>21</sup>*Sunkara Satyanarayana Vs State of Andhra Pradesh, Home Department and others* 2000 (1) ALD Cri 117.

<sup>22</sup>*Sarjeet Singh vs Commissioner of Police and Ors*(2002 CriLJ 3824).

of involvement in a crime that violates the right to privacy. The Landmark Judgment delivered in the case of Justice (Retd.) K.S.Puttaswamy vs Union of India<sup>23</sup> where it is held that the Right to privacy is a fundamental right which will come under the ambit of Article 21. But in today's world, the right is often breached instead of being protected. Therefore, the authors will be glad if the parliament enacts suitable legislation regarding the affixing of photos of suspects in public and also in respect of opening of history sheets against a particular person to safeguard one's liberty guaranteed under the Constitution.

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<sup>23</sup>Justice (Retd.) K.S. Puttaswamy vs Union of India(2017) 10 SCC 1.