In impasse in wrestlers' case, the loser is the rule of law

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The autonomy and the supremacy of the law cannot be taken for granted, because it is dependent on political commitment and a robust rule of law culture. Contemporary Indian society is passing through a phase of an all round weakening of the rule of law, mainly on two counts: first, a trust deficit in the colonial model of the rule of law, and second, a faith-oriented majoritarian re-imagination of laws that locate their essence in the divine providence. The malaise of such weakening is best exemplified by the case of the Indian medal-winning wrestlers and their complaints of alleged sexual harassment, where there has been no resolution even after their long sit-in protest in the national capital.

The airing of complaints

For almost a decade now, women trainee wrestlers – this also includes award-winning sportspersons – have faced and put up with alleged sexual advances and grave indignities during their training. In January 2023, some of the wrestlers began their sit-in/*dharna* at Jantar Mantar, New Delhi. Despite the Sports Ministry referring the batch of complaints to an oversight committee, there was no concrete and satisfactory outcome.

After being subjected to insensitive probings during the depositions, the wrestlers decided to resume the sit-in in late April. This time the protest appeared to be better organised; there was more public support and the survivors also approached the Supreme Court of India, where the Chief Justice of India passed orders relating to the registration of the First Information Report (FIR) under the relevant laws and providing security to the wrestlers.

As a sequel to the orders of the Court, the Delhi Police registered two FIRs: the first, under Sections 354, 354A, 354D and 506 of the Indian Penal Code and the second, under the provisions of the Protection Of Children from Sexual Offences Act (POCSO) Act in connection with the minor wrestler's allegations. With the registration of the two FIRs for the first time, the sexual harassment complaints came into the domain of criminal justice, making them the subject of police investigation as well as judicial oversight.

Following this, the alleged perpetrator and his followers began a campaign to vilify the wrestlers following growing public and even some political support. The campaign of vilification even went to the extent of critiquing the very basis of the POCSO Act. Growing support for the wrestler's cause and increasing social visibility of the issue pushed the Union Home Minister to try and resolve it politically by having a closed door meeting with the representatives of the protesting wrestlers in June, followed by a more exhaustive meeting with the Sports Minister; this also included 'advising' the protesting wrestlers who hold regular jobs to resume work. As a sequel to the talks and assured relief, the sit-in ended, with the wrestlers saying their fight would now continue in court.

There is a weakening of the rule of law in India, best exemplified by the impasse in the wrestlers' sexual harassment complaint and the feeble administrative, judicial and political attempts to ensure justice

Slothful and selective investigation

As a key criminal justice agency that occupies the top slot in the investigation of crime, the Delhi Police ought to have responded quickly when internationally acclaimed wrestlers levelled serious charges against the perpetrator/politician who also occupies a top position in the sports world.

After the first sit-in, which also highlighted the murky goings-on in the Wrestling Federation Of India, the police could have acted as in Section 156(i) of the Code of Criminal Procedure (Cr.P.C.), i.e., "Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII", like the Magistrate under Section 190(c) of the Cr.P.C.

The Delhi Police is also under legal obligation, under Section 166A(c) in the amended Penal Code of 2013, as in the amendment to the Penal Code, which makes the 'non-recording' of information about sexual offences an offence punishable up to two years imprisonment. Therefore, when the Solicitor General advised the Supreme Court on May 28 that the FIRs would be registered 'if your Lordships so directs' and the Court complied with the wish, both displayed unusual deference to the Delhi Police. The Delhi Police would have been better reminded of their obligation to follow the mandatory FIR registration, as laid down in the ruling in *Lalita Kumari* (2013).

The Delhi Police has taken its own time in investigating the crime, with a focus on the credentials of the complainants and only cursory fact gathering as far as the accused persons are concerned. Despite an FIR that falls under the POCSO Act, the prime accused person has not been interrogated or subjected to any kind of restraint even as he continues with this campaign of vilification on social media in an attempt to mount pressure on and intimidate the witnesses.

Police selectivity in the investigation became legally established when after over 40 days of investigation, the police filed its long report in two parts: a charge sheet relating to different sexual offences against the adult wrestlers, and a closure application (over 500 pages long) in connection with the POCSO Act offence. The closure application relied on an extra-legal withdrawal application by the minor, who is alleged to have made the first complaint, including a statement under Section 164 in a state of anger or dispiritedness.

Should the police have total supremacy in matters of the line of investigation, time taken and the final outcome of investigation?

The rule of law course correction

The credibility and endurability of the rule of law is critically linked to universal and equal applicability in all situations, which is ensured by the equality principle propounded by legal philosophers. In the context of the sexual harassment complaints and FIRs, the equality principle demands a free, fair and impartial investigation that ensures a just and expeditious disposition of the complaints. It appears that the legal course at the police level has been designed to be slow and selective and overly deferential to the main accused person.

But that alone is not enough to tilt the scales for or against the accused, who is equally entitled to a 'fair trial'. However, the journey of the rule of law is expected to continue without impediment; that is why the Bench in the Lalita Kumari case relied on the reason of keeping an efficient check on police powers and having the measure of 'judicial oversight' of the magistrate, the idea being to obligate the jurisdiction Magistrate to follow up on each of the FIRs. Such judicial intervention in investigation may arise from an application by the complainant directly under Section 156(3) of the Cr.P.C. or on a writ petition before the High Court. In addition, the appellate courts (High Courts and the Supreme Court of India) enjoy powers to take *suo motu* cognisance and call for an action taken report or direct the lower court to monitor the investigation.

The Supreme Court, in *Sakiri Vasu vs State of U.P.* (2008), has already imbued the magistracy with implied/inherent powers to monitor an investigation in the event of any abuse of powers. Sadly, in the case before us, the survivors have, by and large, had a raw deal. Neither the Delhi police nor the judiciary appear to have considered it worthwhile to stem the rot. They have been protesting in the open – at the site and then on the streets of Delhi – for months now. But administrative relief and judicial vindication seem distant. For the political dispensation, the 'delay' may be part of a 'smart' strategy to let the complaints lapse with time, even as it is convenient to blame the 'failing colonial model' of the rule of law.

But for all those who have a greater stake in upholding the basic ideas of the rule of law and ensuring fidelity to constitutional justice, the approach ought to be different. The need is to stand up and resort to course correction to save the soul of the rule of law. We are not alone in such a fight to save the rule of law, as in many other democracies across the world, the rule of law confronts similar threats. This appears to be why the Stockholm Criminology Symposium (June 2023), focused on the theme of 'principled and equitable law enforcement'.

India's data protection law needs refinement

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Changes can help make the Digital Personal Data Protection Bill, 2022 'future-proof' and ensure a better complaints mechanism

India is no Europe, and this seems especially true in the face of a task such as drafting and conceptualising a data protection law for over 1.4 billion Indians. The European Union's (EU) data protection law, i.e., the General Data Protection Regulation (GDPR), came into force in the middle of 2018 and achieved widespread popularity as arguably the most comprehensive data privacy law in the world. However, the GDPR has been saddled with challenges of implementation and risks being relegated to the status of a paper tiger. Although the EU's challenges may be due to its unique legal structure, India must guard against the risks of enacting a law that is toothless in effect.

Issues around data use

This deliberation becomes increasingly relevant as the Indian government is likely to table India's fresh data protection law in the ongoing monsoon session of Parliament (July 20-August 11). Late last year, the government released the Digital Personal Data Protection (DPDP) Bill, 2022 for public consultation. This is its third recent attempt at drafting a data protection law. While the draft released for public comments was not as comprehensive as its previous versions, news reports suggest that the government may present a Bill that is largely similar. Considering this, critical gaps remain in the DPDP Bill that would affect its implementation and overall success.

In its scope and definition, the DPDP Bill only protects personal data, that is any data that has the potential to directly or indirectly identify an individual. In the modern data economy, entities use various types of data, including both personal and non-personal data to target, profile, predict, and monitor users (non-personal data is typically anonymous data that does not relate to a particular individual – for example, aggregate data on products which numerous users look at between 9 p.m. and 11 p.m. on Amazon). Often, this non-personal data when combined with other datasets can help identify individuals, and in this way become personal data, impacting user privacy.

For instance, anonymous datasets about individual Uber rides in New Delhi can be combined with prayer timings to identify members who belong to a certain community, which could include their home addresses. This process of re-identification of non-personal data poses significant risks to privacy. Such risks were accounted for in previous versions of India's draft data protection Bill, in 2018 and 2019, but do not find a place in the latest draft. By not recognising these risks, the DPDP Bill is very limited in its scope and effect in providing meaningful privacy to Indians. A simple and effective solution – as in the earlier versions – would be to add a penal provision in the Bill that provides for financial penalties on data-processing entities for the re-identification of non-personal data into personal data.

Limited reach of data protection board

Another gap is the inability of the proposed data protection board to initiate a proceeding of its own accord. Under the Bill, the board is the authority that is entrusted with enforcing the law. The board can only institute a proceeding for adjudication if someone affected makes a complaint to it, or the government or a court directs it to do so. The only exception to this rule is when the board can take action on its own to enforce certain duties listed by the Bill for users. This is for the adjudication of disputes between the law and users – for example, an obligation on users not to register a false or frivolous complaint with the board, and not between users and data-processing entities.

In the data economy, users have diminished control and limited knowledge of data transfers and exchanges. Due to the ever-evolving and complex nature of data processing, users will always be a step behind entities which make use of their data. For example, a food delivery app can take all my data and sell it to data brokers in violation of my contractual relationship with them. Individually, I may have little resources or incentive to approach the data protection board.

The board, on the other hand, may be in a better position to proceed against the food delivery app on its own – on behalf of all such affected users.

This is not a novel suggestion. The Competition Commission of India, which is responsible for the enforcement of India's antitrust law, has the power to initiate inquiries on its own (and utilises it frequently). Again, a simple way to do this would be to have a provision in the DPDP Bill that allows the data protection board to initiate complaints on its own.

These are not the only gaps in the DPDP Bill, but finding solutions to them would help address challenges in implementation in a significant way and make for a more future-proof legislation.