

## WHO MADE YOU A MAGISTRATE, ABVP?

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Chapter 2 of the Code of Criminal Procedure 1973 gives the classes of criminal courts, their territorial and judicial jurisdiction, powers and functions. There are three categories of courts, the Court of Session, the Court of Judicial Magistrates and the Court of Executive Magistrate. The power to try cases under the Indian Penal Code and other laws imposing penalties for offences vests in Judicial Magistrates and the Court of Session, which alone have the power to punish on conviction for an offence. Executive Magistrates also have certain powers of detention, etc. Certainly no citizen has any power of a Magistrate and no citizen is allowed to inflict penalty. Under section 37 Cr. P.C. members of the public are bound to assist a Magistrate or police officer demanding his aid in matters given in the said section. Under section 43 a private person can arrest anyone who in his presence commits a nonbailable and cognizable offence, but he has to make over such person to a police officer. The citizen can neither detain the arrested person nor give him any punishment.

In Khandwa a group of students owing allegiance to Akhil Bharatiya Vidyarthi Parishad (ABVP) entered the Agriculture College, beat up an Assistant Professor and blackened his face, alleging that he had illicit sexual relations with a girl student. Needless to say that there was no trial and no proof which could bring home the alleged offence to the Assistant Professor. ABVP activists acted as the prosecutor, judge, jury and executor and the teacher was humiliated and assaulted without even the semblance of a hearing. In other words, the ABVP activists went beyond even the worst kangaroo court. It is also said that they attacked and assaulted a senior professor who died a few days later. It is said that his death was brought about by the rowdyism of the ABVP activists.

This is not the first instance of ABVP members taking the law into their own hands. Every Valentine's Day the Bajarang Dal and ABVP regularly assault young couples, attack restaurants and places of public resort and damage property. The police does not intervene, probably because it has been told that it must handle this variety of goondas with kid gloves. The result is, therefore, for all to see. Prof. Harbhajan Sabharwal of Ujjain died as a result of injuries caused by ABVP activists when they attacked him. The case was deliberately spoilt by the police under the pressure from the Madhya Pradesh Government and the killers walked free. In the Bhopal University ABVP workers are known to have terrorised the Vice Chancellor and his staff. This story has been replicated in other cities also, especially Indore. It is obvious that ABVP feels that it has a special dispensation to behave irresponsibly and no one can touch ABVP workers. The police, on its part, tends to turn a blind eye to incidents of ABVP goondaism. This has far reaching consequence.

It is the duty of the police to maintain order and ABVP has not been exempted from the need to obey the law or the liability to punishment if it transgresses the law. The police has stopped taking action against the criminal acts of ABVP members and in doing so it is encouraging law breaking and in fact has become a partner in such nefarious activities. This, in turn, adversely affects the competence and efficiency of the police and renders it ineffective in other situations concerning law and order. Cumulatively this puts the citizen at greater risk and ABVP which takes the law into its own hands, the police which stands by as an idle spectator and government which prevents the police from taking action are all partners in the deterioration of law and order and increasing threat to the safety of the citizens. If this is how government is promoting welfare, then one can rightly accuse it of not functioning according to the Constitution. Does this not fall within the ambit of Article 356 of the Constitution?

I have tried far and wide to ascertain whether Chapter 2 Cr.P.C. has been amended and a new class of courts set up specially to provide ABVP with magisterial powers. I find that no such an amendment has been made and no magisterial powers have been conferred on ABVP. The act of entry into the premises of the Agriculture College at Khandwa by ABVP activists, assaulting an Assistant Professor and, perhaps, a Professor, beating him up and causing him injury all constitute a whole string of offences. Unauthorised entry into college premises in order to cause harm to the faculty members amounts to criminal trespass under section 441 IPC, which is punishable with upto three months imprisonment and fine under section 447 IPC. Beating the Assistant Professor comes under the definition of hurt under section 319 IPC. If there is any fracture, dislocation or breaking of a tooth this becomes a grievous hurt. If any weapon of offense is used while causing hurt this comes within the ambit of section 324 IPC. Causing hurt carries penalty under sections 323, 324 and 325 IPC. Causing grievous hurt to deter a public servant from doing his duty is a serious offence under section 333 IPC. Physically preventing the faculty members from leaving their chamber amounts to wrongful restraint under section 339 IPC and wrongful confinement under section 340 IPC. Even a simple assault or use of criminal force to prevent a public servant from discharging his duty is an offence punishable under sections 352 and 353 IPC. Blackening of the face of the faculty member is an offence under section 355 IPC because here the assault is intended to dishonour the person by blackening his face. The activists who participated on the assault on the Assistant Professor concerned should be charged under all these sections of Indian Penal Code, brought to book and suitably punished on conviction. This is the least that the Khandwa Police can do. Of course, ABVP being above law, nothing of the sort will happen, which a crying shame.

If ABVP is truly an organisation representing students then it must eschew every form of law breaking. In order to assist ABVP in remembering that the law is made to be obeyed government must subject ABVP to the rigours of the law for all its wrongful acts. That is how this organisation, at present hardly distinguishable from an organised gang of goondas, will be brought back on the rails.

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