

## LEGAL REFORM

# Why many states using the 1923 Goondas Act to curb digital piracy

The music industry has discovered that an age-old statute makes it easier to get the law into action against people who violate copyright.

**Mridula Chari**

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In mid-July, the Karnataka legislature passed the Prevention of Dangerous Activities Act, called the Goondas Act, to bring digital piracy under its purview. Two weeks later, the law returned to the news. The Bengaluru police announced

charge two men accused of raping a schoolgirl under the same statute.

So what is this act that seems to be able to take on illegal music downloaders and sexual offenders?

The Goondas Act, first enacted in 1923 in India, is now in force in nine states in India, one in Pakistan and Bangladesh. The law was initially intended to prevent habitual defenders from repeating their crimes through preventive detention. Typical provisions of the law today allow the police to keep people in custody for up to a year, with reviews every three months.

It might seem excessive for people guilty of downloading ebooks.

### Tamil Nadu takes the lead

Tamil Nadu was the first state in 2004 to target video pirates under the ambit of its version of the Goondas Act. Maharashtra followed suit in 2009. Karnataka and Pradesh in 2010 suggested that it would be better to amend its Goondas Act to include video piracy.

These are just states that already have a version of the law.

Since last year, the Bengali music industry has been lobbying for the West Bengal government to pass their own version of the Goondas Act and to make music piracy a primary offence. Punjab's music industry has been demanding this since 2006.

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“Stricter laws on software piracy only help the big fish in the software, publications and music markets, which typically lobby with governments to increase their profits,” said Prashant Mali, a cyber-law advocate. “But clubbing technology-related laws and the Goonda Act is a bad idea with disproportionate punishment.”

Despite the overlap with the centre’s Copyright Act and the Information Technology Act, states have been the ones pushing for stricter controls on digital piracy. There is a simple explanation for this.

“When the companies whose digital assets are being infringed upon want to take criminal action, they have to rely on police,” said Pavan Duggal, a Supreme Court lawyer. “Since the management of police is a state subject, it makes sense for them to push for more powers to the police to cover acts relating to digital piracy.”

### **Hold-all act**

The Goondas Act is just the sort of hold-all statute that can cover such offences without requiring too much legislative mobilisation. In a typical iteration of the act, a person can be charged if the state suspects that he or she is planning to conduct an illegal activity. This hypothetically means that anyone who possesses a pirated digital copy of any film, book, image or song – or ever used any social media – is liable to see the inside of a jail cell for a year.

“The Goondas Act was essentially invoked against

people who were history-sheeters and suspects when the police couldn't find evidence to put them away for a crime they had already committed,” said Sanjay Hegde, a Supreme Court lawyer and former standing counsel of Karnataka for over a decade. “As long as the act applied to bootleggers and rowdies, the public applauded. Now that its reach is being expanded to people like us, people are pointing out its propensity to being misused.”

In 2010, Tamil Nadu admitted that it had imprisoned 675 people under the Goondas Act, its highest number since 2002.

### **Expanding footprint**

The southern state had reignited interest in the act with its controversial 2004 amendment. The law had dipped out of use almost entirely after Independence. In 1960, the Supreme Court struck down Madhya Pradesh's Central Provinces and Berar Goondas Act of 1946 for having an unreasonable definition of the term “goonda”.

After that, there was a decade-long lull before a host of states, starting with Uttar Pradesh in 1970, began to enact their own versions of the Goondas Act. By the end of the '80s, Gujarat, Maharashtra, Rajasthan and all south Indian states except Kerala had their versions of these acts.

“Those took off after the Emergency, where you had MISA [Maintenance of Internal Security Act] and the

PDA [Preventive Detention Act],” said Hegde. “These laws were replicated at the state level. You might have safeguards put into the law, but they are actually not complied with and judicial redress is also not available.”

“The problem is that we are going towards a nanny state,” said Hegde. “Every government department wants to control everything a citizen does. They want teeth, but they can’t think of anything beyond detention.”

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