

Maintenance of Public Order

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It is the fundamental duty of the State to maintain public order. The definition of public order is given in section 31 of the Police Act of 1861 and requires that order will be maintained on public roads and in public places, obstruction will not be caused by assemblies and processions and, when this is read with section 34 which make it an offence for any person to cause obstruction, inconvenience, annoyance, risk, danger or damage and section 23, which makes it incumbent upon the police to maintain the public peace and prevent the commission of offence and of public nuisance, it is clear that public order really means that the actions of a group of individuals should not impinge on the rights and convenience of any other group. An assembly of persons who use criminal force in order to cause a public servant to desist from his duty, resist the execution of any law or legal process, commit mischief or criminal trespass, deprive any other person of his property, enjoyment of a right of way or peaceful enjoyment of rights by use of criminal force, or use criminal force to compel a person to do an illegal act automatically becomes an unlawful assembly under section 141 of the IPC if it consists of five or more persons. For the purpose of maintenance of public order and tranquility an Executive Magistrate or a police officer is empowered under Chapter X Cr.P.C. to cause the assembly to disperse, if need be by use of civil force or with the help of the armed forces. Every act of disturbance of public order is a cognisable offence, to prevent which a police officer may arrest the accused under section 151 Cr.P.C. Under Chapter VIII Cr.P.C. such persons can be bound over for keeping the peace, be of good behaviour and generally behave in a lawful and orderly manner. The duty of the Executive Magistracy and the Police to maintain public order is thus clearly laid down by law.

Apart from arrest, binding over a person for good behaviour or using force to disperse an unlawful assembly, the Executive Magistracy and the Police have the legal authority to regulate assemblies, public meetings and processions. Whereas under Article 19 of the Constitution the right to assemble peacefully is guaranteed, reasonable restrictions by law on such assembly is permissible under the same Article. After all, the enjoyment of one's fundamental rights is limited by the requirement that this should not impinge on the fundamental rights of other citizens. If, therefore, there is an assembly of people or a procession which obstructs the public way, prevents citizens from going about their lawful work or endangers the public peace, the authorities are duty bound to step in and prevent any disruption of public order. The authorities are not only empowered in this behalf by law, they are duty bound by law to ensure that every assembly of persons works directly within the confines of what the law permits. If the Executive Magistracy or the Police lays down certain conditions or prescribes the minimum requirement of what an assembly of persons can or cannot do, then disobedience of such lawful order is an offence. Apart from the provisions of the Police Act disobedience of an order promulgated by a public servant lawfully empowered to promulgate such order is an offence under section 188 IPC. If the defiance of such order leads to serious offences such as rioting, then it can invite the provisions of sections 147 and 148 IPC. If public servants are assaulted in the process this will be a more serious offence under section 152 IPC, which would carry a penalty of up to three years rigorous imprisonment. If arson is caused, property is damaged, citizens are assaulted and grievous hurt and death is caused to any persons or persons then the provisions of sections 302, 304, 324, 325, 436, 438, etc. would all be attracted. The scheme of the law is that citizens will

maintain public order, will be liable to punishment if they cause disorder, damage, hurt or death that the authorities charged with the maintenance of public order will take necessary steps and issue necessary orders to maintain public peace and, where necessary, use force to bring offenders to book, disperse unlawful assemblies and restore public peace.

The British administration was quite clear about the duty of the authorities to maintain peace. The rebellion of 1857, during which atrocities were committed on both sides and after which terrible retribution was exacted by the victorious British, left an administrative legacy in which the obedience by Indians of every order of a government official was demanded and every act of disobedience was looked upon as mutinous behaviour. The Rowlatt Act and what happened in Amritsar in 1919, leading to the Jallianwala Bagh massacre were all part of the post mutiny syndrome from which the British suffered. Undoubtedly the Civil Disobedience Movement of Mahatma Gandhi, followed by the Quit India Movement, severely questioned this doctrine and created a situation where on the part of the British there was insistence on obedience and on the part of the Indians there was an equal determination not to obey the orders of the British rulers. The fact that ultimately the British had to moderate their response to the Civil Disobedience Movement is the ultimate tribute to the Mahatma's call for the movement to be totally nonviolent and based on the principle of ahimsa.

I joined the IAS in 1957, that is, just ten years after independence. The post 1947 doctrine of public order had undergone substantial change during the Independence Movement, but we were still told in the IAS Training School at Metcalfe House that whereas one should impose a prohibitory order under section 144 Cr.P.C. only in extreme circumstances, once such an order was promulgated it had to be obeyed and enforcement had to be rigidly done, if necessary by the use of lethal force. It was drilled into us that the State would collapse if we allowed prohibitory orders to be disobeyed because that would bring the entire administration into disrepute. Firing in the air was totally prohibited because stray bullets could hit innocents and partly because such firing is ineffective and could encourage the mob to indulge in greater violence. Now one finds that the Police is reluctant to fire at specified targets, firing in the air is resorted to frequently and this does cause unwanted casualties because some innocent is hit at a distance from the scene of the incident.

With independence the political process was strengthened and parties with different ideologies came to power in different States. For example, in West Bengal the Left Front came to power, whose specific aim was to establish the hegemony of peasants and workers. Thus, despite the fact that wrongful restraint and wrongful confinement are offences under the Indian Penal Code, gherao of business and industrial establishments by workers, prevention of free movement by the management and even intimidation of the management became quite normal, with the police being given orders not to intervene despite the fact that a crime being committed. This brought another dimension to the question of law and order. Public agitations against shortages of essential commodities, inadequacy of municipal services, in support of demands of students, etc., brought the people on the streets and such assemblies could not be treated in the same manner as unlawful assemblies of hooligans or agitators bent on mischief. Now a new dimension of public assembly and public order had to be faced by the Executive Magistracy and Police.

As the years passed religious processions and events have proliferated in India and whereas in the past religious processions were strictly regulated, as time passed and political support began to be given to such processions, the Magistracy and the Police also became inert

in regulating such processions and events. Now any wretched marriage procession also results in obstruction of public streets and the Police stands by as helpless spectators. When political processions and agitations take place, as they frequently do in our cities, the Police seems to be almost totally helpless and has virtually given up any attempt to regulate such assemblies. At almost every political meeting, especially of radical groups, the scene degenerates into a near riot situation in which passers by are threatened and intimidated, shops are forced to close, public transport is attacked and quite often the Police and peaceful citizens are physically assaulted. Unregulated public meetings, therefore, are often an invitation to rioting.

Let us take the case of two cities, Delhi, the capital of India and Mumbai, the capital of Maharashtra. I have a quarrel with the name of Mumbai for a city whose authentic name really is Bombay. Where the present city is located there was no habitation, with such habitation as there was being located to the north at Vasai, which the Portuguese, who owned the territory, had named Bassein. The Bay around which the present city of Bombay is located was Bom Bahia, or Beautiful Bay. When the Portuguese Princess Catherine of Braganza married King Charles II of Britain she brought as part of her dowry Bom Bahia, which the British promptly renamed as Bombay. It is said by the Shiv Sena that the name Mumbai has come from the Goddess Mumba Devi. This temple itself was established long after the first British settlement of Bombay and, therefore, can hardly form the base of the name Mumbai for the city. My view is that either the city should continue to be called Bombay or it should be renamed as Vasai, the original settlement in the region. I have elaborated this issue because the Shiv Sena is prone to extreme violence on the question of this name. The name of the city is really a non-issue because in Gujarati and Marathi it is always called Mumbai and for the Hindi speaking people it has always been Bumbai. The fact remains that if a name can arouse passions, including street violence, we should really be worried about the health of our polity.

To return to the main issue, because Delhi is the national capital and the police is not under the control of the elected government of the National Capital Territory, but is under the superintendence of the Lieutenant Governor, himself a central government appointee, it is less susceptible to pandering to local sentiments when dealing with a situation relating to public order. Therefore, processions to Parliament are stopped at least two kilometers from Parliament House. Whether it is Baba Ramdeo or Anna Hazare, a kisan agitation or labour strife, processions and assemblies are strictly regulated and the authorities do not hesitate to act firmly. Of course the same Delhi Police failed miserably in 1984 to check the anti Sikh riots, but that was an exceptional situation. Of course that is no excuse for what happened and it is unfortunate that even 28 years after the event no civil officer, no police officer, no instigator of the anti-Sikh pogrom has been punished. The Delhi Police has no special competence in crowd control, but its objectives are clearly defined and, therefore, it is an effective instrument for the maintenance of public order in Delhi.

In Bombay, by contrast, the Police is subject to the superintendence of the State Government of Maharashtra. By and large Maharashtra has been ruled by the Congress Party and even today there is a coalition between the Congress and its offshoot, N.C.P. Maharashtra has been subjected to some murky political manoeuvrings and just as Vasant Dada Patil was a creation of S.K. Patil, the Shiv Sena is also a creation of Vasant Rao Naik, who used it to counter the militant trade union leader, Datta Samant. All such noxious creations grow into monsters, as experienced by Indira Gandhi whose government built up Jarnail Singh Bhindrawale as a counter to the Akalis. The Shiv Sena has turned into such a monster because its avowed policy is that it

will not hesitate in the use of violence to force its will upon the people of Maharashtra. This has taken the form of violence against restaurant owners from Udupi and Mangalore, harassment of Bihari migrants and exploitation of any communal situation in which Muslims are involved. The handling of Shiv Sena by the Maharashtra Police in Bombay has been so weak-kneed as to be an absolute disgrace and a blot on the face of a Force which once claimed to be the best in India. In the matter of communal riots, inaction by the Police at one end and uncontrolled action at the other have resulted in Bombay being a city which from time to time is torn apart by riots.

Let us take the recent case of August 11th when the Azad Maidan became the venue of extremely ugly rioting by a group of Muslims who had gathered to protest against what was happening in four Bodo Districts of Assam. The gathering had the approval of the Police, but it soon degenerated into a situation in which two people were killed, several policemen injured, vehicles were burnt and weapons were snatched from the Police. This is unfortunate and demoralises the Police. The Police Commissioner of Bombay has been shifted, but only after a very aggressive meeting addressed by the MNS Chief, Raj Thackeray, which held out menace to the Muslims. The Police Commissioner defended himself, but there were certain basic flaws in the manner in which the situation was handled at Azad Maidan on 11th August. He said he desisted from firing because in 1992-93 it had resulted in 188 deaths and it was almost made out as if the deaths had occurred in police firing. In fact had the Police used adequate force at the earliest juncture in 1992-93 the total number of deaths would not have exceeded ten or twelve because the rioting would have been suppressed at an early stage. In the Azad Maidan case certain basic principles of crowd control were ignored by the Police. All Police Manuals prescribe that when faced with a mob armed parties must be organised in a minimum of section strength, to be commanded by a senior officer not below the rank of a Sub Inspector. Under no circumstance should the armed parties be brought into close proximity of the crowd and if the crowd becomes menacing enough to endanger the Force then the armed parties, on appropriate orders from their senior officers duly approved by a Magistrate, must use their fire arms in a controlled manner to disperse the unlawful assembly. In Bombay armed policemen mingled with the crowd and, therefore, could be overwhelmed by it. That is how their weapons were snatched. When an officer of the rank of Additional Director General of Police himself forgets what the Manual prescribes, how can he be forgiven? The senior officers at Azad Maidan, far from controlling the crowd, rendered the jawans vulnerable to mob action and this only proves how incompetent they are. My suggestion to the Maharashtra Government and DGP Maharashtra would be that they very quickly attend to the training and competence of their senior police officers when dealing with a mob. The police action or lack of it on 11th August at Azad Maidan is a prime example of how not to deal with a mob.

The first principle of dealing with a law and order situation is that the officers on the spot have as their first and only priority the very quick restoration of public order. It is possible that people are agitated about an issue with justification and that the issue should be addressed by the appropriate authorities to rectify the situation. That, however, cannot be the determining factor in preventing the officer incharge of a situation to act decisively. If a Muslim mob on an issue relating to injustice against Muslims turns violent, the issue of justice takes a back seat because the mob must be immediately controlled and without inhibition. If a mob dominated by extremist Hindu elements creates public disorder it must be dealt with firmly as a mob and not as a Hindu mob which might have some justification for its agitation. In other words, when the Executive Magistracy and the Police are dealing with a law and order situation they should leave aside moral questions relating to justification of the agitation and instead take all the necessary

measures to restore order. It is only after order is restored that wider questions can be addressed. This applies to all situations, including hooliganism by Bajrang Dal on Saint Valentine's Day.

We need to build in this county an environment in which laws and lawful orders are respected. Instead we are moving more and more towards a state of anarchy in which the strong dominate the weak, mobs rather than the Police rule the streets and the normal life of the people is disrupted from time to time because someone decides to organise a protest or an agitation. Such protests, such agitations, without necessarily promoting their own cause, result in disruption of normal life and must be put down with a heavy hand. People accuse the Police of being an instrument for terrorising of the citizens. My allegation, however, is that we have rendered the Police to a state of impotence, so that it now finds it difficult to maintain public order even under normal circumstances. This is a very dangerous portent.
