

Lynch Law

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The Aam Admi Party has been able to form the government in the Union Territory of Delhi despite the fact that it is not in the majority and survives only because of outside support of the Congress. Such conditional support in one city in the country has already created a megalomania which drives Arvind Kejriwal to dreams of power nationally. Just to get the record straight, rural India has 73 percent of our population, if the seven or eight percent residing in small towns is added to this the figure would be about 80 percent rural and semi-urban and metropolitan India accounts for about six percent of the population. Delhi has about one percent of the total population. What macro trends should one read into 28 seats in the Vidhan Sabha of a territory which is not even a state and has only about a hundredth of our total population?

Government is all about governing, but only according to the Constitution and within the rule of law. One fundamental principle of democracy is that besides the separation of power between the executive, legislature and judiciary, every citizen, every public official must function according to law. The Constitution itself mandates equality before the law and punishment only according to law. The power to investigate is laid down in the Code of Criminal Procedure, which also prescribes the authority to judge. Government, its ministers and officers cannot illegally order law enforcement officers to act in contravention of law. The Supreme Court has categorically stated this in the Prakash Singh case and the whole process of police reforms started with this case. Prashant Bhushan, the principal mentor of Kejriwal, pleaded strongly in the case for depolicisation of the police. The AAP government in Delhi is bound by these rules of government. Why does Prashant Bhushan prefer silence to rendering the correct advice in this case to Kejriwal.

The reality, however, is different. Some people allege that a particular house is used for sale of narcotics and for prostitution. The NCT of Delhi Law Minister, at night, demands that the police should raid the house, which the police refuses to do in the absence of a warrant or of evidence adequate to permit entry to the house without a warrant. The police officers are publicly berated and threatened and Kejriwal states that unless they are suspended he will lead an indefinite protest. To illegality he now adds blackmail. Meanwhile his Law Minister and his hoodlums catch hold of four Ugandan women, publicly humiliates them, force one of them to urinate in public, drag them to AIIMS, subject them to illegal body search and heap racial abuse on them. Kejriwal justifies this, blames them for not voluntarily giving blood and urine samples and says that all this happens because the Delhi Police is sold out to criminals. What about the racist slur against women who are black and foreign, but against whom no evidence was found?

The Constitution and the law both have a presumption of innocence till proved guilty beyond reasonable doubt for every accused person. The Indian Evidence Act casts the burden of proof on a person alleging a particular fact. The police itself has the power to arrest only under the following circumstances :- (a) To prevent the commission of an offence, (b) To prevent the disturbance of public peace and tranquility. (c) In execution of a warrant issued by a competent authority (d). Where, after registration of the First Information Report (FIR) and investigation of a cognisable offence, a prima facie case is made out against a person. The arrest is made in order to produce him before a court and, with its permission, to detain him for further investigation.

The power to enter and search premises is also limited by law. The Delhi Law Minister could not give any directions to or make a demand on a superior police officer contrary to law, especially because under Chapter XII, Cr.P.C, no one other than a superior officer or a magistrate can intervene in an investigation. The Delhi Chief Minister and Law Minister are in the wrong in the present case.

The lynch law of a mob is inexcusable, but far worse is the lynch law of a political party and worst of all is the lynch law of ministers. Taking the law into one own hands can only lead to anarchy and this very soon harms the whole of society. Policemen are corrupt or inefficient? Punish them by all means. Improve the system, make it accountable and let accountability be locally enforced. But to be lawless in dealing with alleged violation of law, to encourage mob vigilantism, is revival in another form of the Nazi Sturm Abteilung, Storm Troopers and of the Gestapo of Hitler's government, which accounted to no one and operated a reign of terror. Kejriwal's lynch law falls just short of this, but only by a hair-breadth; so help us God!

Let us see the aftermath. The Central Government has given Kejriwal partial success by sending two police officers on leave. The Leave Rules have no provision for forced leave and, therefore, this act of government is tantamount to suspension or transfer. The excuse is that these officers did not live up to their duty. How? In one case the officer refused to carry out the instructions of a person not authorised by law to direct him. In the other the officer was incharge of a patrol vehicle in the area where a rape occurred. But was he remiss in his duty? No one has established this. Then why humiliate him?

The entire thrust of police reforms is to make the police a servant of the law and accountable to it. The entire thrust of Kejriwal is to make the police accountable to the mob and become its servant. Why not tell the police to go on leave for a week and let AAP run the city for this period? Perhaps it will dawn on people that with all its faults they do need the police. Let reforms grow out of this realisation.
