

Some Thoughts on Restoring Order to the National Polity

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Utopia must be a very dull place to live in because where everything is perfect, there is no room for debate or discussion, nor is there need for any independent, unorthodox thinking because how can one improve on perfection? In fact one of the problems with revealed religions is that since what has been revealed cannot be bettered, the need to look critically at faith recedes and this is really fertile ground for intolerance and even bigotry. Utopia is not an ideal state to be in and, therefore, we have been fortunate enough to be spared that fate.

If one finds that utopia is difficult to achieve and perhaps not even very desirable, then mankind has to find another type of existence in which we avoid a situation in which the life of man is not selfish, brutal and short, which it would be in a situation where Hobbes's social contract does not exist to maintain order. In other words, there has to be a society of laws in which it is through legislation that society determines how it will be governed, which of the laws will govern it and how will interpersonal relations be determined so that within the space assigned every individual is guaranteed a peaceful and harmonious existence. At the same time in such a social order the dignity of the individual and his freedom would be guaranteed and he would have a voice in how he is governed. In other words, a true society of laws is by definition democratic because one is talking of legislation through consent and not legislation by superimposition. Where laws are superimposed we have totalitarian rule.

India is a democracy because the Preamble to the Constitution directs so and also because the method of selection of those who will govern us is by elections through universal adult franchise. No single authority, not even the army, can decide who will occupy positions of power and so long as this system prevails India will be democratic. Even the brief interlude of the Emergency could not permanently destroy this fundamental basis of the Constitution and our polity.

The government may be democratically elected, the laws may be enacted by the democratically elected Legislature, they may be subject to adjudication by independent courts of law, but does that make the country a society of laws? A society governed by law has not only to enact laws through a democratic process, it has also to implement them. The position stated in the statute book does not automatically translate itself into a reality on the ground unless citizens willingly obey the law and the State consistently and equitably enforces the law. Laws on the statute book which are not enforced create greater chaos than no laws at all. If proof is wanted of this, then one has to revert to the city of New York which in the Sixties and Seventies of the last century was considered one of the most lawless cities in the world. The same laws continued to operate, but when Mayor Giuliani took over and ordered the police to have zero tolerance policing, the authorities began to enforce the law vigorously and suddenly crime came under control. New York is now a safe city for citizen and visitor alike. The laws remained the same, the people remained the same and yet consistent, firm, unrelenting law enforcement turned the city from being lawless into one which is law abiding. In other words, if the Legislature has the role of enacting laws and the Judiciary the duty to adjudicate on matters relating to the law, the Executive has an equally important part in enforcing the law, thus making it truly effective.

Therefore, the lesson for us is that if India is to be a society of laws, then the Executive must become active and in a just but consistent manner enforce the law. Every legitimate democratic right of the citizen would be respected, including the liberty of thought, expression, belief, faith and worship and the freedom to protest through free speech and free assembly, but this would be done within a framework in which the law is enforced. The advantage of having a society of laws in which there is equality before law and, therefore, strict enforcement of law, is that it creates an environment of public peace and order, which is essential to good government and a development process which benefits everyone. Is that the present situation in India?

Unfortunately the answer is not an assertive yes. In fact there are so many different forces in play simultaneously that an impartial observer might be tempted to state that India has too many conflicts to be considered a society of laws. The conflicts range from disputes between two individuals all the way up to a level of insurgency which threatens the existence of government itself. In between are many shades and nuances of conflict in which laws are ignored, in fact broken and an environment of disorder created. It starts from the street in which municipal laws and byelaws are deliberately violated, rules relating to where and what kind of business or enterprise can be carried out are flouted, even simple things like traffic rules are broken. In an ordered society rules relating to use of road space, parking, technique of driving, etc., would be accepted and adhered to almost by way of second nature. For example, in Britain if a pedestrian steps on a zebra crossing all traffic halts till he crosses the street. In America if a school bus stops traffic in both direction halts till the school bus starts moving again. In India a pedestrian on a zebra crossing is like a bull's eye to be targeted and as for use of road space, people feel that they can stop where they like, park where they like or wander across the road as they like. Traffic laws make a great deal of sense because if they are obeyed the flow of traffic would be smooth and accidents will be minimised. In India we do not believe even in obedience of what are rules and regulations which benefit all of them, not even municipal laws and rules which make life easier for all because they help in making cities orderly and easier to live in .

If the general contempt for law were confined only to individual acts one could perhaps live with this. Unfortunately, because even simple laws are not strictly enforced there is a climate in India which seems to suggest that no laws need be obeyed. Even commonsense dictates that public roads are meant for the general movement of the people at large and that an individual has only very limited rights over such public space. However, marriage processions and religious processions take over almost all the road space, halting all traffic. Political assemblies and rallies not only take over such space, they react violently to anyone else trying to exercise his right to move on the public way or path. When there is a political rally there is always a large police presence. Section 23 of the Police Act and similar sections of Acts such as the Delhi Police Act require the police to prevent the commission of public nuisance. Illegally obstructing a public way is a public nuisance. Under section 31 of the Police Act the police is required to bring order on public roads and for this purpose, "... to prevent obstruction on the occasions of assemblies and processions on the public roads and in the public streets...". Every time a public road is obstructed and the police takes no action the policemen violate the duty prescribed for them and one would suggest that the offence thus committed and punishable under section 32 of the Police Act should result in punishment both for him who obstructs and for the policeman who takes no action in this behalf. But the fact remains today that large scale police deployment does not prevent mobs from taking over the streets and inconveniencing or even endangering citizens going about their lawful business because the executive magistracy and police just do not take timely action.

It is an unfortunate fact that, perhaps as a result of lax enforcement of law, Indians have become irresponsible in public behaviour when they are assembled in protest or to push a specific political or social agenda. That is why one sees so many violent incidents during political protests, the latest being the unfortunate clashes in cities such as Delhi and Lucknow. No one can deprive anyone of the right given to him under Article 19 of the Constitution whereby he has freedom of assembly, provided that it is peaceable and without arms. An assembly equipped with lathis and other objects by which its members can inflict injuries, or resorting to such measures as obstructing the public road, preventing ingress and egress to and from premises, hurling abuse which is slanderous or libelous and, through a bandh, assaulting or wrongfully confining a person or persons would clearly be in breach of the constitutional provision, that freedom to assemble is subject to members of the assembly being peaceable and unarmed. Therefore, the increasing use of hooliganism either to make a protest or to intimidate the opponents does not come within the definition of peaceable assembly and it is the duty of the police to intervene, if necessary use force and disperse such an assembly, while arresting and prosecuting those who have violated the law. If this becomes the norm and every police force in India strictly does its duty to keep the public streets free of obstruction, while prosecuting those who violate the law, then certainly it would be a move towards establishment of a society of laws.

A society of laws automatically engenders respect for law which, in turn, isolates the would-be criminal and creates an environment in which crime would be the exception, its detection would become easier and citizens would then live in peace, with no fear of being robbed or murdered in bed.

Where there is lawlessness violent crime, extortion, terrorism and worse flourish because society at large witnesses that the law enforcement agencies are either not strictly enforcing the law or are being prevented from doing so, which undermines law and order. When crime goes unchecked, or the law enforcement agencies are on the back foot, it is but natural that the crime graph would rise. In other words, even crimes against individuals, whether relating to property or body, go on rising, which is one reason why we read of so many cases of sexual offences, domestic violence, even murder. For example, in Madhya Pradesh in the fifties and sixties of the last century, in the northern districts, the failure of the security forces to curb dacoity also led to exploitation of the poor by the well-to-do, kidnapping for ransom and robbery short of dacoity. There was also a great deal of forcible occupation of land by the large farmers. When, however, the police was able to bring dacoity under control the crime graph fell in districts such as Bhind and Morena, resulting in the extension of normal civil administration and development administration. This benefitted everyone. Because there is almost a state of certainty in the minds of those who agitate for various things that government will not deal strongly and firmly with agitations, the level of agitations has increased, as has the frequency, the agitators are intolerant about anyone who differs from them, the likelihood of agitations being accompanied by violence has also substantially increased. Whether it is the Telangana movement, the attack on the office of a political party by the followers of another, the forcible closing of shops during a declared bandh, roughing up of citizens who try and use a road taken over by protesters, these are all symbolic of a society in which respect for law has declined and there is poor law enforcement. The police itself is uncertain about how to deal with such situations because the likelihood is that the political leadership will not permit the police to do its duty. In the 2014 elections, considering the high pitch of talk but low level of the contents of political assertions and debate, there is likely to be considerable violence in the election campaign. True democracy

demands that contending parties and individuals will certainly place their view before the electorate, but this should be done within the prescribed parameters of responsible free speech and opinion. A debate which degenerates into abuse is no debate and unfortunately our politics is headed in that direction, very largely because we do not enforce the laws relating to decency and good order.

There are a few suggestions for restoring the rule of law in India. They are:-

1. If there is a law on the statute book give no one the discretion to decide whether the law will be enforced or not. All law enforcement agencies must be required to apply the law relentlessly, consistently, justly, courteously but firmly. Every person violating the law must be brought to book.
2. Rules and regulations relating to use of public streets and public space must be ruthlessly enforced so that no individual or group can take over public space.
3. The directions to the police on how to deal with processions, assemblies, protests, including group protests, dharnas, bandhs, lock-ins must be very clear-cut and precise so that every police officer know what his duty is in a given set of circumstances.
4. All violence or precursor to violence must be dealt with very firmly, suppressed and snuffed out as soon as it raises its head. Where it is necessary to use force it must be done at the earliest juncture so that it does not escalate into the need to use much more force and the magistracy and the police dealing with such situation must be fully protected. No form of violence should be tolerated, regardless of any justification that might be offered for such violence.
5. Whereas the enforcement of law is a continuing process, during the elections law enforcement must be utterly ruthless so that trouble makers lie low.
6. The police must be trained, disciplined and supervised in such a way that during the process of law enforcement, whereas it is decisive and unrelenting, at no time does it lose sight of the fact that the citizen is paramount and must not be harassed.
7. If law and order is important prevention of offences and timely and professionally conducted investigation of offences is even more important. A competent police force whose forensic skills are well developed would, by quick investigation of offences, quickly bring criminals to book. Nothing deters criminals more effectively than rapid investigation, vigorous prosecution and quick justice. Harsh laws which remain on paper are worthless. Therefore, by streamlining the process of investigation and bringing offenders before the court, which itself is attuned to speedy disposal of cases, will be much more useful in controlling crime than, say, a law which prescribes the death penalty, which will never be imposed or executed because of forensic and legal tardiness.

India has no option but to ensure that it is and remains a society of laws. If it ceases to be that we shall condemn ourselves to anarchy.
