

The Rule of Law and Government by Law

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In all the recent cases pertaining to high level corruption, whether be it 2 G Spectrum allocation, the Commonwealth Games, the allocation of coal blocks, the appointment of a member of the Railway Board, etc., one common theme has been that decisions have been taken arbitrarily, contrary to rules and in violation of good administrative practices. In the case before the Supreme Court filed by Prakash Singh, Prashant Bhushan and others regarding police reforms, the allegation made is that government arbitrarily intervenes in the lawful working of the police and this is one of the main reasons why the police in India is ineffective, corrupt, politically biased and both people unfriendly and largely unaccountable. The prayer made before the Supreme Court is that the police should be insulated from unlawful pressures and influences and should be encouraged and in fact forced to function according to law. I mention this because if corruption is to be stopped it becomes absolutely vital that arbitrariness in government must stop and instead we should return to reasoned rule of law.

In a society of laws the first and foremost consideration is equality before law. This is enjoined by Article 14 of the Constitution. If there is equality before law then every citizen has equal rights and equal liabilities. A systematic violation of rights automatically proves that society no longer functions according to law. In a society of laws no one, however powerful, can deprive a person of his rights by misusing a government agency or by using the power of money to make officials act in favour of a person and with bias against some other person. In a society in which there is equality no one is the sovereign, suzerain or feudal lord of normal citizens, which means that whereas someone may enjoy authority and someone else may not, neither is the superior of the other and the person not having authority does not have to kowtow before a person having authority. The one in authority has still to function according to law and the rules, regulations, procedures and practices which emanate from it. Now it is a fact of which we can take notice that whereas equals do not pay tribute to each other, where there is a perception that someone is superior to others and can take decisions favouring someone and denying favours and rights to others, then an element of vassalage creeps in. When that happens the one without authority becomes a vassal who tries to keep his overlord pleased, either by becoming his servant or paying him tribute which naturally would take the form of money or other valuables. A tribute is a token of submission and it is a well known fact that in India those who are in servitude do pay nazrana to those who are their superiors. It is only in a society of laws that everyone is equal and nazrana will not be necessary, nor will be paid.

India is not a society of equals and anyone who has even a little brief authority can become a target for payment of nazrana. If, however, the officer in question who is in a decision making position is unable because of the rules to do undue favours or to unduly deny justice to an applicant, then the nazrana become irrelevant and will not be paid. From this emerges my suggestion, which is that look at every point of contact between government and citizens, remove rough edges and simplify rules, procedures, etc., to such an extent that a person entitled to a decision gets the decision, there is no delay because the person delaying exposes himself and is liable to punishment and there is no relationship of superior –inferior in the whole transaction. If an official cannot harm through delay and cannot avoid decision making under fear of

punishment, then there is no question of any nazrana being paid. The absence of nazrana means that applicant and decision maker are both at the same level. If both are equal how can the officials extort money, which can be called jabrana, from a person whose application relates to that to which he is genuinely entitled?

To have a society of laws what we need first and foremost is the framing and formulation of laws in a manner which is compatible with the Constitution and with the general concept of parliamentary democracy. The least we can expect from our legislators is that they will ensure that legislative business is conducted strictly according to the Constitution of India and the tried and tested practices and procedures of Parliament and the State Legislatures in India. Because I have started by making a statement that it is only in a society of laws that we can have equality and it is only from equality that good government can flow which checks corruption, therefore, it is all the more important that the Legislature itself should be patently and actually seen to be functioning according to law.

Articles 110, 199, 117 and 207 of the Constitution define a Money Bill and provide that such a Bill can be introduced in the Legislature only with the recommendation of the Head of State. Section 22 of the National Capital Territory of Delhi Act has precisely the same provisions. Therefore, when introducing the Jan Lokpal Bill in which the Lokpal and staff would have to be paid from the Consolidated Fund of Delhi, the prior approval of the Lieutenant Governor is mandatory. The then government of NCT of Delhi insisted that this rule did not apply to the introduction of the Jan Lokpal Bill in the Vidhan Sabha by it. For government to state this is the height of arbitrariness and would defeat the very purpose of curbing arbitrariness in order to ensure that decision making is as per law. From this one can only conclude that Kejriwal's government was not interested in governing but only in trying to push an agenda which would give it popularity but which had no chance of being enacted. Once a government itself becomes arbitrary in legislative business it becomes a protector of corruption. Remove the rule of law and this is what one gets.
