

Mass protest and police action



Rupgonj: People fled locality to avert arrest.

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MUHAMMAD NURUL HUDA

LARGE-SCALE mass protest leading to unfortunate violence entailing loss of human lives and destruction of property and subsequent police action often bordering on the excessive has been a reality of our public life. The violence at Rupgonj resulting from the Army housing scheme land acquisition transaction in the recent past brings to the fore some facets of authoritarian actions that are not apparently in public interest.

It is quite significant to note that the police is the complainant in the Rupgonj incident in respect of which several criminal cases have been registered against a few thousand known and unknown individuals. Such complaint by the police means that the State is seeking action against a large number of people amongst whom there may be many who did not have any involvement in the violent activities.

It was, therefore, quite timely and pragmatic of the Prime Minister to administer caution, with regard to taking penal action against the real wrongdoers and to exercise due diligence and circumspection in investigating the incident. Looking back one may remember that the large scale arrests made in early 2006 were a definite manifestation of mal-governance that spelt disaster for our polity.

From the horrendous accounts of the harrowing experiences of the arrestees of yesteryears, the insensitiveness of our enforcement culture and the ruling coterie was displayed. One wondered if we were still living in a country where the paramount interests of the colonial and imperial power had to be protected by the sentinels of order, come what may.

It is important to note that the Criminal Procedure Code, 1898 has conferred very wide powers on police in making arrest but the limiting factor is the necessary requirement of reasonability and credibility of information to prevent the misuse of powers. We all know that to arrest persons

and that too in such huge numbers as is suspected without an apparent justification is one of the most serious encroachments upon the liberty of the citizen.

One has to remember that the reasonable suspicion must be founded on some definite fact or some tangible proof which should be sufficient to establish in the mind of a reasonable police officer the credibility of the information or suspicion. This reasonable suspicion must relate to definite averments which the arresting officer must consider before he acts. Let us remember that the authority that the law confers in this regard is personal and the responsibility is personal also.

The expression "credible and reasonable" in the Criminal Procedure Code must refer to the mind of the person by whom the information is received and mere assertion cannot form the material for the exercise of judgment by such person. The arresting police officer has to exercise his own judgment and his own opinion as to whether he should or should not act and to enable him to do so he must have the necessary facts before him. Reasonable suspicion is understood to mean a bona fide belief that an offence had been committed necessitating the arrest of the person concerned.

There is nothing in the Criminal Procedure to suggest that the arresting police officer is to be the final judge of what is reasonable or credible. The spirit of the legislation makes it clear that the police officer should have grounds for determining the reasonableness of complaint and that of the credibility of information and the foundation of suspicion upon some definite fact.

One would expect that the above legal provisions, procedural directions and precautions as envisaged in the code will be applied while effecting arrests in connection with the Rupgonj incident.

Our democratic polity has to ensure that our law-enforcement does not plunge headlong into a legally indefensible

course. They must not act at the behest of motivated quarters.

One has to remember that by resorting to practicing lawless law enforcement, the police will inevitably further tarnish their image. Paradoxically, such lawless police officers may be in high demand in our society. The government is always more concerned with the so-called order than the observance of law. Therefore, the remedy largely lies in the attitudinal change in the police whereby our police culture will get a riddance from several scourges including false implication of innocent persons in criminal cases. That would be some relief as substantial remedy would follow from the change in the attitude of the political government, the real wielders of power.

In a democratic set-up, the members of the police must be made to realize that they are not above the law but subject to it like all other citizens and all their actions have to be supported on ground of legality when challenged before a court of law. The question is, how do we do that? One way of ensuring that would be to question police indiscretions and excesses, specially the major ones, in court.

As has been mentioned hereinbefore, the legal authority and responsibility to arrest is personal, so each individual officer must be made to account for rash and indiscriminate arrest, if so proved. To be more specific, a wrongful arrest of graver type should make the arresting officer liable to a charge of wrongful confinement under the penal law of the country. Therefore, if the authority arranges to commence criminal proceedings for

wrongful arrest, the wrongdoers in enforcement outfit would get the message, and hopefully, rash and illegal actions will be on the decrease. All segments of the judiciary have to assert themselves.

Our apex court has already given a number of procedural and administrative guidelines in respect of arrest under Section 54 of the Criminal Procedure Code. This has to be followed up in right earnest by issuing strictures and where appropriate by arranging to institute criminal proceedings against delinquent officers. One or two criminal convictions of wayward police officers would have a salutary effect. The fear of authority needs to be instilled.

For their part, the senior police officers should be able to prove that law observance by the police is the best form of law enforcement in a democratic country under the rule of law. They should be ready to carry out the behest of law at any cost.

Claims for damages caused by wrongful arrest should be instituted by activating the law in this regard. There should be no bar in fixing the civil liability caused by wrongful arrest. That would be a damper to highhandedness.

Last but not least, there should be serious efforts to stop compromising the impartial and efficient service to the citizens. The politicians have to realize that the right to live is not merely confined to physical existence but includes within its ambit, the right to live with dignity.

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Resolving the Babri Masjid dispute

Two judges -- one of them was a Muslim -- have said in their 2-1 verdict that beneath the mosque was a temple. They have based the judgment on the archaeological survey report. They have also given sanction of law to the belief. Many may not like it. But this is the High Court's judgment. The Supreme Court can reject it or uphold it.

KULDIP NAYAR

I have not been able to make out why the ruling Congress has been inactive when it could have taken the initiative in bringing the two communities, Hindus and Muslims, together to discuss the Babri Masjid-Ram Janambhoomi dispute after the Allahabad High Court judgment. It has opened a window, which still remains ajar after five weeks.

If the opportunity is not exploited, the parties concerned will meander to the Supreme Court in appeal. Central minister for minorities Salman Khurshid has said that the judgment has made the ground smoother. But both the party and the government have remained distant.

The consideration before the Congress may be the same old fear of annoying one community or the other and losing votes. The problem is too big to be trivialised or politicised because the Lok Sabha election is more than three years away.

The reason why I am appealing to the Congress is the clout it enjoys for being in power at the centre. The party has also better credentials on secularism than the BJP. If the Congress were to try to sort out the dispute, it would be taken seriously. And it shouldn't be forgotten that the Babri Masjid was demolished when the Congress was in power at Delhi.

I wish the BJP had been less aggressive. The judgment has given Muslims one-third of the site. Without their cooperation, no mandir can come up there. Moreover, the nation wants a peaceful solution, not threats of ever-growing dispute. The RSS did well to stop L.K. Advani from going ahead with another yatra. He does not seem to be repentant over the killing of hundreds of people in the wake of a yatra 18 years ago.

I have not met any Muslim who does not feel that the judgment was unfair to the community. Now his fear is that some

other mosques may be targeted soon. Already, some Hindutva votaries have threatened to demolish the mosques which have stood by the side of temples in Mathura and Varanasi for centuries.

When the Babri Masjid was demolished in 1992 the Muslims knew that they would not get back the mosque site. Yet, they went to the court to claim ownership. They probably thought that by doing so they would warn the Hindutva elements not to repeat what they did to the Babri Masjid.

Today, they are undoubtedly angry but feel helpless. I can see a lot of activity in the community to discuss what it can do. I wish it had made a joint platform with Hindus and Sikhs who were horrified to see on television screens the pulling down of the Masjid, stone by stone. Together, they could have made an issue beyond the Muslim community and turned it into a point to reassert the country's ethos of secularism.

I have not liked the speeches by some Muslim leaders. One went to the extent of saying that the Muslims had lost because they were not powerful. He appealed to the younger generation to build up power. Such speeches only arouse passions and evoke equally strong words from the other side. They do not sort out the issue.

The Hindus must realise that the problem is deeper than the loss of the Babri Masjid. Muslims, who have been living under suspicion and bias after partition, are losing faith in India's claim to be a secular society. How to give them confidence is the nub of the problem.

Parliament enacted in 1993 a Place of Worship Bill to lay down that the temples, mosques, gurdwaras, churches and synagogues would stay as they existed on Independence Day on August 15, 1947. The courts were barred from entertaining any dispute relating to places of worship. The Babri Masjid could not be included because a case on its ownership was



Tight security engulfed Ayodhya before court verdict on Babri Masjid-Ram Janambhoomi dispute was declared.

already pending before the Allahabad High Court.

That law should be incorporated in the Constitution so that the Muslims feel more confident. Also, the two Houses of Parliament should pass a resolution to buttress the constitutional guarantee to the Muslims. They constitute the largest minority, 16%, in the country and cannot be allowed to go into a shell or become sullen. If they continue to stay alienated, India should forget the growth rate beyond 9%.

I recall Prime Minister Atal Behari Vajpayee asking late President R. Venkatraman to have a dialogue with the community. He asked me to help him. We met several Muslim leaders including Maulana Mujahidul Islam Kazi, who was keen on a settlement. Why we could not proceed very far was because the BJP never offered anything specific which we could place before the Muslims.

Again, the RSS and its parivar have to decide whether it wants to begin a new chapter of conciliation with Muslims. If it were to guarantee protection to all mosques, as is the law, a settlement is possible. Otherwise, the Muslim community will appeal to the Supreme Court against the judgment. That means the problem may hang fire for years. And there is no certainty that the community which loses in the Supreme Court will accept the verdict.

The Hindutva elements should take a leaf from Pakistan. The Gurdwara Shaheed Gunj exists as the gurudwara at Lahore following the Privy Council's

judgment in 1948. The Islamic state of Pakistan has protected the structure and the sanctity of the gurudwara, and religious elements have never tried to undo what the highest court had decided.

Once the Muslims feel secure about their worshipping places, they should make a gesture on the Babri Masjid. I know the argument that Muslims cannot gift a mosque's site to anyone. But bigger than this belief are the sense of tolerance and the spirit of accommodation, without which the Indian polity cannot stay united. Muslims should, however, have a mosque in the complex near the proposed Ram Temple.

Two judges -- one of them was a Muslim -- have said in their 2-1 verdict that beneath the mosque was a temple. They have based the judgment on the archaeological survey report. They have also given sanction of law to the belief. Many may not like it. But this is the High Court's judgment. The Supreme Court can reject it or uphold it.

Ideally, as I wrote earlier, the site should be left vacant to bear testimony to the murder of our multi-cultural, multi-religious society on December 6, 1992. But the court, in its wisdom, has given a verdict which tilts towards Hindus.

Muslims should consider giving them the entire site if a constitutional guarantee and Parliament resolution is forthcoming that mosques will stay mosques as they existed on the day of independence. The quality of gesture is in giving, not in taking.

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Biman grounded

Government intercession needed immediately

THE current situation prevailing in Bangladesh Biman is unwarranted and unacceptable. The national airlines has virtually ground to a halt as a result of strike called by the pilots in protest against suspension of four pilots, which again is the consequence of action and counteraction of the two parties, the Biman management and Bangladesh Airlines Pilots Associations (BAPA), that have to do with certain provisions in the working conditions of the pilots and their retirement age.

It is indeed a shame that the national carrier has become inoperative, except for the Hajj flights, for the last 48 hours, and, given the rather hostile position of the Biman administration and the pilots, one is not certain if the impasse will be resolved soon unless the highest authority in the government intervenes. The Biman management has given 48 hours ultimatum and have already cancelled flight schedule for 48 hours starting yesterday. And we do not know what alternative arrangements have been made by Biman should the pilots not join duty after expiry of the ultimatum to restart Biman's operation without much delay.

While both the airline's management and the pilots must share the blame for the current state of affairs there is little doubt that the Biman administration cannot absolve themselves of the responsibility for grossly mishandling the situation, for indeed there is every reason to believe that the matter was handled in a very ham handed manner. When what was needed was a degree of cooler headed reaction on the part of the management one noticed instead emotion and hasty decisions compounding the situation. In this context we are surprised at what we see as the detached position of the ministry of civil aviation. We have not heard from the minister anything regarding the deadlock as yet.

We feel that the Biman management should have thrashed out the issue of the retirement age of pilots, which has been increased but many benefits slashed, and which is the main bone of contention, or the issue of flying hours that the pilots insist cannot exceed 70 hours per month, with BAPA before taking the final decision. Why couldn't Biman wait for the time-limit of the show cause notices to expire before suspending the four pilots? As for BAPA, we are appalled by its lack of appreciation of the consequences of calling strike without adequate notice.

It is regrettable that both the parties are displaying inflexible attitude. That will not help resolve matters. Both parties must immediately sit across the table to put an end to the impasse. The two must understand that they are not the only ones involved in the matter; one cannot lay preconditions for talks on an issue that involves thousands of passengers.

The national flag carrier is in dire straits. And the current issue is but one aspect of the illness of Biman. Among other things, poor management has been worsened by the absence of good relationship between Biman and the ministry. Such a situation demand immediate intervention by the prime minister's office.

Food security concerns

Regional cooperation is a powerful instrument to meet them

FOOD Minister Abdur Razzaque underscored the need for harmonizing regional cooperation to enhance food production and ensure food security in South Asia. The food stock in the region is proposed to increase coinciding with the 4th Board Meeting of SAARC Food Bank. But food grain management and distribution are needed to be considered first, as predicament already exists due to the drawbacks in the operational manual and the level of contribution of the member countries to the food bank.

The lack of economic access to food is one of the main crises of South Asia because of low purchasing power of consumers in most of the member-countries vis-à-vis extremely high market prices. Global increases in food prices often result in high prices in the domestic market as most South Asian countries are net food importers. In addition, rising temperatures and variable precipitation due to climate change with the existing natural disasters are already affecting performance of South Asia in every sector. The crisis is especially acute in population growth threatening to outstrip increases in productivity. In this regard, maintaining suitable drawing rights to borrow food grains is crucial.

The advantages of the food bank would be initiation of low prices of the products and deferred payment system for the people in the emergency situations. Transportation cost would also be less, as the food reserve will be available in different places in border areas of the member nations. It is worthwhile to mention here that adequate investments with climate resilient technology in agricultural sector are inevitable to increase production of food in the member-states, especially, which lack productivity. It is also essential to operate a strong monitoring system so that the food products reach the victimized people at appropriate time.

Last but not the least the link between agricultural production and cold storage facilities has to be strengthened. As food security means not only food but safe and healthy food; reliance on chemical fertilizer has to be minimized as well as the use of formalin has to be stopped. Diversified food items have to be made available to the people at a price affordable by all. Syndicate business with food items should be dispatched to the museum if healthy food security is the ultimate goal. Furthermore, the food bank for the vulnerable people must be maintained with the cooperation of all members rather being dominated by the any particular state.