**Cleaning up GOVERNANCE**

*Broom Wielder*

Hurry! Get all the brooms out. Let us wield it aggressively to yield results through democratic process for cleaning up governance that has sunk into deeper morass. For, those entrusted by us with power through the ballot boxes, connive and in cahoots with extra-constitutional coteries, are writing and amending the laws at their will to suit themselves, ignoring the people’s WILL.

It is vexing but this is no time for discussion, analysis and accommodating the contrarians. Laws are said to be of positive morals. Current efforts by shenanigans -to amend RTI to take Political Parties out of its ambit, and permit criminals to vote and stand in elections circumventing strictures drawn up by the Courts, Information and Election Commissions- smacks of misconduct, malfeasance and criminal intent. That, no law, law maker, courts, institutions, proponents of justice, observers or citizens can accommodate, ignore, forgive or accept to live with.

For, in law making, practice and justice, intent is what matters and counts ultimately. In the matter being argued, the famed concept of Mens Rea easily establishes guilty minds and identifies them too as a group. It is pertinent, fair and imperative to state that in this context that the rules/amendments such corrupt criminals/minds are trying to import are foreign and alien to legal systems world-wide. Let us give them no room to masquerade their credentials or motives.

A clever lawyer could argue that no crime has been committed (yet, by amending RTI) and so culpability under mens rea cannot be applied. But what is being hatched and purported to, is misconduct to say the least, is criminal in nature and thus the intent is not unquestionable. Therefore the ‘accused’ in this case would not be coming to courts for justice with clean hands and hence the responsibility should be on them to disprove our genuine concerns of malafide intents.

Good laws have sprouted bad practices and bad laws have encouraged questionable activities. The same applies to good intentions and bad intent. As such, amending RTI to provide cover for political parties to operate beyond purview of citizens and the long arm of the law, bereft of controls breaking every conceivable safeguard provided in economic activities (FEMA, Cash Transactions..etc and in the process resorting to blackmailing/goondaism for fund raising, collections, parking benami investments etc) amounts to abetting crime, if not committing serious crime itself.

The onus is on the legal system to protect the rights of the weaker section, as psychologists and philosophers point out that the majority make laws to cover their selfish tracks; one tends to think that one owns what is given in good faith with trust to manage for greater common good. ***Equals should not be treated unequally by bestowing benefits to few as chosen and privileged, because of their position, strength or audacity.*** No one can be a judge of his own acts: *Nemo iudex in causa sua*; the obviously-would-be-guilty cannot ostensibly sit on judgments of their own guilt.

We have sufficient disclosures available in the public domain to fear that those in power will also use their muscle power to cover their tracks. Information is at the core of any activity and denying rightful information is tantamount to denial of justice. Our Constitution warrants the proper use of power and not its misuse or abuse. Checks and balances are proven natural corollaries of laws and all management systems. PIL- public interest protection –through litigation- as necessary, is the evolved process to ensure social justice. This perhaps is our only recourse.

Going back to the source and fundamentals of jurisprudence, law making, laws, rule of law, justice, interpretation et al, one can trace them to social mores and ethics. This from the very beginning of community living has implied unacceptability of corrupt practices and fraud against community, its members individually and collectively in toto. So, isn’t ostracising the final punishment for ‘them’?

As civility and civilisations developed and grew, bonding, guidance and supervision of societies were entrusted to few of the committed and devoted trustworthy ones. Spirituality, religions and practices evolved were natural progressions due to the inherent limitations to grasp and understand nature, its components and their play. Morals, Canons, dogmas, edicts, fiats, diktats, tenets that followed are constraints on individuals/freedom specifically for their own and greater common good.

Laws evolved out of these and other faithful activities, good thinking and intent to create and live harmoniously with mutual respect and accommodativeness. Codified, consolidated, enacted rules, regulations, directives etc are gist of such efforts. Doctrines, principles, dictums, theorems etc too have evolved simultaneously to strengthen their administration and impact. Where in their annals can one find criminality and fraud in such selfless endeavours of citizenry? (New Companies Bill has timely brought `fraud’ out of closets to be guarded against and punished).

Don’t the law drafters and makers invoke Spiritual, Temporal and Commons to empower themselves? Thence, why should we the sane let the insane channelize their selfish motives in drawing up rules, laws and acts to facilitate grand larceny? Under moral turpitude perhaps! Don’t we citizens –with our rights well enshrined and protected in the Constitution- have the final say when our powers are being usurped? We shouldn’t be enslaved by wrongdoings and misdeeds of the elected few –normally unfriendly and polarised on ideological grounds, even if they build criminal majority amongst themselves- with evil intent. Bad faith indeed! Ubi dicitur reasonableness?

In the realms of law, how do we correct such unacceptable law making? Don’t we have recourse against the system that perpetrates injustice? Do we have to take to streets and resort to violence to make ourselves heard and understood? Can’t the big lawyers, the prominent ones and the famous jurists come together to solve the issue? Are we all so helpless and hapless to become subservient to nefarious activities of our *netas*? If not pro bono, can we create a legal aid for public cause to pursue our rightful grievances against the system?

Taken that the laws, courts and their modus operandi have tested, proven means and methods of addressing and solving complaints through various methodologies. Pardon my ignorance of such nuances, but pray, allow me to plead in the interests of citizens that we have to think laterally and innovate a new approach to accommodate the concerns of vox populi and find a just, fair and reasonable solution. Changes of mind-set vide paradigm shift in legal problem solving through due process of the law that is feared to take its own course, is necessitated. Quite simply, a complainant has to be heard and not just fobbed off because it may not suit the executive and judiciary also.

We have rights -some fundamental, and should not be discriminated. Our writ petition would need to be admitted without attempting to shield the miscreants. There is no room or provision in law to deny justice when the concern is genuine and its impact affects almost all the citizens in all walks of life in their living, co-existence and peace. Before the oft stated `courts are about law, and not about justice’ is repeated ad nauseum, as justice must be seen to be done, let us pause to think consciously and conscientiously to find solutions to the trilemma – obey, disobey or alter- we are in, as unlawful cannot turn lawful ab initio or anytime later.

Can the Board of Directors pass unanimous resolutions enriching themselves at the cost of stakeholders? Can Trustees govern to suit their own agenda? Can Societies be run against the ‘objects’(should have been `Objectives’ though) they were founded for? Can legislature make/amend laws for perverted means and ends? Weren’t such monarchies and dictators deposed/displaced? As a leading developing nation, is this what our Maha-Bharat can offer to those looking up to us?

In simplistic terms the parliament has no electoral/deemed authority to pass/amend such laws. Neither has the President any authority/ duty to sign on such dotted lines. Should he do so, he loses his moral/constitutional mandate and respect for the chair as well. If he indeed does so, such laws, amendments will be illegal, unlawful, void, voidable & immoral and will have no sanctity of law.

As such it will be open to us right-thinking and well-meaning citizens to disobey, disrespect, non-co-operate, rebel, revolt to set corrective measures in process through fair and reasonable means. Let us put all concerned on notice as to our intent and purpose on this Independence Day to preserve and protect our hard won freedom, rights, respect and responsibilities.