

‘Has Normality Returned?’

- *Maja Daruwala*

It is very difficult for me as an Indian, who loves my country very deeply and cares about every little thing that happens there – it nurtures you, you don’t belong anywhere else – to come and talk about matters that are such a great sadness. On this 55th birthday of the nation I would have preferred to have been able to talk of tremendous development, of deep democracy and of successful management of our diversity – and to celebrate the realization of our human rights. But today, uppermost in my mind is the huge challenge to the core values of our Constitution that the events in Gujarat have thrown up.

One of the gateway issues that those of us who speak on these matters have to battle with is the constant demand, not only from fundamentalists but also from our government, our bureaucracy and our political classes: “Why do you keep on talking about this? Why do you speak out?” But it is useless to say that we must not speak of this, or that we must speak of it only in whispers or at home. If we love truth and justice, and if we love our country, our culture and our Constitution, then speak we must. It is the classic situation of the battered wife who is criticised if she speaks out, while the man who beat her is not. That is hypocrisy which I will not accept. I have nothing I need to apologise for.

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The many historical, cultural and sociological dimensions that went into the making of a Gujarat cannot be itemised. But as a lawyer and constitutionalist, my concern is for the challenge that ‘targeted violence’, supported by state complicity, poses for the rule of law, for human rights and above all for the accommodation of diversity. All of those things are part of the unalterable basic structure of our Constitution, both legally and morally. They are the values on which we agreed to build a modern nation, 55 years ago.

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I have a very narrow agenda to pursue with you today. It is simply that I want everybody to be accountable.

It is repeatedly said, when analyzing what happened in Gujarat, that it was a failure of the State. But I want to suggest that this is not true. Actually the State is very much alive and well in Gujarat. It is a functional machine; everything works. But it is working, not to a constitutional agenda, but to the agenda of what can be called a hijacked State. The State has not been eroded or weakened. It has taken strength from illegitimate goals. And it is putting a process into place that will outlast the riots and which can only be stopped by demanding accountability, open and immediate.

I want my day in court. I want it for the victims and for those who lost family and property. I don't want them to go homeless and uncompensated. In Gujarat we see the quintessence of what governance and politics have become, and could continue to be, without this process of accountability.

There is a strong political class. It rules, with the support of individual dictators and ideologies that are not necessarily constitutional, by the steel frame of the bureaucracy – or the iron cage of the bureaucracy, depending on your point of view. Their will is, willy-nilly, the State's view. It is enforced by its coercive arm, the police. They all function very well. In the absence of an effective, speedy and accessible justice system within all these entities, politicians, bureaucrats and the police that depend on each other for protection are part and parcel of one class. A recent study indicates that, incredibly 95% of all political candidates come from the top decile of the rich, and are not willing to call anyone to account.

If that is the leadership, what of the people?

Money power, muscle power and a strong interplay between criminals and politics are well documented up and down the country. The dynamics of politics ensures that manifesto promises mean little; they do not form the mandate against which performance can be judged. What choice does the voter have? The choice between bad and worse. And voting has now to be expedient, according to short-term advantage, protection and loyalties based on caste or community. 'What will you do for me, if I give you my vote?' In that sense the voter is very smart. But he cannot be smart in terms of the Constitution, because he doesn't know the Constitution. We surveyed middle class and trading classes in Delhi. 70% - 80% knew that we have a Constitution. But the fundamental right of equality was not recognized.

Many commentators on Gujarat ask in bewilderment, 'How could ordinary people suddenly have turned on each other?' The answer lies in the erosion of the rule of law. When this breaks down, and law and order are willfully subverted by those in power, there emanates a strong message from the power-centres, that it is acceptable to break the law. Communities that have been living in amity with one another at a subsistence level, and who are not prone to do wicked things, realize there is a benefit and incentive in breaking the law-especially when it is almost guaranteed that one can do so with impunity. So the agenda is set at the very top, but the operation of that agenda and the suffering that results happens at the bottom.

The willingness of ordinary people to go with the flow for short term gain also points to the powerlessness of citizens.

The relationship between citizen and State envisaged in the Constitution has not evolved over these 55 years as that of sovereign citizen and elected representative. It is rather the relationship between patron and pleader. And as you go down the economic and gender scale, it becomes the relationship between master and servant.

It will continue to be so as long as there is no easy, speedy and local mechanism for adjudicating disputes, people will turn to wicked patrons and corrupt police in order to ensure their own safety and security. Equally, because people do not know about constitutional norms and equality, pluralism and non-discrimination, the large mass of the population will continue to live with an age-old and living system. It is imbibed from childhood and based on social exclusion, whether Dalits, Muslims or any other community; and it is based on social stratification, as we see in the case of women.

But if there is a long history of social division of communities as a living norm, there is also a long history of coexistence. People do not arbitrarily attack and kill one another. You have to deliberately cultivate and spread communal poison to turn coexistence into the carnage and the intolerance that we are seeing in Gujarat today.

We have a powerful State. A powerful State has the ability to send strong signals of approval or disapproval, and bring things quickly back on to the paths of constitutional norms. So what has been the response of the State?

You have heard endless reports of targeted killings, rapes and more. Every report - notably that of the National Human Rights Commission - has strongly castigated the State government and made accusations that the

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police did not do enough and could have done more. In my view it becomes clear, from the response of the Gujarat government to the NHRC, that the police were alive to the danger, especially immediately after Godhra. They were taking steps to ensure that things did not escalate, but bent to the orders of the CM made on the night of the 27th, the let people's feelings have full expression and not to stand in the way of what he assuredly knew would be prolific bloodletting.

To my mind this changed the course of events. The police, politicized and communalized as they were, felt they had no choice but to comply. The Ahmedabad Police Commissioner admitted: 'Where the whole society has opted for a certain colour in a particular issue, it is very difficult to expect the policemen to be totally isolated and unaffected.' The administration has said as much. Both display bias and both are wrong. All must be held accountable.

How else has the State responded?

- ▶ By initial refusal and tardiness in setting up camps.
- ▶ By refusing to recognize the gravity of the situation or to stem it.
- ▶ By discriminating in compensation awards – 2 lakhs* to the Godhra victims and 1 or less to those killed in subsequent carnage (the NHRC has commented on this and it was withdrawn). This is nugatory; it is blood money and does not go towards accountability. It is basically a way of saying 'Shut up – and sit down'.
- ▶ By using the Prevention of Terrorism Act immediately against people involved in the Godhra incident (that too was withdrawn, for its patent misuse).
- ▶ By refusing, on grounds of political expediency, to dismiss the Gujarat government – or even to rap Modi over the knuckles. In fact they said he was doing a good job and should not resign, even though he had presided over the deaths of 2,000 people and the destruction of an estimated 3,000 crores** of pro-property; and seriously jeopardized development within the State and its future. But what needs to happen before we can say that a government has broken down? What price do we put on those who have been killed? (I mean, what constitutional price, I do not mean money.)
- ▶ Whether it was deliberate or not, when the highest leadership, Mr. Vajpayee, finally spoke (and we were all waiting to hear what he had to say), he spoke in terms of 'we' and 'they'. He has explained a thousand times that it was inadvertent. Nevertheless, it sent a signal: it was the articulation of the feelings of the sectarian heart against

* 1 lakh = 100,000

** 1 crore = 10 Million

which we are fighting, that of the VHP/RSS combine. It reinforces notions of segregation that the Constitution of India does not permit.

- ▶ One of the most cynical responses of all must be the unseemly desire to hold early elections, to gain party-political advantage from the momentary arousal of the basest sentiments in the public consciousness. This, in a situation where a whole community has been virtually disenfranchised. All the good people who didn't come out and commit violence lost, at a conservative estimate, 3,000 crore*. Can you imagine the loss in daily wages? And at that moment politicians say, 'We can gain from this.'

Thos are the signals we have to look at when we talk about complicity.

Today the Prime Minster had said he regrets what has happened. This is a big step, for it dignifies the victims and gives them some validation and a measure of closure. But it also suggests that normality has returned, and that we should be grateful.

Mr. Noon has said that we should put these things behind us. He is right; so we should. But there is a condition. What is this normality to which they have returned? It cannot be normal for an entire population, and more particularly a segment of it, to live in insecurity. Who will protect them when they go out of their houses? Is there a police force you can trust? When the women go out to work, who will look after their families? Who will protect them when they have been pauperized or killed? What is the normality they are being offered? Are they being offered jobs?

It is not normal for men and women, deprived of their children and life partners, their livelihoods and loved, to be asked to go back into communities where they are forced to be in daily contact with gangsters, looters, rapists, arsonists and unrepentant purveyors of hatred. I have dozens of documented cases of people going back to work under threat and being forced to accept compensation of as little as £ 3 from small-time local officials. They demanded that they sign 'unofficial' bonds, promising not to file criminal complaints against their neighbours, nor to identify known aggressors and perpetrators of violence in their community, nor to ask for further compensation. That is the price for going back. Is that not too high a price to pay for normality?

It is not normal to pretend that there are systems of redress in place which will eventually provide them with just compensation. It is not normal to pretend that there are homes available for people to return to in safety, especially for women who have been raped or have lost their breadwinners.

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This 'normality' is well illustrated by Adambhai's story. He lived in the Kalol area from where, it was rumoured, some of the perpetrators of the Godhra outrage came. It was a high-risk area; close to Godhra. But despite prohibitory orders and full knowledge that trouble was a certainty, the police pleaded that little could be done. In the event a mob of about 100 people came on 28 February, the day after the train incident and looted shops and houses. Muslims ran away into the fields hoping that peace would be restored next day, because there were policemen in place and there had been enough warning to stop it happening. Instead, a much larger mob of at least 1000 armed Hindus entered the village next day and hunted down members of the community. Adambhai and others witnessed the deaths of more than 18 people. Eight of them were members of his own family. Other eye-witnesses say that some of the local police were leading the mob. Bereft and traumatized, Adambhai fled to the relief camp that had been set up in Godhra by members of the Muslim community to provide shelter. Two months later he plucked up the courage to send a written complaint to the District Superintendent of Police -he could not bring himself to file it personally at the police station. Adambhai has no way of knowing what happened to his complaint or if it is being investigated. He has not been summoned to provide witness, which probably means nothing has been done. An 'omnibus' First Information Report has, in fact, been filed in relation to the incidents in his village by the local police themselves. It talks of anonymous mobs responsible for violence, without mentioning any individual instance of murder, looting or arson. This is typical of how incidents are recorded. There are no individuals named. Investigations will be based on that report and can go in any direction, since there is little specific that need be followed up. Convictions are guaranteed to be impossible.

Since February, Adambhai has fled from Godhra to a camp near his home. When that shut down, he went back to his village. He has no business to support him and no family any more. Adambhai has received a total of £18 towards rebuilding his house. He is entitled to £ 2,000 as an ex-gratia payment for each family member killed. But Adambhai cannot find the remains of his loved ones, so the police refuse to declare them dead, only 'missing'. Even if the police agree to accept that Adambhai has 8 missing members in his own family, he will have to promise to return the money if the 'missing' person turns up in future. He also needs to give a guarantee of 'solvency.' It is unlikely that he can. This is a return to normality for Adambhai.

It is in this context – of the life of an ordinary family man and good contributing economic entity and fully fledged citizen of India, reduced to a terrified groveling half-life – that we must decide what it is we must do.

Our hosts have asked us. We must answer.

We must work for peace, but these are two types of peace. Peace with honour based on justice, and the Peace of the grave. For the living that second passive peace is equivalent to being among the dead who have no choice in the matter. It is compromise. It is the badge of a second class citizenry. It is unacceptable. Peace must be built on accountability. I am not talking about revenge, but about ensuring justice through law.

So how do we ensure that there is access to justice without impunity, that no act of human rights violation by the State or simple criminal bestiality by people goes unpunished, in a situation where there are already 20 million cases pending in the lower courts and the lack of access to justice is a scandal?

We join together in international solidarity: we unite across jurisdictions to insist on accountability, we commit to keep things under review even when others have forgotten. We follow individual cases; monitor and report on trends; lend assistance to those working for justice in the country; ensure that they have help and are not themselves in danger or intimidated; we ask for reform of systems such as police reform-this is so basic and vital that we cannot hope to avoid a repeat of Gujarat without it. Since 1977, the government of India and the State governments have sat on recommendations of the National Police Commission and resisted all efforts at police reform. Why would they, when the police serve political ends so well?

There are many areas where reform is overdue, but to my mind we cannot get anywhere unless we prioritise the reform of the justice system and fight for electoral reform. You may have seen how stoutly all parties in our fractious democracy came together to resist the perfectly reasonable directive of the Supreme Court and the Election Commission, that potential candidates reveal their criminal antecedents. This is being resisted to the death-our death!

If secularism and democracy are to survive in India as we would want them to, we need to fight at many levels and on many fronts. International society must signal its disapproval of bad behavior in our country.

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This is a real challenge. How do you deal with the perpetrators without punishing the whole country or restricting their access to aid and development assistance? Organisations like the Commonwealth keep countries under review at CMAG and trust to quiet diplomacy; the EU in the case of Mugabe in Zimbabwe has imposed smart sanctions that prevent him and his close family from being welcome abroad.

Apart from diplomatic nicety there is the real possibility of filing complaints and States recognizing them, even when crimes are alleged outside the jurisdiction. There are precedents for invoking universal jurisdictions – as happened with Pinochet.

This could possibly make it both an embarrassment and a serious legal hazard for people who have implemented, abetted or presided over human rights violation, to travel. There are opportunities to air the issues and get comments from the Committee on All Forms of Discrimination; at the Human Rights Commission, and elsewhere. International Dalit Solidarity has achieved this very well and only very recently.

We must not be inhibited by narrow definitions of who has legitimacy to speak out against human rights violations in a country and who has not. The language of Human Rights has become common coinage and is the recognized basic value-system of the international community of nations, of which India is a part. Once a country whether India or Britain, has submitted to the great covenants that guarantee our citizens' political and civil rights and assure non-discrimination, we must submit ourselves to their disciplines and abide by their codes.

I believe that India is a great experiment in constitutionalism. It is an unprecedented challenge to the notion that the quintessence of democracy is the accommodation of diversity and acceptance of dissent and differentness. Gujarat is the face of everything that went wrong. We are here talking with each other, and that symbolizes what is possible and what is potential. Here we are a minority. For us, when so much has gone bad, it is a time of pessimism. But not, I hope of defeat.

Someone once said that the only way to be optimistic about the future is to invent it. That is what we living in India and many of you living outside must do in solidarity with each other, so that next year will be one of celebration, rather than one more year of mourning for the India of our dreams.

Interventions made by Maja Daruwala during the conference:

Several points have come up. I guess one's views are only one's own, and we could argue for ever – and I am sure that at lunch time we will.

As far as the conference focus is concerned: at every conference I attend there's always somebody who gets up and says, "Why are you talking about this, and not that?" The answer is, 'Because we are talking about this!' There is always another time to talk about 'that'. I could ask the Conference organizers, 'Why aren't you talking about the Human Rights of women?' I'm very into it, but that's not the issue here. They have organized a conference on Human Rights and minorities in India because there is a major problem at the moment which has to be focused on. We can talk about it in South Asia next year, we would love to do so, but that would be another kind of conference and we would need to prepare for it. So the point is one that always comes up and I'm afraid it has no meaning – I'm sorry if that sounds harsh.

The issue about the arrest of a Chief Minister in South India – yes, when he was arrested he was filmed while it was happening. The whole country was up in arms, the arrest had a huge amount of attention. He made sure it did. And people like me who have no particular love for that minister did say it was wrong. We wanted to point to our agendas. What is my agenda? Police reform.

That brings me to another point. Everybody says, why are the British, the EU, other people, pointing a finger? You do something wrong and then you say that people should not point fingers! If you run around naked, people are going to laugh. Should they stop laughing, go indoors and close their eyes?

You have to take the consequences of the things that you do. Human Rights have become a universal coinage in terms of international parlance and discourse, in terms of economics and in terms of foreign policy. And if you recognize that, you will govern better. If you don't recognize that, just take the consequences as they come.

Sometimes the consequences may be ameliorated by India's capability at finessing something diplomatically. But how long can you do that? Smaller countries with smaller economies can't do that. We can. And we are managing, but for how long? At some stage you are going to have to go to the doctor's – you are going to get your diabetes treated – or you are going to die.

That is the issue before us, not who might be pointing a finger at us. Once we accept that we are part of the international community, and have submitted ourselves to the disciplines of the great covenants, we have to abide by those disciplines. That is the law and that is part of our Constitution. Please remember, we are not doing anything because the British or the Americans are telling us to do it. We have simply to abide by our rules and laws.

To answer the point about pluralism: pluralism and minority rights are written into our Constitution. There are sections that say we must be proactive. There are sections that recognize traditional disadvantage. There are sections that say you must not discriminate on grounds of caste, of religion, of linguistics, of this that and the other.

It is not only the rights of Muslim minorities that are protected that way. When we talk about 'minority rights' everybody in VHP seems to be thinking we are talking about Muslim rights. It's not so. We are talking about the rights of tribals, the rights of women, the rights of children, people in vulnerable groups, linguistic groups, cultural groups - those have to be accommodated if we are going to have the democracy that was envisioned in our Constitution.

Shah Rukh Kahn was mentioned. I find that offensive. To compare the success of a laughing, dancing actor to the real human tragedy of a woman being raped repeatedly and then having her children killed in front of her is to trivialize in a way that I am not willing to accept. *[Applause]*

Finally, money. There is great concern about where money is coming from and what is happening to it. India is a democracy. I think part of that democracy is the willingness to have extremes as well as to have dissent. I have no objection to the VHP or the RSS getting money, provided that they behave legally and provided that their money is coming in a transparent way, being accounted for, being used as the donors want and according to the laws of our country. Similarly I should be allowed to get money for my little activities; another should be allowed to get money for his Christian activities. Get the money, if you can account for it, if it's all above board, if it's on the table, do it.

It's when you do not do it even-handedly – when you attack all Christian institutions for getting money, or all secular organizations, and you question every penny and you chase them around for months and you make their life hell so they can't work because they can't get their field activists to work

– but you don't do the same for a temple trust or a mosque, then you are wrong. Let's have an even playing field. We'll manage.

You have been extremely generous in the time that you've given me. In one more minutes, I just want to re-focus on something.

This is a conference on Human Rights and minorities in India. I just want to say once again to those who have talked to day about terrorism: terrorism is outside. A terrorist, whether he's Hindu or Muslim or Japanese, is outside the law, and the entire legal system is geared to get him. But what we have been discussing is something different: What is the minority's right vis-à-vis the State? What is the minority's right to State protection? That is a different issue, and you cannot compare it with terrorism. You cannot. We have been asking: What should the State's response be to protecting and promoting a minority, its culture, its identity, ensuring that its members have the ability to be diverse and at the same time to be respected in exactly the same way as the majority – not to take away a single thing from the majority, not at all, but to enrich the majority?

That is quite a different matter to saying. 'A terrorist is doing that.' That fellow is just a simple criminal and we have to treat him as such.