

Reversing the spread of lawlessness in India

There is the widespread belief, not unjustifiable, among those committing crimes large and small that they will not have to pay for their crimes

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The increasing boldness and arrogance of those who break the law, the cynical abandonment of their responsibilities by those responsible for enforcing the law, and growing apathy among citizens is a deadly combination. Photo: Reuters

A couple of years ago a friend who was travelling abroad at the time called me to ask if I could accompany her house-keeper to the hospital where the latter had an appointment. The staff in question was suffering from breast cancer, was new to the city and didn't know her way around. On the designated morning I accompanied the lady to the cancer wing of the hospital, a leading public referral hospital of the country. The scene that confronted us was appalling.

Some 50 patients, in most cases accompanied by someone, were jostling with each other in a small room to get ahead in the queue for the doctors' chamber. These were all seriously ill cancer patients desperate for a consultation. They had been queuing up since 6.30 a.m. to see the doctors,

who would arrive around 9 a.m. A couple of orderlies were collecting the patients' files to place on the doctors' table. But they were also quietly collecting side payments from some patients to place their file on top of the others so that their turn would come earlier.

When our turn finally came, I asked the consulting doctor why they did not cut out the unnecessary chaos by instituting a simple queuing system of patients collecting their tokens or numbers on arrival as is done in many hospitals, banks and other public offices in India as well as all over the world. The doctor snubbed me by asking whether I thought she should use her time to attend to patients or manage the crowds. I did not resent her remark because she was right. Her job as consulting doctor was to attend to patients, not set up systems. That was a failure of the hospital administration. And the orderlies were making money because of that failure.

Consultation over, we went our way. It is another matter that the tests the doctor had recommended, supposedly free in the hospital, could not be performed since the machines were not functioning. Nor did the hospital have stocks of the supposedly free drugs that the doctor had recommended. So the tests had to be undertaken outside for a fee and the drugs also purchased outside for a price. Again a failure of the hospital administration. And again, somebody was making money because of that failure—in this case the private imaging clinics and pharmacies.

There was nothing unique about this experience. It is typical of what goes on every day in thousands of public hospitals throughout the country. But the episode has stuck in my mind because it is so representative of the many failures of governance, large and small, that we experience in our everyday lives.

Drivers jump traffic lights or drive on the wrong side, putting themselves and others at great risk. Roads, pavements and public spaces are eaten up by illegally parked vehicles or encroached upon by shops and buildings. Mindless residents chuck garbage all around their colonies. School teachers do not teach and encourage students to cheat. Primary health care centres remain dysfunctional. Ration shop owners refuse rations to eligible ration card holders, saying they are out of stocks. Power distribution staff don't fix damaged lines without a bribe. Petty bank staff refuse loans to eligible

small borrowers without a kick back. Senior bank managements sanction thousands of crores in loans without due diligence to crooked but powerful borrowers who never return the money. Licensing and contracting procedures also worth thousands of crores are gamed in return for bribes. Industrial units release toxic effluents into our water bodies, poisoning those who use the waters. Victims of accidents or violent crimes are left bleeding to death on the streets. Sometimes such emergency cases are even turned away from hospitals. Women are raped, victims lynched and murdered in broad daylight with impunity.

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The random list of cases above range from mere negligence and petty crimes to serious fraud, major crimes and heinous crimes. Some of these we have experienced ourselves. Others we learn about from the media. In sum, they add up to an environment of disorder and lawlessness. There are also some common threads running through this whole range of misdemeanours, petty crimes, serious fraud and major crimes.

First, there is the widespread belief, not unjustifiable, among those committing crimes, large and small, that they will not have to pay for their crimes. This lack of respect or fear of the law stems entirely from the wholesale failure of enforcement. Our knee jerk reaction to most dramatic events of fraud and crime to ask for stronger laws or rules. But the fact is that in India we do not have a deficit of laws and rules, if anything we have too much of them. We can have all the laws and rules we want but they will make no difference if they are not enforced, if those failing to comply with the law get away with impunity. Sometimes enforcement failure is simply a matter of sheer negligence, but often enforcement fails because there is money to be made from such failure, a defaulting enforcer collects bribes and is complicit in the crime.

The average citizen has no option but to grin and bear it all because individually she lacks the power to contain such failure. There is spreading acceptance of this weakening of the rule of law. The increasing boldness and arrogance of those who break the law, the cynical abandonment of their responsibilities by those responsible for enforcing the law, and growing

apathy among citizens is a deadly combination. If not somehow reversed through collective action the spreading atmosphere of disorder can lead to a complete breakdown of the rule of law.

Can something be done to reverse such a descent to anarchy? The #metoo movement that has finally reached our shores is a source of hope. For decades predatory men have used their power to sexually exploit women in the workplace. They are now tumbling like ninepins, and potential predators are running scared, in the social media storm unleashed by the victims who have discovered the collective power of their going public. I doubt that such a movement would have similar traction if unleashed against lawbreakers or the authorities who fail to enforce the law. Still, there is a lesson to be learned. In India as elsewhere if the environment changes and incentives change that can change behaviour.

In *The Tipping Point* (New York, Little Brown, 2000) author Malcolm Gladwell tells the story of how the high crime rate of New York was brought down based on the so-called 'broken window' theory of criminology. George Kelling, together with co-authors James Wilson and later Cathrine Coles, developed the theory that a prevalent atmosphere disorder, vandalism and lawlessness, encourages further lawlessness and serious crimes. A crackdown on petty crimes can reverse the environment to one of order and lawfulness, discouraging vandalism and eventually reducing the incidence of serious crimes. Hired by the New York City Transit Authority, and supported by its president David Gunn and police officer William Bratton, Kelling first mounted a concerted campaign to remove graffiti from the subway trains, catch fare evaders and punish other petty offences. Later, as Commissioner of the New York Police under mayor Guiliani, Bratton applied the same theory to crack down on vandalism, public drinking and other petty crimes in the city. The crime rate in New York, then among the highest in the world, declined rapidly in the 1990s and it once again became a city safe for its residents.

This interpretation has been disputed. Alternative explanations for the decline in New York's crime rate include an increase in the size of the police force, a general improvement in economic conditions that reduced crime rates throughout the US, including New York, and even a decline in lead content of gasoline. The 'broken window' theory has been subjected to much testing in several studies and results vary. But the burden of evidence

seems to confirm that creating an ambience of order and lawfulness through energetic campaigns against petty crimes does change social behaviour, eventually curbing the incidence of serious crimes as well.

How could we go about reversing the spreading atmosphere of disorder and lawlessness in India? Clearly, the lawlessness cannot be curbed without dealing with law enforcers who fail to do their job. Along with lawbreakers the law enforcers must also be held accountable and punished for failing to enforce the law. We need an incentive system where law enforcers find it in their interest to enforce the law rather than be complacent about or even complicit with the breaking of laws.

We need monitors to track the law enforcers, track whether they are enforcing the laws or not, ranging all the way from simple parking offences and vandalism to serious financial fraud and heinous crimes like murder and rape. A revolving door personnel system where today's monitors become tomorrow's law enforcers may not work, so do we need a separate dedicated force to monitor law enforcers? To pre-empt the 'caged parrot' syndrome used to describe the Central Bureau of Investigation, should the monitoring force be independent of the executive and report to an ombudsman? Can we expect a political class that tolerates the high incidence of legislators with serious criminal charges among themselves be expected to pass laws that would so empower the ombudsmen? Finally, would we also need monitors to monitor the monitors?

These are challenging questions of administrative design. I do not claim to have the answers, but these questions must be urgently addressed if we are to arrest a descent into disorder and lawlessness. The good news is that some of the best minds in a whole discipline in the intersection of economics and law are indeed asking these questions. Hopefully they can provide us some of the answers.

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