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Counterterrorism in South Asia:

'Low Hanging Fruits' of Cooperation

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South Asia is a cradle of ancient civilisation where 20% of the global population currently reside. Their ethos is intensely pluralistic, and at times even chaotically so. But like any other part of our globe, it is not free of the scourge of terrorism. What is significant, indeed striking, about South Asian communities is the consensus that while terrorism must be firmly addressed and eliminated, such actions must be undertaken within the broad parameters of the rule of law and justice. This is where the judges, prosecutors and police officers of the region are expected, indeed, required to play such an important role.

As a matter of fact, South Asian legal culture shares some commonalities that should buttress a sense of cooperation among the countries in this regard. South Asia's legal heritage dates back to the pre-1947 colonial times, to the British common laws of England and Wales. It

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recognises very well, and takes into account, the irony implied in Anatole France's famous quip: 'The law in its majestic equality forbids the rich and poor alike to sleep under bridges, beg in the streets and steal bread'. In South Asia, law is designed to perform the four customary functions: one, defending the citizens from evil: two, promoting the common good: three, resolving disputes over the limited resources and four, encouraging people to do the right thing.

The main instruments that even to this day guide the application of law in most of these countries date back to common sources, mainly to the British Raj during mid-and-late 19th century. While in England there is a preponderant influence of practice and precedence, in South Asia the principles were codified. For instance the Penal Code of 1862 lays down the quantum of punishment applicable to the culprit after trial; the Criminal Procedure Code of 1898 provides the procedural formalities to be adopted , especially in criminal cases and the process of trials; the Evidence Act of 1872, that comprehensive piece of legislation which was the brainchild of Sir James Fitzjames Stephen, is an elaboration of what kind of evidence should be admissible under different circumstances and their weightage; and the Police Act of 1861 that originally determined the nature and function of that law-enforcing agency.

Of course since then, and particularly since the independence of India and Pakistan in 1947 and the birth of Bangladesh in 1971, these have been amended in line with political, religious, and socio-cultural developments in each country. Trial by jury has been abandoned in all these countries. In the Islamic Republic of Pakistan certain *Sharia* laws have been introduced, as well as some traditional methods at local levels in the tribal areas, such as the *Jirga* or the Council of Elders, which is actually a carry-over from the past. In Bangladesh, when I was myself in the Cabinet, we successfully separated the judiciary from the executive. Significant societal developments such as rapid urbanization and the growing youth bulge created conditions in all these countries that had to be factored into the combating of violent extremism. However *that* golden thread that runs through the English Common Law system that one is innocent till proved guilty, or the right of any arrested individual to be produced in person before a judge as contained in the principle of *Habeus Corpus*, largely remains common to all as the main frame of reference. To some, these may seem rendering tackling of crimes difficult to that extent, but all South Asian countries remain committed to paying that price for the sake of justice. This is to be achieved without fostering unnecessarily a culture of complaints and compensation. Enforcers of law must never be instruments of oppression, but the watchdogs of civic rights and fundamental liberties. In reality, at times

this is not always so. But such high aims are worthwhile because it is these that lend vigour to our societies, and help us forge ahead.

Indeed the principle of justice is so strong that the South Asian prosecutors are not supposed to display a thirst for conviction in the cases they are associated with, but instead strive for fairness. In a key ruling whose spirit survives to this day the Full Bench of the Allahabad High Court in the case of the Queen Empress vs Durga stated: It is the duty of the prosecutor to conduct the case of the Crown fairly. His object should be not to obtain an unrighteous conviction but as representative of the Crown to see that justice is vindicated. Another similar ruling laid down the maxim that 'prosecution to use a familiar phrase, should not be persecution'.

At the United Nations, with which I have had the privilege of being associated not only as my country's long-term Ambassador and Permanent Representative but also as a 'Facilitator' for Reforms appointed by the President of the UN General Assembly in 2005, there is a continuing on-going debate and discussion on the counterterrorism architecture of that body, which is vital to the issue of world order. Our challenge is to tackle terrorism effectively while remaining within the parameters, norms, and standards of the UN, and of human rights. This would be best achieved through the proper implementation of the UN Global Counterterrorism Strategy.

It is regrettable that the UN Strategy is still not being acted upon sincerely in South Asia, though individually no South Asian country is immune from the effects of violent extremism. While the regional organisation, South Asian Association for Regional Cooperation (SAARC) adopted a Convention in this regard in 1987, and further updated it with an Additional Protocol in 2002, incorporating elements of the UN Security Council Resolution 1373, SAARC is yet to walk the talk. I would strongly recommend that it be deliberated at its highest political levels. It should be inserted as an agenda item at the next informal retreat of the SAARC Heads Summit. Only the leaders collectively can provide the necessary political directive for effective action. This is also true of the other regional body BIMSTEC, which comprises Bangladesh, India, Myanmar, Sri Lanka, Thailand, Bhutan and Nepal. This will become all the more critical after the projected withdrawal of the US and NATO (North Atlantic Treaty Organisation) forces from Afghanistan later this year.

Some South Asian countries, particularly those that are identified as least developed, could have some resource constraint in mobilising counterterrorism efforts across the broad spectrum of governance. The UN system, including the UNDP, should examine this, and in collaboration with the Bretton woods organisations like the World Bank and the IMF come up with ideas on how effective support can be rendered in this regard.

It is universally agreed that effective counterterrorism measures and the protection of human rights are not conflicting but complementary, as well as mutually reinforcing. The classical Romans had a saying in Latin: '*Fortier in re, suaviter in modo'*: 'be tough in your aims, but be smooth in the way you put them into practice'. The success in the implementation of our ideas, or any ideas, may depend on how we are able to conform to this piece of wisdom.

South Asia has always prided itself on its intellectual capabilities. These are resources that must be utilised to advance our societal interests. There is a role in this of practitioners in the field, of functionaries such as judges, prosecutors and police personnel in the field. As Mahatma Gandhi once said, an ounce of practice is worth tons of preaching.

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