

THE CONTINUUM OF SAFFRON SECULARISM¹

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The Sikh Riots in 1984, the Mumbai Riots in 1993, the Godhra Riots in 2002... all these events mark important milestones in the history of India. The memory of these days fills the common and the 'uncommon' man's heart with memories so dark that they are better not prodded. And the question is, what is the common factor that can be taken as the cause of the pogroms and their aggravating factors? Partisan Political Leaders, Spineless Bureaucracy, Aficionado Police and a Helpless Judiciary? The limbs of the largest democracy in the world have displayed nothing more than mere tokenism in either combating causes of communal tension or in helping people overcome the aftermath of the tension, let alone taking efforts to remove the causes. People of various communities live in India. Now in the religious spheres the environment is charged with religious fanaticism and religious conflicts. Gradually this religious fanaticism has manifested itself in a dreadful way, disturbing the peace and tranquillity of the social order. The assigned task of the various state players is not to get swayed by their communal passions and derive as much benefit as possible from this disease but to put a stop to the endless requiems that still remain to be sung at the loss of the many more lives if the communal ardour is not dampened. However, as far as communal passions are concerned, one has nothing to offer as a solution...

¹ Research paper on State-sponsored communal genocide with special reference to the role of governmental organs in the riots of 1984, 1987, 1992-93, 2001-02 and 2006.

Gandhi repeatedly declared:

“Religion is the personal affair of each individual. It must not be mixed up with politics or national affairs.”

1. Introduction

With the onset of the 21st century, mankind has come full circle. We struggled against arbitrariness and insecurity. Through gradual evolution we brought orderliness into our lives. After centuries of struggle, we devised rules to govern ourselves. We fought against dominance in various forms. We also formulated a philosophy to change the world. And this progress was what led to Constitution making, in itself a major step towards transparent governance.

Communalism emerged as a result of the emergence of new, modern politics based on the people and on popular participation and mobilization. It made it necessary to have wide links and loyalties among the people and to form new identities. This process was bound to be difficult, gradual and complex. This process required the birth and spread of modern ideas of the nation, class and cultural-linguistic identity. These identities, being new and unfamiliar, arose and grew slowly and in a zigzag fashion. Quite often people used the old, familiar pre-modern identity of caste, locality, sect and religion to grasp the new reality and to make wider connections and to evolve new identities of nation, nationality and class have prevailed. Unfortunately, in India this process has remained incomplete for decades, for the last 150 years or more a nation-in-the-making. In particular, religious consciousness was transformed into communal consciousness in some parts of the country and among some sections of the people. The question is why did this happen?

If a modern Diogenes were to hunt out for Indians with his lantern in these days, he would be sure to come across fervid Hindus, bigoted Muslims and fanatical souls deeply engrossed with the problem of tirelessly finding out how unjustly their own particular community was being treated, and he would have to ask in sorrow: “Where are the Indians?” Today every party, every political leader is competing to rouse this communal passion and to derive as much benefit as possible from this disease. What do we do about it?

It is no secret that one of the biggest challenges facing the Indian

body politic today is the challenge of communalism. The challenge is to the secular credentials of the Constitution. It is also no secret that the challenge comes from the ruling parties who head the ruling combine at the Centre.

The guarantee of maintaining communal harmony is at the heart of a secular Constitution. Multiculturalism, respect for all cultures equally and the right freely to practice religion, without fear of being put to death, must surely form the basis of any civilised constitution.

"We will not tolerate..." one has to proclaim. But exactly what should one mean by "We"? The inspiring opening words of the Indian Constitution, "We the People of India..." or, "We, the *Hindutvawalas*..."? That is the question?

Though the Constitution recognises the plural character of our society, issues of plural societies are never confronted and resolved democratically by any of the institutions functioning under the Constitution.

All the courts up to the apex court were not geared to deal with such large-scale genocidal violence. Nor were the innumerable commissions of inquiry set up for such purpose. The police bureaucracy down to the constable was suffering from a Hindu perspective and the criminal justice system was no exception.

The apex court differentiated between the persons responsible for the carnage and the persons involved in the carnage, the planners and the perpetrators and the "wanton boys", the conspirators and their instruments.

Notwithstanding the indignation at the failure of every institution of the State, the prosecution is directed only against the perpetrators. In our criminal justice system the principal culprit is either not prosecuted or let off if prosecuted.

Considering these facts and the distinct tendency and trends that mass crimes committed against marginalized groups have taken in past years, it is a grave lapse on the part of the Government of India, which has, to date, not enacted any law in compliance with Article V of the International Convention on the Prevention and Punishment of the Crime of Genocide, 1948. What happened in 2001-02 in Godhra, in 1993 in Bombay, and in 1984 with the Sikhs are genocides, and courts, as enforcers of International Covenants, ought to have taken serious note of these blatant transgressions of human rights and devised jurisprudential and procedural tools to deal with this situation.

A magniloquent attack on lawlessness is hardly a substitute for doing justice to the wronged. A court which innovatively protected propertied interests by devising the concepts of prospective overruling and basic structure could have devised a concept for disqualifying a chief minister or other ministers as having been constructively responsible for the carnage by redefining a writ of *quo warranto* for meeting these situations. If the chief minister Modi had been disqualified on the principle of constructive responsibility, Rule of Law would not have become the fugitive that it has become now.

The system on its own does not intervene to deliver justice, condemn discrimination and slaughter; it has to be pushed to do so. It has been rare that our system has delivered in the case of communal carnage and crime.

These are not random thoughts that occurred in one's mind one day. These are thoughts voicing the unvoiced and even un-pondered mulling of the billions of Indians who face these problems at the hands of the biased and incompetent state players everyday. The worst part is, both the Indian law and the International law condemns these acts and makes them punishable and yet the law is continued to be taken for granted and the law-makers, enforcers and the interpreters allow it.

The inspiration for this paper commenced with the communal flare-up in Vadodara (Gujarat, India) with the demolition of the 300-year-old shrine of the Sufi saint Syed Rashiduddin Chisti on Fatehpura-Chappaner Road, Vadodara's old city. The police had warned of a communal outbreak during the demolition. But the municipal corporation was insistent on knocking down the dargah.²

But, unlike the pogrom of 2001-02, this was only a riot. The violence of 2001-02 was a far more widespread, state-sponsored. There were reports of continuous police inaction, and the steps taken by the government was nothing more than tokenism.

Today at a time when our nation is bereft of political leadership, when leaders of industry have proved spineless in times of social cri-

² The start of the violence began, as the bulldozers closed in. A crowd started gathering and throwing stones and trying to stop the demolition. The police burst tear gas shells and later fired on the mob. Two people were killed. That was when things took a turn for the worse. The angry crowd went on the rampage in other areas close by. It stormed the Nyay Mandir (District Court) and burned vehicles outside. Curfew was imposed by 1 p.m. Two people were stabbed. The violence went beyond control.

sis, when the police in every state have been partisan in upholding the law and when bureaucrats have betrayed their oath to the Indian Constitution in support of venal executives, we need to keep reminding ourselves of how close many sections of society are to slipping into the tribalisation that Yeats deplored in his "Meditations in time of Civil War"; "We have fed the heart on fantasies, the heart's grown brutal from the fare... More substance in our enmities, than in our love..."

2. On Communalism

The Oxford Dictionary defines '*Communal*' as a *feeling of togetherness; where people share the same feeling, language and culture*. People of various communities live in India. Religion, in India, is taken as a private matter of the individual. *Religious fanaticism is termed as communalism*. Gradually this religious fanaticism has manifested itself into a dreadful state, disturbing the peace and tranquillity of the social order.

3. Genesis Of Communal Violence In India

The British imperialism sowed seeds of dissention as a deliberate design. British adopted the policy of '*Divide and Rule*'³ treating Indians basically not as Indians but as members of religious commu-

³ The question arises that why was communal violence needed by the state? The British officials clearly state the reason why they needed it: Divide and Rule Sir Henry Cotton wrote referring to the Partition of Bengal in 1905: "*For the first time in history, religious feud was established between them (Hindus and Muslims) by the partition of province. For the first time, the principle was enunciated in official circles: Divide and rule. The Mohammedans were officially favoured in every possible way.*"

Lord Minto wrote to Morley: "*I think that caste and religious differences, certainly in respect to the two great groups of Mohammedans and Hindus, are showing signs of weakening, and that in the next generation there is a great prospect of the disappearance of the separation of castes and religions in deference to the calls of political aims.*"

Source: *History of Modern India*; Bipin Chandra; 8th Reprint Edition; NCERT; New Delhi (2000)

nities and exploiting religious differences between Hindus and Muslims to perpetuate their imperialistic policy. Communal political encounters were made by British imperialism to appease the religious fundamentalists, from communal suffrage of 1909 (Morley-Minto Reforms for Muslims), of 1919 Montague-Chelmsford Reforms for Sikhs), to the Partition of India in 1947 and then the Sikhs Creation of Pakistan. These led to communal riots, migration of population, Gandhi's assassination on the 30th of January 1948 and the rise of political parties and the organization with strong communal orientation and parties coming in existence. These included the Muslim League, Vishwa Hindu Parishad, Rashtriya Swayamsewak Sangh, Hindu Mahasabha, which encourages its members to create disharmony. Subordination of national interests to narrow sectarian loyalties took place along with the rise of religious intolerance. In order to destabilize India, neighbouring countries and some Western Powers propagated communalism. They trained separatist and terrorist elements. They also helped with arms and ammunitions and capital. Communalism has its roots in the modern colonial socio-economic political structure. How bizarre this seems to one while reading from the past. Writing in the quiet seclusion of a prison in 1944⁴, Jawaharlal Nehru contemplated "the diversity and unity of India":

It is fascinating to find out how the Bengalis, the Malayalis, the Sindhis, the Punjabis, the Pathans, the Kashmiri, the Rajputs and the great central block comprising of Hindustani-speaking people, have retained their particular characteristics of hundreds of years, have still more or less the same virtues and failing of which old traditions of record tell us, and yet have been throughout these ages distinctively Indian, with the same national heritage and the same set of moral and mental qualities.

It is necessary to look at both the text of the Indian Constitution as well as the practice of the ruling parties, which have a self-professed Hindutva agenda.

⁴ His ninth term of imprisonment for revolting against the British.

The devastating consequences of this agenda have only recently been witnessed, leaving thousands dead or devastated, in what was nothing short of genocide. The conscious spreading of communal propaganda, the equally conscious incitement of religious sentiments was unconstitutional. The guarantee of maintaining communal harmony is at the heart of a secular Constitution. Multiculturalism, respect for all cultures equally and the right freely to practice religion, without fear of being put to death, must surely form the basis of any civilised constitution.

4. On Genocide

The **Convention on the Prevention and Punishment of the Crime of Genocide** in Article II defines the crime of Genocide as:

Genocide means any of the following acts committed with the intent to destroy, in whole or in part a national, racial, or religious group, as such:

Killing members of the group; causing serious bodily or mental harm to the members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; forcibly transferring children of one group to another group.

The Convention has also enumerated the offences that are punishable⁵: Genocide; Conspiracy to commit genocide; Direct and public incitement to commit genocide; Attempt to commit genocide; Complicity in genocide.

Under the Convention, it is a responsibility of member states to

⁵ To prove the crime of genocide, there has to be evidence of the physical destruction of a section, community, and racial or ethnic group as well as the evidence of mental harm. At the crux of it all, the evidence needs to point to an "intention" to destroy and harm; it is a crime not computed in numbers of dead or harmed but in the intention and desire to commit it - the sheer planning, pre-meditation, extent and thoroughness of the killings.

make legislation to give effect to the provisions of the present legislation; and to provide penalties to persons responsible to be tried by a competent tribunal of the state or such international penal tribunals whose jurisdiction the contracting party may have accepted.

The Gujarat carnage was especially coloured by state complicity in the violence, premeditation and planning behind the attacks on the lives, dignity, livelihoods, businesses and properties of the population a selective assault on their religious and cultural places of worship.

The Chief Minister of Gujarat, Shri Narendra Modi has been held by this Tribunal to be directly responsible, along with cabinet colleagues, and organisations that he leads and patronises For all these reasons together there is no way that the post-Godhra carnage in Gujarat can escape being called squarely what it was - Crimes against Humanity and Genocide.

It is a grave lapse on the part of the government of India, which has, to date, not enacted any law in compliance with Article V of the International Convention on the Prevention and Punishment of the Crime of Genocide, 1948.

5. Why Are The Ruling Circles And Their State Organizing Communal Violence Today?

Whose interest does Divide and Rule policy serve today? Who are they trying to divide and what for? What is this diversion today for? Communal violence today is being organized for the following reasons:

To weaken the resistance of the Indian people against neo-liberal globalization, privatization and handing over of public resources to financial oligarchies and monopolies and domination of India by imperialism, to weaken the movement against Prevention Of Terrorism Act⁶, To use it as a diversion from basic problems facing the people, To sort out conflicts amongst various sections of the ruling elite themselves; for the control of the state

⁶ Violence against the State was christened terrorism and to contain terrorism lawless laws were enacted; the latest is known by its acronym POTA.

machinery and resources, With the United States imposing its dictate for a unipolar world and its ambition to dominate Asia, this anarchy and violence also suits US.⁷

6. The Hindutva Agenda In The Context Of The National Political Parties

The Supreme Court of India has declared the basic feature of our Constitution as unalterable and not amendable. The Hindutva ideology of the RSS *parivar*, namely, India is Hindu and Hinduism is nationalism, of the ideal of a Hindu state within which Hindutva is seen as constituting the national mainstream or cultural nationalism, a state in which Muslims and Christian are minorities and second-class citizens and can live only if they win the goodwill of the majority, cannot be implemented in India through the constitutional system we have. Both cannot co-exist. This is a direct subversion of the Constitution and presents a permanent threat, which if not defeated will destroy the Constitution itself. In its multi-faceted offensive against the secular and democratic character of the Indian State, certain political parties have also forged an alliance with other non-party fundamentalist organizations, according to these groups, successive Indian governments have been following a policy of appeasement towards minorities. Virtually every single officially appointed judicial commission to probe into the cause of riots in different parts of the country has found the RSS and other majoritarian communal outfits guilty.⁸

⁷ They also use these differences to strengthen their positions by supporting the communal violence of the Indian state and also use it to get more concessions from the Indian state as they did in the past. It suits imperialism to play the communal card. In their geopolitics they also want to use Hindu India against China and Pakistan as well as other Islamic countries. Communal politics also suits their interest in many ways.

⁸ Some of the notable Committees are:

- The Justice Jagmohan Reddy Commission of Inquiry investigating the Ahmedabad riots of 1969
- The Justice DP Madon Commission of Inquiry into the Communal Disturbances at Bhiwandi, Jalgaon and Mahad of 1970
- The Commission of Inquiry, Tellicherry Disturbance, 1971, Justice Joseph Vithyathil

7. Servile Service

In the aftermath of the grim birth of a Indian nation in 1947, the leaders of the struggle for Indian Independence had resolved to retain a powerful bureaucracy inherited from the colonial legacy of governance. Their expectation was that it would act as a sturdy bulwark, a 'steel frame' to strengthen the unification of the land. In the decades that elapsed after Independence, the corroded 'steel frame' dissolved in the 'laboratory of hindutva'. The various carnages have proven that the Indian Administrative Service, which heads the law and order machinery in India, can not be trusted to act with fairness and objectivity as it willingly allows itself to be governed by the local politicians.

8. The Aficionado: The Police

The National Human Rights Commission (NHRC), New Delhi, has commented on the functioning of the police during communal violence and has adversely commented on distorted FIR, extraneous influences, lack of transparency and integrity. There was widespread lack of faith in the integrity of investigating process and ability of those conducting investigations. Atrocities against women including acts of rape are not recorded and investigated. Investigation and prosecution of crimes are not free from extraneous political and other influences and, therefore, the NHRC called for investigation by the CBI of the very worst incidents of murder, arson rape and other atrocities.

The issue of investigation in communal case trials were deliberately subverted by the police so that the names of the influential and

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- The Commission of Inquiry into the Communal Disturbances at Jamshedpur, April 1979
 - Justice Venugopal Commission of Inquiry into the Kanyakumari riots of 1982 (prolonged confrontation between Hindus and Christians)
Source: Combat Communalism, August 2004 <http://www.sabrang.com/cc/archive/2004/august04/cover1.html>
Also See: <http://www.sabrang.com/cc/archive/2004/august04/cover2.html>;
and <http://www.sabrang.com/cc/archive/2004/august04/cover3.html> (From the archives of the home ministry, government of India.)

powerful politicians are not recorded in FIRs, the charge-sheets and all other documents are unsubstantiated and repeated pleas by witnesses under section 173(8) of the CrPC for re-investigation are ignored.

In Gujarat and Mumbai riots of 1992-93 several cases were closed. The police even manipulate the case diaries. The Madon Commission appointed to inquire into the Bhivandi-Jalgaon riots of 1970 strongly reprimanded the police authorities for forging daily diaries and manipulating its contents. It is not as if the political classes are unaware of the inherent vulnerabilities of the Indian police as constituted under the Indian Police Act of 1861 that make it open to misuse and manipulation by the State, which really means, in the current situation, the political party holding office.

9. Judiciary And Communal Violence

What happened in 2001-02, in 1993, and in 1984 are genocides, and courts, as enforcers of International Covenants, ought to have taken serious note of these blatant transgressions of human rights and devised jurisprudential and procedural tools to deal with this situation. A magniloquent attack on lawlessness is hardly a substitute for doing justice to the wronged. The pogrom against Sikhs in 1984 in the nation's capital, or the post-demolition pogrom targeting Muslims in Mumbai in 1993; have escaped judicial condemnation.

Within six months of the carnages across several districts, two of Gujarat's lower courts acquitted all accused of the slaughter of 70 human beings in the village of Pandharwada, The state of Gujarat did not file any appeals against the acquittals. It was only after the country experienced Zahira Sheikh's sensational testimony in a press conference organised by Citizens for Justice and Peace, Mumbai that the true import of the situation in Gujarat became real and was addressed by the courts.

Within weeks of the Gujarat carnage, or genocide, as some of us plainly put it, citizens at different levels had petitioned the highest court in the land, praying for a judicial pronouncement on the utter constitutional breakdown in that state. Unfortunately, the courts preferred to wait, possibly to see if corrective action was forthcoming from the executive and legislative arms of the state.

Only the higher judiciary, especially at the Supreme Court level

provides relief to the victims of the communal violence. The Supreme Court rightly ordered the Modern Bakery case to be tried outside Gujarat. But for the Supreme Court the victims would have had to reconcile itself with gross injustices in the land of Hindutva. The Judge concerned of the Fast Track court also did not make efforts to find out why the witness had turned hostile. "*The High Court*", the Supreme Court observed,

Made unwarranted reference to personalities and their legitimate moves before competent courts, despite knowing it could not deal with such matters. Decency, decorum and judicial discipline should never be made casualties by adopting such intemperate attitudes of judicial obstinacy.

The Supreme Court in its remarks even reminded the people of "modern day Neros."⁹ The Supreme Court judges observed in their judgment,

The modern day Neros were looking elsewhere when Best Bakery and innocent children and helpless women were being burnt and were probably deliberating how the perpetrators of the crime can be saved or protected.

Even more forthrightly the learned judges of the Supreme Court observed,

Law and justice become flies in the hands of these wanton boys. When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as public interest becomes martyrs and monuments.

If the victims of earlier bouts of communal violence or pogroms did not have the satisfaction of a resounding judicial verdict in their

⁹ It is very apt reference to Nero though it is not clear whom the highest court has referred to as Nero. Nero was one who sent several Christians to death and was condemned to death by the Roman senate in 68 A.D.

favour, it doesn't speak well of the role of the police and the state and the existing legal and justice system. Our Constitution remains on paper. Rarely do our courts initiate *suo motu* action on issues of mass homicide and rights atrocities.

10. Anomie In Governance: Death Of Dissent And Societal Outrage

The framework of governance arms governments with the necessary illusions to take up cudgels against people for lawlessness when they are actually struggling for social change. One can have a Constitution without working it and by allowing parts of it to fall into desuetude. If the people are trained not to use rights, or look at the exercise of these rights as a futile endeavour, at a time when globalisation and market forces fail to enhance the quality of our lives as a human collective, we would have forgotten the art of collective protest. This state of affairs can only be described as anomie. The Constitution proceeds on the assumption that the State is likely to be the only violator of our freedoms. But all major assumptions of a liberal State have disappeared. The State under these circumstances corresponds to some extent with the 'Exceptional State' conceptualised by Nicos Poulantzas:

Law, to put it briefly, no longer regulates; arbitrariness reigns. What is typical of the Exceptional State is not so much that it violates its rules, as that it does not even lay down rules for functioning. It has no system for one thing, i.e. it lacks the system to predict its own transformations. This is evident with the fascist State.

There is an urgent need to save ourselves from this enveloping anomie. We have to try and reinstate the fast vanishing social cohesion without undermining the plural character of our polity.

11. What Is The Way Out?

What guidelines have the state players set out for preventing recurrence? Should they not set out guidelines to ensure that religion

does not enter the sphere of political government? Should they not have set down a principle of trial of these cases under the chapter on public tranquillity read with the Genocide Convention of 1948 to render complete justice? All these acts leading to the carnage satisfy the principal ingredients of a terrorist act under Section 3 of Prevention of Terrorism Act. If justice is to prevail, a necessary condition for this must be created through the dismissal of the Modi government and other governmental organisations akin to it, under Article 356 of the Constitution.¹⁰

It is strange that in a democratic society a citizen has to be afraid of his best-endowed fellow citizen. We must build unity in action of all those forces for democratic renewal and unite all those who are fighting against communal violence of the Indian state irrespective of their religious and political views or affiliation.

Democratic renewal of Indian society and empowerment of the people is the way forward.

12. Enactment Of Law

A step has been taken by the administration towards curbing the menace of fanatical propagation of religion through conversions, which are mostly forced upon citizens. The Rajasthan Dharma Swatantrya Bill, 2006; passed by the Assembly on April 7 is the new piece of legislation that bans religious conversion. Offences under the new law are non-bailable.¹¹

In pursuance of the U.N. Universal Declaration of Human Rights (1948), a penal law must be enacted for the protection and safeguard

¹⁰ There is legitimate apprehension among many about the use of Article 356, lest it set a precedent for the Centre to get rid of governments in Opposition-ruled states. But the Gujarat case is an exceptional one in so much as the state government has been seriously implicated by the NHRC and even the Supreme Court, in what are perhaps the most inhuman, horrendous and unconstitutional acts in the history of post-Independence India. Statements by serving policemen that have been made public clearly show that; orders were issued by none less than the present chief minister Narendra Modi that, minorities who resist or protest be exterminated. Put together, the imposition of Article 356 in Gujarat is warranted not only on grounds of humanity and constitutional propriety, but also for the maintenance of the country's unity, integrity and secular fabric.

¹¹ Source: <http://www.frontline.in/fl2307/stories/20060421004410600.htm>

of citizens against the onslaught of powerful groups. Similarly, there should be provision for relief and rehabilitation to the victims. The role of voluntary associations in providing relief and rehabilitation should also be specified in the proposed law.

The Protection of Human Rights Act, 1993 should be amended to the effect that the recommendations of the NHRC, be accepted like a judgement by both Centre and state. The NHRC should be so empowered under Section 18 of the Protection of Human Rights Act, (1993) that the commission's report after inquiry is accepted in toto, and it is not for the state or central government to interpret the recommendations for its convenience.

Finally, penal action must be provided for serious dereliction of duty on the part of government servants for failing to control communal violence.

13. Conclusion

It looks as though we have turned a full circle and returned to the Hobbesian state of nature where life was depicted to be "nasty, brutish and short". Instead of progressing towards an egalitarian society we have been busy completing the task left unfinished by Hitler and Mussolini.

There is urgent need for police reforms and maintenance of communal harmony depends upon the acceptance of the legitimacy of social and political institutions, administrative machinery including the police, and meeting the aspirations of the people. Our institutions should be capable of providing justice to all without discrimination, and our political institutions should be so managed that it makes 'violence as a political tactic both unnecessary and unrewarding.'¹²

As far as communal passions are concerned one has nothing to offer as a solution. We can only continue to push ourselves; in the words of Auden in 'the Shield of Achilles'; to, "*a world where promises are kept; and one could weep because another wept.*"

¹² The Report of US National Commission on Causes and Prevention of Violence (1969; 68).