

Communal Violence and the Law in India – A Legal Perspectives

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Abstract : *India has a composite culture where people of all religions, caste and communities are equal before the law as enshrined in the Indian constitution. The Universal Declaration of Human Rights, 1948 recognizes that all human beings are born free and equal in dignity and rights without any distinction of any kind including religion. Communal violence tends to create internal disturbance, destroy the basic fabric and threatens the unity and integrity of the nation, the supreme law of the land, mandates the Central Government and the State Government to take effective measures to suppress communal violence perpetrated on such a magnitude and dimension which threatens the secular fabric and unity and integrity of the nation.*

Key words: Communal Violence, Human Rights, Offences, Criminal Justice System.

Introduction: India has a composite culture where people of all religions, caste and communities are equal before the law as enshrined in the Indian constitution. Everyone has a right freely to practice his religious belief. The Constitution dovetails freedom of religion on the one hand and secularism on the other hand. Secularism is one of the basic features of the Indian constitution and Communal violence is anti-secular activity. It is the duty of the State to prevent communal violence that tends to create

internal disturbance, destroy secular fabric and threaten the unity and integrity of the nation.

Communalism is a malady which erodes the society. It is the manifestation of anti-secular belief and may lead to communal violence. On communal violence there is no exact law except two Bills introduced in 2005 and 2011 respectively. Pre-independence period casualty

Table 1: Pre-independence period casualty¹

Years	Killed	Injured
1921-25	3116	1638
1926-30	495	4054
1931-35	561	3379
1936-40	75	794
1941-45	243	952
1946	15735	13734
1947	5,00,000 Approx.	

The post-independence era has not been better. The instances of communal violence have increased since independence. There were 60 incidents of communal violence in 1981 which took the toll of many lives. In 1985 more than three hundred people were killed in 525 communal riots. During 1986-89, there were 2,086 communal riots in the country leading to death of more than one thousand persons and more than twelve thousand people were injured during the said riots. On demolition of disputed Babri Mosque in December, 1992 about two thousand people were killed and eight thousand were injured. The historical verdict of the Apex Court on 9th November, 2019, the outbreak of riot in Gujarat in 2002 took the life of more than 1200 persons and the loss of worth rupees 687.72 crores was officially estimated. Similarly during 2005-2009 while 648 people were killed and 11,278 were injured in 4,030 incidents of communal violence. 36.2% of all the casualties in India since 1954, according to the United Nations Human Development Report, 2004 have occurred between 1990 and 2002. The Ministry of Home Affairs in its Annual Report, 2009-10 has mentioned that while 826 communal incidents took place in 2009 in which 125 persons were killed, 943 communal incidents took place in 2008 and in that 167 persons died.

Table 2: Conviction in Communal Violence²

Post-independence year	Court cases	Conviction	Conviction to tried case trial	Convictions to Registered conviction
1957 Hospet (KA)	47	25	53.2%	--
1964 Rourkela	27	4	14.8%	--
1967 (Gorakhpur)	56	16	58.8%	27.3%
1980	125	6	4.8%	1.5%
1983	146	--	2%	0%
1984 (Bhiwadi)	185	4	2.2%	0.7%
1985 Kalyan	63	0	0%	0%
1985 Ahmedabad	63	0	0	0
1989 Bhagalpur	251	29	11.6%	3.5%
1992-93 (Bombay)	42	8	19.1	0.4%
2012 (Gujarat)*	20,000	9		

Communalism was a blight on the body politics because the nationalist saw nation-ness as natural – the heritage of every people – given by birth.³ The Universal Declaration of Human Rights, 1948 recognizes that all human beings are born free and equal in dignity and rights without any distinction of any kind including religion. Everyone has the right to life and security of person and no one shall be subjected to cruel, inhuman or degrading treatment.

The National Human Rights Commission of India observed that it is the primary and inescapable responsibility of State to protect the right to life, liberty, equality and dignity of all. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts or through abetment or negligence.

The Constitution of India imposes a duty on the Union to protect State against internal disturbance.⁴ When communal violence tends to create internal disturbance, destroy the basic fabric and threatens the unity and integrity of the nation, the supreme law of the land, mandates the Central Government and the State Government to take effective measures to suppress communal violence perpetrated on such a magnitude and dimension which threatens the secular fabric and unity and integrity of the nation.

Communal Violence in India: India is a pluralistic society where people of all religious, caste and communities are equal before the law as enshrined in the Indian constitution. Everyone has a right freely to practice his religious belief. It belongs

equally to Muslims, Christians, Buddhists, Jains, Parsis, Jews and Sikhs and all are equal under the law. Only Hindus cannot live in this country as a first rate citizens while others can live as second-rate citizens. In this country, all citizens are entitled to live as first-rate citizens.⁵

India witnessed a holocaust in the form of religious riots at the time of partition which had engulfed the subcontinent in religious madness. Religion in fact binds spiritual nature of man to supernatural being and it includes worship, belief, faith, devotion etc.

Causes of Communal violence in India: The spell of communal madness most likely happening during festivals, procession through prohibited route, or due to eve teasing or economic rivalry and politics. Social tensions give loss of lives and property and fear in interaction and movement. The framers of the Article 15 of Indian constitution wanted to dismantle the structure of social discrimination perpetuated by the caste system and also the possibility of religious discrimination in India. First, it is political. The Ministers give their views on communal violence and they unduly influence local officers dealing with a situation and thereby undermine the respect and dignity of civil and political administration and demoralize them. Secondly, the crime statistics confirm that six local factors influence the quality of riots statistics:

- (i) The corruption of the local police;
- (ii) The perceived power of those who initiated the riot that the greater the power the greater the reluctance of the police to register case;
- (iii) Where policemen were injured or fired their weapons and the level of financial compensation offered to riot victim by the State or Central government;
- (iv) In the annual crime reports in India, the communal riots are not listed separately but include in the general category of riot together with union and the student related violence;
- (v) The Indian Home Ministry does in fact collect town level statistics on death injuries and property damages after riots; it receives reports forwarded to New Delhi by each states Home Ministry and by its own intelligence agencies.

Existing Legal framework: Indian Penal Code, 1860: For the sake of clarity and convenience various offences related to work covered by the Penal Code have been divided as under:

- (i) Offences against public tranquility
- (ii) Office against religion
- (iii) Specific offences against human body and property.

Clause 11 of the Bill, Offence under the Indian Penal Code, 1860 the following provided in:

- (a) Schedule II, Part A of this Bill; or
- (b) Schedule II, Part B of this Bill, when committed against any person belonging to a group by virtue of his or her membership to that group, shall be deemed to be offences of communal and targeted violence under this Bill and shall be dealt with accordingly.

Schedule II, Part A is as below:

The Indian Penal Code, 1860 Section	Description of offence
153B	Imputations, assertions prejudicial to national integration.
295	Injuring or defiling place of worship with the intent to insult the religion of any class.
295A	Deliberate and malicious acts intending to outrage religious feelings of any class by insulting its religion or religious beliefs.
296	Disturbing religious assembly
297	Trepassing on burial places etc.
298	Uttering words etc. with deliberate intent to wound religious feelings of any person.

Schedule II, Part B, comprises the following section comprise 120, 141, 142, 144, 145, 146, 148, 149, 150-157, 322, 324, 336, 337, 302, 307, 375, 376, 397, 435, 436 of Indian Penal Code 1860 and the Bombay Police Act, 1951, Section 353.

Public tranquility: Chapter VIII of the Indian Penal Code, 1860 deals with offences against public tranquility. This chapter comprises twenty sections from 141 to 160. The formation of unlawful assembly may assume various dimensions and accordingly provisions for punishment have been made.

Offences relating to Religion: Chapter XV of Indian Penal Code 1860 entitled as “Of offences relating to Religion” containing four sections. However, Section 505 though it fall under the Chapter XXII entitled “Criminal Intimidation Insult and Annoyance” but it has been discussed here only the main reason for these sections in Indian Penal Code to curb the factors that are responsible for inciting religious animosities and which is in accordance with the declarations of religious toleration of the government, which is necessary to prevent religious riots and crusades.”⁶

Specific offences against Human Body and Property: Rapes during communal tension are quite rampant. The accused is chargesheeted for offences like any other rape case. In *Sister Meena Lalita Borwa v. State of Orissa*⁷ in the month of December 2007 communal violence broke out in Kandhamal district, Orissa and while tension continued to prevail in the said area, Swami Laxmanananda Saraswati was murdered in August 2008, once again, resulting in large scale violence in Kandhamal district and other parts of Orissa. During such violence, Sister Meena Lalita Borwa was sexually assaulted, raped and paraded naked by a mob of 40-50 persons. The case was registered for the commission of offence under sections 147, 148, 324, 354, 355, 294, 376 (2) (g) read with Sections 149 of the Indian Penal Code 1860.

Judicial responses: The Best Bakery case is very significant juncture in the analysis of the Gujarat Pogrom surcharged by communal frenzy which occurred after the burning of a compartment of railway train at Godhra Railway station on 27th February 2002. On this from first day of March 2002 massive violence and arson by unruly mob of 1000-1500 people took the life of several persons. The Trial Court and the High Court of Gujarat acquitted the entire accused persons who were indicated for various charges under section 147, 148, 149, 188, 504, 342, 427, 436, 395, 307 and 302 of Indian Penal Code, 1860. When the appeal in *Zahira Habibullah H Sheikh v. State of Gujarat*⁸ reached at Supreme Court, the court opined that the present appeals have several unusual features. The order for retrial was permitted because question raised by the State of Gujarat itself which related to threat and coercion of witnesses and improper conduct of trial by the public prosecutor. The role of the investigating agency itself was found to be perfunctory and not impartial. The parties made rival contentions. The accused persons alleged their false implication, the victims' relatives. The way in which the trial has been conducted demonstrates the trial judge remained as a mute spectator when justice as sacrificed at the altar of the temple of justice leaving the poor victims of communal violence and murder in perils. The Supreme Court shows that there are evils exist where the society is heterogeneous. Dangerous repercussions and reactive effect on the society brought then it is the constitutional duty of state to protect its entire citizen from communal violence.

In *Amjad Khan v. State*⁹ the communal riot had broken out in the town of Katna in Madhya Pradesh between Sindhi refugee and local Muslims. Muslims shops were looted and some Muslims lives were lost. The mob beat upon the closed doors of the shop of the accused with lathis. Before the mob could break into the shop, the accused fired two shots from his gun, which resulted in the death of the man in the riotous crowd. The Supreme Court held under Sections 102 and 105 of the Penal Code the

right of private defence was available to him against mob.

In *Babu Rao Patel v. State (Delhi Administration)*,¹⁰ the Supreme Court was faced with the task of distinguishing speech violative Section 153A from political thesis and historical truth. The Supreme Court examining two articles held that the first entitled 'A Tale of Two Communalisms' was an undigested attempt to promote feelings of enmity, hatred and ill-will between the Hindu and Muslims communities'. The reference to the alleged Muslims traditions of rape, loot, violence and murder and the alleged terror struck into the hearts of Hindu minority in a neighbouring country by periodical killings.

Role of Criminal Justice System: 'Law should not sit simply, while those who defy it go free and those who seek its protection lose hope'.¹¹ The Criminal Justice System plays a crucial role in attainment of truth. Justice forms the cornerstone of each nation's law. The Constitution of India and the criminal justice system have a reciprocal relationship. The constitution sets certain ideals directly on State to securing justice to the people and maintaining unity and integrity of the nation. The main objective of criminal justice system is to create social harmony and maintain order by enforcing the laws and curbing their violations. It comprises communal violence cases the role of police, public prosecutor, judiciary etc. These agencies constantly depend on the constitutional support to their principles and procedures.

Role of the State: India is big country comprising the 28 States. No country in the world has a greater diversity of group life, "when State came into existence, when man felt the necessity of State, it has no fix date of the circumstances surrounding the dawn of political consciousness". The most popular theory is known as Social contract theory. Social contract theory is based on "human life was solitary, poor, nasty, and brutish and short". So the State is formed.

Role of State as Night watchmen: The night watchmen state of classical liberal theory, limited to the functioning of protecting all its citizens against violence. Right to life, liberty and property were once considered to be inalienable rights under the Indian Constitution,¹² each one of these rights was considered to be inextricably bound to the other and none would exist without the other. Of late, right to property parted company with the other two rights under the Indian Constitution and took the position of a statutory right.

Role of State to do Justice: According to John Rawls, the State is emerged to do justice. For this State have to follow two principles that are commonly known as two principles of justice: (i) each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty after others; and (ii) social and economic inequalities are to be arranged so that they are both, (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and office upon to all under conditions of fair equality of opportunity. India is secular and democratic country. The security of India is the prime concern of the Union of India. Public order or law and order fall in the domain of the State.

Role of State in prosecution in Communal Violence Offender: As per the allegation made by National Human Right Commission on Gujarat government on Gujarat riots (2002) as follows:

- (i) The State Administration had not suppressed communal violence with legal and rightful penal power.
- (ii) The State failed to protect rights to life, liberty, equality and dignity as laid down in the Constitution.
- (iii) The State failure to identify local factors and players for participating in the violence.

In the matter of Commission of offence and for ensuring that the offenders are booked, the primary responsibility is of the State and it is for the State to ensure that the offenders are booked and the victims are not made to suffer.

Compensation and Rehabilitation of Victims of Communal Violence: The compensation to victims of communal violence is a matter of concern. The victim protection jurisprudence developed in United Nations General Assembly 1985 by adopting a 'Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power'¹³ was included, the immediate family members as well as it applied to everyone irrespective of race, religion, nationality, language, age, colour, cultural belief and cover the protection programs for victims of crime and abuse of power. A victim of crime is a person who suffers any loss or injury as a result of the crime. In the case of grievous hurt, the victim would be the person on whom the hurt was inflicted although, there would be other family members, and friends who may also indirectly suffered the trauma.

Compensation under Public Law: The public law proceeding serves a different

purpose than a private law proceedings. The relief of monetary compensation as exemplary damage, in proceeding under Article 32 by Supreme Court or under Article 226 by the High Court, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.

In communal violence incidents, which violence become national issue then Central Government grants ex gratia compensatory relief. Otherwise, the victim thinks they have no remedy because a criminal justice system does not provide any legal tools to be compensated.

Compensation and Reparation under Communal Violence Bill, 2005: Communal violence Bill, 2005 provides the duty of each State to establish funds for the victims of communal violence. According to the Scheme of this Bill, there are two types of funds (i) State fund (ii) District fund. According to Clause 49 (1) every State government has to establish a fund to be called the State Communal Disturbance Relief and Rehabilitation Fund and there shall be credited thereto-

- (i) All money received from the Central Government;
- (ii) All money received from the State Government ;
- (iii) All money received by way of gifts or donations, from a public sector undertaking or a local authority or an individual or a private voluntary organization;
- (iv) Amounts received as aid from the International Organisations or organizations in India where necessary in terms of the existing regulations governing such aid, for the rehabilitation or welfare of victims of communal violence.

Clause 4 provides that the assistance from the district fund may not be given to those victims or to legal heirs if the victim itself is involved in the commission of any offence under the provisions of this Bill.

Remedy and Reparation under Bill, 2011: Any person who has suffered physical, mental, psychological or monetary harm or harm to his or her property as a result of the commission of any offence under this Bill, or when death has occurred as a consequence thereof, the next of kin of such deceased person shall be entitled to remedy and reparations including compensation, restitution and rehabilitation.¹⁴ The State Government in co-ordination with the Chief Secretary of the State, the Inspector General of Police, Superintendents of Police or Commissioner of Police, as the case may

be, the Collector shall ensure that any entitled persons, whose life, liberty or property is threatened or where he or she apprehends such threat, is immediately provided security including creating police outposts and pickets in the vicinity of the affected area and providing temporary relocation, if necessary.¹⁵

Conclusion: India is pluralistic society where people of different caste, creed and religion reside. The constitution makers gave a dynamic and vibrant secular constitution which extends equal protection to each and everyone without any discrimination and extends equal right to profess any religion. Justice – social, economic and political inhere in every aspect. India is thus not a country of any particular belief and faith instead everyone having belief and faith in any religion is accepted in this constitutional scheme and has equal citizenship rights. Despite its unique tradition of tolerance, India has witnessed several communal violence in pre-independence and post-independence era too.

Communal violence, hostility or antagonism between different race and religion was unknown to Indian history despite people of different culture and religion resides since long. Communalism is malady, a social disease, which erodes the fabric of society by creating an artificial tension between different communities.

The communal violence is in common parlance, confrontation between two or more communally identified groups. But the communal violence has not yet been treated as distinct offence rather it is treated as social tension. The Communal Violence (Prevention, Control and Rehabilitation) Bill, 2005 is punishable and under Clause (19) of the Section 3 (c) of the Prevention of Communal and Targeted Violence (Access to Justice and Reparation) Bill, 2011.

In view of the above, the following suggestions may be given

1. Any offence which is actuated with the feeling of religion, caste, race, should be treated as a case of communal violence- an offence of discrimination.
2. The community motivated offences should be treated distinctly and should not be treated at par with any other ordinary offence while awarding the sentence under the penal laws.
3. The offences having element of religion, caste or race should be treated as aggravated category of traditional offence.
4. Whenever an offence was actuated with communal motive this may be treated as an aggravating circumstances for imposing enhanced sentence upon the accused.
5. The investigative branch of police should be separated from political interference

and get autonomy in matters of investigation.

6. The Trial court should exercise its power given under section 311 of the Criminal Procedure Code, 1973 and Section 165 of the Evidence Act, 1872.
7. The media should refrain from spreading sensations in the community by becoming a more responsible fourth column of the State.
8. The duty should be imposed upon the State by making effective law to protect the witnesses from being threatened or coerced either by an individual and also a provision for the insurance of such witnesses may be resorted to.
9. Where the state itself is found to be involved in outbreak of communal violence, it may be a ground of imposition of president rule under Article 356 of the Constitution of India.
10. The victims of the communal violence must be adequately compensated and an effective rehabilitation policy must be made.

End Note:

1. "Casualties of Death", *The Hindustan Times*, (1989, August 8) Delhi.
2. Steven I. Wilkinson, *Votes and Violence – Electoral Competition and Communal Riots in India*, 2005 Cambridge University Press: Printed by Replika Press (P) Ltd., India, p. 89.
3. Theodore Morrison, 'Muhammedan Movements', in J. Cumming (eds.). 2006. *Political India*, London, 1932, as referred by Gyanendra Pandey, *The Construction of Communalism in Colonial North India*, Oxford University Press, New Delhi, India, at p. 2.
4. See, Article 355, Constitution of India.
5. *Arumugam Seervai v. State of Tamil Nadu*, [2011] (6) SCC 405
6. *Queen Empress v. Imam Ali*, [1888] ILR 10 All 150 (FB)
7. 2010 Cr LJ 2779 (SC)
8. (2004) 4 SCC 158, popularly known as Best Bakery case also includes the cases as *Zahira Habibullah Sheikh (3) v. State of Gujarat*, [2005] 4 SCC 292; *Zahira Habibullah Sheikh (4) v. State of Gujarat*, [2005] 4 SCC 294; *Zahira Habibullah Sheikh (5) v. State of Gujarat*, [2006] 3 SCC 374
9. AIR 1952 SC 165
10. AIR 1980 SC 763
11. *Jennison v. Baker*, [1972] 1 AllER 1997.
12. Article 13 (2)
13. 39 YUN 743 (1985, 29th November) General Assembly Resolution 40/345.
14. See, Clause 87(1) of the Bill, 2011.
15. *Ibid* 89(1).

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