

NATIONAL CONSENSUS ON COMMUNAL VIOLENCE

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The promised enactment of a comprehensive law on communal violence by the UPA Government should not be treated as a partisan issue in spite of the fact that the issue of genocidal nature of Gujarat carnage played a role in making large sections of civil society organizations mobilize opinion against the NDA Government. It would be better if a national consensus was arrived at on permanent legal institutional reform measures required for impartial, effective and humane law enforcement for prevention and control of all inter-group riots and for speedily bringing the guilty to justice and rehabilitating and compensating the victims. Such a consensus needs to be developed on the basis of the recommendations of various Commissions, including those related to police reorganization for its functioning independent of cynical political directions of the ruling party and effective preventive mechanism for conflict resolution.

Essential requirement of a national consensus is the realization that it is not only the victims of Gujarat carnage who deserve justice and it is not only Modi Government which is responsible for crimes against humanity. Justice needs to be done in all other major riot cases, especially for anti-Sikh pogrom of 1984. That the pogroms of Delhi 1984, Hashimpura 1987 and Gujarat 2002 are Genocide have been testified by responsible national and international jurists and human rights and peace workers.

There is a need for the human rights class in the country to vigorously exert to make the present Government rise to the occasion and enact and implement the promised law against friend and foe, in Delhi as well as Gujarat, Nellie and Bhagalpur.

In this regard the important issue that needs to be addressed is the relative roles of the State and Central Governments. Major communal riots, which, on occasions, spread over several States requiring assistance from central forces including army, cannot be treated as routine law and order problem to be dealt with exclusively by the States. While discussing the issue it needs to be kept in mind that most inquiry reports, official as well as NGO, of riots from Jabalpur (1961) to Gujarat (2002) reveal that it is the State's failure of governance caused by partisan law-enforcement based on cynical political calculations or inefficiency or both which resulted in massive destruction of life and property.

Given such a recurring pattern of communal violence it will not be fair to give exclusive jurisdiction to the same government of the State to institute inquiry to fix responsibility, and to register cases, undertake investigation and prosecution of accused persons by the same agencies whose role is tainted, and to leave the victims of violence to its mercy for adequate relief, compensation and rehabilitation.

Examples of gross distortion of course of law in riot cases are provided by those related to 1984 anti-Sikh massacre in Delhi and more prominently by the case of the trial of the 19 accused PAC men who were found responsible by the U.P. Government's CBCID inquiry for conspiracy and killing of 42 Muslims of Hashimpura, Meerut in May 1987. After filing the charge sheet against them in the court of CJM, Ghaziabad in May 1996 the public prosecutor seems to have been colluding with the accused to escape the law. It was only after the publication of the story of the nefarious role of the U.P. Government by Siddhartha Varadarajan prominently in the Times of India on 17 May, 2000, that the accused started surrendering in June-July, 2000 and secured bail. In view of these circumstances the case was transferred by the Supreme Court to Delhi in September 2002.

Till the Best Bakery case, even the judiciary, subordinate as well as higher, has been dealing with riot related cases in a routine manner, which has encouraged a pervasive climate of impunity.

The situation calls for a central law under the provision of 'internal disturbance' in Article 355 holding the State Government responsible for maintaining communal peace and liable to dismissal under Article 356 if the rioting continued for, say, more than five days resulting in loss of more than, say, hundred lives. Such a comprehensive law should provide for a Statutory National Crimes Tribunal (SNCT) empowered to fix responsibility for failure of governance and to undertake investigation and prosecution, as well as to determine losses and reparation and rehabilitation of victims.

It needs to be kept in view that the National Police Commission's Report VI (1981) dealing with Communal Riots, expressed the opinion that trial of cases related to riots required not only special courts and prosecutors but also special procedure. No justice can be done in the absence of provision for special procedure for trial and punishment, if the riots acquire the nature and dimensions of a pogrom, a genocide, for the prevention and punishment of which the Government of India is committed to enact a law under Article V of the Genocide Convention 1948 to which we acceded in August 1959. Article 51(c) of the Indian Constitution directs the State "to foster respect for international law and treaty obligations". Article 253 empowers the Parliament "to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention". Moreover Article 20 of the International Covenant on Civil and Political Rights (ICCPR), which has been acceded to by India in 1979 binds the Indian State to prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". Mere transferring cases from Gujarat to Maharashtra is not enough, as is obvious from the fact that even appointment of public prosecutor in the transferred Best Bakery case lay in an unsettled area of jurisprudence.

Such a Central law cannot be treated as only a model for the States to enact their own laws under the plea that law-and-order is a State subject. It should be enforceable under the overriding imperative of protection of the life, dignity and freedom of citizens of all classes and communities and especially of vulnerable sections, when they are under attack from organized groups motivated by hate and revenge. It is an absolute obligation of the Indian State to its citizens belonging to weaker sections and vulnerable minorities.

However such a law should have built-in provision of safeguard against abuse of power by the Central Government, for which the authority deciding the applicability of the law should vest in a body which may ensure its independence from the political calculations of the ruling party(ies).

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