

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 5 | Issue 6

---

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Communal Violence: A Critical Study

---

SAKET PRAKASH<sup>1</sup>

## ABSTRACT

*There are various types and degrees of violence. Most of our civilizations have it ingrained in their very foundation. It could be psychological, verbal, sexual, or violent. Individuals, groups, institutions, or nations may cause it. The threat of violence is to humanity. Violence is a hazard to humanity as a whole now. Numerous people participate in collective violence. One form of collective violence that occurs between groups with different religious beliefs is communal violence. Religion is frequently seen as a catalyst for conflict and violent behavior. Religion has, however, always served as a source of both violent and nonviolent inspiration.*

*One of humanity's biggest worries in the modern world may be the sharp rise in violence. India has also been dealing with violence of an unprecedented scope and intensity. In India, communal violence has been a significant factor in preventing peace. India has a wide range of religious, linguistic, and cultural diversity. To preserve society's peace and harmony in its variety, excellent coordination is required. But this hasn't happened. We frequently hear about racial violence in our society. In reality, it begins for unimportant reasons, but when it changes the complexion of communities, people start to divide themselves into parties and fight with one another.*

## I. INTRODUCTION

Everyone has the freedom to practice the religion they choose, as we can see in India. When something is true, it makes no difference if you disagree with or harm someone else's religious beliefs. Continue living quietly while allowing others to do the same. Only once we divide ourselves into numerous groups does the issue of violence arise. Therefore, we must respect the unique group that brings us together. The concept or group in question is known as humanity. There won't be room for any communal violence if we uphold the idea of humanity and respect the people. Even more than fifty years after gaining its freedom, India was unable to rid itself of communalism.

In fact, things have become worse every year. Despite the fact that the number of instances may have varied, there has never been a year in the post-independence era without some form of communal violence. Since the Gujarat carnage started at the very beginning of the year, 2002

---

<sup>1</sup> Author is a student at Chanakya National Law University, Patna, India.

has been among the worst in this regard from the start. Violence in the last 20 years is different from violence in earlier decades. The current sectarian violence is not the fault of any one extremist organization, but rather of the governments that use inter-group animosity to achieve power. These institutionalized causes of intergroup conflict pose a danger to the nondiscrimination and democratic governing ideals. Identity politics is the root cause of current racial violence. Identity politics emphasize the collective nature of rights, experiences, and identities, regardless of their racial, sexual, caste, socioeconomic, linguistic, or religious foundations.

## **II. COMMUNAL VIOLENCE: CONCEPTUAL FRAMEWORK**

Violence is a menace to humanity since it can take many different forms and manifest itself at many levels. It may be inflicted by individuals, groups, institutions, or nations, and it may be physical, verbal, sexual, or psychological. One such aspect that spreads its poisonous tentacles to annihilate the population is collective violence. Communal violence is a form of collective violence that occurs between groups that practice various religions. It is essential to understand the concept of violence in order to comprehend the concept of collective violence.

### **Meaning of Violence**

Violence is defined as the intentional use of physical force to cause harm to another person's person, property, or resources. Other definitions of violence, including those provided by the "World Health Organization," exist as well. "The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development, or deprivation" is how the World Health Organization defines violence. 1 "Collective violence" refers to acts of intentional and planned violence committed by a large group of people.

Violence can be classified into different groups such as Self-directed Violence, Inter-Personal violence, Collective Violence.

## **III. COMMUNAL INCIDENTS AND THE ROLE OF JUDICIARY IN COMBATING COMMUNAL VIOLENCE**

Throughout British control and even before, there have been several rioting occurrences that have been documented. However, racial unrest and riots didn't start until the last quarter of the 19th century, and they weren't very common in India until 1946–1947. Prior to that, communal unrest peaked between 1923 and 1926. Violence within communities can arise for a number of

causes. In each of the two distinct phases, a different factor has contributed to communal violence. During the time of partition, riots between two different communities' elites were caused by a clash of political interests. However, local political and economic considerations had a significant role from the 1960s through the late 1980s.

In this stage, while local circumstances have also contributed to the instigation of riots, the rise of Hindutva politics during the last two decades has been a cause of communal unrest. The communal unrest that occurred between the 1960s and the 1980s has a certain pattern. They have mainly happened in places that are either industrial hubs or commercial hubs with a strong focus on a single industry. The majority of these locations had a sizeable Muslim community whose political or economic interests conflicted with those of the Hindu population.

#### **(A) Some communal incidences**

##### **a) Anti-Sikh riots: 1984 Sikh Massacre**

#### **FACTS**

The worst anti-Sikh protests were organized after Mrs. Indira Gandhi's murder. More than 3000 Sikhs were killed during the riots, Justice Ranganatha's Committee enquiring into the anti-Sikh riots found.<sup>2</sup>

For several decades after Partitions, Sikhs in Punjab had complained about domination by the Hindu majority. In a 1975 court case, Indira Gandhi was found guilty of electoral malpractice which barred her from government offices for six years and opposition parties staged protests to demand her resignation. In response, she declared a State of Emergency during which she jailed thousands of opposition members, censored the press, postponed elections, and changed.<sup>3</sup> As a result of their "Campaign to Save Democracy", out of 140,000 people arrested without trial during the Indian Emergency, 40,000 were Sikhs. In later elections she supported the politics Jarnail Bhindranwale, a religious conservative, in an effort to undermine the Akali Dal, the largest Sikh political party. However, Bhindranwale began to oppose the central government and moved his political base to the environs of the Darbar Sahib in Amritsar, Punjab.

While there, he significantly increased his political influence and overthrew the local government. In June 1984, the Indian army stormed the Darbar Sahib with tanks and armored vehicles under Indira Gandhi's instructions. Although the operation was militarily successful,

---

<sup>2</sup> <https://shodhganga.inflibnet.ac.in>

<sup>3</sup> Torts Against Secular Communal Group: A study of Communal violence in India, available at <http://www.legalservicesindia.com/article/2327/Torts-Against-Secular-Communal-Group:-A-study-of-Communal-violence-in-India.html>

it generated a great deal of controversy, and the government's rationale for the attack's timing and design is hotly contested. In reaction, a separatist movement to liberate Punjab from the Indian Government was started by some Sikhs and Punjabi Hindus. In retaliation for the storming of the Golden Temple, two of Indira Gandhi's bodyguards killed her on October 31, 1984.

Following the murder, there were anti-Sikh riots in Delhi in 1984. Government and police authorities helped gangs of Indian National Congress party workers target Sikhs and Sikh homes "methodically and systematically." Due to the pogroms, 10,000–17,000 Sikhs were killed, their property was severely damaged, and "at least 50,000" Sikhs were forced to flee their homes. The Indian government has not brought any of the attackers to justice as of yet.

The Harmandir Sahib attack and the 1984 anti-Sikh pogroms contributed to the Khalistan movement's rising support. The state's elected administration was overthrown by the Indian government between 1987 to 1992, and elections were outlawed along with direct control. Rajiv Gandhi famously said in a divisive speech that when a large tree falls (Indira Gandhi), the earth shakes (the people). Religious violence committed by separatists, government-sponsored organizations, and the paramilitary branches of the government was pervasive on both sides during the insurgency's peak years. Separatists are allegedly responsible for "massacre of civilians, attacks against Hindu minorities in the state, indiscriminate bomb attacks in crowded places, and the assassination of a number of political leaders," according to Human Rights Watch. In line with human response "led to the arbitrary detention, torture, extrajudicial execution, and enforced disappearance of thousands of Sikhs". The government generally targeted "young Sikh men on suspicion that they were involved in the militancy" but would later deny having them in custody, as a result, many of the victims of enforced disappearances are believed to have been killed. The insurgency resulted in the stagnation of Punjab's economy until normalization in 1993.

Numerous members of the Indian National Congress, including Jagdish Tytler, Sajjan Kumar, and Kamal Nath, were charged with inciting and taking part in riots that were directed at the Sikh community of the nation's capital after Indira Gandhi was killed by two of her Sikh bodyguards after Operation Blue Star. There are claims that the government hid the guilty while destroying evidence. The government's actions were referred to as "the Mother of All Cover-Ups" on the main page of Asian Age. There are claims that during the riots, Indian National Congress activists and supporters organized and frequently participated in the violence. The government, which was then run by the Congress, came under heavy fire for taking very little action and possibly participating in a conspiracy. The evidence for the theory is the fact that

voting lists were.

### **Analysis of finding of commission**

There were various commissions and committees were appointed. Such wide-scale violence cannot take place without police help. Delhi Police, whose paramount duty was to upkeep law and order situation and protect innocent lives, gave MI help to rioters who were in fact Congress Workers or else mercenaries hired by the Indian National Congress who were working under able guidance of sycophant leaders like Jagdish Tytler and H K L Bhaga.

#### **b) Bhagalpur Riots**

The communal unrest that erupted in and around Bhagalpur in October 1989 persisted for over two months and resulted in the deaths of nearly 1,070 people. When the Ramshila puja procession bearing bricks for the construction of the Ram temple in Ayodhya arrived in the Muslim-dominated Tartarpur on the afternoon of October 24, violence broke out. Then bombs were hurled at the Muslim school's parade. Communal rioting then began there. Official statistics state that 1,070 people died and 524 were injured. The riots at Bhagalpur hit 15 of the city's 21 blocks. 11,500 houses in 195 villages were destroyed, displacing 48,000 people. 600 power looms and 1,700 handlooms were burnt to ashes. 68 mosques and 20 shrines were destroyed. 142 FIRs were recorded in various police stations. 1,283 persons were accused in the riots.<sup>4</sup>

#### **c) 2002 Gujarat violence**

Since the partition, Muslims in Gujarat have been the victims of numerous incidents of mass violence. In a case referred to as "fascistic state terror" in 2002, Hindu fanatics committed horrific acts of violence against the Muslim minority community. The attack on a train, which was attributed to Muslims, served as the catalyst for the tragedy. Young girls were burned, hacked to death, or subjected to sexual abuse during the tragedy. The ruling BJP approved of these rapes, and because they did nothing to stop them, 200,000 people were forced to flee. The official death toll ranges from 790 Muslims and 254 Hindus killed to 2,000 Muslims killed. Additionally, Chief Minister Narendra Modi has been charged with starting and supporting the violence.

### **(B) Recent developments in communal violence**

#### **a) 2013 Muzaffarnagar riots-**

---

<sup>4</sup> See "Report of Working Group of National Integration Council to study Reports of The Commission of Inquiry on Communal Riots 2007" on <http://mha.mc.in/pdfs/NIC-W-Group.pdf>

At least 62 people, including 42 Muslims and 20 Hindus, were killed in clashes between the Hindu and Muslim communities in Muzaffarnagar district, Uttar Pradesh, India, between August and September 2013. 93 people were also injured, and more than 50,000 people were displaced. All riot-affected areas had their curfew lifted by September 17 and the army had also left the area.

The army was therefore sent to the state for the first time in the previous 20 years as a result of the riot, which has been called "the worst violence in Uttar Pradesh in recent history." The Supreme Court of India held the Akhilesh Yadav-led Samajwadi Party prima facie guilty of negligence in preventing the violence while hearing petitions related to the riots and commanded it to immediately arrest all those accused, regardless of their political affiliation. The Samajwadi Party-led state government was not given intelligence inputs in time to help issue alerts, and the court blamed the Central government for this.

#### **IV. LEGISLATIVE ENACTMENTS**

The primary responsibility of the State is to maintain law and order so that citizens can enjoy peace and security. Life and personal liberty being very precious rights, their protection is guaranteed to the citizens as a fundamental right under article 21 of our Constitution.

There are various legal provisions relating to communal violence as contained in general and special laws on the subject, e.g., The Indian Penal Code, 1860; The Code of Criminal Procedure, 1973; The Police Act, 1861; The Arms Act, 1959; The Explosives Act, 1884; The Explosive Substances Act, 1908; The Explosives Rules, 1983; The National Security Act, 1980; The Unlawful Activities (Prevention) Act, 1967 etc.

##### **(A) Preventive Legislation**

Section 144 of the Criminal Procedure Code: Section 144 of the Criminal Procedure Code allows the administration to issue a wide range of prohibitory orders, including a ban on assemblies of five people or more, a prohibition on demonstrations, orders prohibiting the going in procession, and the imposition of curfew under more urgent conditions. A violation of section 144 of the Indian Penal Code is punishable under section 188 of the Indian Penal Code.

##### **(B) Punitive Legislation**

According to Section 142 of IPC, 1860 if any person becomes a member of an unlawful assembly in any manner and at any time, and if one has the knowledge of the unlawful nature of the assembly and still continues to be a part of it, he/she becomes liable for all the acts of

such assembly.<sup>5</sup>

### **Section 153-A**

- This Section provides punishment to those who promote enmity between different groups on grounds of race, religion, place of birth, language, residence, etc.<sup>6</sup>
- Also makes the promotion of disharmony or feeling of ill-will a punishable offence.
- Such a person can be imprisoned for up to three years, or with fine, or with both.

However, if the offence is committed at a place of worship, such a person can be held punishable for a period of five years and with a fine.

### **Section 153-B**

This Section was inserted to the IPC in 1972 while taking into account the rising unrest and acts of communal violence in various regions of the nation. In accordance with this Section, if an offense is committed at a place of worship or a location where there is a gathering for religious worship or a religious ceremony, the offender may face up to five years in prison and a fine.

### **(C) Prevention of Communal and Targeted Violence Bill, 2011**

The bill intended to curb the problem of communal violence and riots in India but was opposed by the opposition and was not passed. The bill was drafted by the National Advisory Council (NAC), led by Sonia Gandhi, and was originally proposed by the United Progressive Alliance (UPA-1) in 2005.

The bill seeks to fulfil the following objectives:

- It imposes a duty on both, the Central and the State Government to exercise their power, in a non-discriminatory manner in order to control and prevent any attempt of targeted violence against any member belonging to a minorities group (which included Scheduled Castes (SCs) and Scheduled Tribes (STs) and other religious or linguistic minorities in any state of India.
- It made provision for investigation, prosecution, and trial of offences.
- It prohibits discrimination (on grounds of sex, community, religion, caste, and race) while providing relief and compensation to the victim of communal violence.
- It ensures to provide restorative relief and reparation.
- It provides a provision to ensure the protection of victims, witnesses, and informants.

---

<sup>5</sup> Section 142, The Indian Penal Code, 1860

<sup>6</sup> Section 153-A, The Indian Penal Code, 1860

- It ensures the victims of communal violence get appropriate compensation assessed by the relevant authorities.
- It provided for rehabilitation, restitution, and compensation to all persons affected by communal violence.<sup>7</sup>

Why was the bill opposed by the government?

The measure claims that only "groups" made up of linguistic and religious minorities experience community violence (including SCs and STs). In a situation when the minority is using violence against the majority, it was useless. No member of the majority can ever be a victim because it appears that the minority is favoring the bill. This bill would have expanded the types of abuse that are not punishable by this act if it had been passed.

According to the 7th Schedule of the Indian Constitution, maintaining "law and order" is a state responsibility, and the federal government is not permitted to issue orders to the states in this regard. The bill also established instructions for its upkeep and specified what actions may be taken against state government officials if they failed to prevent the scenario. These factors meant that the central government had no authority to introduce such a bill.

### **Role of judiciary:**

The historic judgement in the *BEST Bakery case*<sup>8</sup> delivered by Justices Doraisamy Raju and Arijit Pasiath on April 12, 2004 is a vindication of the struggle for justice over decades. The collective struggle for justice for mass crimes, be it the Judicial Commissions of Inquiry or citizens efforts to intervene have been legitimised by this judgement. The historic judgement sets precedent for independent investigation and a locality of neutrality for mass crimes.

In the Best Bakery case, the Supreme Court has also enunciated the following fundamental legal principles: Discovery, vindication and establishment of truth are the main purposes underlying existence of courts of justice; "In a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice – often referred to as the duty to vindicate and uphold the 'majesty of the law'. Denial of a fair trial is as much injustice to the accused as is to the victim and society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm.

---

<sup>7</sup> Dissociation of Legislation to stop Religious Violence, available at <https://blog.ipleaders.in/dissociation-legislation-stop-religious-violence/>

<sup>8</sup> *Zahira Habibulla Sheikh v. State of Gujarat*, (2004) 3 SC 158

In *Gudalure M.J. Cherian and Others V. UOI*,<sup>9</sup> in this case there was unfair police investigation with regard to alleged rape of Christian nuns. Instead of arresting the real culprits, the police arrested four people and asked the victim to identify four arrested persons as the culprits. The Hon'ble Court held that "Entrusting the investigation to the CBI and transferring the case from a Sessions Judge, Moradabad (U.P.) to a Sessions Judge, Delhi". It is not for the SC, ordinarily, to reopen the investigation by entrusting the same to a specialized agency like the CBI, but in a given situation, to do justice between the parties and to instil confidence in the public mind the court may ask the CBI to investigate the case, but transfer of the case was not accepted.

In *Paramjit Kaur (Mrs). Vs State of Punjab and Other*<sup>10</sup>, it was held that: "The Supreme Court by its order can confer jurisdiction on a body/authority to act beyond the purview of its statutory jurisdiction/function." "The Supreme Court requested by its order to the NHRC to examine the matter of human rights atrocities in Punjab in accordance with law. "The Investigation of some other facets including culpability of those responsible for human rights violations entrusted to the CBI".

## V. CONCLUSION AND SUGGESTIONS

It is concluded that the problem of communal violence is heavily rooted in our society. There are various causes for the same and it can be said Britisher's presence in India was one of the contributing factors that it is still so deeply engraved within us. Attempts have been made in order to improve the laws that can be more stringent in handling the situation. However, all such attempts failed due to their shortcomings. However, it can be said that the present laws in India are more than sufficient in handling the situation. Instead, what is lacking behind is the proper implementation of the laws by the state. For example, it has been seen that the problem is with the police's unwillingness to handle the situation of violence rather than the shortage of police force. Such a scene was witnessed in the Delhi protests recently. There are laws that provide the stimulus to stop communicating feelings, to stop provocative speeches, writing and publicity. Such activities are punishable under SS. 153-A, 295-A, 298 and 505, IPC. But these provisions are rarely used against criminals. It has encouraged communal forces to suffer minorities through major communal violence.

In recent years, the increase in communal violence is really dangerous. What we have seen in Gujarat, Bombay (now changing the name of Mumbai), Bhagalpur, Delhi etc. is not the ugly face of religious madness. The Concerned Civil Tribunal (CCT), Gujarat-2006 has clearly

---

<sup>9</sup> (1992) 1 SCC 397

<sup>10</sup> (1999) 2 SCC 131

stated that the crimes committed during the Gujarat violence were: 'Crime Against Humanity and Genocide'. Nevertheless, nothing has been done to ensure the punishment of those convicted of these crimes. There is an obvious lack of political and administrative will to implement the recommendations of National Police Commission (NPC) (March, 1981) as pointed out by the NHRC. The government is also not serious to take up the most vital issue of communal violence, as is obvious from the fact that the directions of the Supreme Court (SC) (September 22, 2006) to reorganize the police system as drafted by the Sorabjee Committee, is not being implemented. Moreover, past instances have shown negligence on the part of the State Government in not handling the situation effectively. So it can be said that there is a need for better implementation of present laws rather than separate legislation in place.

It is suggested that there should be a separate Central law which provide for appointment of an Independent Inquiry Commission to fix responsibility of defaulting law enforcement agencies. The functioning of the police must be independent of political direction and interference. State Investigating Squad (SIS) should be set up to investigate crimes committed during communal violence.

\*\*\*\*\*

**VI. REFERENCE**

- Pravin J. Patel, Communal Riots in Contemporary India: Towards a Sociological Explanation, in CRISIS AND CHANGE IN CONTEMPORARY INDIA (Upendra Baxi and Bikhu Parekh eds., 1995).
- The Code of Criminal Procedure, 1973
- The Indian Penal Code, 1860
- The Constitution of India, 1950
- <https://shodhganga.inflibnet.ac.in>
- [http://ijrar.com/upload\\_issue/ijrar\\_issue\\_866.pdf](http://ijrar.com/upload_issue/ijrar_issue_866.pdf)
- <https://blog.ipleaders.in/dissociation-legislation-stop-religious-violence/>
- <http://www.legalservicesindia.com/article/2327/Torts-Against-Secular-Communal-Group:-A-study-of-Communal-violence-in-India.html>

\*\*\*\*\*