

The Genocidal Pogrom in Gujarat: Anatomy of Indian Fascism

THE NEED FOR A LAW AGAINST GENOCIDE

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We have never given up our adherence to colonial administrative practices and the vocabulary used by them in the administration of the country. A Hindu-Muslim problem is communal and not a problem of religions. It has always been communal violence and not religious violence.

Communal violence has always been a law and order problem and not something affecting public order or security of state. After Partition, Muslims were accorded minority status. Every communal riot was a political statement that the majority community is not willing to accede to the minority more than formal equality. The conflict may be triggered on grounds of lack of equal opportunities for livelihood and may also be on account of claiming equal status. At the bottom of all the violence is the claim and denial of equality by the contending groups in our society.

Formally, there is no mention of the majority community religion in the Constitution though the name given to the country, i.e., Bharat is decidedly Hindu. We have not elected to name the Hindu religion as the state religion. We have constitutional oath for both believers and non-believers. We have given to ourselves the freedom of conscience and not provided, advisedly, security to religious institutions. We have, along with the freedom of conscience, given to ourselves freedom of speech, assembly and association so that these may be exercised to evolve, in the course of time, a culture of tolerance essential for a pluralistic society as ours. We had a reasonably well-written Constitution having a written agenda for social change but all the political and the constitutional institutions failed and a handful of men of superannuated eminence are now appointed for reviewing the Constitution to find out why it failed us.

Over the years we have destroyed the moral and normative contents of the Constitution by interpretation given to it by judges and administrators. We were given the freedom of conscience but a change in religion entails civil consequence. This limitation was not provided for in the Constitution. Personal laws, declared the judges, were not subject to the Constitution. Our courts said we should have a common civil code to prevent Hindu husbands, inclined towards bigamy or polygamy, from opting for Islam! Hitherto, the inarticulate major premise has always been to maintain a low-profile Hindu state and that they managed to maintain despite repeated exposure by Dalits. As politics abandoned the philosophy of social transformation and became a gamble for power, people were categorised into vote-banks and capture of these vote-banks had to be on caste and communal lines. Secularism and democracy became the immediate casualties. With the disappearance of politics

of social transformation, religion stepped into the slot. When V.P. Singh's Government was formed, the BJP unleashed its political agenda. The Ayodhya rath yatra and the anti-Mandal stir were the twin unconstitutional issues which brought down attempted democratic forms of Government in the country. The 1990 rath yatra was a galloping incitement to violence, which the Congress Government failed to control. It is ironical that mass support for the rath yatra came from the very classes against whom the anti-reservation stir was carried on. Narasimha Rao said he could fight the BJP but asked how he could fight Ram. This visual confusion denied him the strength to stem the onslaught of the Hindutva forces. They brought down the Babri Masjid in Ayodhya. Until then, Ayodhya was linked to the Ramayana. It is now known and will always be remembered for the Babri Masjid that stood there. The violence unleashed after the protest and violence by a few Muslims in Mumbai and other places is not rioting but unilateral killing of a few thousand Muslims. Every `maha arthi' held by Shiv Sainiks was a signal for a genocide in the area.

It is no longer a communal riot. To call it so is an understatement. It is targeting a religious group. There are no provisions in the old penal code to cope with this kind of largescale violence and killings. Terrorists would not have killed as many people in 10 years as these religious brigands have in a week. Yet, we do not think of a special law to prevent targeting minorities. This has been happening to Muslims. Sikhs were slaughtered in 1984 and Christians are being targeted.

The laws are such that they do not instil fear. It is time we stopped the massacres in the name of religion. There has to be a re-definition of religion and, meanwhile, we have to include genocide as an offence in a separate chapter in the POTO. Even if it is not passed, a law on genocide has to be tabled in Parliament.

The Convention on the Prevention and Punishment of the Crime of Genocide came into being on December 9, 1948. Genocide is defined as killing members of a targeted group; causing serious bodily or mental harm to members of the group; deliberately inflicting 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 from one group to another. The offences indicated are genocide, the conspiracy to commit genocide, direct and public incitement to commit genocide; attempt to commit genocide and complicity to genocide. This is the international criminal law on genocide and it has, unfortunately, become necessary to translate this covenant into national law.

When religious violence was unleashed in Gujarat, it was not spontaneous. It was not a backlash. The majority community was being prepared for such carnages. There was direct and public incitement to genocide. Shilanyas and the fixation of the date set the stage for this colossal genocide. There is complicity both at the Centre and the State. If we are not to end up in fascism what happened in Gujarat has to be identified as genocide.

(The writer is the National President of the People's Union of Civil Liberties.)

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