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**COMMUNAL VIOLENCE AND THE LAW IN INDIA – A LEGAL PERSPECTIVE**- Kumar Abhishek Bhushan<sup>1</sup>**Abstract**

India has a composite culture where citizens of all religions, class and communities are come to before the law as enshrined in the Indian constitution. The Universal Declaration of Human Rights, 1948 recognizes that all individual is instinctive liberated and identical in self-respect and constitutional rights without any difference of any type including religion. Communal violence tends to make conjugal trouble, destroy the basic foundation and threatens the harmony and honesty of the nation, the ultimate law of the land, mandates the Union Government and the State Government to take successful procedures to hold back communal violence perpetrated on such a extent and measurement which threatens the secular structure, unanimity and honesty of the nation.

Keywords: Communal Violence, Human Rights, Offences, Criminal Justice System.

**Introduction**

India has a composite culture where citizens of all religions, class and communities are come to before the law as enshrined in the Indian constitution. Everyone has a right freely to practice his religious belief. The Constitution of India makes freedom of religion on the one hand and secularism on the other hand. Secularism is one of the essential elements of the Indian constitution and Communal violence is anti-secular activity. It is the duty of the State to prevent communal violence that leads to make internal trouble, wipe out worldly structure and pressure the accord and truthfulness of the nation.

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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.

**Table-1: Pre-independence period casualty 1-**

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 as many as instances of communal violence in 1981 which took the toll of a lot of 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 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 citizens were murdered and 11,278 were ill-treated 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. According to the official source of Ministry of Home Affairs has mentioned that while

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826 communal circumstances took place in 2009 in which 125 persons were murdered, 943 communal incidents took place in 2008 and in those 167 persons died.

**Table-2: Conviction in Communal Violence 2**

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%	-
1984 Bhiwadi	185	4	2.2%	0.7%
1985 Kalyan	63	-	-	-
1985 Ahemdabad	63	-	-	-
1989 Bhagalpur	251	29	11.6%	3.5%
1992-93 Bombay	42	8	19.1%	0.4%
2012 Gujarat	20,000	9	-	-

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Communalism was a blight on the body politics because the nationalist motto nation-ness as usual - the inheritance of each people given by nativity<sup>3</sup>. That all human beings are born free and equal in self-respect and rights without any difference of any kind including religion. Everybody has the right to stretch out and safety of person and no one shall be subjected to unkind, ruthless or humiliating behaviour.

The National Human Rights Commission of India observed that it is the main and inevitable accountability of State to protect the right to life, freedom, fairness and self-respect of all. The responsibilities of each State to make certain 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<sup>4</sup>. When communal violence tends to generate interior trouble, demolish the essential structure and threatens the harmony and sincerity of the country, the highest rule of the land, mandates the Union Government and the State Government to take competent actions to hold back communal violence perpetrated on such an amount and measurement which threatens the worldly foundation and harmony and reliability of the country.

### **Literature Review**

Salah Punathil (2019) in his book in February 2020, Delhi faces the most dreadful conflict during the post-colonial period. About 50 people have been murdered, 100 peoples were also injured and the death toll is more than 200 people as per official sources. The first Prime Minister of India Jawaharlal Nehru, Mahatma Gandhi the father of the nation, B.R. Ambedkar who is well designer of the constitution envisaged the new nation.

Rajgopal, P.R. (1987) in his book Communal violence in India examined violence in three essential dimensions in India: communal violence, violence arising away of socio-political modify in India and lastly, organised offence and illegal justice. These have been available as three separate studies. The current study deals with the difficulty of communal violence.

Sajid, Mohammad (2017) in his research article entitled on 'splintered justice in the aftermath of Communal violence'. Since British Law, communal violence has been become a spot on the Indian confirmation. After the finish of the British Raj the responsibility is to keep on the divide-and-rule policies for the Nellie massacre of 1983, during the year 1984 riots of Sikhs, the killing of Graham Staines in 1999 in the month of January in Odisha is some of the

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examples of educational awareness. These studies have a significant impact on the economic, political and social distinction of communal violence.

Kausar, Zeenath (2006) in his research Article "Communal Riots in India: Hindu-Muslim Conflict and Resolution". India has the second largest population of Muslim followed by Hindu society. It forms the largest Muslim minority in the universe. Since the turn down of Moghul periods in India, Muslims constitute have been conflicting communal riots and conflicts from a number of sections of the Hindu society who are communalists and militants.

In this paper an attempt is made to throw away light on the Hindu- Muslim riots and conflicts in India from before independence to after independence, with meticulous position to the demolition of the significant Babri Masjid in 1992 and the genocide of Muslims in Gujarat in 2002. This research paper discusses the causes of these dilemma and presents a modest proposal of some Muslim scholars on the decision of the Hindu-Muslim tensions and conflicts in India.

### **Research Methodology**

The secondary sources of data consisted of learned articles, seminars, proceedings, legal journals, periodicals, published and unpublished reports and some research books relating to the topic. Relevant case laws also formed part of the secondary sources. Here the researcher made a critical analysis of the developing case laws and evaluates the same to point out how far they have influenced the legal trend of the research.

### **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. All are equal whether it belongs to Muslims, Christians, Buddhists, Jains, Parsis, Jews and Sikhs under the law. Only Hindus cannot exist in this nation as primary rate citizens while others can survive as second-rate citizens. In this context, all citizens are entitled to live as unparalleled people 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 religious natural world of man to supernatural creature and it incorporates worship, belief, faith, devotion etc.

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## 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. Article 15 of Indian constitution required to take the pieces of the understanding for social unfairness perpetuated by the caste arrangement and also the opportunity of religious prejudice 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 some of the factors that influence the quality of riots statistics:

- (i) The dishonesty of the local police;
- (ii) The apparent control of those who initiated the disturbance that the greater the power the greater the unwillingness of the police to record case;
- (iii) Where policemen were ill-treated or enthusiastic their weapons and the level of economic reimbursement obtainable to riot fatality by the Union or State government;
- (iv) In the annual crime reports in India, the communal riots are not planned independently but include in the wide ranging group of uprising mutually with union and the undergraduate associated aggression;
- (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 tranquillity
- (ii) Office against religion
- (iii) Specific offences against human body and property.

Under the I.P.C, 1860 Clause 11 of the Bill, Offence the following provided in:

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- (a) Schedule II, Part A of this Bill; or
- (b) Schedule II, Part B of this Bill, when devoted against any individual belonging to a crowd by good quality of his or her membership to that crowd, shall be deemed to be offences of communal and under attack violence under this Bill and shall be dealt with for that reason. Schedule II, Part A is as below:

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

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

**Public tranquillity:** Under I.P.C., 1860 the Chapter VIII deals with offences against public tranquillity. 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

Under Indian Penal Code 1860, Chapter XV 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

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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 charge sheeted for offences like any other rape case. In *Sister Meena Lalita Borwa v. State of Orissa*<sup>7</sup> communal violence took place of Kandhamal district, Orissa in the month of December 2007 and while tension sustained to succeed in the said spot, Swami Laxmanananda Saraswati was killed in the month of August 2008. It is to be noted that resulting in great scale violence in Kandhamal district and other localities of Orissa. During this violence, Sister Meena Lalita Borwa was sexually beaten, raped and paraded unclothed by a gang of 40-50 persons. This case was registered under different sections 147, 148, 324, 354, 355, 294, 376(2)(g) read with sections 149 of the I.P.C. 1860 for the commission.

### **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 occasion from the first day of March 2002 massive violence and arson by unruly mob of 1000-1500 people took the life of several persons. Under section 147, 148, 149, 188, 504, 342, 427, 436, 395, 307 and 302 of Indian Penal Code by the Trial Court and the High Court of Gujarat acquitted the entire accused persons who were indicated for different charges. When the appeal in *Zahira Habibullah H Sheikh v. State of Gujarat* <sup>8</sup> reached at Apex Court, the court directed that the current appeals have different extraordinary points. The order for retrial was permitted by the State of Gujarat since question was raised itself which connected to danger and compulsion of witnesses and indecent behavior of assessment by the public prosecutor. The role played by the investigating agency was found to be unthinking and not unbiased. 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. Hazardous repercussions and unthinking result

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on the society brought then it is the legitimate duty of State to save from harm its entire citizen from communal violence.

In *Amjad Khan v. State* 9 the communal riot had broken out in the town of Satna 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 that under Indian Penal Code Sections 102 and 105, the right of private defence was obtainable to him against mob.

In *Babu Rao Patel v. State (Delhi Administration)* 10, the Apex Court was faced with questions raised for unique speech violative under Section 153A from political thesis and chronological truth. The Supreme Court examining two articles held that the first entitled 'A Tale of Two Communalisms' was an undigested effort to encourage feelings of hostility, extreme dislike and ill-will between the Hindu and Muslims communities'. The reference to the assumed Muslims civilization of rape, burgle, violence and killed and the suspected horror struck into the hearts of Hindu minority in a neighbouring nation 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 security lose hope. 11" The Criminal Justice System plays a significant aspect in achievement of fact. Justice forms the foundation stone of each nation's rule. The Constitution of India and the criminal justice system have a give- and-take connection. The constitution sets persuaded principles in a straight line on State for securing fairness to the people and maintaining harmony and honesty of the country. The main objective of criminal justice system is to make social concord and uphold order by enforcing the laws and constraint in their violations. Communal violence comprises the position of police, public prosecutor, judiciary etc. These agencies continually depend on the constitutional hold up to their philosophy and measures.

### **Role of the State**

India is large country comprising the 28 States. No country in the universe it has a better variety of assemblage life, "when State came into survival, when man felt the necessity of

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State, it has no fix date of the circumstances surrounding the dawn of political consciousness". The most accepted theory is known as social treaty theory. It is true that social contract theory is mainly depends upon "human life was solitary, poor, vicious, and violent and short" as far as the State is created.

### **Role of State as Night watchmen**

The state of classical liberal theory based on night watchmen, which is limited to the implementation of defending its entire people against violence. Right to life, liberty and property were once measured to be unchallengeable rights under the Indian Constitution, 12 every one of these rights was measured to be inextricably bounce to the other and none would live without the other. Of delayed, right to property parted company with the additional two rights under the Indian Constitution and took the place of a constitutional 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 followed for ideology of justice: (i) every person is to have an the same right to the most wide-ranging vital autonomy well- matched with a similar liberty after others; and (ii) social and economic inequalities are to be given so that they are both, (a) logically expected to be to everyone's benefit, and (b) emotionally involved to positions and place of work upon to all under circumstances of fair equal opportunity of occasion. India is secular and democratic country. The safety measures of India are the major apprehension of the Union of India. Public order or rule and dispose fall in the meadow 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 safeguard rights for existence, freedom, equality and self- respect as laid down in the Constitution of India.

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(iii) The State failure to make out confined factors and players for participating in the violence.

In the issue 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 make certain measures that the offenders are booked and the fatalities are not complete to suffer.

### **Compensation and Rehabilitation of fatalities of Communal Violence**

The compensation paid to victims in the matter of communal violence is a great concern. United Nations General Assembly 1985 laid down for the victim in order to protect jurisprudence for developed by adopting a 'Declaration of the Basic rules of Justice for the Victims of Crime and ill-treatment of Power'<sup>13</sup> was included, the instantaneous family members as well as it functional to everybody irrespective of competition, faith, nationality, language, age, colour, cultural belief and face the safety programs for victims of crime and mistreatment of power 13. A victim of crime is an individual who suffers any defeat or grievance as a consequence of the crime. In the case of serious damage, the injured party would be the person on whom the damage was inflicted although, there would be additional family members, and friends who may too not directly suffered the disturbance.

### **Compensation under Public Law**

The communal law proceeding serves a dissimilar idea than a personal law measures. The assistance of financial compensation as excellent damage, in proceeding under Article 32 by Apex Court or under Article 226 by the High Court, for reputable contravention of the indefeasible right guaranteed under Article 21 of the Constitution is a preparation accessible in communal law. The reason of communal law is not only to enlighten public power but also to guarantee the citizen that they exist under a lawful system which aims to look after 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**

It is the duty of the State to set up a fund for the victims of communal violence under Communal violence Bill, 2005. According to the Scheme of this Bill, there are two types of

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funds (i) State fund (ii) District fund. Every State government has to establish a fund under the State Communal Disturbance Relief and Rehabilitation Fund as per norms and guidelines according to Clause 49 (1) of the Constitution.

(i) Money received from different sources by the Union Government;

(ii) Money received from different sources from the State Government;

(iii) Money received from different sources by way of gifts or donations, from a public sector undertaking or a local authority or an person or a private controlled organization;

(iv) Received money from the International Organisations or organizations in India as an aid in terms of the accessible rules governing such aid, for the treatment or wellbeing of victims of communal violence where necessary.

Further, it is also observed that 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 under the Clause 4

### **Remedy and Reparation under Bill, 2011**

Any individual who has suffered either 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 result thereof, the next of kin of such departed person shall be permitted to remedy and reparations together with 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 make certain steps to that effect. Any individual whose life, liberty or property is in danger or where he or she apprehends such risk, is without delay provided security including creating police outposts and pickets in the surrounding area of the exaggerated area and as long as provisional rearrangement, if necessary.

### **Discussion**

The study has examined communal violence and the Law in India

legal perspectives need to provide legal solution to the problem in India. One sought to find out whether communal violence is composite culture where people of all religions, caste and

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communities. In analysing data on the responses of pre-independence period killed and injured which is shown in Table-1. The findings show data were collected and presented that conviction of communal violence in India in Table-2. It is also observed that findings concerned with the extent of communal violence in India. In addition to it shows that people are not aware as there are two types of funds available in the country (i) State fund (ii) District fund available for this purpose. Every State government has to set up a fund under the State Communal Disturbance Relief and Rehabilitation Fund as per rules and regulations for the functioning of the Clause 49(1) of the Constitution

### **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 every one 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 different 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 problem, a common disease, which erodes the structure of society by creating a false tension between different communities.

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

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.

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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 circumstance 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 work out its power specified under section 311 of the Criminal Procedure Code, 1973 and Section 165 of the Evidence Act, 1872. 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 cover of such witnesses may be imposed to.
9. Where the state itself is found to be involved in outbreak of communal violence, it may be a ground of obligation 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.

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4. See, Article 355, Constitution of India.
5. Arumugam Seervai v. State of Tamil Nadu, [2011] (6) SCC 405
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