

## **The Consequences of Legal Impunity\***

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There are many reasons to worry about and to be anguished by the communalisation of Indian politics and society that has proceeded apace over the last few decades. There is the general coarsening of the public discourse, which increasingly gets driven by prejudice and rumour rather than fact. There is the increase in both subtle and open forms of discrimination, typically directed by members of the majority community against the minority community, but often expressed against the “other” whenever that person or group is perceived as being weaker. There is the hardening of positions within communities, with hard-line stances in one provoking their counter in the other, to the detriment of both and to the loss of intra-community democracy and shrinking space for moderate and dissenting voices. There is the distraction away from other more important issues that directly affect the lives and well-being of people of all religious groups.

But most significant of all, there is the ever-present threat of violence, which flares up in riots and other expressions of religious tension, or even in individual attacks, both “provoked” and unprovoked. The destruction this causes is enormous: not just in the extreme cases of loss of life and other terrible effects like physical and psychological damage to the survivors; not only in the loss of property and often inability to sustain livelihood; not just in the forced displacement and migration under duress that creates people without a home. There is the further and more lingering outcome of a climate of fear and suspicion, of lack of trust that erodes a society and prevents “normal” functioning in all sorts of ways.

The horrors of a communal riot are well-known and now also well-documented. And the social, political and cultural forces that build up to such violence have also been studied by social scientists. But one critically important aspect of this, which unfortunately contributes to the ever-present possibility of future riots and more violence, has been less discussed. This is the culture of impunity that has emerged for many of the perpetrators, which sends a chilling signal to those involved and those who would copy them, as well as to the rest of society.

This culture of impunity has a particularly disturbing reflection in the lack of legal justice and unsatisfactory closure of many cases of riot-driven violence. A new book by a lawyer and a legal activist who have been involved in investigating and fighting such cases in court (Warisha Farasat and Prita Jha, *Splintered Justice: Living the Horror of Mass Communal Violence in Bhagalpur and Gujarat*, New Delhi: Three Essays Collective 2016) provides shocking detail on how exactly this plays out and the appalling implications of this in terms of denial of justice to those whose lives are destroyed by such violence.

This is a painful and searing book to read, but not because the writing is emotional. That is not so; indeed, the authors have focussed on providing a clear, unsentimental statement of facts and objective analysis. Rather, the bare accounts of what happened – not just in the horrific riots and the administrative lapses that enabled them, but even more so in the subsequent train of events in terms of police follow-up and legal action – leave the reader shocked, furious and emotionally exhausted. But it is

nonetheless essential reading for all of us. The two examples studied in this book are only a tiny fraction of the number of violent communal disturbances in the country, albeit they have become some of the more prominent among such episodes. But if they provide an accurate indication of how such violence has been handled, then this is a devastating indictment of the system of justice in India. It also allows us to understand why rioters continue to behave as if there would be no major consequences of engaging in such violence.

The two episodes of communal massacres occurred at different times in different parts of the country (Bihar in 1989 and Gujarat in 2002) and of course the socio-political factors driving the violence varied. Yet the underlying cynical use of polarisation as a political tool played a significant role in both of them. Both the episodes in essence involved the targeting of local resident Muslims, with riots continuing for weeks that killed large numbers of adults and children and also involved other atrocities like rape and maiming of victims. In both cases the prolonged riots suggested at best inadequate efforts by the state to control them and at worst a significant degree of complicity by certain state actors. The subsequent pattern of events in terms of determining culpability and punishing the guilty as well as providing some protection, compensation and rehabilitation to the victims, also show disturbingly similar patterns. In both cases, there has been undeniable and occasionally severe subversion of the process of ensuring justice.

Further, this pattern was not confined to one political tendency or one particular type of state government. In Gujarat, of course, the association of the BJP government led by Narendra Modi is well known. But at the time of the Bhagalpur riots, Bihar was ruled by a Congress government. Thereafter it has been led by Lalu Prasad Yadav of the RJD, then his wife Rabri Devi, then Nitish Kumar of the JDU with and later without the support of the BJP. While there were some variations, especially in terms of once again opening up some cases during the tenure of Nitish Kumar, the basic flaws identified by the authors were common across both these states over this very prolonged period.

The partisan role of the police emerges very clearly: police indifference to desperate pleas for help from victims as the riots flared and spread; delays in filing First Information Reports (FIRs) and then filing inaccurate FIRs that would not implicate the perpetrators or underplayed the effects of the violence; the filing of omnibus FIRs bunching together all sorts of very different cases and occurrences, which subsequently made the legal process for survivors difficult if not impossible; careless and shoddy investigations that made the legal case against perpetrators even weaker.

Yet it is not only the police who have been at fault. The role of the courts also comes for scrutiny, and they do not come out of this well at all. There was very little or no assistance in helping riot victims file their cases or for when they had to attend court; the Special Public Prosecutors did not display the required commitment or diligence; there was a lack of judicial oversight mechanisms for the prosecutors themselves and for the entire legal process; there were many cases of neglect of victims' rights during trial; the lack of recognition of outside pressure on and intimidation of the victims meant that they were not adequately protected and so many of them and other witnesses turned hostile over time; all sorts of false or cross cases against victims were allowed to be registered.

But possibly worst of all is the unaccountable and unacceptable delay in disposing of these cases. The trials appear to be never-ending, with continuous delays on flimsy pretexts. Hardly any have reached any conclusion, and many have been abandoned by survivors who have given up hope of legal justice and cannot any more spend the time, energy and emotional courage required to keep appearing in court and fighting these cases. It is obvious that justice delayed is justice denied. It is now 28 years since the Bhagalpur riots and 15 years since the Gujarat carnage. Many victims who lost their family members, their possessions and their livelihood because of those terrible events have since died themselves, or are no longer in a position to derive any benefit from either seeing justice done or getting their due compensation.

And then the process of compensation itself showed too many flaws: poor procedures for identifying victims; lack of sensitivity in dealing with them, including demands for all sorts of paperwork and proof that would be impossible to provide; providing too little too late in terms of tiny amounts of money after more than a decade; showing little concern for rehabilitation; inadequate protection to enable them to return to their original homes and thereby acquiescing in forcible displacement; and much more.

Overall, this is a stinging commentary on the state of our justice system in an area where it possibly matters the most. It is a huge mistake for anyone, including complacent members of the majority community, to feel that this does not concern them because they are not the ones directly affected. A security and justice system that can fail even a subset of citizens so enormously is clearly dysfunctional, and it is only a matter of time before this dysfunctionality strikes at all of us. Farasat and Jha have done all of us a huge service in bringing all this to public notice – but now we need to ensure that their work does not go waste, by mobilising to ensure that our justice system does indeed start working as it should.

**\* This article was originally published in the Frontline Print edition: March 31, 2017.**