CHAPTER V
Violations of minority rights in India have many dimensions and manifestations. It can be discerned at the level of laws/policy formulations on paper and also at the level of their implementation on the ground. One can find a wide disparity in constitutional precepts and practices in different areas of governance. The practice of discrimination and religious hatred which lie at the root of such violations seem to be prevailing not only among different communities against each other but also found on the part of Indian State committing it through its agencies like police and other administrative machinery. Below we take a detailed look at how Indian minorities have been subjected to injustice and gross violations of their human rights. This chapter generally deals with violations of rights of two minorities – the Muslims and Christians.

Violence Against Minorities: Riots against Muslims

One of the extreme manifestations of atrocities on minorities has been the frequent eruption of communal violence in different parts of the country. India has a long history of communal riots and violence involving Hindu majority and Muslim minority. After independence, the first virulent communal riot took place in Jabalpur in 1962 when Nehru was alive. It shook Nehru so much that he decided to constitute the National Integration Council (NIC). Conceived to promote communal harmony and national integration, NIC could hardly make a dent. The country's atmosphere was so vitiated by communal ideology
of Rashtriya Swansevak Sangh (RSS) and Jan Sangh type outfits that the NIC could not prevent occurrence of series of communal riots later. In most of these riots more Muslims were killed than Hindus. The Ahmedabad riot of 1969 was greater in casualties and in intensity of violence than Jabalpur riot of 1962. In this riot more than 1000 people were reported to have been killed. Later in Maharashtra, at the instigation of another communal party, Shiv Sena, the Bhiwandi riot took place in 1970 in which more than 250 people were killed.

The decade of the eighties was the most dangerous decade as far as the communal disturbance is concerned as it saw anti-Muslim violence happening with increasing intensity and frequency. It was during this decade that a large number of communal riots broke out, particularly in places of north India like Moradabad in 1980, Biharsarif in 1981, Baroda and Meerut in 1982. In 1983 Nellie in Assam saw a riot in which more than 3000 Bengali Muslims were killed. Nellie was followed by the Bombay-Bhiwandi riots of 1984.

A major anti-Sikh riot also took place after Mrs. Indira Gandhi’s assassination on October 31, 1984 by her Sikh bodyguards. More than 4000 Sikhs were massacred in this riot in which members of the ruling Congress party were involved. The anti-Sikh riot was the first of its kind against Sikh community and was isolated.

In nineties the anti-Muslim campaign got fresh lease of life and communalism started raising its ugly head with renewed vigour and force in the wake of Ram JanamBhoomi agitation starting with the unlocking of Babri Masjid gate in 1985. Its impact was felt all over the country in the form of violent riots. First example was the Ahmedabad riots of 1985, which continued in phases up to October 1986. This riot of Ahmedabad was followed by the Meerut riot of 1987. Later Bhagalpur riots
followed in 1989. Both the riots of Bhagalpur and Meerut saw a
great number of police atrocities and much police collusion in
killing members of the minority community. In Meerut the police
dragged out 23 young Muslim boys from Hashimpura locality, shot
them dead and threw their bodies into a nearby canal. No action
has been taken against these murderers so far. In Bhagalpur,
Bihar, police took part in violence directly and when Rajiv Gandhi,
the then Prime Minister, suspended the police inspector involved,
he was gheraoed and made to reverse the suspension order.\(^2\) A
police inspector in one of the villages in Bhagalpur district killed
many Muslims, buried their bodies in a field and grew cauliflowers
over them.\(^3\)

All the periodic eruption of riots in India is in fact the result
of hate propaganda and extreme intolerance nurtured against
Muslims by aggressive "religio-political Hindu nationalists". These
riots have also exhibited prejudiced and discriminatory attitude of
law-enforcement personnel targeting Muslims causing great loss
of life, property, honour and destruction of their places of
worship.\(^4\) It is estimated that ten of thousands of communal riots
have occurred in India since independence. The number of major
riots can easily run into hundreds. What is agonising is the fact
that each of these riots has gruesome story to tell to us. For
example in 1961 in Jabalpur, hundreds of Muslim girls were raped
by Hindu rioters, who were avenging the death by suicide of a
Hindu girl who had conceived from an illicit love with a Muslim
boy.

A report prepared by Ajeet Bhattacharjee inquiring into the
1969 Ahmedabad riot which took 3000 lives revealed lack of
direction from political bosses as the major source of massive
loss of life and property. When Ajeet Bhattacharjee contacted a
cabinet Minister to ask why was the police given the direction to
be soft on rioters, the Minister admitted to having done so for fear
of loosing the coming elections to Jan Sangh Party. The 1978 Aligarh riots revealed a more disturbing feature than earlier inaction of police. The People Union of Civil Liberty and Democratic Rights Report found the state’s armed police, Provincial Armed Constabulary (PAC) targeting Muslims, shooting to kill them in the name of controlling riots. The connivance, complicity and active participation of administration and police in riots with a view to teaching the Muslims a lesson acquired alarming proportion during 1980s and 1990s as is evident from various enquiry commission’s reports.

Some of the findings related to the role of the police and other law enforcement agencies are relevant to note here. Justice D. P. Madon Commission Report on Bhiwandi, Jalgaon and Mahad riots (1970) reveals biases and partisanship of police in the following words.

Discrimination was also practised in making arrests and while Muslims rioters were arrested in large numbers, the police turned a blind eye to what the Hindu rioters were doing. Some innocent Muslims were arrested knowing them to be innocent. Some innocent muslims who went to take shelter at the Bhiwandi Town Police Station were arrested instead of being given shelter and protection.

Pointing to the inadequacy of measures in Jalgaon riots the Commission observed.

The real reason for the inadequacy of the measures taken by the authorities was the communal bent of mind of some officers and incompetence of others. No attempts were made to check the rioting and arson at Joshi Peth, though fifty-four Muslim houses were set on fire there and the flames could be seen even from a distance of two miles.
The National Police Commission in its sixth report also takes note of biased and cruel behaviour of the police thus:  

We also heard of stringent criticism from many responsible quarters that the police do not often act with impartiality and objectivity. Several instances have been cited where police officer and men appear to have shown unmistakable bias against a particular community while dealing with communal situations. Serious allegations of high handedness and other atrocities, including such criminal activities as arson and looting, molestation of women etc. have been levelled against the police deployed to protect the citizens.

The Amnesty International Report on allegations of extra judicial killings by PAC in and around Meerut on 22-23 May 1987 underlines the fact that "members of PAC have repeatedly been accused of carrying out their duties in a partisan manner when employed to control rioting between the Hindu and Muslim community. On a number of occasions PAC members themselves are said to have participated in violence directed against members of the minority community, including unprovoked and indiscriminate killings".  

A senior police officer, V. N. Rai, in his published work "Perception of Police Neutrality During Hindu-Muslim Riots in India" points out numerous attitudinal features of police while dealing with communal strife. He finds:

a) Police behave partially during most riots. In all the riots discussed in this study, they did not act as a neutral law enforcement agency but more as a 'Hindu' force.

b) Perceptible discrimination was visible in the use of force, preventive arrests, enforcement of curfew, treatment of detained persons at police stations, reporting of facts and investigation, detection and persecution of cases registered.
during riots. Muslims suffered in all the above mentioned areas.

c) An average policeman does not shed his prejudice and predetermined beliefs at the time of his entry into the force, and this is reflected in his bias against Muslims during communal violence.

d) The inimical relationship between police and Muslims make them overreact in a confrontation-like situation.

The partisanship of custodians of law was also witnessed in Bombay riots of 1992-93 against the Muslim minority. This was very much substantiated by the Justice B.N. Srikrishna Commission in its report on Bombay riots. The report says:

Police officers and men, particularly at the junior level, appeared to have an inbuilt bias against the Muslims and Muslim victims of riots. The treatment given was harsh and brutal and on occasions, bordering on inhuman, hardly doing credit to the police. The bias of policemen was seen in the active connivance of police constables with rioting Hindu mobs on occasions, with their adopting the role of passive onlookers on occasions, and finally, in their lack of enthusiasm in registering offences against Hindus even when the accused were clearly identified and post haste classifying the cases in "A" Summary.

The report further reveals:

Even the registered riot related offences were most unsatisfactorily investigated. The investigations showed lack of enthusiasm, lackadaisical approach and utter cynicism. Despite clear clues the miscreant were not pursued, arrested and interrogated, particularly when the suspected accused happened to be Hindus with connection to Shiv Sena or Shiv Sainik. This general apathy appears to be the outcome of the built-in prejudice in the mind of an average policeman that every Muslim is prone to crime.
Violence Against Christians

Besides the perennial anti-Muslim violence, India has witnessed anti-Christian violence too. The underlying causes have been the same as those promoting violence against Muslims. Attacks against Christians increased significantly since the Hindu nationalist party, Bhartya Janta Party (BJP) came to power. A majority of the reported incidents of violence against Christians occurred in Gujarat in 1998 – the year BJP formed the government in the state. In the district of Dangs in south eastern Gujarat, a spate of violence and premeditated attacks on Christian communities and institutions continued for ten days between December 25, 1998 and January 3, 1999.¹⁴

In other parts of the country also such anti Christian violence took place. There was a gang rape of four nuns in Madhya Pradesh in September 1998. Also in Orissa in January 1999, an Australian missionary, Graham Staines and his two sons were trapped in their car and burnt alive. In just a week after this gruesome incident another Christian religious leader, Rev. Arul Doss was shot in the chest with an arrow and beaten to death by a group of unidentified assailants. The follow up to these killings revealed serious irregularities in the official treatment of anti-Christian violence.¹⁵ A government appointed commission of inquiry accused Bajrang Dal activist and BJP member Dara Singh of leading the attack in Orissa killings.¹⁶

On the violence against Christians in the country, Human Rights Watch, a New York based NGO in its report documents the role of right-wing Hindu organisations and the local media in promoting anti-Christian propaganda, the exploitation of communal differences to mask political and economic motives underlying the attacks, local and state governments complicity in the attacks, and the failure of the central government to meet its constitutional and international obligations to protect minorities.
Summary of the Human Rights Watch Report makes the following observation:  

Local police have not provided adequate protection to villagers in the affected areas, even though there have been early warnings of violence. In some cases, police refused to register complaints by members of the Christian community, whereas they have registered complaints by others against Christians. Some Christians who have filed charges with the police have been pressured to withdraw their complaints. Officers who have taken action in response to anti-Christian attacks have been threatened with transfers.

The victimization of Christians in various states also drew the attention of National Human Rights Commission, which issued notices to the Chief Secretaries of Orissa, Madhya Pradesh and Gujarat and to the Union Home Secretary seeking immediate and effective measures to prevent such incidents in the future. The National Minorities Commission has also submitted several reports to the state and central government recommending actions and accusing government of failure in protecting the rights of its minorities.

Babri Mosque Demolition

Another flagrant violation of minority rights took place when a four hundred and sixty-four year old mosque called Babri Masjid was razed to the ground by Sangh Parivar in broad daylight in the presence of entire law enforcement machinery of the state. The Prime Minister of the country at that time, P. V. Narsimha Rao, did not bother to take any action and remained mute spectator as if he was conniving with vandals. The Central Reserve Police Force deployed nearby was never pressed into service. The act of vandalism was committed with utter disregard to rule of law and constitutionalism.
The role of other wings of state’s law enforcement machinery i.e the district administration and the police was blatantly partisan. Given the command-control system of the district officials and the police, they faithfully carried out the order of the Chief Minister, which required them not to use force against \textit{kar sevaks} (volunteers). Instead of giving any thought to the legality of such an order, the district official and the police sought to provide maximum satisfaction to the political executive. It vindicates the observation that the police in India are not organised for impartial law enforcement but for government policy enforcement.\textsuperscript{19} Moreover, the role of judiciary in this case has also not been above board. Right from the beginning of the case in 1949 the court seems to have acted in response to physical moves and agitation of the \textit{Sangh Pariwar}.\textsuperscript{20}

The initial attachment order (December 1949) of the magistrate and subsequent injunction order by the district court giving legal sanction to the condition of Babri Masjid after the surreptitious installation of the idols of \textit{Ram Lalla} during the night of 22-23 December 1949, in spite of the FIR of the constable affirming such illegal trespass, are held by eminent legal luminaries as violative of the principle of natural justice. It was also against legal precedents in similar cases, wherein status quo had been restored after removing any such adverse possession. It is this initial injunction order favouring one party against other that practically deprived Muslim of their right to worship in the mosque.\textsuperscript{21} This fact of the deprivation of Muslims from entry into the mosque since December 1949 was later used by the Supreme Court as a ground for its own sanctioning of the makeshift temple after mosque demolition in the judgement of 1994.\textsuperscript{22} On this part of judgement former Attorney General, Soli J. Sorabjee makes the following comments: \textsuperscript{23}

The majority judgement overlooks that the reason why (Muslim) worship had come to standstill was the
surreptitious entry into the mosque and the placing of idol there in a clandestine manner. Indeed that was the unequivocal admission of the state of U.P. in its written statement, solemnly affirmed in the suit.

He further says:

The distressing part is that the majority judgement countenances a situation which was the outcome of an act of national shame. The minority community is understandably disappointed with the majority judgement.

Earlier, the case of unlocking of the gate in 1986 was disposed off by the Faizabad District Court in just a matter of two days in contrast to the previous lack of any progress in Ayodhya suit. The speed with which case moved and other things was done appeared to be premeditated. It raises doubt in many minds about the dubious role played by the court. Till date no legal action has been taken against such scandalised role of the Court, it may be taken as something not disapproved of by the judiciary in Ayodhya case. Moreover, the view that the Court’s order for opening the gate of the mosque was not an independent act of judiciary based on the merit of the case gets substantiated by the statements of Shankaracharya of Dwarka and jyotishpeeth, Swaroopananda Saraswati given in the Kumbh Mela - a religious congregation at Allahabad. There he claims that it was at his behest that Prime Minister, Rajiv Gandhi, got the lock opened for political consideration.

Criminal Justice System

Failure of the criminal justice system in India has been a major source of perpetual violation of minority rights. An important object of the criminal justice system is to ensure justice to the victims. It is duty of the state to protect fundamental rights of the citizens as well as the right to property. The state must
strengthen the criminal justice system so as to protect the rights of the innocent and punish the guilty.

The governments' failures to do so in providing equal protection of the law and safeguarding the rights of minorities has been very much visible on Indian scene. Such a failure of system generally gives rise to the sense of despondency to the victims, which lead to acts of revenge on the part of such victims against injustice done to them and innocent members of their community by certain organisations and government's law enforcement and justice delivery system. Some of the acts of terror committed in India are attributed to the denial of justice and unfair treatment experienced by some sections of minorities. Justice Srikrishna's findings make it amply clear. He observes in his report on Bombay riots and subsequent serial bomb blasts regarding the circumstances and motives of those Muslims who were supposed to be responsible for blasts that:

The Muslims felt a feeling of insecurity, tension and anger on account of their suffering during the two riot periods and they were inclined to blame the State Government and police for their misery. The Muslims perhaps felt that the Government and police instead of protecting their interests had actually acted against their interest by joining hands with communal elements which took a lead in the riots. A large number of Muslim youths came to entertain this firm belief.

He further says:

There was a large amorphous body of angry frustrated and desperate Muslims keen to seek revenge for the perceived injustice done to their community and it is this sense of revenge which spawned the conspiracy of the serial blasts. This body of angry, frustrated and desperate Muslims provided the material upon which the anti-national and criminal elements succeeded in building up their conspiracy for the serial bomb blasts.
Justice Srikrishna noted his agreement with the finding of Mahesh Narain Singh who was heading the team of investigators into the bomb blast and who emphasised that "the serial bomb blasts were a reaction to the totality of events at Ayodhya and Bombay in December 1992 and January 1993."\(^{27}\)

The Coimbatore bomb blasts at L.K. Advani's meeting on February 14, 1998 are again traceable to the partisan brutal police action against Muslims during Coimbatore riots of November-December 1997. The report of the enquiry Commission by Justice (Retd.) PR Gokula Krishnan tabled in the Tamil Nadu Assembly on 18 May, 2000, established the conspiracy by Muslim fundamentalist organisations, particularly Al-Umma to explode the bomb to wreak vengeance for the death of 18 Muslims in police firing on November 30 and December 1, 1997.\(^{28}\)

A discussion on the genocidal killings that took place in 1987 and the lackadaisical course of law give us an insight into how miserably criminal justice administration has failed in India in delivering justice to the aggrieved minority.

During curfew in Meerut in the State of U.P the Provincial Armed Constabulary (PAC) picked up several hundred innocent Muslims mostly youth, from their homes and took them away in trucks while there was no rioting in that area of the city. A few days later about forty dead bodies of some of those arrested were found floating in the upper Ganga Canal in Murad Nagar, District Ghaziabad, U.P. Inquiry reports by reputed journalists like Nikhil Chakravarty and Kuldip Nayar and organisations like the People’s Union For Civil Liberties (PUCL) and the People’s Union For Demoratic Rights (PUDR) revealed that it was a case of barbaric cold blooded murder by the PAC personnel. Nikhil Chakravarty compared the event with "Nazi Pogrom against the Jews, to strike terror and nothing but terror in a whole minority community".\(^{29}\) The Amnesty International's inquiry report observed that "there is
evidence to suggest that members of the PAC have been responsible for dozens of extra judicial killings and disappearances". In a joint statement eminent persons including I.K. Gujral, Rajinder Sachchar, Kuldip Nayar, Subhadra Joshi and Badruddin Tayabji demanded that "the government must prosecute all those who have disgraced their uniforms. Their misdeeds must be treated at par with treason and tried by special Courts".

As a result of this public out-cry, the Government of U.P ordered an inquiry into the ghastly incident by the Crime Branch CID. A thorough Inquiry Report was submitted by the CBCID in February, 1994 in which 66 PAC-Police personnel of all ranks were indicted. A Writ Petition was filed by Jamaluddin and others of Meerut on 15 February, 1995 before the Lucknow Bench of the Allahabad High Court for making the Report public, prosecuting all those indicted and payment of adequate compensation to victims. But U.P. Government filed cases against only 19 PAC men of lower rank in the court of Chief Judicial Magistrate, Ghaziabad on May 20, 1996. However, there was no compliance of the court’s summoning order followed by bailable warrants six times and non-bailable warrants seventeen times between January 1997 and April 2000, although all of the accused PAC men were in active service whose posting and home addresses were there in the file. After mounting pressure created by media, the accused started surrendering in June-July 2000 and secured bail. As adjournment routinely continued on one pretext or the other in the trial court at Gaziabad, the Supreme Court transferred the case on an application of the Minorities Council to the Tees Hazari Court in Delhi on 27 September 2002 in the interest of justice, though the learned judges did not go into the merit of the issue of collusion between prosecutor and the accused raised in the application. Since September 2002 till April
2005 there has been no progress in the case at Tees Hazari Court, Delhi.\textsuperscript{33}

In the counter affidavit filed on March 13, 1997 in the High Court the CBCID admitted that the detenues were taken in the PAC truck to Hindon Canal and Platoon Commander and PAC men shot them dead. Affidavit also submitted that the incident of human rights violation not denied.\textsuperscript{34} In spite of this background of admission of guilt the proceedings in the court of law has not been able to deliver justice in this case.

Thus none of the guilty PAC personnel responsible for cold blooded murder of 41 Muslims in May 1987 have been brought to justice though the incident had stirred the conscience of the nation and the world over 19 years ago. Not only the trial of those indicted by the CBCID inquiry has not yet started, but the next of kin of those killed were given token relief of Rs. 40000 in two installments. No compensation for loss of life has yet been given by the U.P Government. The case of adequate compensation is still lying for disposal in the Lucknow Bench of Allahabad High Court since 1995.\textsuperscript{35} This case is unique as it is the only one in which the CBCID inquiry has been successful in pinpointing the responsibility of 66 PAC-police personnel in the killings, which offered the rare opportunity of bringing guilty custodian of law to justice. It would have deterred recurrence of pogroms and genocidal killings of Muslims, Sikhs and Christian in India.\textsuperscript{36}

Further, apart from this case all those officials named by Justice Srikrishna Commission are yet to be brought to justice. The governmental lawlessness and impunity enjoyed by the guilty of the carnage of Gujarat 2002 again brings into focus the fragility of justice delivery system in India particularly in case of violence against Muslims and other minority groups.
Given the endemic delays happening in present legal system and its inability to produce effective results, the Government of India decided to constitute a Committee on Reforms of Criminal Justice System headed by Justice V.S. Malimath. The notification to this effect contained Government's candid realisation that "people by and large have lost confidence in the Criminal Justice System... Victims feel ignored and crying for attention and Justice..." The Committee on its part makes extensive recommendations but remains silent on suggesting any concrete reform so as to provide equal protection of law and safeguard the rights of minorities. The Committee regrettably finds no space to discuss repeated failure of various arms of criminal justice system in ensuring effective protection, investigation, prosecution and justice to victims and survivors of communal violence.

But what is positive about Malimath Committee's recommendations is that it emphasises on the system with focus on justice to victims. It observes that "criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognised by law and restitution for loss of life limb and property are provided for in the system".

Any legal institutional reform aimed at tackling communal violence should take into account issue of impartial, effective and human 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. The promised enactment of comprehensive law on communal violence by the present government may be taken as a right steps if it addresses these issues. But the draft of the proposed Communal Violence (Suppression) Bill 2005 is deficient as it suffers from many infirmities. The new law, for example, does nothing whatsoever to
ensure that governments are forced to perform their most fundamental duties to their citizens or face legal actions. It makes absolutely no difference to a government driven by communal agenda.

**Gujarat Carnage**

Gujarat carnage is unprecedented in the history of communal violence in the history of independent India. It unquestionably ranks as India's worst state sponsored pogrom since partition. The violence unleashed on the Muslim minority was not controlled and death and destruction were let loose for almost three months spreading almost all parts of Gujarat state ranging from cities and towns to villages. The whole police force with some honourable exception was communalised or abdicated its duty. The administrative apparatus behaved no differently. The widespread violence attracted worldwide media attention and several fact-finding missions by various concerned citizens and human rights groups.

According to reports, the most prominent of Gujarat violence was experienced in the form of pogrom in Muslim dominated localities of Ahmedabad, which was led by local Vishwa Hindu Parishad (VHP) and Bajrang Dal leaders. The worst instance of brutality was witnessed at Naroda Patia where a big settlement of Muslims of about 25,000 inhabitants, mostly working class was completely destroyed by the rioters with active connivance of police. It saw barbarity of the worst order with more than 100 persons being burnt alive including women and children. Worse still not only some girls were raped before being burnt alive but also heart rending was that one expectant mother's womb was cut open in the melee and her foetus dashed to the ground. The enormity and ferocity of the attack forced all the surviving residents of the settlement to run away.
Another shocking incident was the burning alive of 39 persons along with Ehsan Jafri, a former Congress Member of Parliament at his Gulberg Society bungalow in Ahmedabad city despite frantic call of help made by him to various authorities including Commissioner of Police. The cases of burning alive were not confined to Ahmedabad alone, it took place at many other places. One such incident of prominence is the case of Best Bakery where numerous persons were roasted alive.

The organised hate killing was so grave and enormous in Gujarat that even Muslim police officials and other government functionaries were not safe. One Muslim inspector general of police was threatened by his own Hindu subordinates and had to remove his police uniform to save himself. A person of a status of a High Court Judge was not safe in his official residence. He had to shift, under advice from the Chief Justice of the Gujarat High Court, to a relative's place in a Muslim locality. All this speaks volumes about the role of the police and the nature of violence in the state in 2002.

In the violence most restaurants, hotels and boarding houses belonging to Muslims were burnt down. Many schools, madrasas and social and cultural institutions were damaged and destroyed. Minority institutions like Wakf Board and Minority Finance Corporation were attacked. Dargahs including that of 17th century Urdu poet and a sufi saint was not only destroyed but also a Hanuman temple was set up on the site. According to an estimate nearly 350 places of worship mostly Muslim places of worship were destroyed.

Riots, arson, loot and mass murders targeted against Muslim community continued for several weeks all over Gujarat. It was organized on such a massive scale that many of the media observers called it an ethnic cleansing and genocide.
This orgy of killings of Muslims was preceded by the train-burning incident at Godhra, which had been condemned by one and all. But in the name of 'every action has a reaction' to engage in systematic wiping out of a community goes to explain the plan that was hatched even before Godhra took place. In a report prepared by British diplomats it is stated that the post Godhra incidents were planned. If the Sabarmati Express tragedy had not happened, another flashpoint would have been created to justify premeditated violence as reaction.\(^{44}\) That there was a systematic planning could be seen from the build up towards such massive violence. It is also a fact that right wing Hindu fundamentalist forces like RSS/VHP considered Gujarat as their laboratory and their programme to build a Hindu nation was at the root of this experiment.

The planned nature of the violence, looting, raping and burning was quite obvious as government ministers and machinery were seen to be involved. There were reports that some ministers even entered the police control room and gave instructions to the police not to intervene in the prevailing situation. It was perhaps because of such instructions from political bosses that many of the ugly incidents were allowed to happen in full view of the police. Police inaction and complicity was very pervasive. The planning of the violence can also be gauged from the fact that rioters were well equipped with gas cylinders, swords, petrol bombs and mobile phones besides voter’s lists and sales tax details for identifying Muslim shops.\(^{45}\)

Several features of this violence have been noted for their being entirely new.\(^{46}\) In many respects Gujarat violence was different from rest of other hundreds of previous major riots that have happened in free India. Never ever has any government been found to be as patently partisan as in this case and indicted so severely for its failure to protect citizen’s constitutional rights.
to life, liberty, equality and dignity. It was also for the first time that some foreign nationals as they happened to be Muslims were killed in the communal strife. Never before European Union or any foreign country sent its investigating teams and registered protest at the diplomatic level for failing to save the lives of innocent people. Also, it was for the first time in India that the opposition insisted on debating the issue of communal violence in Parliament under rule 184 under which votes are taken after discussion. Further it was this episode of wanton destruction that for the first time led any Indian Chief Minister to be denied visa by the government of USA for violation of freedom of religion.

It is now important to examine the course of law and process of justice that followed after outburst of this massive violence.

All over Gujarat, the subversion of due process of law was observed in a number reports published by various human rights agencies. As a result justice for the victims of mindless violence remains elusive. This is understandable from the way charge sheets were filed by the police, for example, in two of the most gruesome incidents i.e Gulberg Society case in which 39 persons including former Member of Parliament were burnt to death and Naroda Patia where also nearly 100 people were burnt alive. The charge sheets in both the cases virtually begin with a defence of the accused and paints the victims as instigators. Not only that the charge sheets were prepared to help the accused, even names of prominent persons included in FIR were also omitted. The argument advanced by the police in defence of this action was that there was no documentary evidence against them. It means that police was ignoring requirement of evidences of witnesses under criminal law.
Further only cases relating to mob attack were registered by the police. But they avoided registering cases where rioters were identified. In the Best Bakery case Zahira Sheikh filed a complaint naming all the accused. She was, however, not given a copy of the FIR by the police. Later she went to the police station and found that the FIR registered by the police was false as it stated that the victims were burnt in their sleep. Similarly a number of FIRs were skillfully manipulated so that accused appear to be a nameless and faceless mob. There are also instances where the FIR was registered only when the victims agreed to drop the name of the accused especially if they happened to be BJP or Bajrang Dal members.\(^4^9\)

In view of such widespread reports of FIRs not being properly recorded for extraneous consideration under political influence and investigations getting affected, the National Human Rights Commission (NHRC) had recommended to entrust certain critical cases to the Central Bureau of Investigations (CBI). These included Godhra incident, which was being investigated by the Godhra police, Chamanpura Gulberg Society and Naroda Patia massacres in Ahmedabad, the Best Bakery case in Vadodra and the Sardarpura case in Mehsana district. The NHRC pointed out to the authorities in Gujarat that it is “central principle in the administration of criminal justice that those against whom allegations are made should not themselves be entrusted with investigations of those allegations”.\(^5^0\)

In addition to the NHRC, the National Commission of Minorities, various civil liberties and citizen’s groups and writ petitions filed in the Supreme Court had asked for investigation by the CBI. The Gujarat government, however, refused CBI involvement in the investigation. The central government response was also not positive in this regard on the plea that ‘existing rules’ permit investigation of cases by the CBI only if the
state government makes a request for the same. The system of checks and balances and division of powers and functions envisaged by the framers of the Indian constitution had perhaps not conceived of the situations where the central and state governments both collude to deprive of certain section of Indian citizenry of their fundamental rights. On such response of the government the NHRC reminded “It would thus be a travesty of the principle of criminal justice if such cases were not transferred to the CBI. Worse still, the inability to do so could severely compromise the fundamental rights to life, liberty, equality and dignity guaranteed by the constitution to all of the people of India on a non-discriminatory basis”.

The Gujarat governments' disinterest in securing speedy justice was also apparent from its constant refusal to heed the recommendation of the National Human Rights Commission (NHRC) regarding the setting up of special courts for the trial of select cases of carnage. Because of high backlogs in existing courts, there is least possibility of cases like Naroda Patia coming up for trial in near future. The charge sheets that have been filed before the metropolitan magistrate who after looking into them will be submitted to the session courts. The NHRC had suggested that the special courts with no other business could expedite matters by holding daily hearings, trial court dealing with many cases may not be able to do this. This was necessary if the saying 'justice delayed is justice denied' was not to be allowed to be true. How delayed the proceedings of trial courts can be is illustrated by the fact that the cases from the 1985 communal riot in Ahmedabad are still being fought. The trial in one case involving a former Union Minister, Harin Pathak and a Gujarat minister, Ashok Bhatt, was still to commence in 2002.

NHRC further recommended that special public prosecutors should be appointed. This was equally important as any
professional, competent, independent and impartial prosecutor alone can represent the case of the victims of this carnage in an effective manner.

Under the Indian criminal justice system, crimes are supposed to be committed not against an individual but against the state. It is therefore the job of the state to prosecute those who commit crimes. Problem however, arises where government itself stands indicted as an accomplice in the crime. Here it is to be remembered that under Section 301 of the Code of Criminal Procedure, the public prosecutor alone is authorised to prosecute an accused and the role of a private counsel in a criminal trial is limited to assisting the prosecution. The appointment of honest and upright special public prosecutor for the trial of cases of Gujarat carnage was therefore need of hour.

Moreover, the government of Gujarat blatantly followed discriminatory practices and policies in total disregard of constitutional guarantees of certain basic fundamental rights provided to every single citizen under Chapter III including Article 14 of the constitution which stipulates that state shall not deny to any person equality before law or equal protection of laws; Article 15 which prohibits discrimination against any citizen on the ground of religion etc. and Article 21 which enshrines a principle that no one should be deprived of his life or liberty except according to the procedure established by law. In fact the Gujarat government had suspended the operation of these fundamental rights for a section of Indian citizens namely the Muslim community.

The discriminatory approach of the government was also evident in its legal response. The state’s BJP government led by Narendra Modi initially announced Rs 2 lakh compensation for the victims of Godhra and Rs 1 lakh for others murdered in rest of Gujarat. Again initially an enquiry was ordered into the train
attack at Godhra alone and not into the mass murder that followed throughout the state. Similarly, while pogroms against Muslims were not considered terrorism, the initial response of the state government was to arrest those accused of involvement in the Godhra train attack under Prevention of Terrorism Act (POTA).\textsuperscript{55} It was only after public out-cry that Modi government backtracked on all these decisions. It opted to reduce compensation amount from Rs 2 lakh to 1 lakh to Godhra victims but not chose to increase the amount for the Muslims from 1 lakh to 2 lakh. It also widened the scope of Justice Shah Commission, which is now headed by Justice Nanavati and also dropped POTA charges against the Godhra accused.

Another aspect of state government’s discriminatory approach was visible in the investigation process. The overzealousness of the investigating agency in the Godhra case has even led them to administer ‘truth serum’ to seven of the prime accused. This practice is highly objectionable and was described as torture by the United Nations (UN) in 1999. Under Indian law evidence procured in this manner is inadmissible in court.\textsuperscript{56} In glaring contrast, investigation conducted in all other crimes that rocked the state for three months was rather dispirited, uninspiring and unconvincing. As for the use of ‘truth serum’ on those involved in Muslim massacre, why would they use it on them when they wanted to throttle the truth?

Subversion of justice delivery system is further confirmed by Supreme Court’s severe indictment of Gujarat High Court in the trial of Best Bakery case ordering transfer and retrial of the case outside Gujarat in its judgement delivered on 12 April 2004. While overturning the High Court acquittal in this case the Supreme Court observes “the entire approach of the High Court suffers from serious infirmities, its conclusion lopsided, and lacks proper or judicious application of mind. Arbitrariness is found writ
large on the approach as well as the conclusion arrived at in the
judgement under challenge, in unreasonably keeping out relevant
evidence from being brought on record". The learned judges not
only questioned the impartiality and efficiency of the investigation
and prosecution but also expressed concern Court’s “indifference
to sacrilege being committed to justice” and they were also
constrained to observe that the trials “were reduced to mock trials
or shadow boxing of fixed trials”.

The latest Amnesty International Summary Report released
on January 27, 2005 focuses state’s failure to protect women’s
right to life with dignity and non-delivery of justice to victims. The
Report laments that three years after the frenzy, virtually none of
the perpetrators of targeted violence against Muslims including
those responsible for rape and mass murder in Gujarat has been
brought to justice. The criminal justice system including the
police, the judiciary and the public prosecutors office, failed in
their constitutional duty to record and investigate complaint
objectively and prosecute offences. Medical documentation of
abuses was frequently fraught with deliberate or careless
inaccuracies which frustrated survivors attempt to secure
justice.

Thus it can be concluded that the Modi led BJP government
in Gujarat since 1995 has for years failed to curb hate
propaganda against Muslims and to maintain a non-discriminatory
approach to state’s minorities. It assumed a partisan role during
Godhra incident and subsequent rioting, failed to cooperate with
the judiciary to provide legal redress and to ensure the
impartiality of public. It also resisted public scrutiny, failed to fully
cooperate with the NHRC and to protect human rights defenders
and victims and witness seeking redress. It made it hard for
victims to obtain relief, compensation and rehabilitation. The
central government of India also led by BJP, which continued in
office till May 2004 failed to distance itself from the state government despite its clear failings to protect the human rights of members of state’s Muslim minority.\textsuperscript{60}

**Neglect of Cultural Rights – A Case of Urdu**

The acts of discrimination against minorities are discernible even in the field of culture and language. The example of Urdu as a minority language is a case in point. As a language Urdu has come to be associated with Muslims. The reason for Muslim attachment to Urdu is best described in the words of Dr. S. Abid Hussain. “It has a two fold importance because it is not only their secular and cultural but also their religious language. No doubt there are number of books on Muslim religion in Bengali, Assamese, Gujarati and other Indian languages. But even Muslim who ordinarily speak these languages do not regard this meagre literature as sufficient but use it only in the initial stages and then proceed to read Urdu books. In short, the learning Urdu language is for Indian Muslims not only a vital cultural but also a religious necessity.”\textsuperscript{61}

As we noted in earlier chapter, Article 29 of the Indian constitution guarantees that a minority having a distinct language and culture of its own shall have the right to conserve the same. If plight of Urdu is any indicator, in practice this guarantee meant very little. How could the Indian Muslims conserve their culture if their mother tongue was banished from the primary school attended by their children? Throughout large areas of northern and central India in the states of U.P, Bihar, M.P, and Rajasthan Urdu was virtually eliminated as a medium of instruction in school. In 1949 in M.P, it was made an offence for a government servant to use any language other than Hindi in Devnagri script. The Punjab government took steps to ban the use of Urdu in administration and public educational institutions. In May 1948 the U.P government issued new regulation which stated that
children would be educated through the medium of Hindi exclusively. According to this order, a child whose mother tongue was Urdu would have no opportunity to his own language except as an optional subject when he reached sixth standard.52

In U.P a special officer for compulsory education issued order completely contrary to the principle of instruction in the mother tongue approved by the government of India after Provincial Education Minister's Conference held in 1949. This order resulted into the expulsion of Urdu as a medium of instruction in primary schools controlled by municipal and district boards.63

Before 1947 Urdu was used as the official language in Punjab, United Provinces and Central Provinces at the district level for revenue records, for judicial proceedings, for police records and for other government business. It was the official language of many princely states falling within the present boundaries of the states such as Himachal Pradesh, Punjab, Haryana, Uttar Pradesh, Rajasthan, Andhra Pradesh, Karnataka and Maharashtra. In all these provinces and states, Urdu was the medium of instruction and examination of our educational system up to the secondary level. In some places it shared this status with Hindi and English and in some other places it was solely used for these purposes. Urdu was opted as the first language by a large number of students irrespective of any religious consideration. Urdu press was the strongest among the vernacular languages and played a great role in the social, religious and political fields in the country. Its contribution to the freedom movement has been no less than that of any of the language in the country. All this shows that the language had a mass base widely used all over the country and actively responded to the rising needs of various communities. The language was developing in its natural course. But after
independence it became the victims of antagonism of political class, which resulted into its gradual removal from the sector of practical utility.64

Re-organisation of states in 1956 on the linguistic basis has also left an adverse impact on the status of Urdu. All major languages of the country were assigned to one state or the other which became homeland of the language and where the language was declared as the regional and official language of the state. The state took the responsibility of developing the language and implementing its usage for all official purposes in the state. As a result of this reorganisation Urdu could not become official language in any state except for Jammu & Kashmir and was thus allowed to suffer. Moreover, policies and programmes of the government have never been encouraging.65

Given this plight, the government of India appointed a committee for promotion of Urdu under the chairmanship of Mr. I. K. Gujral, the then Union Minister of State for Works and Housing by a resolution dated May 2, 1972. It was requested to advise the government on the measures to be adopted for the promotion of Urdu language and steps required to be taken to provide adequate facilities for Urdu speaking people in educational, cultural and administrative matters.

The report prepared by the Gujral Committee was submitted to the Ministry of Education on May 8, 1975. Running into 269 pages the report contained 187 recommendations covering a wide spectrum of issues and problems. The major recommendations of the report include the amendment of the three-language formula, use of Urdu for official purposes where there are 10% or more speakers of Urdu and provision of adequate safeguards for the Urdu linguistic minority. Besides there are other recommendations regarding the use of Urdu as medium of instruction, training of Urdu teachers, setting up of Urdu research
institutes, starting of Correspondence Courses in Urdu in universities, development of Urdu journalism and literature, increasing the frequency and duration of radio and T.V broadcasts in Urdu and strengthening of the Bureau for Promotion of Urdu.\(^66\)

Later Sardar Ali Jafri led Expert Committee appointed to examine the implementation of Gujral Committee report finds that most of the Gujral committee recommendations remain unimplemented. According to the report of this expert committee, the constitutional provision of Article 350 (A) which lays down that "it shall be the endeavour of every state to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such direction to any state as he considers necessary for securing the provision of such facilities" has been totally disregarded. The Committee says that this provision has been disregarded in all three aspects it emphasises namely 'endeavour', 'adequate facilities' and 'direction'\(^67\). Education was included in the Concurrent List as a result of the 42\(^{nd}\) amendment of the constitution in 1976. Although it was a far-reaching step with regard to sharing of responsibility between the Union and State governments, no benefits have accrued to the Urdu speaking population by this measure.\(^68\)

The Gujral Committee's recommendation to set up Urdu medium primary schools where there are 10% or more Urdu speaking people has not been implemented in any of the states. The condition of the Urdu medium secondary schools in the states is also highly unsatisfactory both quantitatively and qualitatively. In U.P for example there is not a single government Urdu medium secondary school. There is acute shortage of Urdu teachers all over the country. There is also general complaint about non-availability of Urdu textbooks.\(^69\)
The report of the Commissioner for Linguistic Minorities 1989-90 says that many states have not submitted data and some others have sent incomplete data about facilities available for education in Urdu. This shows government apathy with regard to minority language.\textsuperscript{70}

Because of lack of facilities for learning Urdu script in the mainstream education system during the last fifty five years a large number of speakers of Urdu do not claim Urdu as their language, resulting in the language census figures not truly reflecting the percentage of its speakers. Urdu suffers neglect also because of the majoritarian perception of its not being a language independent of Hindi.\textsuperscript{71}

The part of the problem lies in the existing constitutional provisions and hostile political and linguistic climate unfavorable to Urdu.

Articles 345, 346, 347, 350, 350 (A) and 350 (B) of the Constitution relate to the protection of minority languages. Article 345 empowers, subject to the provision of Article 346 & 347, the state legislature to adopt one or more languages in use in the state or Hindi to be used for all or any of the official purposes of the state. Article 346 provides for languages for interstate communication.

Article 347 reads:

On a demand being made in that behalf the president may, if he is satisfied that at a substantial proportion of the population of the state, desire the use of any language spoken by them to be recognised by that state, direct that such language shall also be officially recognised throughout that state or any part thereof for such purpose as he may specify.

Article 350 (A) and (B) were incorporated in the constitution through seventh Amendment Act of 1956 in accordance with the

Article 350 reads

Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a state in any of the languages used in the Union or a state as the case may be.

Article 350 (A) lays down:

It shall be the endeavour of every state and of every local authority within the state to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such direction to any state as he considers necessary or proper for securing the provision of such facilities.

Article 350 (B) provides for the appointment by the President of a special officer for linguistic minorities for monitoring and reporting on implementation of safeguards provided for linguistic minorities.

All these provisions in fact do not make clear statement of rights. In stead of making definitive statements for ensuring two crucial rights of linguistic minorities concerning facilities for primary education in the mother tongue and use of minority language for all or any of the official purposes in the entire state, region within the state or at district or local bodies level, they present a clear case of making vague promises depending on subjective satisfaction. Moreover, they are presented in such a language that implies nothing can be claimed as a matter of right. One can only beg for it.

It is also not clear whether state legislatures are really empowered under Article 345 to declare more than one language as an official language in a state.
Similarly, Article 347 instead of making it a duty of the state to determine the size and spread of linguistic minorities in a state for their official recognition at appropriate levels and purposes, makes it dependent on three things which are not easy to conclusively determine. These are (i) desire of a substantial proportion of the population of a state for official recognition of their language (ii) this desire taking the form of a demand and (iii) satisfaction of the president regarding both (a) substantial numbers and (b) strength of desire.

In Article 350 citizen's right to representation can not necessarily be exercised in his mother tongue as the Article limits the right of such representation to the languages used in the Union or in the state, not mentioning that such representation can be made in all the languages listed in Eighth Schedule. Under this condition it can not be possible for a citizen in Rajasthan or Madhya Pradesh to submit his representation in his mother tongue if it is Urdu as it is not officially recognised language in these states.

Thus the provisions that we discussed above dealing with minority language are deficient in respect of providing protection to minority languages. Part of the solution lies in enacting a central law on minority languages so as to ensure compulsory teaching learning in these languages.

Conclusion

While injustice against minorities has many forms and facets in India, the most glaring among them has been the perennial problem of virulent riots against Muslims. As is evident from the present study, these riots have always demonstrated prejudiced and discriminatory attitude of state's law enforcement agencies resulting into heavy loss of life, property, honour and
destruction of their places of worship. The rampant occurrence of vandalism is in fact the result of hate propaganda and extreme intolerance nurtured specially against Muslims and Christians by aggressive religio-political Hindu nationalists.

These gross violations of minorities' human rights have been possible largely due to country's ineffectual justice delivery system. The inability of present legal system to produce effective results calls for extensive judicial reforms. The issue of effective, impartial and human law enforcement must be taken as the basis of all such reforms. It must also aim at speedily bringing the guilty to justice as well as rehabilitating and compensating the victims.

The deprivation that we saw of cultural and linguistic rights caused by political hostility shown towards Urdu because of its perceived association with Muslim minority is another injustice Muslims are faced with in India. The state's crucial obligations in respect of promoting their language thus remain largely unfulfilled.

What is therefore required on the part of government to do away with all such infringements of rights is to take serious steps towards ensuring minorities' economic and political empowerment.

Endnotes

1. For a comprehensive and detailed account of the communal riots and its impact, see Asghar Ali Engineer, Communal Riots After Independence, Shipra Publications, Delhi, 2004

3. Ibid

4. Iqbal A. Ansari, Intolerance And Discrimination Against Muslims As A Religious Minority In India, a paper submitted at United Nations World Conference, Durban, 27 August-7 September, 2001

5. Ajeet Bhattacharjee, Report on Ahmedabad, Sampradayikta Virodhi Committee, New Delhi, 1969

6. Mukandan Menon and Sumanta Bannerjee, Report on Aligarh Riot dated 5 October 1978 submitted to People's Union for Civil liberty and Democratic Rights, Delhi state


10. Al Index ASA 20/06/87 Dist. SC/PO/CO/GR India


13. Ibid, Para 1.14


15. Ibid


17. Ibid

18. For example National Commission for Minorities released on 31.1.1999 a special report titled 'Anti Minority Violence in Gujarat'


20. Ibid


22. *Ismail Faruqui v. Union of India (1994)* 6 SCC360


24. Iqbal A. Ansari, n.19, p.11


27. Ibid

28. Ibid
29. Iqbal A. Ansari, n.4
30. Ibid
31. Ibid
32. Siddharth Vardarajan, *Times of India*, 17 May 2000, New Delhi
34. For sequence of legal proceedings in this case, see *Human Rights Today*, n.17, p.12
35. *Human Rights Today*, n.33, cover page
39. S. Murlidhar, n.37, p.101
41. Besides statutory bodies like the National Human Rights Commission, National Commission for Minorities and National Commission for Women, host of other non-governmental human rights groups sent fact finding teams and prepared reports, for example All India Democratic Women’s Association, Indian Social Action Forum, People’s Union for Civil Liberty (PUCL), People’s Union for Democratic Rights (PUDR) etc.
42. Asghar Ali Engineer, n.2, p.21

43. *The Gujarat Pogrom, Compilation of Various Reports*, Indian Social Institute, New Delhi, 2002, p.4


45. Asghar Ali Engineer, n.2, p.19


47. Asghar Ali Engineer, n.2, pp.20-21


50. NHRC Final Report, reproduced in *The Gujarat Pogrom*, n.43, p.35

51. Ibid

52. Ibid. p.37

53. Kingshuk Nag, n.48, p.185

54. Vrinda Grover, n.49, p.379

55. Ibid, p.380

56. Ibid, p.
57. Quoted from Supreme Court judgement reproduced in *Human Rights Today*, Vol. VI, No. 2 April-June 2004, p.21

58. Ibid, p.22


60. Ibid


62. Ibid, p.181


65. Ibid


67. Ibid, p. 208

68. Ibid

69. Ibid, p. 209
70. Atiq Ahmed Siddiqi, n.64, p.197


73. Ibid

74. Ibid