

A travesty of justice:

Acquittals in cases of communal violence in India

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The protracted legal proceedings over the anti-Muslim pogroms in the Indian state of Gujarat in March last year have exposed just how deeply the entire official establishment is mired in Hindu chauvinism.

The violence erupted throughout the state after a clash in February 2002 involving a train carrying supporters of the Hindu extremist group—the World Hindu Council (VHP)—left 58 people dead.

The VHP, Bajrang Dal and other chauvinist groups immediately blamed Muslims and, with the tacit support of the Bharathiya Janatha Party (BJP) state government, launched an orchestrated rampage against Muslim families, their homes and businesses. About 2,500 men, women and children, mainly Muslim, were killed and many more were injured, raped or left homeless.

The violence was part of a wider agenda. Looking for a means of reversing a string of electoral losses, Gujarat Chief Minister Narendra Modi and sections of the BJP leadership seized on the riots as the means for intensifying communal tensions. The BJP won the state elections last December by appealing directly to Hindu chauvinism in what was a highly charged communal atmosphere.

Eighteen months after the riots, no one has been convicted over the anti-Muslim violence despite compelling evidence against individual thugs. One high profile case involved the murder of 14 people—11 Muslims and three Hindus—who were burnt alive when a mob set fire to the Best Bakery in Vadodara. The proceedings were given “fast track” status to enable a speedy decision.

The case was based on the statements of a number of witnesses who had seen what had happened and identified the culprits. The main witness—Zahira Habibullah Sheikh, the daughter of the bakery owner—described in detail how the thugs burnt the building down, killing her father.

But in the course of the hearings, Zahira and 41 of the 73 other witnesses abruptly retracted their statements. Without bothering to question why, the trial judge, H.U. Mahida, immediately dismissed the charges on June 27 declaring there was not an “iota of reliable evidence” against the suspects. He went on to accuse the witnesses of fabricating the evidence against the accused.

The judge’s 24-page verdict included comments on the Parsi religious group in India which he described as a model minority that advanced society “without creating hurdles to any caste or community.” The implication was that Muslims were not a model community and got what they deserved.

Soon after, it became clear why the statements had been retracted. Zahira Sheikh and her mother told the media they had withdrawn their statements after intimidation and death threats. At a press conference on July 7 in Bombay, Zahira said she “lied in court” as a result of pressure. She accused BJP MP Madhu Shrivastav and his cousin Congress politician Chandrakant “Bhattu” Shrivastav of threatening her and other witnesses.

In an interview with the *Frontline* magazine, she explained that “Bhattu” Shrivastav had approached her saying that the police and her own government lawyer were against her. “Decide now. Do you want to save your family’s lives or do you want these people to be punished? Even now you have time to think,” he told her.

Zahira said that other witnesses feared for their lives. She described the atmosphere in the court as hostile, pointing out that a number of Bajrang Dal members connected to the killings had been present. Among them was Hanuman Tekri, who she identified as one of the thugs involved in burning down her family’s bakery. Zahira has filed a petition in the Supreme Court calling for the case to be heard outside Gujarat.

After Zahira's revelations, other witnesses declared that they had also been intimidated. Shehzaak Khan explained that she had been too scared to speak in court but would now say what she had "seen and name all the accused."

International human rights organisations have condemned the acquittal in the Best Bakery case. Demanding a retrial, Amnesty International said that the decision "confirmed its worst fears about the lack of government commitment to ensure justice to victims of the communal violence in Gujarat". The US-based Human Rights Watch accused the state government of "sabotaging investigations."

The Best Bakery case is not an isolated incident. Explaining the situation in rural areas, Navaz Kotval from the Commonwealth Human Rights Initiative told *Frontline*: "Prosecutors are playing the role of the defence. They make sure the case falls through. One fell asleep during the second half of a trial. There is no decorum in the court. People jeer while witnesses relate incidents of rape or murder. The accused keep shouting that they will be freed."

There are many cases of chauvinist bias among police and prosecutors. Initially police refused to take down witness statements then, when they did, the names of the accused were left out. Police have already closed half of the initial 4,252 cases, citing lack of evidence. Several cases have been closed without any investigation at all.

The lawyers and prosecutors are often hostile to the victims. Yusufbhai, whose 11 family members were all killed by Hindu extremist mobs, explained to NDTV: "I am an illiterate man...The lawyer is supposed to guide me. But he has not spoken to us." He said that the district public prosecutor, Dilip Trivedi, was a VHP district leader.

Following international criticism of the Best Bakery case, the government's National Human Rights Commission (NHRC) filed a petition in the Indian Supreme Court calling for a retrial outside Gujarat. In its statement, the NHRC declared that "the verdict in the Best Bakery case is a testimony to the failure of the criminal justice system on many counts" and ruled out any possibility of a fair trial in Gujarat.

The Gujarat government has moved to block the appeal, however. On August 8, the same day that the NHRC petition was due to be heard, the state government filed its own case in the Gujarat high court "against" the Best Bakery verdict. The move was designed to preempt the Supreme Court case and keep control of legal proceedings within the state.

The BJP state president Rajendrasinh Rana accused the NHRC of damaging Gujarat's reputation and being "a muted spectator" when it came to human rights abuses in other states. The BJP in Gujarat also called a demonstration on August 8 to protest against the NHRC appeal.

During its petition, the NHRC lawyer argued that the state government appeal was a diversion designed to cover up its actions. But the Supreme Court judges baldly declared: "We cannot undermine our judicial system and high court in Gujarat". Their seven-page ruling delayed any decision on the NHRC request until after the state government appeal has been heard.

The BJP-led government in New Delhi has largely kept silent on the legal proceedings in Gujarat. While occasionally condemning the Gujarat violence to appease international opinion, Prime Minister Atal Behari Vajpayee and Deputy Prime Minister L.K. Advani have made clear their support for the state's chief minister Modi. Their stance is the surest sign that the BJP plans to run similar chauvinist campaigns in four upcoming state elections and next year's general election.

While the opposition Congress Party has criticised the outcome of the Gujarat trials, it is just as heavily implicated in fanning Hindu chauvinism. The fact that Congress politician Chandrakant Shrivastav helped his BJP-aligned cousin intimidate witnesses in the Best Bakery case is symptomatic. During the Gujarat state elections last year, the Indian media branded the Congress campaign as "soft Hindu chauvinism" as it was not fundamentally different to that of the BJP.

The legal cases on Gujarat violence reveal the degree to which the entire Indian political establishment and the state apparatus have abandoned any pretence of defending basic democratic rights and opposing communal politics.



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