



RESEARCH PAPER

Delhi Pogrom and Cessation of Constitutional State: A Critique

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PAPER INFO ABSTRACT

Received: January 15, 2020	Endeavour of this research paper is to examine the prolific claims Indian state on secularism, minorities' rights and its commitment towards idea of Constitutional state in the wake of recent communal massacre in Delhi. Recurrent occurrence of communal riots in India not unfamiliar rather a general phenomenon but magnitude violence, participation of police in mass-killing of Muslims and compromised role of mainstream media outlets raises some pertinent questions about protection of human rights and right to life including 'right not to be killed arbitrarily by the state itself'. The mainstream media has played a reprehensible role in spinning the bigotry and hatred against Muslims that culminated into mass-killing of Muslims and destruction of their houses, places of worship and sexual assault of their women. The Delhi pogrom, has questioned blatantly India's prolific stand of rule of law society and its proud claim of Constitutional state, looking at the current state of affairs, it is seen that all proved merely hollows
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Introduction

Let's initiate this piece through an assumption; what you will do when your parents brutally murdered in front of your eyes? What you will do when your brother or son killed by a huge fanatic mob just because of your religion? Will you go to police station for lodging FIR or demand justice? But what would be your reaction when you came to know that it was the same police who killed your parents or brother in collusion with the fanatic mob? How you feel when instead of taking any action of your complaint, police throw you behind the bar and also implicates you in numerous false cases of rioting and arson? Whatever stated earlier are not merely imaginaries but cruel and authentic version of Delhi pogrom that claimed the lives of many innocents and mainly Muslims in large numbers. In the context of prolonged Delhi's horrific pogrom there have been numerous questions and issues that need to be answered but probabilities are extremely vague to get them. Delhi pogrom has also constructed new interpretation of rule of law, minorities' rights, human rights and secularism in India-as per the new interpretation- the victim shall be penalised for being a Muslim and rioters,

administration and police repeatedly showing them as architect of violence through their compromised and messy investigation. In a modest language-justice is nowhere for India's Muslims and when Delhi was burned the judiciary, police and political class averted their eyes. The stark and frightening truth is that communal carnage unfolded in Delhi because a particular political class wanted it and the police allowed it. Numerous eyewitnesses to the attacks have confirmed through their testimonies that police action was soft or facilitating the rioters to attack Muslims and when victims of the violence rushed for help towards the police, they were thrashed and chased away. In this article the main thrust of the author is to examine the well-designed and orchestrated mass-killing of Muslims and attempt to trace the possibilities whether justice will be done or not in this most gruesome violence against Delhi's Muslims.

Genesis of Pogrom

A pogrom refers to large-scale destruction of a particular minority as states authorities look on, if not encourage it. Ashutosh Varshney, Professor of Political Science, Brown University and author of the highly-acclaimed book 'Ethnic Conflict and Civic Life: Hindus and Muslims in India', explains that pogroms require:

- (i) the state looking on other way while the target group is attacked
- (ii) the state ideologically condoning the violence.

It is defined as "a mob attack, either approved or condoned by authorities, against the persons and property of a religious, racial, or national minority". These acts are not spontaneous and state authorities look on as they are committed, if not actively encourage them. Perpetrators also usually harbour bloodthirst and vengeance. The goal is to not only destroy the target group but their material values too

Any study of communal violence in India cannot be completed without examining the factors; that fuelled the communal atmosphere and what triggered the violence? The previous studies of communal massacre in India be it anti-Sikh riots in Delhi (1984), anti-Muslims riots Bhagalpur (1989), anti-Muslims riots Nelli-Assam (1985), Muzaffarnagar (2013) (HT Respondents, 2013, September 24) and Gujarat genocide (2002) (Engineer, 2008), and now in Delhi pogrom (2020) have repeatedly highlighted the collusion between the political class, police and activist of ruling dispensation of the time. The striking feature of Delhi pogrom was that the current regime at the centre has been involved exceptionally and did not took the cognizance of the certain development that led to generate the heated communal environment through hate speeches.

It would be erroneous to fix culpability of Delhi riots to hate speeches of the ruling party's young bloods alone that triggered the violence but why repeated calls of hatemonger to murdering the traitors followed the hate speeches that

inflamed religious tensions remained unheeded by the police. It should be noted that riots are not spontaneous, the pre-violence activities of certain Hindu extremists groups and action of the government largely responsible for the violence (Noorani, 1997) Herein we cannot overlook the certain developments of past few months that were went against the minorities especially Muslims-things were happened in sequence and enough to disturb not only an ordinary Muslim but a law abiding citizen and a person who has reasonable understanding of law, human rights and Constitution of India: Triple Talaq Act that criminalised the instant Triple Talaq (although it has already been declared invalid by the Supreme Court), Abrogation of Article 370 from Jammu & Kashmir, Judgment on Ayodhya, promulgation of Citizenship Amendment Act 2019 and proposed nationwide NRC and finally communalisation of Shaheen Bagh. Hence, pyramid of communalisation was completed during hate speeches spewed by the young BJP leaders. All these developments finally led to sharpening the communal passion and poisonous environment. It is obvious that you cannot always boil the water at a controlled temperature and it bound to overflow at a time when Hindutva forces lest wanted. (Lal, 2020, March 8), Furthermore, it would be unjust to overlook the misuse of different social media platform and poisonous reporting by the loyal media outlets that also contributed largely in spreading the violence against Muslims. The mainstream media has been critical in manufacturing bigotry and hatred against Muslims and government inaction led to the situation out of control.

The Kapil Mishra ferociously speech who is in race to become a leading firebrand leader of Hindu supremacist party during state electioneering against Muslims and his attempt to equates the Shaheen Bagh protestors as Pakistani agents was deliberately overlooked by the police. Although their speeches are nothing but brazen attempt to polarise the voters in the impending Delhi's assembly election, but content of such inflammatory language targeted against Muslims. In fact, the whole exercise of spewing the venom against Muslims and Shaheen Bagh is nothing but well-crafted scheme and vicious attempt to portray the all peaceful protests against CAA and NRC as anti-Hindu conspiracy, and administration, police and government collusion was proved steroid driven. The loyal media outlets with their compromising reportage, derogatory language and blatant news bulletins have tried to portray the Shaheen Bagh and other such protests throughout the country in a negative shade but it was the global media institutions based in the capital and massive social media campaign both have demolished their conspiracy against Shaheen Bagh and other peaceful protests against CAA and NRC, NPR in different parts of the country (Mandar, 2020, March 9).

Since the government was adamant to continue its ambitious contentious NRC and NPR exercise despite nationwide unrest of the minorities and Dalits can be seen as genesis of the engineered riots in North East Delhi that claimed the lives of more than 53 innocent people. In the area where majority of incidents of violence occurred actually lies on the metro line of Jaffarabad, Babarpur and Mouzjpur stations and the middle road of the metro line known as Asha Ram

Tyagi Marg. Muslims in these localities slightly larger than other communities and women of the area inspired by the success of Shaheen Bagh protest. There are places where “No CAA” and “No NRC” props up in the entire area and women of the area protesting since last one month on the lane on the pattern of the Shaheen Bagh. February 22, 2020 was the day when a group of women started a sit-in protests on the main road against CAA and NRC also flanked by the male protestors for their support. The newly protest site of women of the area was close to the local temple where next day on 23.02.2020 a slightly belligerent crowd of youth gathered at the call of BJP leader Kapil Mishra who addressed the gathering and threatened to remove the protests within three days if the police failed to do so. In the said political address Kapil Mishra, as per eye witness account, asked his supporters to be weaponised and he was in extremely dangerous mood. A soon after the crowd gathered at temple started pelting stones on women that triggered the mayhem in the area. In a Hindu majority nation, with a Hindu supremacy government that has allowed the killers of Muslims to go rampaged and unpunished and fear was that violent Hindu fanatic mob could spin out of control (Gettleman, et. Al. 2020, February 26). In Delhi pogrom of February 2020, the most severely violence hit area were Mustafabad, Chand Bagh, Shiv Vihar, Khajuri Khas, Seelampur, Karaval Nagar, GokalPuri, Wazirabad, Bhajanpura and Ghonda, these places have witnessed saga of brutal form of violence-arson, murder and destruction of properties.

It may be noted that on that fateful day when stone-pelting incidents occurred in some Muslims dominated areas, there was an announcement during *Maghrib* that people should not step outside their residences. The local Muslims habitants of the area also issued directives to ensure that no Hindu temple or Hindu families will be caused damage. The local Muslims in fact protected the Hindu temples and families and discouraged community members from congregating near the temple, said Kamil and local residents of Khajuri Khas and famous *tabla* player (Ziya Us Salam & Trivedi Divya 2020, March)

Modus Operandi-The Engineered Pogrom

The way violence was engineered in the north east Delhi, it is quite obvious that it was not a spontaneous riot or natural reaction between minority and majority community clash but a well-planned and organised mass-killing of the Muslims in connivance with the state police force, lower bureaucracy and activists of political class of Hindu supremacist government. There are many compelling reasons and testimonies of the victims that suggest the violence was premeditated and deliberate aiming to target identical persons, property and religious places of worship, belonging to the Muslim community residing in the violence affected areas. Victims have been asked their religion before they were attacked. There are countless reports where journalists were brutally attacked by the rioters. NDTV’s correspondent Saurabh Shukla was attacked in similar pattern, he recounts his ordeal as how he escaped from the death meticulously when he assured rioters that he is a Hindu and also shows his *Rudraksh* to prove his Hindu identity

(Shukla, 2020, February 26). The *modus operandi* of the violence was different from previous history of communal violence in India, as a day before the violence the non-Muslims homes were marked as 'square' a kind of religious symbol of Hindus. In the violence hit area the rioters did not touch the homes of the Hindu families and damaged done at maximum Muslim families. Hundreds of video and eye-witness accounts are available, including testimonies of newsmen and those of journalists, exposed the role of the Delhi Police in the escalation of the violence.

Notably, the pattern of destruction of homes, properties and mosques was repeated in almost same fashion and this time to the rioters run amok without any fear of law, police and other hindrances. In this well-organised mass attack, the rioters' main target was the religious places of Muslims, their home and vehicles and mosques—all were destroyed in similar fashion as they used gas cylinders and petrol bombs for maximum destruction. Shiv Vihar's MadeenaMaszid and Aulia Maszid both were similarly attacked by the rioters and police were remain there as mute spectators. Same was the case with Farookiya Maszid of Brijpuri near Mustafabad, this mosque too was attacked and vandalised by the mob on the evening of 25th February 2020. According to some eyewitness the rioters come with police force and they suddenly started pelting stones at the mosque from outside. The mosque also runs a madarassa with students of first-generation learners and at the time of attack Imam helped the students to get release them safely and escaped himself but Imam of the madarassa badly injured and still in hospital. Approximately 19 mosques were burnt down in this carnage, religious scripture and holy Quran also burned along with the properties, homes, madarassa and vehicles of Muslims. (Ziya Us Salam & Trivedi , 2020, March)

Police Complicity in Delhi Pogrom

If we sincerely characterise the Indian police system, it is deeply communal, divisive and hugely biased against Muslims. When the police act in the riots like situation, it is worse and their prime target is to kill Muslims and help rioters and not to stop violence or save lives (Khan, 2006). This proposition has been developed through an empirical research based on the trends and role of the police during communal violence since 1955 to 2005 (Varshenay, 2020, March 2). There are many police images during communal massacre in India and in each massacre; the police scored their notoriety, barbarism and cruellest character much harder from the previous one. In Gujarat genocide of 2002, rioters were found to chant the slogan while killing the innocent Muslims saying that "*yeh andarki bat hai police hamaresathhai*" (HRW, 2002). In Gujarat genocide more than 3000 innocents Muslims were killed but unofficial figures much higher than government data and most of the casualties happened due to complicit role of the state police in the targeted killing of Muslims in different parts of Gujarat (Setalwad, 2002). In Bhagalpur (1989) riots, the state police have displayed its horrendous character while tackling the communal riots. In Bhagalpur communal massacre, the Bihar police mercilessly killed Muslims and finally buried the dead bodies in the open field and camouflaged with radish and cauliflowers saplings upon the dead bodies

to hide its deeds (Verma, 2008, September 3). Later on the commission of enquiry ordered to dig up the field and dead bodies were recovered. The gory images of anti-Sikh riots of Delhi (1984) are still fresh in our mind as how police joined the mob and brutally killed innocent Sikhs and their families. Again, in Delhi pogrom (2020) the capital's police force has displayed its terrible character and their main target was the innocent Muslims.

The description as narrated earlier signifies that it was not the riots but well planned cold blooded and one-sided attack on the innocent Muslim community. No riot can take place without the connivance of the police; the police is capable to prevent the all sort of violence in less than three hours if police is firm to control the rioting, violence and all pre-violence activities of the communal organisations. If any riot exceeds more than three hours it is testament to political indictment and collusion of the police (Lal, 2020, March 08). Dr V N Rai, former IPS officer has maintained that enough provisions are available in the police manuals, Indian Penal Code and Code of Civil Procedure to prevent the violence or any possibilities of the occurrence of violence due to any reason (Rai, 2008). Rai further adds that blatancy of the collusion and violation of norms during the violence of all three-four days communal mayhem in north east Delhi something really unprecedented. Apparently, the command and control of the police shifted to police headquarter to North Block, which houses the ministry of home affairs who control the capital's police.

In the language of Zafarul Islam Khan, Chairman of Delhi Commission for Minorities, "the inhuman and most barbaric violence in the north east Delhi was purely well planned and cannot be materialised without the local support of political activists of ruling regime and connivance of police". How it is possible that despite numerous calls at police control room, the police failed to reach on the spot of violence and rioters continue with their armed mayhem in the capital of India, he questioned. He reveals that in Shiv Vihar, Rajdhani Public School and DPR Convent School were occupied by the well-built muscular people for more than 24 hours and all were outsiders, they wore helmets in order to concealed their identity and also covered faces, they used to go out in the batches for two and three hours and then returned. They spent more than 24 hours in these two schools and vanished only when police started coming in the evening of February 25, 2020. It is almost impossible to organise such huge number of people without the constructive support of the police at particular place and also given them safe passage after finishing their 'job' (Khan, 2020, March).

The magnitude and horrendous brutality of violence evident from just cursory glances make this one of the most brutal episodes of violence that the country has witnessed since 2002. The facts make it evident that this was a well-planned and organised attack on India's most vulnerable religious minority by non-state supremacist nationalist political actors in collusion with state actors in general and law enforcement agencies in particular. There are many reports of police did nothing and acted only against Muslims in pelted stones, fire tear gas

and shells targeting properties and houses of Muslims. Apparently, the police have been given free hand to teach the Muslims a lesson as the ruling regime was deeply upset from past one month, as sit-in protests against CAA and NRC mainly led by Muslims women mushroomed all over India. After the success of Shaheen Bagh, many area of Delhi have also seen such sit-in protest led by the women. These sit-in protests become an eyesore for the activists of the BJP that led to immediate formation of "Pro-CAA protestors." The cadre of Sangh Parivar found justification in their cause and got the support they were looking for. In the pogrom that followed, the police put the rule of law, police manuals and their professionalism aside and joined the mob in massacre against Muslims. With its pre-planned agenda, the police targeted Muslims habitants' houses and properties and destroyed all sites of sit-in protests and arrested many activists. The inhuman action of the police deeply appalling when the forces arrested many human rights activists of the area namely Isharat Jahan (Congress member and lawyer), Khalid Saifi (United Against Hate), Akif Abidi (Indian Civil Liberties Union). When a team of lawyers of Supreme Court of India reached the Jagatpuri police station to enquire about the detained persons they were also assaulted and refused to let them meet anyone. The lawyers also made an application u/s 41 of Cr. P. C, which enable the lawyers to meet a detainee, but police did not comply. The aggrieved Muslims community has expressed deep shock and anguish towards the unprecedented complicity of the criminal justice system specifically that of the Delhi Police. The news of transfer of a Justice Muralidhar of Delhi High Court who issued direction for registration of FIR against BJP leaders for their hate speech transferred overnight make them distressed thereby diminished all hope of justice. There are many reports of victims have been falsely implicated in rioting and arson cases despite knowing well that some of the victims are below eighteen years of age. It is unprecedented fathers and mothers vehemently looking for their children but refused to go to police station under the fear of police terror and apprehension of illegal arrest, custodial torture and jail. The complicity of the state police and union government top officials, shoddy approach of NHRC, NCM and Lieutenant Governor of Delhi has also maintained suspicious silence that slowed down hearing and investigation processes have further contributed to intensifying the feeling of distrust in all systems of justice and grievance redressal mechanisms (Ellis & Azizur Rehman, 2020, March 16).

Rays of Hope and Some Good Stories

Amidst many incidents of violence and targeted killing of Muslims there are few good stories where Hindu saved the Muslims families and Muslims saved their Hindu neighbours? It is apparent that Delhi pogrom was executed with well-crafted conspiracy aiming to teach the minorities and show them their limit (Bhatnagar, 2020, March 4). Since the victims have never seen these rioters goons before the violence and all were well-built muscular kind of persons. During the violence the rioters have made a call of 'murdering the traitors. In this horrible episode of violence there are Muslim families who sheltered and protected by Hindus and also ensure protection of Hindu temples in the Muslim-dominated

areas. In another incident a Sikhs family saved more than 36 Muslims from the fanatic mob which is almost killed the Muslims, these are some good stories and they can inspire rapprochement between the two communities. The Dalits of Seelampur area blocked the road to prevent the saffron fanatic mob to enter the Muslim colonies and made entry of mob impossible, this is really good inspiring story of Dalit-Muslims unity. In Delhi's state managed pogrom, it be would wrong to state that only Muslims were torched, maimed and killed the death of Ratan Lal and Ankit Sharma and other victims reveals that both Muslims and Hindu community suffered a lot, shared pain and display solidarity. The story of Sanjeev Kumar, a jewellery shop owner really moving as he saved the lives of his Muslims neighbour and ensure their safety and security in the massacre (Dutt, 2020, March 3). Unfortunately, not a single incident crops up to highlight the humane face of capital police force, the Delhi police brought ignominy on itself by its act of commission and omission to please its political bosses. The capital's police even failed to protect the children of a school in the riot affected zone, nevertheless civilians of the area have formed a human chain to protect the children and also ensure their safety (Kataria, 2020, February 26).

Institutional Failure-A Cessation of Constitutional State

Franklin D. Roosevelt once stated that "there is no meaning of democracy if the state failed to recognise the minorities' rights in a multi-religious and multi-ethnic society, since democracy cannot survive if state does not accept the basic fundamental rights of its minorities." The US President's quote fairly apt in Indian context also as India's democracy is incomplete without the religious, linguistic and ethnic minorities. If trust of the minorities diminished in the state-the repercussions might be unpredictable and incontrollable. The minorities trust in the state instrumentalities and other government functionaries has been reduced to all time low since the initialisation of process of CAA and NRC by the union government. The Supreme Court has condemned the police for its lack of professionalism and biased action against Muslims. Justice Muralidhar of Delhi High Court has also observed that it could not permit to repeat of anti-Sikhs genocide in the capital. Justice Muralidhar also issued direction to registration of FIR against BJP leaders for hate speech that triggered the violence, the next day he was transferred to Punjab and Haryana High Court. Despite severe criticism of its biased role against Muslims, the state police force refused to tone down its stiffest anti-Muslim mindset as gravely injured victims of violence lying in the local hospital for immediate shifting into a bigger hospital but repeated pleas to the police went unheard and their cruel unresponsive behaviour was appalling. The mob was not allowed shifting of the injured Muslims and police remained stands as mute spectator also refused to provide any security to injure whose shifting was essential to save their lives. (Singh, 2020, March 01). It is really outrageous to see how police enforced injured Muslim youth lying on the roadside to sing national anthem as they beat them with the baton. In that cruel and ugliest form of violence one of the injured has been died. This action of the police will be remembered in

the history of most gory and cruellest historical account of police atrocities against minorities.

Another matter of concern in this grave human rights crisis was medical establishment too was reluctant to provide immediate medical assistance to victims of riots. The deeply communalised behaviour of the medical staff including doctors and para-medics equally raised troubling questions-where we are heading? Do we really represent a civilised society? Certain allegations of obscuring/concealing the vital information from the post-mortem report and other medical reports raised the pertinent question whether pious profession like care and healing be spoiled through communal poison of hatred, discrimination and bigotry. The answer is yes, if we believe whatever happened in some hospitals of the north east Delhi (Mandar, 2020, March 09). It is admitted that Delhi is the headquarter of numerous rights bodies and seat of highest judiciary also located in the capital, the National Human Rights Commission, National Commission for Minorities and National Commission for Protection of Child Rights located here but sadly all these institutions proved to be completely defunct. Unfortunately, all these institutions were missing from the crisis riddled Delhi.

In this engineered violence against Muslims that lasted for more than four days in the capital raises some pertinent questions of accountability. The delay in prompt action has led to loss of life and sizable destruction that could have been avoided. As per the latest figures published in media reports as on March 5, 2020, 53 people have died and many more have been injured as a direct result of this violence which has also led to the destruction of 122 houses, 322 shops, 301 vehicles and 3 schools. As per reports of Jamaati Islam E Hindi, Delhi, around 19 mosques of the area has been burnt down but relief and compensation yet to be done by the union government (Trivedi, 2020, March). The city government led by “pro-people chief minister” avoided to visit the riots hit area and chose Rajghat (Gandhi Samadhi) for protest and discontentment against the Delhi Police apathy and centre’s non-cooperation. Had the chief minister intervene timely with the support of Lieutenant Governor of Delhi, the lives of Muslims could have been saved and loss of the properties could be much less. The Delhi pogrom that engulfed the lives and property of poor and helpless Muslims proved that local and central administration will be remained disgraceful against them. The pogrom has further reinforced the message that justice is nowhere for Muslims in this country and there is comprehensive collapse of every institution under the state without any exception.

Conclusion

The founding fathers of Indian Constitution were well conscious about the certain apprehensions of the religious and linguistic minorities’ especially Muslim community as what would the future of Indian Muslims in an independent India who have rejected the two-nation theory and chose to stay in India. Therefore, the framers of Indian Constitution provided certain specific rights and privileges to

minorities to propagate and practice of their religion and protection of places of worship 37. Hence the primary objective of the Article 25 to 30 of the Constitution of India is to preserve India's rich composite culture, minorities' rights and secularism (Jain, 2018). Coming at the larger issue-why Delhi was burned and who is responsible for mass killing to innocent Muslims, the answer is fine that violence broke-out during the state visit of US President Donald Trump. Predictably, a major part of Delhi's police was deployed for the security arrangement of high-profile visit of US President. But in police manuals, there are enough provisions are available to deal if there is a situation of law and order arise and how to tackle such crisis. The police department always work with two plans in such situation, Plan-A is dedicated to safety and security arrangement of state visit of foreign guest, Plan-B is also on place to ensure safety and security of the common citizens, in case of some unfortunate situation like blast, earthquake or riots. But in Delhi pogrom, there was complete failure of the Plan B, how the capital's police forces can miss this crucial planning, that too from the force which is directly comes under the union government. Why police prevented the ambulances to reach the violence affected area and why the passage of ambulance were blocked by the rioters? Why the police remained helpless to open the passage from rioters? A few hours of clash between two groups can be understandable but constant bloodbath and extreme violence that too three to four days cannot be materialised without active and constructive connivance of police. The first elementary point needs to be noted that Delhi pogrom has proved that Muslims in BJP ruled India are most vulnerable community and the community should not think about any concept of justice, rule of law, minorities rights and secularism. Looking at the situation where ruling party's spokespersons legitimize the violence against Muslims and openly equates the human rights activists and academicians as *deshdrohi*, dissenters have been equates with nation's disloyalty through their loyal media outlets, hence it is like a situation where ruling regime want to ousted the Constitution of India at any cost. In such deplorable scenario, how can minorities expect that justice will be done and all accused and errant police officials will be punished? Instead of taking stern action against the guilty and errant police officials get arrested, the ruling regime and their bigoted ruling classes vehemently abuses minorities, dissenters, human rights activist, secular academicians and lawyers when asked for ensuring culpability, accountability and commission of enquiry against pogrom. It would be silly to be thoughtful that prime accused of Delhi pogrom will face music and justice will be done, how it is possible when bigoted leaders were assigned job to run the state, heinous crime accused were picked to run the sensitive union ministry, ruling party's parliamentarian brazenly shouting hate and inflammatory speech to a large crowd.

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