The Delhi Killings and the Making of Violence

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The recent killings in Delhi, orchestrated by armed mobs with impunity and legitimized through the highest offices of government and the current ruling party, resulted in the death of almost 50 people, mostly Muslims and mostly the poor and vulnerable among them. The sheer scale, design and brutality of the undertaking revived memories of the 2002 Gujarat riots and the 1984 riots in Delhi, that exhibited a certain pattern. That of absolute unrestraint and complicity. Of the state, the executive, the police, the popular media and in many respects the courts as well, in creating and perpetuating a state of terror while fuelling discrimination and disenfranchisement against minorities, especially Muslims.

An entrenched pattern of violence and discrimination

On the 23rd of February and the following days, several pockets in Delhi witnessed unmitigated violence being meted out particularly against the Muslim community, with their homes ransacked, property and shops burnt, places of worship vandalized and several people killed or severely injured. All this while the Delhi police stood with alarming laxity and in several instances was even seen to accompany the violence that ensued against minority communities. It speaks volumes when law enforcement remains indecisive in the face of majoritarian impulses, while in other cases, is too quick to respond with authoritarian fervour. Thus, it would indeed be foolish, if not outright complicit to view this bloodshed as simply 'clashes' or 'riots' amongst two communities, that one might say have had a history of violence and antipathy, and where slaughter and mayhem have visited both Hindus and Muslims. This ignores the tilted scales of power, legitimacy and capacity that the state has bequeathed on the former and has practically withdrawn from the latter. This is what makes the present killings not an isolated instance of communal violence, but the focal point of a carefully constructed and historically grounded system of exclusions and discrimination, long sustained and legitimized through a hierarchical state machinery.

While the immediate impetus for the violence may have come from threats and intimidation by members of the ruling party against peaceful protestors, the writing has been on the wall for quite a while now. The present government came to power, twice over (2014 & 2019), riding on ethno nationalist 'Hindutva' sentiment that carefully orchestrated an ideology, that in its most benign form, viewed Muslims as outsiders, and, in its most pernicious manifestation, as enemies, worthy only of the most exacting scrutiny. Successive attacks on the community in the form of mob lynchings, hate speech by sitting government functionaries, police brutality and detention of several Muslim activists, students and journalists, and systemic discrimination with respect to public and State services, made 'secularism' as embedded within the Indian Constitution, a distant chant. This was on the heels of the government revoking Kashmir's autonomy under the Indian Constitution, a Muslim majority state, while detaining its political leaders, and plunging the State into a prolonged communications lockdown. Never mind that this 'integration' of Kashmir was carried out in a manner that defied both the letter and the spirit of the Constitution, while the voices and aspirations of the people of Kashmir were systematically muted. The project of further disenfranchisement took a decisive turn when the government introduced the Citizenship Amendment Act (CAA) last December, effectively excluding Muslims from the benefit of fast tracked Indian citizenship, while conferring the same to 'Hindus' and other communities that have fled Pakistan, Bangladesh and Afghanistan, on grounds of religious persecution. The CAA coupled with the National Registry of Citizens (NRC), a government led

nationwide exercise to document legal citizens, and thus weed out all 'illegal' migrants, leaves scores of Muslims vulnerable and liable to be either deported or confined to detention centres for want of proof of citizenship. The fact that the CAA excludes Muslims, effectively removes any protection that the law potentially offers to other communities.

The government's divisive religious agenda was supported by an equally decisive state apparatus that was set on crushing any and all manifestations of resistance. Everyone who expressed in the language of freedom was suspect. Vulnerable communities that stood in the way of state sanctioned oppression, were immediately silenced. Protestors have found themselves at the mercy of law enforcement, while universities have been raided and criminal charges of 'sedition' under an erstwhile colonial law have become routine *modus operandi* of state repression. The popular media, which one would expect to keep the government in check, flamed pre-existing divisions and prejudices. Students, activists and leaders of various communities that stood up against the government were routinely branded as 'anti-national' and 'traitors', further delegitimizing progressive forces within the country.

The courts on the other hand, including the Supreme Court, have been loath to act. In several crucial instances involving life, liberty and fundamental rights, the courts have been too quick to repose faith in the government. The Supreme Court delayed hearings on the clampdown in Kashmir, refused to stay discriminatory laws such as the CAA, failed to hold the government to account on matters as fundamental as '*habeas corpus*' petitions and most recently, amidst the tumultuous scenes of the killings in Delhi, the High Court agreed with the government to postpone the registering of First Information Reports against incendiary speeches and mob incitement. Unsurprisingly, when individual judges have stood up for Constitutional rights, like the Delhi High court did under Justice S. Muralidhar when his bench pulled up the police for its failure in controlling the riots, the government responded with an order for his immediate transfer. At this point, it is safe to suggest that this government's *Schadenfreude* lies in its knowledge that the utter abandonment of accountability, absence of condemnation upon the loss of lives and livelihoods of communities, failure to protect its people and systematic crushing of all its dissent would at best lead to liminal reprimandations of its unfettered powers.

The force of the Law and the Constitution

Piece by piece, the law and legal institutions have been steadily stripped of their normative potential, enmeshed as they have become into the very same process of engendering disadvantage and misery. Violence and brutality when mediated through ideology and sophistication makes those very acts seem legitimate and even necessary. The State machineries, with the aid of an extremely divisive media pool have been largely successful in curating and sustaining the perception of every act of protest being synonymous with violence, vandalism and obstruction of enjoyment of public spaces. The mischaracterisation of any organised and critical assembly of civilians as anticipated violence by the State and its allies adds the additional smokescreen to the narrative of violence and brutalities of the State being legitimate, necessary and prescriptive. What is often sidelined in this narrative is the inherent imbalance of power between a civilian and the State wherein the constitutional right to protest is often portrayed as violence and acts of the State as necessary intervention. This usurpation of this very narrative is evident when the reach of the Constitution and its values have become muted under a government that has coalesced and co-opted practically every other functionary of the State. When law becomes the handmaiden for majoritarian advances and courts acquiesce in delegitimizing dissent and disagreement, it is but through large scale mobilization and social formations that transformative change becomes possible. The enterprise and labour of bringing the will and intention of the Constitution to the spaces occupied by its beneficiaries is an act of transformation in itself.

It is therefore remarkable when the masses are willing to register their acts of resistance against inequality and injustice in spite of what are often deeply embedded power structures within societies.

This is what makes the ensuing peaceful protests in Delhi and other parts of the country a rallying cry for the very soul of the country and the Constitution. If there is one thing that the protests on the streets, public readings of the Constitution, endless sit-ins of civilians, students and teachers and the momentous turnout of numbers in the last months have shown us, it is that this battle is already being fought, relentlessly and unabated even in the face of irrepressible tyranny and ruthlessness. At its deepest level, this ensuing dialogue on the streets and on the university campuses are perhaps as fundamental to our Constitutional order, as are the numerous petitions before the Courts. It helps us truly preserve what arguably is a 'transformative Constitution', that ordains a struggle for emancipation not only through the law and in the Courts, but also within public spaces and private orderings. In these spaces, a distinct form of 'Constitutional Morality' emerges, even as citizens debate, discuss and stand up for what clearly seems unjust and unfair. In the face of public and private institutions pursuing policies that have become inherently confiscatory and burdensome, the protests have come to represent a fight for structural and social emancipation, that the Constitution so ardently aspires for. The making of the violence in Delhi is an affront specifically to that aspiration and is an attempt at gutting, perhaps the last and most meaningful vestiges of dissent and disproval.

The author notes that much inputs were received from Rudrani Banerjee who is an independent legal researcher.

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