The Muslim minority at risk

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In 2006, a committee appointed by the prime minister to inquire into the socio-economic and educational status of India's largest minority group, Muslims, submitted its findings. Popularly called the Sachar Committee, its report only confirmed what many had long suspected: that the Muslim share in education, landholdings, and government employment was far below its share in population. It was reported that nearly 25 percent of Muslim children have never attended school—and only 17 percent of Muslims above the age of 17 have managed to complete matriculation (as compared with the national average of 26 percent); their participation in higher education falls further to an abysmal 4 percent. Only 5 percent of government employees were Muslims and the community—with 31 percent Muslims below the poverty line—was the poorest in the country, barring the Scheduled castes and Scheduled tribes, two groupings of historically disadvantaged people that are given express recognition in India's Constitution.

The report sparked a political row—with Muslim groups calling for affirmative action to address this discrimination and the right-wing Bhartiya Janta Party raising its staple bogey of "Muslim appeasement." Nevertheless, perhaps for the first time in public discourse, Muslims were being viewed as more than just cultural entities—as citizens with rights to participate in India's growth story. Debates around the rights of the minorities, especially Muslims, have centred largely on cultural questions—personal laws, for example—thus delaying the issue of material entitlements. The Indian state, too, traditionally disregarded attending to Muslim deprivation and inequality in favour of a cultural paradigm. For instance, the educational concerns of Muslims were deemed to be addressed through government programs to modernize madrasas—the Sachar Committee report strikingly shows that these traditional institutions are *not* preferred by Muslim parents—or through article 25, which allows minorities to establish their own educational institutions.

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FALLING OFF THE MAP AND INTO PRISONS

There were other figures—deemed far more volatile than those that pointed toward gross Muslim underdevelopment—which, though collected by the committee, were omitted from the final report. These were statistics of Muslim incarceration. In the eight states that submitted prison data to the committee, Muslims were found to be grossly over-represented in prisons. In Maharashtra, where the Muslim share in population stands at 10.6 percent, according to newspaper reports of that time, the committee received information that Muslims comprised 32.4 percent of all jail inmates in the state. In Gujarat—which in 2002 witnessed the worst anti-Muslim pogrom in independent India—close to a quarter of those jailed are Muslims. In the absence of disaggregated data about the crimes for which they have been convicted or are under trial, the high numbers are explained in curious ways. The former Director of the Border Security Force, Prakash Singh, rejected the charge of communal bias, arguing that, "[I]n cases of terror attacks or communal riots, if the police goes after the perpetrators of the violence, and they happen to be mostly Muslim, you cannot, in the name of secularism, expect the police to act in proportion to their population."

Commission after commission of inquiry had shown that minorities are the worst sufferers in times of communal riots; that the police, administration, and political leadership not only fail to protect the minorities, they are in fact complicit in the attacks; that the scale of violence and destruction could never reach the levels it has—whether in Delhi in 1984, Bhagalpur in 1989, Mumbai in early 1993, Gujarat in 2002, or Kandahmal in 2008—without the connivance of those who were meant to protect. This is not counting incidents such as Hashimpura where the Police Armed Constabulary (PAC) lined up Muslim men and shot them in cold blood—for no other reason than that they were Muslims (1987). There is enough documentation to suggest that this injustice is compounded by mass arrests and detentions—mostly illegal—of Muslims for rioting.

THE BOGEY OF ISLAMIC TERRORISM

As for terror attacks, there are no clear estimates about the total number of Muslim youth charged, facing trial, or convicted on charges of terrorism. A Delhi-based lawyer filed a Right to Information (RTI) application seeking the statistics on Muslims detained in various jails on these charges. The application evoked no response even two months after filing.

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On the contrary, the use of "Islamic" in conjunction with "terrorism" has been normalized in our discourse. For the past several years, scores of Muslim youth have been picked up, detained, tortured, charged for blasts—with clearly no evidence. Anti-terror agencies probing terror wilfully refused to pursue the Hindutva angle preferring to engage in a communal witch hunt—or as in the case of the Nanded blast in 2006—where the evidence was so glaring as to be unimpeachable—weakening the prosecution.

In the name of national security, courts condoned torture, and the framing of innocent Muslims became routine. A pliant media reported uncritically about "encounter specialists" and police shootings of alleged terrorists in gangland style. The term "encounter specialists," which has no legal validity, has seeped into our language, surely an indication that it had acquired a life of its own. In legal parlance, encounter killings are shootouts or crossfire, but in reality are executions by police or security agencies. First used against Maoists in the 1970s, and against counterinsurgents in the Northeast and Kashmir, executions as implicit state policy were perfected in dealing with Sikh militant groups in the 1980s and 1990s.

As the Indian state slouches towards a national security framework, entire sections of its population are pushed out of the ambit of civil rights and marked out as suspects.

The "Punjab solution," as it came to be known, became the model for the internal security establishment. Mumbai's underworld was reined in through a series of high-profile encounter killings—much celebrated in the popular media for imposing order into the urban anarchy that the gang wars were breeding. Indeed, this became the preferred and quick-fix method of dealing with a range of "undesirables," from petty criminals to gangsters, to alleged terrorists and separatists. More often than not though, those lumped together as "encounterables" were simultaneously marked out through their caste, ethnic, and religious affiliations.

BATLA HOUSE "ENCOUNTER"

There is no better illustration of the absolute communalization and increasing accommodation of extra-legal violence in India's "war on terror" than the Batla House encounter. On September 13, 2008, serial blasts rocked Delhi killing about 20 people and injuring scores of others. Less than a week after the blasts, a party of the Delhi Police Special Cell raided an apartment in the Muslim-dominated locality of Batla House. Two young men, Atif Amin and Md. Sajid, were shot dead and an inspector of the Delhi Police also lost his life. On the evening of the "encounter," the police announced that the slain young men were key operatives of an Islamic terrorist group, called the Indian Mujahideen, and that with the encounter, the Delhi Police had cracked the conspiracy behind not only the Delhi blasts, but also several blasts that had rocked the country in 2007–8.

What followed was a pernicious media circus of gigantic proportions. Azamgarh, from where the two slain youth hailed, was dubbed instantly the "epicentre of terror," and Jamia Millia Islamia, the University abutting the Batla House locality and where Atif was enrolled as a student was labelled a "nursery of terror." In the aftermath of the death of Inspector Sharma, few in the press were willing to question the police version—to raise questions was

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"truth telling" techniques are encouraged as a step forward toward replacing the traditionally brutal third degree. However, the reality is that the techniques are actually compatibly coexisting with a "regime of terror."

As noted earlier, the "regime of terror" in India is characterized by custodial torture in routine interrogations, but in addition includes extra judicial killings of mafia, militants, and activists, and undemocratic extraordinary laws such as *Terrorism and Disruptive Activities (Prevention) Act* (TADA), and *Prevention of Terrorism Act* (POTA) in the past, and UAPA today. In such a context, disallowing only the involuntary use of these "scientific" techniques becomes even more inadequate because they appear as benign merely being used to gain efficiency in criminal investigations. This is the case despite the fact that both the reliability of and safety in using these techniques is highly suspect.

EXTRAORDINARY LAWS AND STATE VIOLENCE

The Supreme Court has presently ruled out the possibility of involuntarily using these techniques even against "suspected terrorists" basically stating that

There has been much criticism of the Indian state's consistent refusal (and delay) to ratify the UN Convention against Torture

"compelling state interest" could only be a legislative decision, not a judicial one (*Smt. Selvi & Others v. State of Karnataka*, 2010). This is reminiscent of other extraordinary laws such as POTA and TADA, which were also introduced by Parliament and upheld by the Indian Supreme Court in the past. Thus, it is important to note that the Court did not strike down the techniques by themselves despite their inherently coercive nature. Therefore, it is too soon to evaluate whether the Court will reject them if a law is actually introduced. This is because, in any case, terror suspects are subject to more stringent laws that dilute the protections against torture. They are subject to other due-process violations and volition is even less visible.

Furthermore, in many of these investigations, the premise is often to use information for intelligence purposes not as evidence, and section 27 would be particularly open to abuse in such contexts. Or else, the evidence could be creatively used in gaining information in extraordinary cases but used to convict in routine cases—a phenomenon Ujjwal Singh calls "the interlocking of the ordinary and extraordinary" (Singh, "State and Emerging Interlocking Legal Systems" (2004), vol. 39 *Economic and Political Weekly*, 149-154). This may explain the particularly egregious way in which these techniques were applied to Ferreira, though it is important to note in his narrative that this was commonly the case.

Thus, the Indian state's relationship to violence is reflected in both these realities: a continued inability to contain high rates of custodial torture (and deaths) and the introduction of "scientific techniques" ostensibly to replace the former without recognizing the compatibility between the two and the possibilities of violence within the new techniques themselves.

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tantamount to dishonouring the death of a brave police officer.

SUBVERSION OF DEMOCRACY

Indeed, every single institution of Indian democracy was subverted and sacrificed at the altar of national security. The National Human Rights Commission (NHRC) watched on helplessly as the police ignored its guidelines on encounter killings—namely, that a First Information Report (FIR) is registered against a police party who conducts the encounter and that a magisterial inquiry is held. Then, when asked to conduct its own inquiry, the NHRC chose to rely on the statements of four senior police officers of the Delhi Police to proclaim their innocence. The Supreme Court ruled out any further investigation preferring to uphold the morale of the police force, which apparently would flag if the police were caught killing innocents, rather than seeking the truth. For almost two years, dozens of RTIs seeking the post-mortem reports of the three killed were rejected on spurious grounds with the argument that release of this information would impede investigations!

When the post-mortem reports were finally released, perhaps mistakenly by the NHRC, it came to light that the two youth killed had suffered non-firearm injuries, hinting at torture—but even more startling was the revelation that they had only sustained gunshots in their back region—an obvious impossibility if one were to believe the police story of exchange of fire. The gunshot wounds suggested that they had been shot in the back from very close range, with the younger Sajid probably made to crouch when the bullets were emptied into his head.

The Delhi Police will, however, not be held accountable in any court of law. Despite severe pressure from human rights and Muslim groups, the government refused to order an inquiry, especially after the clean chit, helpfully handed out by the NHRC. As the Indian state slouches toward a national security framework, entire sections of its population are pushed out of the ambit of civil rights and marked as suspects. In this netherworld of counter terrorism, guilt is established rather easily.