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India

# To kill or not to kill – a twisted test of nationalism

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**“There is no justice in killing in the name of justice.” – Archbishop Desmond Tutu**

**The last week of July 2015 presented two tests of nationalism before Indians. The first was whether one mourned the passing away of former President APJ Abdul Kalam Azad, also known as the ‘Missile Man’ of India; the other was cheering for putting to death Yakub Memon, who was convicted and executed in relation to the Bombay blasts in 1993.**

In the case of Abdul Kalam, no arguments – however painstakingly made – that one who opposed hyper-militarism and came from an anti-war perspective need not consider Kalam a hero, were accepted. These arguments were quickly labelled naïve and unbecoming of the realities of the 21st century. Others, equally naïve, were preparing to commemorate 70 years of the dropping of atomic bombs on Hiroshima and Nagasaki. Any arguments questioning the competence of Kalam as an engineer (he was not a scientist) [1], or the cynical nature of his political appointment in the wake of the 2002 Gujarat riots [2], when the BJP was in need of a Muslim face, who was ‘steeped in Hindu culture, [3]’ were met with charges of being anti-national.

Even though met with resistance, criticism of Kalam upon his death was still permissible; but not participating in the celebrations of the execution of Yakub Memon was considered beyond the pale. BJP MP Sakshi Maharaj, who is facing multiple charges of murder, rape and gang rape (with his two nephews), said that “[s]edition charges should be slapped against people sympathising with Yakub Memon and those who have no faith in the Indian Constitution should go to Pakistan. [4]” Yakub Memon was found guilty of conspiracy in the Bombay blasts of 1993, which killed 257 people, convicted and hanged to death in the early hours of July 30, 2015, which by a tragic coincidence also happened to be his birthday. The prime accused in the case – Tiger Memon, Yakub’s brother, and Dawood Ibrahim – are both absconding.

On display was a degrading spectacle of goading in front of television cameras, discussing the macabre details of the length of the rope that would hang Yakub, how and when he would be handed the Quran, when he would be given new clothes, what breakfast will be offered, and in one case “an officer who had been on the investigating team of the 26/11 attacks, excitedly showed how Yakub’s hands would be tied at the back when he takes his last walk – from his cell to the phansi yard. [5]” These are the same people who are appalled at the barbarity of the Saudi Arabian state’s violent form of punishments, and loathe, rightfully, the practices of the Islamic State. Noting on the inhuman barbarity and immorality of death penalty, Albert Camus wrote:

“But what then is capital punishment but the most premeditated of murders, to which no criminal’s deed, however calculated it may be, can be compared? For there to be equivalence, the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months. Such a monster is not encountered in private life.”

Hundreds, according to some reports nearly 8000 Muslim, mourned the death of Yakub Memon. According to an Indian Express report dated July 31, 2015, Mushtaq Phoolwala, the lone florist inside Bada Qabristan said that “I’ve worked here for 30 years. Aisa manzar pehle nahin dekha (never seen such a sight before). [6]” However, none of this was reported, as Sanjay Barkund, Deputy Commissioner of Police (Operations), issued a 13-hour gag order to the media prohibiting “photographing and videographing the funeral procession and the last rites of [the] hanged convict. [7]” In an intensely militarised atmosphere, with the presence of about “1,000 policemen, 125 Rapid Action Personnel (RAF) and riot control police,” family members and others who mourned were disallowed to see Yakub’s face, for one last time, citing concerns of law and order problems [8]. Tripura Governor Tathagata Roy tweeted that

those who visited the funeral of Yakub Memon were potential terrorists. He defended his tweets and dismissed those who alleged his remarks reeked of communalism. Hours later, he tweeted: “An explosion of tweets on a hanged terrorist almost made me forget the most important tweet: GURU PURNIMA GREETINGS to all. [9]”

Amidst the sickening display of blood lust for a man helplessly captive in jail, it was heartening to see that quite a few Indians voicing their concern against a culture of violence, and opposing death penalty in general. Aakar Patel, Executive Director, Amnesty International India said “[t]his morning, the Indian government essentially killed a man in cold blood to show that killing is wrong.” In a July 30, 2015, report titled Execution of Yakub Memon cruel and inhuman, Amnesty International went on to observe:

“The use of the death penalty in India has been repeatedly acknowledged by Indian courts to be arbitrary and inconsistent. There exists no credible evidence that the threat of execution is more of a deterrent to crime than a prison sentence. This fact has been confirmed in multiple studies carried out by the UN and in many regions around the world.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. It opposes it as a violation of the right to life as recognized in the Universal Declaration of Human Rights and the ultimate cruel, inhuman and degrading punishment. [10]”

Many eminent personalities, including retired judges of Supreme Court and various High Courts signed a petition to stall the hanging of Yakub Memon, including but not limited to “Justice Panachand Jain (Retd), Justice H.S. Bedi (Retd), Justice P. B. Sawant (Retd), Justice H. Suresh (Retd), Justice K. P. Siva Subramaniam (Retd), Justice S. N. Bhargava (Retd), Justice K Chandru (Retd), Justice Nagmohan Das (Retd). Retired judges of the Supreme Court of India like Markandey Katju went on to say Yakub Memon's hanging would be a gross travesty of justice. [11]” Professor Anup Surendranath, faculty at National Law University, Delhi (NLU), and Director of Death Penalty Research Project, resigned from the post of Deputy Registrar (Research) in the Supreme Court of India. Such instances of protest from jurists and eminent individuals amongst a general atmosphere of call for violent retribution have reignited the question whether capital punishment is a legitimate form of punishment in liberal society.

## The case against Yakub

Since the current discussion has been initiated around Yakub Memon's involvement in the Bombay blasts, let us examine some of the facts of the case. Some people have claimed that Yakub Memon got a fair trial and all legal avenues were exhausted, and in fact they claim that the Supreme Court has shown unprecedented leniency in Yakub's case – as an example they cite the late night hearing of the mercy petition by panel of Supreme Court judges at the CJI's house. As Manisha Sethi, faculty at Jamia Millia Islamia, points out “there was nothing unprecedented about a late night sitting of the Supreme Court. In 2014, Chief Justice HL Dattu stayed Surinder Koli's imminent hanging through a late night order after his lawyers woke him up at 1 am,” and “... Yakub's death warrant was issued before he had exhausted his legal rights – a clear violation of the ‘procedure established by law’ to precede a death sentence; [12]” while senior lawyer Prashant Bhushan said that “[y]esterday the issue was of giving 14 days time, as per a Supreme court judgement, so that he can challenge the dismissal of his mercy petition in court and that he can settle his worldly affairs. But it (mercy petition) was dismissed late last night. No time was given to him. What was this unseemly hurry? What was the need for us to be so bloodthirsty?”

The charge brought against Yakub was that of conspiracy. Nowhere under the law does anyone deserve a death penalty for conspiracy. In this case he was guilty by association – he being the brother of the prime accused Tiger

Memon. He was found guilty of transferring money and handling hawala transactions for Tiger Memon, a contemptible crime deserving of punishment for sure. But, the law is clear on the point, that one does not get a death penalty for conspiracy. As N. K. Bhupesh in a Tehelka article points out: “Now, compare this with how the law of the land was applied in the case of Mahatma Gandhi assassination case in which only Nathuram Godse and Narayan Apte – two of the eight murder convicts – were hanged. “The others were not given the death penalty because they did not take part directly in the murder but only assisted in it.” But, that consideration was extended neither to Afzal nor to Yakub. [13]” Hence, while the real perpetrators Tiger Memon and Dawood Ibrahim remain absconders, Tiger Memon’s brother is made a scape goat, and had to pay with his life.

There is no direct evidence against Yakub Memon. The only evidence is the statement of an approver and confessional statements of a co-accused made to the police, which was later retracted. Former Supreme Court judge Justice (Retd) Markandey Katju upon studying the Supreme Court judgement said that the evidence is “very weak.” He observed that “[t]his evidence is retracted confession of the co-accused and alleged recoveries,” and added that “everyone knows how confessions are obtained by the police in our country by torture.” Prashant Bhushan said that a case mounted solely on the basis of confessional statement would not be admissible under normal law, but can only happen under TADA, which brings me to my next point.

Yakub Memon was tried, and convicted under the Terrorist and Disruptive Activities (Prevention) Act, also known as TADA, a draconian law which was later scrapped for its misuse. As Manisha Sethi argues eloquently:

“Its appeal lay in its usefulness as a tool to quell dissent, suppress movements and torment minorities – all through a law legislated by the Parliament and sanctioned by the Supreme Court. By 1995, TADA had been in operation for over a decade. A mountain of evidence pointed to its inherent abuse and lawlessness. Its various sections enabled the police to detain suspects for long periods of time without charging them; simple suspicion became grounds for arrest, confessions before police became admissible – in contravention to the established law of evidence, which protects an accused from incriminating himself – and prosecution could produce secret witnesses against the accused. In early 1995, the incumbent Chairperson of the NHRC, Justice Ranganath Mishra, made an appeal to Parliamentarians to not renew the law, dubbing it “draconian in effect and character” and “incompatible with our cultural traditions, legal history and treaty obligations”. ...

But it was TADA’s partisanship that was its most striking feature. It was invoked against striking workers and trade unionists in Gujarat, against Dalit landless labourers and Communist activists in Bihar (but never against upper caste private militias), against Muslims accused of perpetrating bomb blasts in Mumbai (though of course not against those who killed, looted and terrorized Muslims in the ghoulish violence that preceded the blasts).

In 1994, the National Commission for Minorities documented that 409 out of the 432 arrested under TADA in Rajasthan belonged to minority groups. In Punjab, thousands of Sikhs were rounded up, detained, incarcerated for years. [14]”

The Supreme Court should definitely have taken into consideration mitigating circumstances associated with Yakub Memon’s trial. There seems to be some debate as to whether he was actually arrested in Kathmandu or New Delhi, and whether a deal was actually struck by the CBI and Indian officials with Yakub, a speculation which gained currency after the posthumous publication of an article by B. Raman, who was a R&AW official. Even without discussing all these details, what can be said with absolute certainty is that the information provided by Yakub Memon built a water tight case of Pakistan government’s complicity in the Bombay blasts. Yakub came back from Pakistan – and also made sure eight other family members of the Memon family came back to India – and provided Indian officials with very valuable information about Tiger Memon, Taufiq Jaliawala and other ISI operatives and their direct involvement in the bomb blasts. While he was in Pakistan, Yakub started making audio and video recordings, with the intention of turning it over to Indian officials, which he eventually did. He provided three audio cassettes, recording conversations of Tiger Memon, Taufiq Jaliawala and other ISI persons involved in the blast. He provided Indian authorities with videos of bungalows of Dawood Ibrahim, Taufiq Jaliawala and Tiger Memon.

In view of the facts that a person who has provided crucial information on the involvement of the principal accused in the blast; direct complicity of the Pakistan government; against whom there is no direct evidence except confessional statements, some retracted; and who is tried and convicted in accordance to a law which the country has long scrapped deciding it to be draconian, the judgement of capital punishment seems exceedingly harsh and immoral. Even if one were to accept the premise that there are some criminals who deserve to be given capital punishment, Yakub Memon seems not to fit the bill.

## Killing as Justice?

But, as I have indicated before, I am opposed to capital punishment in general. I will try to go over some of the most salient points on capital punishment.

☞ The most common argument put forward in favour of capital punishment says that it provides a deterrence. Leaving aside the point of how morally abhorrent the practice is, there is absolutely no evidence to buttress this claim in the first place. As Shashi Tharoor correctly points out (since we know he is not always right):

“The overwhelming evidence suggests that the death penalty cannot be justified as an effective instrument of the state. Look at the numbers: there's no statistical correlation between applying the death penalty and preventing murder. About 10 people were executed from 1980 to 1990 for the offence of murder under section 302 of the India Penal Code, but the incidence of murder increased from 22,149 to 35,045 during the same period. Similarly, during 1990-2000, even though about 8 people were executed, the incidence of murder increased from 35,045 to 37,399. However, during 2000-2010, only one person was executed and the incidence of murder decreased from 37,399 in 2000 to 33,335 in 2010. No correlation: QED. [\[15\]](#)”

More than 100 countries have abolished capital punishment. The universal declaration of Human Rights adopted by the UN General Assembly considers right to life a most fundamental of human rights, and hence considers capital punishment one of its worst violations.

☞ The power to put someone to death at the hands of the state is dangerous. The state and all its institutions reflect the biases and prejudices of the society we live in. Thus, the clause that an incident which is deemed to be the ‘rarest of the rare’ are eligible for capital punishment, makes it vulnerable to misuse because of prevailing prejudices of society which even the best amongst us are not immune to. No wonder research shows that it is the marginalised and the most vulnerable in our society who are at the receiving end of the death penalty. As N. K. Bhupesh observes:

“A recent report of the Death Penalty Research Project of the National Law University, New Delhi (NLUD), reveals that most of the death-row convicts are from the underprivileged sections of society and raises serious questions on the criteria courts adopt to classify certain cases as “rarest of rare”.

The NLUD report was not the first to make such an assertion about how the death penalty is given almost exclusively to people from the minorities, exploited castes and oppressed castes. Human rights activists have long maintained that political, religious and ethnic prejudice play a part in adjudication and sentencing. To drive home the point, late human rights activist KG Kannabiran cited the case of two Dalit peasants, Kishta Goud and Bhoomaiah, who were hanged during the Emergency. That was a time when militant agrarian struggles were raging in different parts of the country, including Andhra Pradesh, against the atrocities committed by feudal landlords and peasants, most of them landless, were demanding the constitutional promise of “land to the tiller” to be implemented. Kishta and Bhoomaiah were accused of killing a landlord and sentenced to death. ...

Looking at the profile of Indian citizens hanged since then, Anup Surendranath of NLUJ, who has done extensive research on death-row convicts, tells Tehelka that the death penalty is not imposed as a deterrent but to send a political message. Every execution reassures the State of its absolute power over citizens. Surendranath argues that if the death penalty was meant to be a deterrent, then most of those on death row would have been from the zones of conflict across the land. But that, he points out, is not the case because “in the conflict zones, the State doesn’t have the patience to go through the judicial process”. “There, extrajudicial murder is clearly the most favoured form of execution,” he says.”

What if there are mistakes made? Surely no one thinks that our judicial process is immune to human error. But capital punishment is irreversible. The principle that “it is better that ten guilty persons escape than that one innocent suffer” cannot be safely guarded with capital punishment in vogue. Consider the death penalty of Dhananjay Chatterjee, accused of sexually assaulting and brutally murdering 18 year old Hetal Parekh, who was executed on August 14, 2004. A People’s Union for Democratic Rights (PUDR) report reads:

“Almost 11 years later to date, a report released by two scholars of Indian Statistical Institute (Kolkata) exposing the shoddy and biased investigation and trial, provides evidence that points towards his innocence and wrongful execution. According to the report by Debashish Sengupta and Prabal Chaudhury titled "Re-Analysis of the case of the murder of Hetal Parekh: And the Judicial Killing of Dhananjay Chatterjee" all the mainstays of the police and prosecution’s story are open to question ...

The report makes clear that Dhananjay Chatterjee is only the latest addition in the list of wrongful executions in India. In 2012, 14 eminent jurists including Justice PB Sawant, Justices A P Shah, B A Khan, B H Marlapalle, B G Kolse-Patil, Hosbet Suresh, PrabhaSridevan, K P Sivasubramaniam, RS Verma, and P C Jain had appealed for the commutation of death penalty in separate letters to the President in the cases of 13 persons on death row who they claimed were erroneously sentenced to death. They specifically drew attention to the grave miscarriage of justice in the case of Ravji Ram and Surja Ram who were hanged in the late 1990s and who according to the Supreme Court's own acknowledgement were wrongly executed.

While the possibility of miscarriage of justice is ever-present and no form of punishment is reversible, the death penalty forecloses any possibility of reversal. [16]”

Last, but not least, is the moral argument. There is absolutely no justification to kill a person in captivity. I am no pacifist. I affirm the right of the oppressed to struggle and fight for their emancipation – to quote Malcolm X – “by any means necessary.” But, killing a person, however wicked, proven guilty beyond any doubt, serves no purpose. It is not a reflection of justice delivered, but that of the society that carries out such a horror.

## Why did this happen to Yakub?

Why then did the Indian judiciary carry out this murder state-sponsored murder? Many say it is for justice, for closure of the victims of the Bombay blasts. Really? The Srikrishna Commission report – comprising of 15,000 pages, containing depositions of more than 500 witnesses, and taking on record more than 2900 exhibits – provides details of the violence inflicted by Hindu fanatics, led by Shiv Sena, on the Muslim community, and provides evidence of police complicity in the violence. It claims that “[o]ne common link between the riots of December 1992 and January 1993 and bomb blasts of 12 March 1993 appear to be that the former appear to have been a causative factor for the latter. There does appear to be a cause and effect relationship between the two riots and the serial bomb blasts.”

The Srikrishna Commission reports that mahaarti ritual held from December 26, 1992, “ostensibly to protest the

namaz on the streets and the calling of azaans from mosques.” “Some of the mahaartis were later used as occasions for delivering communally inciting speeches; and the crowds dispersing from the mahaarti indulged in damage, looting and arson of Muslim establishments ... [17]” R. Padmanabhan in a Frontline article extensively quotes from the Srikrishna Commission:

““From January 8, 1993 at least, there is no doubt that the Shiv Sena and Shiv Sainiks took the lead in organising violent attacks on Muslims and their properties under the guidance of several leaders... from the level of shakhapramukh to... Bal Thackeray, who, like a veteran general, commanded... Shiv Sainiks to retaliate by organised attacks against Muslims.” Statements and acts of Sena leaders and Thackeray's writings and directives meanwhile kept building up communal tension, says the Commission. “The... rioting triggered off by the Shiv Sena was hijacked by local criminal elements, who saw... an opportunity to make quick gains. By the time the Shiv Sena realised that enough had been done by way of 'retaliation,' the... violence was beyond the control of its leaders...””

Just to give an example of one horrible incident: “On 12th January 1993, a Hindu mob surrounds, strips and assaults two Muslim women. The older woman manages to run away. The uncle of the younger woman, who comes to rescue the young girl of 19, and that girl are beaten and burnt alive by the violent mob. The names of the miscreants are disclosed to the police by a Hindu lady in the locality. Though the miscreants were arrested and tried, they were all acquitted. [18]”

With clear evidence that Shiv Sena leaders were stoking communal violence, police and authorities made no endeavours to stop them, and made claims that any effort to stop them would result in a backlash and worsening of the law and order situation; which further increased the violence incitement from the leaders, now that they had proof that their actions will go with impunity. The commission provides painstaking evidence of the complicity of 26 police stations in the violence. A report published by The Citizen claims that:

“The evidence collected was traumatic, recording instances of Shiv Sainiks and the Mumbai police going into houses and killing innocent inhabitants. Asked by the interviewer about the then well known Hari Masjid incident, Justice Srikrishna said that prima facie evidence established that the police had entered the mosque and opened fire on the unsuspecting congregation. He described this as “inhuman” and said that a police man was named as being the prime motivator, but clearly no action was taken against him. In his report he indicted 15 police officers including then joint commissioner of police R.D. Tyagi, and 16 police constables for their ‘delinquency’ during the riots. [19]”

Three people have been so far been convicted from the Bombay riots, one of whom, the Shiv Sena MLA Madhukar Sarpotdar, died in 2010 without even serving a single day in prison. Shiv Sena leader Bal Thackeray, who openly incited violence, on occasions challenged the police to arrest him threatening that the law and order situation will deteriorate in that event, was given a state funeral upon his death. That was closure for the Bombay riot victims.

What about another riot that we know of? The 2002 state-sponsored pogrom carried out by Hindu fanatics in cahoots with the administration [20]. The official estimates claim that 790 Muslims and 254 Hindus died, but the unofficial estimates claim that the death toll exceeded 2,000, of which the majority were Muslims. Communalism Combat, a journal edited by civil rights activist Teesta Setalvad, had issued prior warnings about the looming danger of communal violence. Eminent historian Tanika Sarkar points out:

“Each individual feature of Gujarat has been anticipated and experimented with since the Ramjanmabhoomi (Birthplace of God Ram) movement began: in Meerut, Maliana, Bhagalpur, at Ayodhya, Mumbai, Surat, Bhopal, at Manoharpur in Orissa and at countless other places. [21]”

The Hindu mobs had computer printouts of voter registration documents and knew addresses of Muslim-owned

properties. Muslim-owned shops were looted and vandalized and shops partially owned by Muslims were also looted and damaged, indicating that preparation had started long before the Godhra incident. Smita Narula, senior South Asia researcher for Human Rights Watch and author of the report *India: Gujarat Officials Took Part in Anti-Muslim Violence* said:

“What happened in Gujarat was not a spontaneous uprising, it was a carefully orchestrated attack against Muslims. The attacks were planned in advance and organized with extensive participation of the police and state government officials. [22]”

The police aided and abetted the mob in carrying out the violence. In some cases, they were silent spectators and did not interfere while the saffron-clad Hindu mobs proceeded to kill Muslims with swords and sticks. On other occasions, they abetted by masquerading as protectors, only to lead hapless Muslims straight toward a waiting mob.

Ambulances were allowed to pass once they yelled *Jai Shri Ram* (meaning *Hail Ram*, indicating the victim is a Hindu). First Information Reports (FIR), the initial complaint made about a crime, were often denied or not recorded. Sometimes the police entered FIRs collectively and did not allow individual names, despite the victims claiming to have recognized the perpetrators. The state tried to cover up its complicity and the role of the *Sangh Parivar*.

As Tanika Sarkar writes, words like “communal violence” and “massacre” have been too “domesticated,” to be used to describe the depravity of the violence. Women in particular were made targets of violence and revenge, according to philosopher Martha Nussbaum:

“Particularly striking were the mass rapes and mutilations of women. The typical tactic was first to rape or gang-rape the woman, then to torture her, and then to set her on fire and kill her. Although the fact that most of the dead were incinerated makes a precise sex count of the bodies impossible, one mass grave that was discovered contained more than half female bodies. [23]”

According to the Human Rights Watch Report [24], “[i]n some cases, pregnant women had their bellies cut open and their fetuses pulled out and hacked or burned before the women were killed.”

These atrocities didn't stop Modi from declaring “even as the scale of violence was at its most intense” that the “people of Gujarat have shown remarkable restraint under grave provocation,” according to the HRW report. The then Prime Minister of India Atal Bihari Vajpayee said in April 2002:

“[W]herever Muslims are living, they don't want to live in harmony. They don't mix with the society. They are not interested in living in peace...We don't need lessons in secularism from anyone. India was secular even before the Muslims and Christians came. [25]”

Atal Behari Vajpayee was given a *Bharat Ratna*, the highest civilian honour an Indian can get, on March 27, 2015. His birthday, December 25, is now declared to be “Good Governance Day.” No communalism here, if you are raising questions, you are probably not nationalistic enough, and would be well served if you relocated to Pakistan.

More than 200,000 people were internally displaced, in Gujarat in the aftermath of 2002 pogrom. Muslims fled riot-prone neighbourhoods in search of shelter from the unspeakable violence. The state turned a blind eye to survivors and the relief camps organized for them. Not only did the state provide inadequate relief, it refused to acknowledge the relief camps set up by international organizations and Indian nongovernmental organizations that did make efforts to address the humanitarian crisis. It has also been reported that in some cases, the relief camps were organized near graveyards, and some victims even had to sleep between graves. While the plight of Muslims in the country is such, BJP MP and current



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External Affairs Minister Sushma Swaraj has assured, on August 2, 2015, to help Hindus in Pakistan [\[26\]](#).

In a sting operation, Tehelka recorded a video where former Bajrang Dal leader Babubhai Patel, also known as Babu Bajrangi, said:

“We didn't spare a single Muslim shop, we set everything on fire ... we hacked, burned, set on fire ... we believe in setting them on fire because these bastards don't want to be cremated, they're afraid of it ... I have just one last wish ... let me be sentenced to death ... I don't care if I'm hanged ... just give me two days before my hanging and I will go and have a field day in Juhapura where seven or eight lakhs [seven or eight hundred thousand] of these people stay ... I will finish them off ... let a few more of them die ... at least 25,000 to 50,000 should die. [\[27\]](#)”

In the video Babu Bajrangi also claimed “that he had called the state Home Minister Gordhan Zadaphia and the Vishwa Hindu Parishad general secretary Jaideep Patel at the time, to inform them about the killings.” He has been given life imprisonment, but has been out on bail for more than 125 days, and was granted a bail six times – sometimes for niece's wedding, sometimes for medical reasons – the last time on July 23, 2015.

The other person convicted for Gujarat 2002 was Maya Kodnani. She has been described by court rulings as “the kingpin of Naroda Patiya massacre.” She has been given a sentence of 28 years in jail. The Gujarat government withdrew their appeal to seek death penalty for Kodnani. Here, so there is no misunderstanding, I would like to reiterate that even for criminals like Maya Kodnani and Babu Bajrangi, I vociferously oppose death penalty.

How can one expect closure of the Gujarat 2002 pogrom, when Himanshu Trivedi, who was a judge in the City Civil and Sessions Court from October 2002 to May 2003, in a recent facebook post came out saying that he quit judiciary because the State of Gujarat wanted the judges to act against the minority community? [\[28\]](#)

In the case of the Malegaon blasts of 2006, the initial suspicion was that Pakistan or Lashkar-e-Toiba or Jaish-e-Mohammed were involved in the blasts. Among those arrested were activists of Students Islamic Movement of India (SIMI). After Hemant Karkare's investigation found that the initial Muslim men suspected were innocent, the case was handed over to National Investigative Agency (NIA). When it was found that the accused are no longer Maoists, Muslims, or does not fit a description which can be used to declare them a national enemy or “greatest internal security threat,” the situation became complicated. Special Public Prosecutor Rohini Salian has come out saying that after the change in the central government, there has been more pressure to favour the accused.

In the case of the grenade attack on a Friday prayer gathering at the Ahle Hadees mosque in Peer Mitha on January 9, 2004, which had left two J&K officials dead and 19 injured, the Jammu police initially blamed Tehreek-ul Mujahideen, and arrested 108 people. As reported in an Indian Express article:

“Seven years later, the National Investigation Agency (NIA) had said Rajendra Chaudhary and Dhan Singh, arrested in connection with the 2007 Samjhauta Express attack and the 2008 Malegaon blasts, were behind the attack. In December 2012, an NIA team had questioned two youths from Kanachak in Jammu.

In the light of the NIA disclosures, a re-investigation was ordered, but it never took off because the J&K Police said that the original case file had been “stolen”...

As per the NIA, in a “disclosure statement”, Rajendra Chaudhary had said that in 2001 he had met Sunil Joshi, then a pracharak in Mhow, at Depalpur in Indore district of Madhya Pradesh...

“Dhan Singh told me he had come to the camp around two months ago. Sunilji left Jammu after dropping me there. We, three, stayed in that room at Purkhu camp for about three months... Patil showed us two hand grenades kept in his suitcase and asked us to explode them. Along with Dhan Singh and Patil, I went to the mosque at Peer Meetha (around 15 km from our place) by bus. They told me to wait at the local bus stop and went to the mosque. After hurling grenades (I heard the sound of explosion), they both came running to the bus stand. I later came to know that due to that explosion, two persons had been killed and a few injured. Along with Dhan Singh, I returned to Indore, leaving Patil in Jammu. [29]”

This list can go on. There is no closure to the Babri Masjid case, despite the damning evidence provided by the Liberhan Commission report; no closure for the victims of the 1984 anti-Sikh riots; no closure for the victims of the Kunan Poshpora in Kashmir, where according to human rights organizations like HRW about 100 women were gang raped by Indian army personnel; no closure for the Sopore massacre in Kashmir, where Indian army killed 55 civilians, and according to conservative estimates of the government 250 shops and 50 houses were burnt and so on.

The duplicity of the liberal defenders of Modi, BJP and Sangh parivar in general is pathetic. When one raise the question of Gujarat 2002, one is repeatedly accused of being stuck in the past, yet the Sangh Parivar go back thousands of years and search in mythical stories about temples built in particular places. There is a myth going around that Modi has been given a clean chit; well not exactly, as an article in India Resist points out [30]. How can you expect justice, when the perpetrators of Gujarat 2002 pogrom go unpunished, while Teesta Setalvad, whose untiring efforts have helped bring justice to the survivors of the pogrom, is being hounded?

There is another charge that activists only bring up the case of abolition of death penalty when a Muslim man is on death row. That is patently false. As I have mentioned before, I would be opposed to death penalty for Maya Kodnani, or even Henry Kissinger, who probably would be one of the biggest war criminals on earth if ever tried. Committed and principled activists have been fighting for the abolition of death penalty for a long time. We opposed the noose symbol in the Shahbagh movement; we have opposed the death sentence awarder to Muslim Brotherhood's Muhammad Morsi; the order of death penalty to 183 Muslim Brotherhood supporters in Egypt; and now we are opposed to the death penalty of Gaddafi's son, Saif al-Islam.

## Reaction from the political parties

The Congress did not even raise the issue of principled opposition to capital punishment. Given that Sonia Gandhi had earlier forgiven the killer of her husband, she had some moral capital to at least start up a conversation on the issue of mercy and against retributive justice. Although individual Congress leaders, like Digvijay Singh, opposed the hanging of Yakub, the party was largely silent.

The Communist Party of India (Marxist) opposed the death penalty of Yakub Memon. Veteran CPI(M) leader Prakash Karat wrote in The Citizen, “Yakub Memon's fate underlines the need for the abolition of the death penalty, a demand which the CPI(M) has been making. [31]” The hypocrisy of this statement is palpable. Let us remind ourselves that the West Bengal CPI(M) government had taken an active role in hanging Dhanajoy Chatterjee, with the Meera Bhattacharyaâ€”the wife of the then Chief Minister Buddhadeb Bhattacharyaâ€”taking the lead role. As remarked upon earlier, new evidence has surfaced, which casts doubt on the role of Dhananjoy, and it might have been a wrongful execution. Upon the hanging of Afzal Guru, convicted for being involved in the parliament attack in 2001, Sitaram Yetchury, who is currently the General Secretary of CPI(M), had said “I think, the law of the land with all its provisions has finally been completed as far as the Afzal Guru case and the attack on the Indian Parliament is concerned. The issue which had been lingering for the past 11 years has finally completed its due course. [32]”

Arundhati Roy noted then: “In a moment of rare unity the Nation, or at least its major political parties, the Congress, the BJP and the CPM came together as one (barring a few squabbles about ‘delay’ and ‘timing’) to celebrate the triumph of the Rule of Law. [33]”

After the December 16 horrific incident of rape of a Delhi woman, Prakash Karat commented: “As per the present laws, capital punishment is prescribed for cases of murder and Supreme Court has defined it or interpreted it as the rarest of rare cases when death penalty can be given...of course, in the case of the brutal gang rape and murder of this young woman, that law would apply. [34]” Though, given what I noted earlier, CPI(M)’s deep historical commitment to fighting capital punishment is hard to find, I think it is a welcome development that at least now they have an official position of opposing death penalty as a legitimate means of punishment, and in the case of Yakub Memon had openly opposed it.

## Conclusion

With the change in the central government, there is a process of Hinduization of institutions and society playing out, with a precipitous increase in communal disharmony. There is a spate of activity of “shuddhikaran”, “gharwapsi”, attacks on churches all of which barely receive any comments from Prime Minister Modi. In a report, which came out marking the 100 days of Narendra Modi’s government, John Dayal notes that there have been more than 600 incidents of communal violence since the new BJP government came into power [35]. From declaring the Gita to be the national book, to making political appointments of people with ties to the Sangh Parivar, the current BJP government – when not actively stoking communal tension – conveniently turns a blind eye to the atrocities.

While we should take a principled position, not only questions of capital punishment, but also on questions of terrorism, and condemn the attack on innocent civilians, whether the victim is in India or a blogger in Bangladesh, we cannot forget that our main battle remains in our own country where we are based. We condemn horrific attacks everywhere else, and write statements of solidarity to groups fighting extremism and bigotry, but our task is to organize on the ground where we are based. It is important for us to fight islamophobia, because it is an important tool at the hands of Hindutva forces, which it will, as it has done in the past, use cynically to gain political power at the cost of innocent human lives from either sides of the religious line.

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