

# Case Comment on Tripal Murder

-Lokesh Bulchandani & Shikha Thakkar<sup>1</sup>

## Introduction

India is a secular state, as propounded by the Constitution and believed by the judiciary, but the masses of people are segregated in water tight communities. On one hand, "Religion" broadly refers to a belief in the transcendent which is a double-edged sword that can embark or combat peace. On the other hand, "Communal Violence" is the difference between religions and includes harm caused to the followers and institution of another religion.

It was thought on the verge of partition in 1946 that the communal violence would be resolved and its ill effects shall vanish, little did we know that this was a false hope which shall be the root cause of generation and aggravation of riots in India in the years to come to an extent that religion and violence shall go hand in hand.

In Ahmedabad there were riots in 1714-1716 and later there were communal tensions in the later 19th century. When a direct action was sent by the muslim league in 1946 a clear relationship between communal riots and politics was seen that led to subsequent partition of the country.

The pattern of riots significantly changed since the 1990s. The chief reason of violence can be traced in two phases. During the partition, the clash of two different communities with different political interests resulted into enmity. But since 1960s, hindutva politics has been a chief cause of communal rift that helped in instigating violence. Communal violence since 1990 is to be seen with references to the change of our country's political equation. The decline of Congress and emergence of BhartiyaJanata Party has led to a major shift in the chronology of events. Religious violence has never been spontaneous, it a planned activity of religious fanatics which is organized and supported by local administrators. The said violence has entered into a new phase with the victims of planned attacks being minority religious such as Christians. This violence is instigated by Hindu-right wing organizations and has led to growth of communal sensitive areas such as Kerala, Tamil Nadu, Orissa etc.. The animosity was a systematic targeting by a family of influential Hindus- SanghParivar, of which Vishwa Hindu Parivar is an efficient agency, BhartiyaJanata Party- the political front and RashtriyaSwayamsevakSangh - the mentor. Subsequent to the attack on Babri

---

<sup>1</sup> Student, Amity Law School, Noida

Masjid, Bajrang Dal and Vishwa Hindu Parishad started a new strategy of attacking churches when the monotony of Hindu-Muslim violence could not attract the attention of masses.

Orissa has seen a state of turmoil and witnessed the worst form of religious violence against Christians since 1946 which included brutal murders, forceful conversions to Hinduism and widespread destruction of properties such as Churches. A chronology was witnessed in the riots of 1999, 2000, 2003, 2007. The case comment concentrates on one such riot that occurred and left the nation in a dilemma, whether or not religion is the peace maker that it claims, and should India be proud of the diversity in religion that it possess. The case of Rabintra Kumar Pal (Dara Singh) v. Republic of India is a triple murder case which portrays the state of mayhem in India in the name of Religion.

### **Facts Of The Case**

1. Graham Stuart Staines, 58, an Australian born Christian missionary came to India in 1965 with his two minor sons, Timothy Staines, 7, and Philip Staines, 10. Staines became an active participant of the leprosy mission of Australia and for past 35 years ran a nursing home in the outskirts of Manoharpur, a remote tribal village of the district Kheonjhar, Orissa. Home to 150 Santhal Families, known for guarding their religion with utmost zeal, Manoharpur witnessed the conversion of 22 families to Christianity over the years. On the day Staines arrived, the village stood on a rickety pavement divided enormously on the lines of religion.
2. Dressed in Casuals and riding his cycle he did "God's Work" daily by serving leprosy patients and came to be known as –Saibo, a Bengali equivalent to "loved one". Graham Staines became part of village camps for more than 14 years and instructed tribals on varied subjects from health, hygiene to bible. Habituated with an every year visit, Staines along with other missionaries visited Manoharpur village for hosting a 4 day jungle camp for a series of programme.
3. On 22-01-1999 after the set of targeted activities of the day were achieved, the missionary team retires. At night, Dara Singh, Hindu activist, rounded up several followers and agitated passion against Staines who he claimed to be associated with conversion of adivasis. While on one hand the work of Staines with lepers was known all around, Dara Singh was accused of several crimes including murder charges against a Muslim trader accused of cattle smuggling.

4. On the fateful night, Graham Staines along with his two minor sons slept in their Willy's station wagon, parked outside the church. At midnight, the macabre mission initiated as the religious fanatics commenced their handiwork. A politically agitated mob gathered around the vehicle in which the Staines family was sleeping, bolted the gates, poured gasoline and charred the family alive. The forensic report declared the source of fire to be either petrol or diesel which intensified the fire to 7000 degree Celsius, melting the aluminum roof and glass windows of the vehicle.
5. 100 meters away, Santhal boys and girls danced with enthusiasm as they celebrated the attainment of adolescence and became silent spectators of burning shame. The mob hailed the slogans "Dara Singh Zindabad" and "Bajrang Bali Zindabad" while the flames swept away the darkness of dreadful night and what remained besides the ashes of Staines family was the darkness created in the name of religion, the peace maker. Rolia Soren, ex pastor of Church, filed an FIR mentioning many persons of the locality.
6. The initial investigation by Mayurbhanj Police pointed the involvement of Dara Singh. Dara Singh fled the location and subsequently within days his photographs were displayed at every place as "the wanted man" with an award of Rs. 10 lakhs.
7. On January 1999, a judicial commission was set up by Hon'ble Justice D.P. Wadhwa of Supreme Court for investigating the case. However, later the case was handed over to Central Bureau of Investigation. Based on the chargesheet filed by CBI, the trial began in 2001. The judgment and order of which are as follows:

## **Judgement**

### **1. Lower Court/ Session Judge**

Before the session judge of Khurda a charge sheet was filed by the CBI after the investigation where 14 accused person were put to trial. Apart from these accused, one was tried by juvenile court.

After the examination of 55 witness from the side of prosecution and 25 from the side of defence a common judgment and order dated 15<sup>th</sup> September 2003 and 22<sup>nd</sup> September 2003 was passed by the session judge of Khurda convicting all the accused for the offences under various sections of IPC as applicable and the death sentenced was passed against Dara Singh.

## **2. High Court**

Against the common order and judgment dated 15<sup>th</sup> September 2003 and 22<sup>nd</sup> September 2003 passed by the session court the accused filed an appeal for death reference of Dara Singh and conviction of others in the High Court [Criminal Appeal No. 1366 of 2005].

By the common judgment dated 19<sup>th</sup> May 2005 the High Court held that "the witnesses are not trustworthy and no credence should be given to their statements and confessional statements were procured by the investigating agency under threat and coercion."

The High Court by this challenging judgment, modified the decision of session judge by commuting the death sentence of Dara Singh into life imprisonment and conformed the life imprisonment imposed on MahendraHembram and acquitted all the other accused persons. The judgement was appealed before the Supreme Court.

## **3. Supreme Court**

An appeal was filed by the CBI in Supreme Court to award death sentence to Dara Singh, as the murders were committed in the most "diabolic and dastardly manner". On the other hand, Dara Singh and MahendraHembram also filed an appeal in S.C challenging their conviction and life imprisonment awarded to them by the Orissa High Court

The Supreme Court in this case upheld the decision of Orissa High Court by rejecting the plea of CBI for death penalty and the plea of Dara Singh and MahendraHembram for their acquittal. The Supreme Court held that it could not be demonstrated that any specific action by Dara Singh himself had caused the deaths thus this case does not come under the ambit of "rarest of rare doctrine"

In the 76 page judgment, the Supreme Court strongly condemns the practice of conversion and said "We hope Mahatma Gandhi's vision of religion playing a positive development integrating into a prosperous nation will be realized. There is no justification for interfering in someone's belief through force, conversion or false premise that one religion is better than the other" also the Court stated "Our concept of secularism is that the State will have no religion. The State shall not interfere with their individual right of religion, faith and worship and treat all religions and religious groups equally and with equal respect." Yet, condemning religious conversions, the Court also said, "It is undisputed that there is no justification for interfering in someone's belief by way of 'use of force', provocation, conversion, incitement or upon a flawed premise that one religion is better than the other"

On 25<sup>th</sup> January 2011, the two controversial paragraphs of the judgment were replaced by two sentences. The new sentence, replacing one paragraph, said, "However, more than 12 years have elapsed since the act was committed, we are of the opinion that the life sentence awarded by the High Court need not be enhanced in view of the factual position discussed in the earlier paragraphs." The justices who had given the original judgment removed the remarks implying that burning a person alive was a "lesson" gone awry. The other replaced paragraph read, "There is no justification for interfering in someone's religious belief by any means." Language denouncing any form of religious violence was retained and the criticism of conversion softened.

### **Issue**

The bird's eye view provides a single issue for consideration before the Hon'ble Supreme Court, whether the conviction and life imprisonment imposed upon Dara Singh and MahendraHembram maintainable?

### **Judgement Analysis**

Cancer remains in the judgment of the Supreme Court to commute the death penalty of Dara Singh and MahendraHembaram into life imprisonment while the "secular" masses of this country sit and rue the fact that communal differences can be resolved by roasting a missionary and his two innocent children alive. The verdict makes the country look small and stuck in the hands of politically benefitted religious organizations. As already quoted, Communal violence is not a spontaneous event, it is a planned activity for attainment of certain objective and in the instant case the objective was to teach Graham a lesson about his religious activity, namely conversion of Hindus into Christians, as quoted by SC in the judgment without an iota of evidence in this regard as to whether Graham Staines was involved into conversion?

It is contended, firstly, that the triple murder was a pre-planned, pitiless crime committed in a dreadful manner. In the case of *Ranga-Billa*<sup>2</sup>, the Supreme Court upheld the death sentence on the grounds that the murder was pre-planned, cold-blooded and committed in a brutal manner and therefore there were no mitigating circumstances to commute the sentence.

---

<sup>2</sup>Kuljeet Singh v. Union of India, (1981) 3 SCC 324 (India).

Although the abolishers of death penalty shall now rely on the verdicts of *Jagmohan Singh v. State of U.P.*<sup>3</sup>, *Rajendra Prasad v. State of U.P.*<sup>4</sup> and *Bacchan Singh v. State of Punjab*<sup>5</sup> and quote that under section 302 of The Indian Penal Code death penalty is only an alternative to life imprisonment which is to be awarded in the rarest of rarest of rare cases. Therefore, the second contention in the said case falls within the purview of rarest of rare case doctrine and possess all the essentials as propounded in the case of *Macchi Singh v. State of Punjab*<sup>6</sup> which are as follows:

1. Manner of Commission of Murder: When a brutal manner of commission of crime such as setting fire to a house so as to roast a person alive, cutting the body into pieces etc. are relied upon so as to arouse indignation in the community.
2. Motive: A mensrea which exhibits meanness. E.g.: hired assassin, inheriting property.
3. Anti-Social nature of Crime: When a minority community person or person of scheduled caste is murdered which provokes social wrath such bride burning for dowry.
4. Magnitude of Crime: Crime involving multiplicity of murders like murder of more than one person in a family or caste or community.
5. Personality of victim of murder: When the victim is an innocent child or a person who is generally respected whose murder is committed for reasons which are beyond personal such as political or similar reasons.

Thus, the case falls within the ambit of rarest of rare cases while the offenders were given life imprisonment. This lacuna still remains in the judgment.

## **Conclusion**

*“Every religion has the potential to  
foster violence or non-violence.*

*It is the responsibility of the believers  
to uphold non-violence from the scriptures”*

---

<sup>3</sup>Jagmohan Singh v. State of U.P.,(1973) 1 SCC 20 (India).

<sup>4</sup>Rajendra Prasad v. State of U.P, (1979) 3 SCC 646.(India).

<sup>5</sup>Bacchan Singh v. State of Punjab,(1980) 2 SCC397 (India).

<sup>6</sup>Macchi Singh v. State of Punjab ,(1983) 3 SCC 470 (India).

Non-violence and the concept of peace are emphasized by various religions.

Hinduism, for instance, in The Ramayana highlights the importance of treating the enemy with honor. The Chariot of Rama is described as having the cords of Compassion and forgiveness. Buddhism teaches the concept of spirituality. It propounds that when the mind is at peace, the world is at peace and that is the fundamental spirituality. Peace is described explicitly in Bible as a virtue of Jesus who believed in non-violence and forgiveness. Islam on the other hand, believes in unity and equality among all. It believes that everyone is the creation of God. Jainism has a famous principle- “Ahimsa parmodharmah” which means that non-violence is the supreme law.

When all these religions seek peace, non-violence and reconciliation with the enemy, are religion the root cause of communal violence or is it the handiwork of some fanatics?

Be it Godhra Case, Babri-masjid case, Gujarat riots of 1969 or Anti-Sikh riots of 1984 involvement of political organization in each of these can be seen. Therefore, In India, the blame of this violence and deaths of numerous innocents cannot be placed on either religion or politics. It is the synthesis of these two. Religious identities are not adequately educated about their religion and they fall prey to manipulators. The poor people are motivated to become executioners of crimes which are conspired by the “elite groups”. The result is violence! Violence where death tolls are at its peak with the creations of God burnt to death in the name of Religion.

If religion contributes significantly in communal violence, can it play a role in peace building?

The need of the hour is interreligious dialogue between members of different religions in order to make them aware about commonalities and learn about the religions of others which would help in easing the tensions between the groups. Religion can still become a key to peace building by encouraging individuals and groups to devote their time and energy for a peaceful and just society. Nobody from a religious or non-religious background would be able to deny that this is a worthwhile goal.