

Pay for your politics

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We live in violent times. Terrorist violence by clandestine groups usually receives near universal condemnation. But the discourse on violence organised or encouraged by conspicuous political groups (including registered political parties) usually gets entangled in a debate on the legitimacy of their objectives. Our constitutional ethos and Gandhian legacy should leave us in no doubt that such violence deserves as unqualified a condemnation as terrorism does: both use human lives as mere means to an end, and in doing so degrade them.

In legal terms, at least three complementary responses to political violence are possible. Criminal law can punish perpetrators of violence. Electoral and other laws relating to associations can derecognise violent groups. Legal provisions dealing with victims of violence may seek to compensate them for the damages suffered. The third strategy is my main concern here. That innocent victims of political violence must be compensated for their losses is a no-brainer. How this may be efficiently achieved and who should pay are moot questions. At least three High Courts have required the state to compensate the victims of 'riots' (in *R. Gandhi*, Madras, 1989; *Inderpuri General Stores*, Jammu & Kashmir, 1992; and *Manjit Singh Sawhney*, Delhi, 2005). It is not, however, obvious that the state should be required to pay even when those responsible for the violence are identifiable and can be made directly liable.

The recent Maharashtra Ordinance amending the Bombay Police Act of 1951 is a case in point. The Ordinance was a reaction by the Maharashtra government to criticisms of its failure to deal with violence against north-Indian migrant workers, allegedly perpetrated by activists belonging to the Maharashtra Navanirman Sena (MNS). The media, by and large, reported that the amended law will provide for political parties like the MNS to be fined for the damages caused by their activists. A closer examination of the text of the Ordinance tells a slightly different story. First, the power to compensate for 'loss or damage or death or grievous hurt' already existed under Section 51 of the un-amended Bombay Police Act. However, the procedure required to do so was very cumbersome, demanding various actions by the state government, the District Magistrate (DM) and the Revenue Commissioner. The amending Ordinance seeks to streamline the procedure by vesting all powers in the DM alone. This simplification is welcome, although one must also consider whether the DM is indeed the most effective (and impartial) authority to impose such fines.

Secondly, the power to compensate and the power to determine the amount payable continue to be discretionary rather than mandatory. Compensation is not treated as a right of the victims, but a largesse doled out if the DM deems fit. Further, it is not clear if the state

can recover costs for damages to public property. Thirdly, and perhaps most importantly, neither the un-amended Act nor the Ordinance actually provide for the imposition of fine on political parties or leaders responsible for the violence. The un-amended Section 51, curiously, allowed fines to be imposed on the residents of the area where the violence took place. So, if you were unfortunate enough to live in the 'disturbance area', you could be made liable to pay the fine. The Ordinance preserves this odd provision, but adds another category — now, 'the members of unlawful assembly' who caused the damage are personally liable to pay the fine. But this only covers the footsoldiers who execute plans. While their political party may choose to foot their bill, it has no obligation to do so. If the fines have to have any deterrent effect, the leaders and organisations whose activists are involved or whose speeches have a causal connection with the violence must be made vicariously liable.

One hopes that the Maharashtra legislative assembly, when called upon to formalise the Ordinance into an Act, will make the necessary changes to address the above-mentioned problems. But the Maharashtra assembly is not the only body grappling with the problem of political violence. In the aftermath of the Gurjjar violence last year and earlier this year, a Supreme Court-appointed committee headed by Justice Thomas is analysing how to deal with violence against public property. The Supreme Court itself is dealing with the issue of compensation to the churches that were damaged recently in Orissa. These debates suggest that India is beginning to take the problem of political violence seriously. The effectiveness of any solution will depend on its ability to deter the leadership that encourages violence rather than focussing merely on the footsoldiers. Imposing harsh fines on the leadership may be one possibility.

The writer is a legal scholar at Oxford University