‘Hindutva terror’ acquittals expose India’s deeply compromised criminal justice system

One by one, persons credibly charged with Hindutva terror attacks since 2006 have been discharged by courts, always on grounds of shoddy police investigation.

Mohsin Alam Bhat & Harsh Mander
3 hours ago

India’s criminal justice system has long been profoundly compromised by its deeply ingrained prejudice against India’s oppressed populations – Dalits, Adivasis, Muslims, women and the poor. Under the watch of successive governments, this institutional bias has corroded every arm of the justice system – the police, the prosecution and the courts.
In its hostility to Muslims, however, the justice system has arguably plumbed its lowest depths in the years since Narendra Modi took office as India’s prime minister in 2014. Even as a deadly scourge of cow lynching and other hate crimes peaked in this period, the police frequently would register criminal charges against the victims, protecting the attackers instead. Often cow or love jihad vigilantes and the police would be seen working closely in unison. In Uttar Pradesh and Haryana, targeted extra-judicial killings surged.

What is more, in these years, those charged with communal hate crimes and fake extra-judicial killings in Gujarat in 2002 and after, including a senior minister and many men in uniform, were first released on bail soon after the government changed hands in Delhi in 2014, and then acquitted one by one. The charge of culpability in extra-judicial killings against the ruling party’s national president was discharged without even allowing the evidence to be presented in court.

But communal partisanship was most brazenly exposed when one by one, persons credibly charged with Hindutva terror attacks since 2006 were discharged by courts, always on the grounds of (what appeared to be deliberate) shoddy police investigation and prosecution.

The latest of these is last month’s acquittal of Swami Aseemanand from the 2007 bomb attack on the Lahore-bound Samjhauta Express train, on the grounds that the National Investigation Agency had “failed to prove the conspiracy charge” and therefore the accused deserved the benefit of doubt.

Aseemanand, who was freed on bail in 2015, was acquitted in the 2007 Ajmer dargah blast case in March 2017 and in the 2007 Mecca Masjid blast terror case in April 2018, by National Investigation Agency special courts.
A special National Investigation Agency court in Panchkula, Haryana, acquitted four people, including main accused Swami Aseemanand, in the 2007 Samjhauta train bombing case, on March 20. (Photo credit: HT).

**Saffron terror**

From 2006, India was rocked by a series of terror bomb explosions, all in locations and at times in which the majority of targets could be expected to be Muslim. These were in Muslim places of worship, on a train to Pakistan, and during Friday prayers or Muslim festivals.

The first of these was in Maharashtra’s Malegaon town, on September 8, 2006, in which 37 people were killed. In the deadliest of these incidents, in February 2007, bomb explosions on the Samjhauta Express train that runs between Lahore and Delhi killed 68 people, of whom 43 were Pakistanis.

In May the same year, an explosion during Friday prayers in Hyderabad’s historic Mecca Masjid killed nine people. In October, another bomb detonated in Ajmer’s famous Khwaja Chishti Dargah, killing three people. In September, 2008, another bomb explosion in Malegaon left six people dead.

The routine bias that has penetrated India’s security systems was exposed once again when, even though this series of terror attacks clearly targeted Muslim people and places of worship, government sources would announce – usually within minutes of each of these – the involvement of various cross-border Islamist organisations in the blasts. These were followed by the arrest of many innocent Muslim men, who had to spend several years in prison, before their release after being declared not guilty.

Investigations revealed over time that these various terror attacks were in fact mounted by extremist radical Hindutva groups, and by people closely aligned to the Rashtriya Swayamsevak Sangh, the ideological parent of the BJP.

These sensational disclosures led to the arrests of several Hindutva activists, including religious figures and a serving and a retired Army officer. But the cases against each of these unravelled after the BJP-led government was elected to power in the summer of 2014. The acquittal of Swami Aseemanand is only the latest in a series of such exonerations.
Sixty-eight people were killed in the Samjhauta blasts in February 2007. (Photo credit: AFP).

**Abhinav Bharat and Hindu terror**

The involvement of Hindutva terror in this succession of blasts may have remained obscured but for the intervention of a police officer of outstanding integrity and courage, Hemant Karkare. He headed the Maharashtra Anti-Terror Squad investigation into the 2008 Malegaon blasts.

The Anti-Terror Squad arrested 11 suspects, all Hindutva radicals, including a former Akhil Bharatiya Vidyarthi Parishad student leader Sadhvi Pragya Singh Thakur, Swami Amritananda alias Dayanand Pandey, a retired Major Ramesh Upadhyay and a serving Army officer Lt Col Prasad Shrikant Purohit. On Wednesday, Thakur was named the BJP candidate for the Lok Sabha elections from Bhopal.

Most were members of an extremist Hindutva group called Abhinav Bharat, and were linked with the Rashtriya Swayamsevak Sangh or its affiliates. Purohit ended up giving numerous leads to the police in November 2008. Purohit is reported to have confessed that he supplied RDX explosives in the Samjhauta Express bombings and also to a “cell” in “two other blasts”.

Karkare and the Anti-Terror Squad were bitterly attacked by members of the Bhartiya Janata Party and the RSS. They described him as “a traitor to the nation” and claimed that the arrests were made under the pressure of the Congress government to appease India’s Muslims.

Narendra Modi, as chief minister of Gujarat, charged the Anti-Terror Squad with undermining military morale. Karkare was killed while on duty during the September 2008 terror attack in Mumbai.
Later, investigations by the Central Bureau of Investigation and the National Investigation Agency uncovered a shocking network of far-right violent Hindutva organisations.

The Samjhauta Express terror case was the central knot that tied the range of other incidents that allegedly involved terrorists with strong connections with the RSS and other Sangh groups. There were two persons in particular who joined the dots – according to the prosecution’s case – of all these cases together.

The first one was Sunil Joshi, a former RSS district leader from Indore. Joshi was a murder suspect involving some Congress leaders and had been apparently excommunicated by the RSS on that ground. The prosecution in the Samjhauta blasts case had argued that Joshi was the main brain behind the terrorist attacks. But Joshi was mysteriously murdered in 2007 before he could be arrested.

In Joshi’s absence, these cases came together for the prosecution with the crucial confession of Swami Aseemanand. A man of many aliases (born Naba Kumar Sarkar, but variously also using the names Jiten Chatterjee and Omkarnath), he worked as a pracharak of the RSS in the Sangh organisation for tribal work mainly to combat Christian conversions, the Vanavasi Kalyan Ashram, first in Burdwan in West Bengal, and then in the Andaman and Nicobar Islands and Jashpur in Chhattisgarh.

The CBI arrested Aseemanand on November 18, 2010, from Haridwar, Uttarakhand. Aseemanand testified before the Metropolitan Magistrate Deepak Dabas at Delhi’s Tis Hazari courts on December 18, under Section 164 of the Criminal Procedure Code, about his involvement in a series of terror attacks on Muslim targets.

He spoke in detail of his and his co-conspirators’ motivations for these terrorist acts. He stated that he, along with other Hindu activists, were involved in bombing Muslim religious places of worship because they wanted to respond to Islamist terror strikes against Hindus. During the investigation and prosecution, this was called the “bomb ka badla bomb” or “a bomb for a bomb” theory. The confession also alleged the role of senior RSS functionaries, most prominently Indresh Kumar.

These confessional statements were the most important pieces of evidence to establish the sequence of events, motive and guilt of Aseemanand and others, and also to link the Samjhauta train blasts case to a larger conspiracy involving Hindutva terrorists.

The confession was leaked and soon the international media was covering the “Hindu terror” story. For example, the Washington Post described this as “Hindu terrorism”, focusing on Hindu radicalism and right-wing organisations, and also on anti-Muslim institutional prejudice and stereotyping.

Aseemanand elaborated further the conspiracies in these terror attacks in a set of graphic free-wheeling interviews with Caravan magazine. In these, he accepted that he was in touch with RSS heads
and in fact RSS chief Mohan Bhagwat had supported the blasts. This resulted predictably in a political storm. Aseemanand later wrote a hand-written letter denying that he had made any such statement, calling it “false and fabricated”.

The National Investigation Agency filed the Samjhauta blasts case chargesheet on June 20, 2011. By January 2013, the “Hindu terror” or “saffron terror” tagline became national news.

Home Minister Shinde and Home Secretary RK Singh (who was to join the BJP soon after his retirement) told the press that they had evidence to link terrorism to the RSS. Singh said that “at least 10 people having close links with the Rashtriya Swayamsevak Sangh and its affiliated organisations were named accused in various acts of terror across India”. Sushil Kumar Shinde accused the BJP and the RSS of conducting “terror training camps to spread saffron terrorism”.

The problem for the prosecution was that soon after Aseemanand gave his Section 164 statement, he withdrew it, claiming that he had been coerced into confessing a crime he did not commit. He also denied giving the interviews to Caravan, and the tapes of those interviews were never submitted to a forensic laboratory to verify their authenticity.

Khwaja Mohinuddin Chisti’s dargah at Ajmer just after the blast in 2007 in which three people were killed. (Photo credit: HT).

**Aseemanand withdraws statement**

The problem for the prosecution was that soon after Aseemanand gave his Section 164 statement, he withdrew it, claiming that he had been coerced into confessing a crime he did not commit. He also denied giving the interviews to Caravan, and the tapes of those interviews were never submitted to a forensic laboratory to verify their authenticity.
The law allows only those confessions that are recorded before a judge to be admissible in evidence. If an accused person makes such a confession but withdraws it later, the court must assess the circumstances of the confession and withdrawal. Importantly, the court must rely on the confession only to the extent the statement is corroborated by material facts on record.

The eventual and ultimately lethal problem with the prosecution in the Samjhauta train blasts case was that it failed to establish any material facts as evidence that could be used to corroborate the withdrawn confession.

As Special Judge Jagdeep Singh wrote in his Samjhauta train blasts judgment in March, “In order to establish guilt of the accused persons, prosecution/NIA has mainly relied upon retracted confession of accused... Swami Aseemanand and disclosure statements of accused persons.”

The failure to back these up could be evidence of professional incompetence, or deliberate attempts to scuttle the case against Hindutva terrorists and the Sangh. The latter is more likely.

According to the prosecution, the mastermind of the blasts was the murdered Sunil Joshi, who, along with others like Aseemanand, were motivated by the need to respond to Islamist terror attacks in India.

The prosecution called this the “bomb ka badla bomb” idea, which it claimed was proposed by Aseemanand.

In 2005, he along with other co-conspirators met senior RSS leader Indresh Kumar, who allegedly encouraged them to think on these lines, in service of their “ideology”.

The main “conspiracy meeting”, according to the chargesheet, happened in June 2006. Aseemanand presided over the meeting, which was attended by Sadhvi Pragya, Joshi, Sandeep Dange, Ramchander Kalsangra, Lokesh Sharma, Amit and Bharat Bhai.

Aseemanand proposed his “bomb ka badla bomb” theory again and suggested targets like the Ajmer Dargah, Mecca Masjid and Malegaon. Sunil Joshi allegedly took the responsibility of organising the attacks.

The second chargesheet elaborated on the training, reconnaissance and actual planting of the bombs. According to the chargesheet, Joshi organised training for the accused in January 2006, in the Baghli forest in Dewas district of Madhya Pradesh.

Lokesh Sharma, Kamal Chauhan and Rajinder Chaudhary procured the suitcases for the bombs from Indore on February 17, 2007.

The third chargesheet focused mainly on the role of Chaudhary in procuring the RDX for the bombs. He apparently took the National Investigation Agency investigators to Dewas, where a demonstration of a
bomb explosion was said to have been done in preparation for the terror explosions. The National Investigation Agency claimed that the soil samples revealed the presence of high-explosive RDX.

Women walk past the historic Mecca Masjid in the old city of Hyderabad in July 2007. (Photo credit: Noah Seelam/AFP).

Problems in prosecution

Right from the beginning of the National Investigation Agency’s involvement, there appeared to be certain strategic and institutional problems, which, on hindsight, had a dire impact on the prosecution’s case in the Samjhauta train blasts case.

Despite names like Indresh Kumar and Pragya Thakur coming up, they were not made co-accused, without assigning any reason for their exclusion. In fact, the defence in the Samjhauta case had raised this question in the court, and the Samjhauta judgment called this “very strange”.

The National Investigation Agency was considering holding a joint trial for the three bomb blast cases, but due to an “adverse legal opinion”, dropped the idea in January 2014.

The separate trials resulted in an awkward prosecutorial presentation. For example, Devendra Gupta was convicted in the Ajmer case but was acquitted in the Mecca Masjid case. Some persons were tried
as suspects in two cases, and presented as prosecutorial witnesses in the third. Media reports suggested that some National Investigation Agency officials were unhappy with this.

**NIA cases unravel**

There is a clear pattern of the unravelling of the National Investigation Agency cases 2014 onward. The first indication of this was the allegation by Rohini Salian, the special prosecutor in the 2008 Malegaon blasts case, that since “the new government came to power” she had been under pressure from the agency to go “soft” in the case. While the National Investigation Agency denied this, it subsequently recommended Salian’s denotification from its panel of lawyers.

Soon after, in August 2014, Ashwini Sharma, the public prosecutor in the Ajmer Dargah case spoke to the media, expressing his concern that the National Investigation Agency was not doing enough to ensure the witnesses are not turning hostile.

Sharma stated that it was the task of the investigating agency to ensure that witnesses were not influenced by defence lawyers. At the very least, it could gather evidence to show the witnesses were being influenced by the defence. But, according to him, suggestions were being “ignored”. He also explained that since there is “little direct evidence” in terror cases, securing witness testimonies is crucial for the prosecution case.

Perhaps the first indication of the unravelling of the Samjhauta case was when on August 28, 2014, the Punjab and Haryana High Court accepted the bail application of Aseemanand.

The High Court noted that there had been “procedural delays” in the case and out of 299 witnesses, only 35 had been examined.

It said:

“The examination of the other witnesses would take substantial time and in case the appellant remains incarcerated all this while, the very purpose of his trial would be defeated as he would in any case have undergone his sentence or most part of it and in case he acquitted the liberty for the period of imprisonment undergone would not be restored...Therefore, by adopting the balancing process as regards the individual liberty of the appellant and the right of the community and the nation to safety and protection from terrorism and disruptive activities, the scales would tilt in favour of the appellant in view of his long incarceration, the role attributed to him, his conduct subsequent to his arrest, his age of 77 years, his being a MSc in Physics and the fact that the trial in the case would be delayed, it would be just and expedient to grant him the concession of bail.”

Before the Samjhauta judgment, the two other companion cases of the Mecca Masjid blast and Ajmer Dargah blast clearly indicated the direction Aseemanand’s trial was taking.
The cases against Pragya Thakur also either failed or were dropped. In May 2018, the National Investigation Agency dropped Pragya Thakur from the 2008 Malegaon blasts chargesheet.

In February 2017, she was acquitted by a court in Madhya Pradesh in the Sunil Joshi murder case. In April that year, the National Investigation Agency filed a closure report in the 2007 Ajmer Dargah blast case, stating that it did not have enough evidence against Sadhvi Pragya Singh Thakur and Indresh Kumar.

In the Mecca Masjid case, the National Investigation Agency court in Hyderabad acquitted all the five who had been chargesheeted in the case “for want of concrete evidence after some of the witnesses turned hostile”.

Apart from Aseemanand, the others who were acquitted included Devendra Gupta, Lokesh Sharma, Bharat Mohanlal Rateshwar and Rajinder Chaudhury. Two other accused, Sandeep V Dange and Ramchandra Kalsangra were absconding.

The Jaipur National Investigation Agency court hearing the Ajmer Dargah case acquitted Aseemanand and six others in 2017, giving them the benefit of doubt. But it found Sunil Joshi, Devendra Gupta and Bhavesh Bhai Patel guilty.

Devendra Gupta was a resident of Ajmer and worked for the RSS in Madhya Pradesh and Jharkhand, and Bhavesh Patel was an RSS activist in Gujarat. Sunil Joshi, of course, had been murdered in 2007.

The court gave life sentences to both Gupta and Patel, making it the first conviction of RSS members in these cases. But on August 30, 2018, the Rajasthan High Court suspended the sentence during the course of their appeal against the conviction. In its order, the High Court noted that their involvement was based on “human probabilities”, perhaps indicating what the future holds for the appeal.
**Getting derailed**

For Judge Singh in the Samjhauta train blasts case, the biggest problem with the prosecution's case was that Aseemanand's retracted statement had “remained totally uncorroborated”. Here started a long list of witnesses – many of them crucial for the case – who turned hostile and refused to support the prosecution’s case.

This pattern was reflected in numerous witnesses turning hostile. Scroll.in reported in October 2015 that [15 prosecution witnesses had turned hostile in the Ajmer Dargah case](https://scroll.in/article/920075) and 19 in the Samjhauta train case, and many more were “likely to go back on their earlier statements”, several of which had been given before a magistrate under Section 164.

The report noted that this had a worse impact on the Ajmer Dargah case, where 14 out of the 15 witnesses, who had recorded Section 164 statements, had turned hostile. These 14 were “key witnesses”, while the remaining ones “were the injured persons or police officers who are not key witnesses”.

By 2016, it was clear that the investigation into the Samjhauta train blasts case itself had taken a different route, with investigators trying again to convert this into an Islamist conspiracy.

In April 2016, National Investigation Agency officials visited the United States to inquire into the role of the Lashkar-e-Taiba financier Arif Qasmani in the Samjhauta blasts.

In May 2016, a [Federal Bureau of Investigation team visited India](https://scroll.in/article/920075). The media reported that the Americans will be “explain[ing] the basis for US Treasury Department's contention that Pakistan-based Lashkar-e-Taiba financier Arif Qasmani was involved in the 2007 attack”.

In June 2018, following an “expose” by *Times Now* TV channel, a [political controversy was stirred on the allegation](https://scroll.in/article/920075) that the Congress-led United Progressive Alliance government had [allowed Pakistani suspects in the Samjhauta train blasts case](https://scroll.in/article/920075) to leave without adequate investigation in 14 days.

While this appears to have been covered a lot in the media, suggesting that the Congress was inclined to blame Hindutva groups for the terror incidents, this contradicts the evidence that the United
Progressive Alliance government and the investigative agencies were, in fact, initially convinced that Pakistani and Islamist terrorists were involved in the case and actively pursued that line.

Besides, as reported by *The Hindu* in 2017, “Senior IPS officer Bharti Arora, who was one of the officers who headed the SIT [Special Investigation Team] then” said that a Pakistani man Azmat Ali “was properly interrogated, and after interrogation when nothing was found against him, he was discharged”.

Ali had been arrested by the Punjab police on March 1, days after the blasts occurred on February 19, 2007, for “illegally entering India on forged papers”.

In April 2016, another important witness in the Samjhauta case turned hostile. Yashpal Bhadana, who in a Section 164 statement had corroborated the April 2008 Bhopal meeting among the alleged perpetrators where they evolved the “bomb ka badla bomb” principle, retracted his statement and said that he was not present in the meeting.

In the same month, Captain Nitin Joshi alleged that he had been forced to give evidence against Purohit in the Malegaon and Samjhauta cases in relation to the supply of RDX.

In October 2018, Krishna from Indore and Narayan Das from Ayodhya also turned hostile. This meant that out of the 178 out of 299 witnesses, 25 had turned hostile.

Making matters worse, Judge Singh noted that the National Investigation Agency had not collected material corroborating evidence on crucial matters, making a number of statements made by the accused redundant.

For example, he noted that while the prosecution was relying on Chauhan’s important testimony that he along with the other accused prepared and demonstrated bombs in Dewas, “no recovery whatsoever” had been made.

Damagingly for the prosecution’s case, the soil samples from Dewas evidencing RDX, were apparently collected 10 months after Chauhan had shown the National Investigation Agency the precise location.

Judge Singh found this evidence to be of “no consequence”. He also noted that there was no indication that the National Investigation Agency had secured the samples in sealed covers, which was necessary to convince the court that they had not become tainted.

The prosecution was unable to provide any material evidence for the other parts of the confessional statements as well. It did not provide any proof, for example, in the form of tickets, indicating the travel and movement of the accused before or after the blasts.
No documentary evidence was brought on record reflecting their lodging. Raising more doubts about the quality of investigation, the prosecution did not even put on record any CCTV footage establishing the movement of the accused, despite the investigating officer having accepted that CCTV cameras were installed in relevant sites.

In a damning passage, Judge Singh wrote that not bringing on record the CCTV footage, “further lays bare chinks in the prosecution version, because the best evidence in the shape of CCTV footages has been withheld by the prosecution/NIA. Had the CCTV footages of Old Delhi Railway Station been collected by the investigating agency and put to rigorous examination, then some vital leads might have been obtained by it in order to bring the real culprits to justice, but no such evidence has been brought on record.”

Another disconcerting facet of the prosecution’s case was that it had not conducted an identification parade for the prosecution witnesses in Indore who had sold the suitcase covers to the alleged perpetrators. In fact, the suitcase and its link with Indore was what had originally allowed the police to build its case. Judge Singh, understandably, called this “very strange”.

While the prosecution had built its case around the “conspiracy meeting” and the claim that all the accused were in communication, they did not bring any material evidence supporting this story.

In the words of Judge Singh,

“[The] prosecution/NIA has not brought an iota of evidence on record to establish any such facts/assertions. Neither any call detail records (CDRs) of any mobile phone nor any other evidence pertaining to ownership and possession of any mobile phone by the accused/suspects has been brought on record.”

And disconcertingly – or as Judge Singh put it, “again, very strangely” – the fingerprint report of the plastic bottles collected from the crime scene, which had been prepared in February 2007 and could have helped identifying the culprits or offer vital clues about the modus operandi, was never placed on record before the court.

Hence for the court, the “prosecution/NIA had miserably failed to prove the charges framed”.

The judge noted that a large number of witnesses had turned hostile, raising “concerns about safety and protection of witnesses”.

He ended the judgment bemoaning the fact that “a dastardly act of violence remained unpunished for want of credible and admissible evidence. There are gaping holes in the prosecution evidence and an act of terrorism has remained unsolved”.

https://scroll.in/article/print/920075
A question for India

Hot on his election trail in his bid for re-election in 2019, Prime Minister Modi was quick to suggest that this acquittal exposed the alleged conspiracy hatched by the Congress to defame the Hindu community.

“How can the Congress be forgiven for insulting the Hindus in front of the world?” he asked audiences in his election rally in Wardha, Maharashtra, on April 1. “Weren’t you hurt when you heard the word ‘Hindu terror’?”

He added, rhetorically: “How can a community known for peace, brotherhood and harmony be linked with terrorism?...In the thousand years of history, not a single incident shows an act of Hindu terrorism.”

Of course, Modi forgot that Mahatma Gandhi and former Prime Minister Rajiv Gandhi were killed by Hindu terrorists and that Gandhi’s assassin was strongly influenced by the ideology of the RSS. Modi obscured the fact that a number of lives had been lost in many incidents of terror traced by investigators to supporters of the RSS and other extremist Hindutva formations.

Modi also disingenuously ignored that while Aseemanand and some of his co-accused did get acquitted in the Samjhauta train blasts case, other Hindu militants did get convicted in the larger conspiracy.

Aseemanand was acquitted in Ajmer Dargah blast case with six others, giving them the “benefit of doubt”, but Devendra Gupta, Bhavesh Patel and Sunil Joshi were convicted under various sections, for “conspiracy, planting bombs and inciting religious sentiments”. The court awarded life sentences to two of them – Gupta and Patel, along with the late right-wing activist Sunil Joshi.

Sandeep Dange and Ramchandra Kalasangra, both RSS functionaries and accused as conspirators in the blasts cases, continue to be absconding.

The Indian government and people hold the Pakistani establishment gravely compromised morally, and culpable criminally and politically, for protecting Islamist terror establishments operating on Pakistani soil. Does the serial acquittal of leading Hindutva activists for terror crimes through what appears to be a string of deliberately blotched-up investigations and prosecution, not expose the Indian ruling establishment to similar charges of protecting Hindutva terrorists from ethical, political and criminal culpability?