

## 'INACTION DOES NOT IMPLY CONSPIRACY'

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Instances which “overrun” a State administration like breakdown of law and order caused by “spontaneous mass violence” or the second wave of the pandemic cannot be called the results of a “larger conspiracy” hatched at the highest level of political dispensation, the Supreme Court judgment in the Zakia Jafri case has held.

“The breakdown of law and order situation in the State, attributable to the alleged inaction of the [State] duty holders, owing to spontaneous mass violence cannot be a safe measure to infer as being a part of a criminal conspiracy at the highest level of political dispensation...” a three-judge Bench led by Justice A.M. Khanwilkar held.

The judgment observed that “larger conspiracy” can be alleged only if there is clear evidence to show a “meeting of minds” at the highest level to commit or promote the commission of a crime.

“To make out a case of larger criminal conspiracy, it is essential to establish a link indicating a meeting of minds of the concerned persons for commission of the crime(s),” it noted.

With this, the court made it clear that the onus of proof is on the person who alleges the existence of a “larger conspiracy”.

### **'No tangible material'**

In Gujarat, the court concluded that the inaction or lack of effective measures taken by officials *per se* did not imply criminal conspiracy on the part of the State authorities which led to the 2002 violence.

There was also no “tangible material suggestive of a chain or any perceivable link or connection with the unfolding of mass violence across the State”.

The judgment has created a buffer for top political leaders in power who may have to bear the brunt of allegations of “state-sponsored breakdown of law and order situation”.

The verdict also endeavours to insulate the highest levels of political dispensation from the failures of a few possibly inept or overworked officials whose actions may not have helped to contain the breakdown of law and order on the ground.

“Inaction or failure of some officials of one section of the State administration cannot be the basis to infer a preplanned criminal conspiracy by the authorities of the State government or to term it a state-sponsored crime (violence) against the minority community,” the court held.

The judgment gains significance in the background of recent communal violence in several States.

### **Pandemic attack**

The court has said that a “larger conspiracy” cannot be readily inferred merely on the basis of the inaction or failure of the State administration. On the other hand, the State administration may have simply been overrun by the enormity of suddenness of events. The court pointed to

the recent pandemic attack as an example.

“The overrunning of State administration is not an unknown phenomenon. It has been witnessed all over the globe during the second wave of pandemic, where the countries with even best of medical facilities crumbled and their management skills were overrun under the pressure. Can it be said to be a case of hatching of a criminal conspiracy?” Justice Khanwilkar asked.

Further, the court said, breakdown of law and order for a short duration cannot take the colour of a constitutional crisis.

“There must be credible evidence regarding State-sponsored breakdown of law and order situation; not spontaneous or isolated instances or events of failure of State administration to control the situation,” the court noted.

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