

Gujarat Carnage

Documentation and Legal Action

There was extensive documentation of the genocide in Gujarat by civil liberties organisations and non-governmental agencies. Twenty months later, as the struggle for justice gets intensified due to the efforts made in the Supreme Court of India in the BEST Bakery case and the Godhra victims case, the difference between documentation and legal intervention becomes sharp and clear.

Cumbersome Procedure in Indian Courts: Except for a brief spell in the eighties and nineties when a few Judges of the Supreme Court of India, especially Justice VR Krishna Iyer a doyen to the human rights movement in India and Justice PN Bhagwati took *suo moto* steps to make the Apex Indian Courts intervene in the field if rights' abuse, generally attitude of the authorities towards interventions by civil liberties groups is grudging and resentful.

Law Courts, Institutions and Human Rights Bodies: The establishment of the National Human Rights Commission (NHRC) in the early nineties and the State Human Rights Commissions (SHRCs) in some states –though others like Gujarat have adamantly refused to establish them and some like Maharashtra have tried to cuckold these bodies—has in a sense drawn Indian establishment's attention to both the human rights issue as also International Human Rights Law; but the inadequacy of personnel has also severely limited the functioning of the NHRC. This combined with the fact that no independent investigation power has been given amounts to a sever lacunae in effective intervention for rights' abuse.

Limitation of the Code of Criminal Procedure, Indian Penal Code and Indian Evidence Act in Dealing with Mass Crimes:

1. Failure of Criminal Justice system
2. Failure of intelligence
3. Preventive Arrests
4. Police participation in the riots
5. Illegal registration of FIRs (Problems with FIRs)
 - a) their failure to record First Information Reports (FIRs) and in fact file omnibus;
 - b) police complicity in not naming the accused despite repeated insistence of the victim/survivors that all accused should be named;
 - c) worst of all, their insistence on recording omnibus FIRs for whole areas, regions and towns instead of separate detailed ones for every crime and offence committed.

Section 154 of the CrPC deals with the First Information Report of cognisable offences and is the first crucial step in prosecution of offenders.

A. Omnibus FIRs

It is a fundamental principle of criminal law that every offence needs to be separately registered, investigated and tried. Filing omnibus FIRs is one of the simplest ways of avoiding detailed investigations and effective trials. In many cases in Gujarat where 80 or 90 shops have been burnt or a large number of people have been killed, instead of filing separate FIRs in respect of each incident, the police has registered collective FIRs thus virtually scuttling the possibility of detailed investigation or conviction. Apart from this, many incidents separated over time (sometimes days) and place and concerning different victims and accused have been clubbed together. Moreover, when individuals came forward to lodge their FIRs, they were told the FIRs have already been recorded, and that no second FIR was possible.

B. FIRs without names of accused

Most of the FIRs which have been filed, especially where police is the informant, do not contain the names of the accused and only say that an unidentified mob attacked. There are significant number of cases where the victims actually named the accused but the Gujarat police have refused to lodge their names in the FIRs. Instead, the police took on the role of a partisan intermediary in evidence recorded from Naroda, Chamanpura, Odh, Sardarpura, Bharuch, Ankleshwar, Varodara, Mehsana, Himmatnagar, Sabarkantha and Banaskantha. In these cases, the police told the complainants that the FIR would be lodged only if the name of the accused is deleted. For example, at village Por, 3 women and 3 children were killed. The victims have identified and named 95 attackers but the police refused to include their names in the FIRs. The detailed area wise list of incidents is covered by the Tribunal in the section on 'Summary of Evidence'.

Points to Be Noted in Deliberate Manipulation on Investigations

- i. Minority community victimised***
- ii. Deliberate obfuscation of identity of accused***
- iii. Unprofessional investigations***
- iv. Real culprits not arrested***
- v. No identification parades***
- vi. Combing operations***
- vii. Rape victims***
- viii. No action against media***
- ix. No Action against Hate Speech and Hate Writing***
- x. No action against VHP/ Bajrang Dal***
- xi. Non-implementation of NHRC recommendations***
- xii. Status of criminal investigations into major massacres***
- xiii. Partisan language in chargesheets filed by the police***

Status of Prosecution in Major Carnages

The Criminal Prosecution into major mass carnages has been de-railed by deliberate manipulation and destruction of investigation. Including the BEST Bakery case where 14 persons were slaughtered and burnt alive, three other major carnages where 87 persons were burnt alive (Limadiya Chowky, Kidiad) and 70 persons similarly butchered (two incidents in Pandharwada village in Panchmahal district) resulted in acquittals last October 2002. The Gujarat government has compromised its investigations and commitment to the Indian Constitution by not providing adequate legal aid for victims of the carnage and actually appointing persons belonging to rabid outfits like the Vishwa Hindu Parishad and Bajrang Dal as public prosecutors.

Investigations into Godhra Mass Burning

After the Godhra tragedy the Gujarat police arrested 62 persons, including at least seven boys, all said to be under the age of 16. They were booked under the Prevention of Terrorism Act (POTA) by the government railway police (GRP) for the February 27 attack on the Sabarmati Express in Godhra. Following public outrage, the application of POTA to these seven boys was withdrawn. But all the accused, including the seven boys, still face charges of murder, attempt to murder, criminal conspiracy, arson, rioting and damaging public property. All are in the GRP lockup in Godhra since February 27. Family members of the arrested minors were not informed in direct contravention of the orders of the Supreme Court in the Joginder Singh case. The boys are: Haroon Iqbal, Farooq Kharadi, Firozkhan Pathan (residents of Signal Falia); Asif Kader, Altaf Diwan and Naseer Pathan (residents of Vejalpur Road); and Hasankhan Pathan of Dahod. The attitude of the police after arresting minors is telling. The inspector of Godhra town police station, K Trivedi said it was not possible to check their age at the time of arrest. "They were seen near the site of the incident, so we arrested them. The rest will be taken care of by the judiciary," he said. Hasankhan Pathan, who is a Class IX student in Dahod in the Panchmahals district, 150 km. away, had come to Godhra to meet his aunt and uncle on February 26. His date of birth according to school records is October 31, 1986. Evidence recorded by the Tribunal records his relative Hussain Khan Pathan saying: "In the morning, he was playing with some other local boys, including Firoz and Mustaq, when they heard of something going on near the railway track. They got scared and came inside their houses. After a few hours, the police came and picked up Hasan near Ali Masjid on charges of mass murder." Under the Juvenile Justice Act, minors below 16 have to be sent to a juvenile home, not to a police lock-up. "But they have been kept in police custody along with other accused in this case. We showed the age-proof documents of these minors to police, but they did not listen to us," said Soukat I Samor, a senior advocate, who represents some of the accused. This is one more

instance of police misconduct in the context of the Godhra tragedy and the genocide that followed.

The Godhra police failed in their first major case, when Additional Sessions Judge Viram Y Desai acquitted all 73 accused of all charges against them on September 22, 02. The judge accused the police of extracting the names of the accused from those who were arrested first, and the investigating officer (IO) of fabricating evidence. He expressed doubts over whether one of the incidents occurred at all. These findings by the Judge cast a major cloud on the conduct of the police in the Godhra investigations.

Following the Godhra incident these 73 who were arrested, were charged with conspiracy, rioting, arson, inciting communal passions, attacking the police, robbery, etc. All the Hindus got bail, whereas most of the Muslims (accused of burning property belonging to their own community, including a mosque and school), remained in custody till the trial was over. Some of them continue to be in custody on the charge of burning the train. The witnesses for the prosecution were all policemen. The prosecutor argued that since curfew was imposed, it was difficult to find independent witnesses. Hence, the testimony of the policemen should be believed, as also the *panchnamas* made on the spot by them.

The Judge found that none of the charges were proved because of the conduct of the investigating officer (IO) who first brought in a set of accused persons to the police station, who in turn named others as co-accused, who were later arrested in combing operations. The Judge held that this revealed that “there is no concrete evidence against the 73 accused who were picked up out of 2,000 people. This verdict of the Sessions Judge points out several serious lacunae in police investigations. Yet persons, allegedly innocent continue to be detained ostensibly for the Godhra Mass Burning Case in Gujarat.

Selective Use of Anti-Terrorism Law Against Minorities in Gujarat

The Prevention of Terrorism Act (POTA) was brought into existence as an ordinance just a few months before the Godhra and Gujarat tragedies but enacted within the state of Gujarat only on February 28, 2002. Since, this law which has provisions that militate against basic protection of human rights of the citizen has been used *selectively against the Muslim minority in Gujarat*.

Medico Legal Issues

During the post-Godhra carnage, government and municipal hospitals that gave post-mortem reports recorded a shocking lapse when detailing causes of injury in the case of police firings. The post-mortem reports in such cases mentions nothing about injury by bullet but states that death was due to injury and shock. This lapse, we hope, is not deliberate, as otherwise it would legitimately invite the criticism

that hospitals in Gujarat are not different from other public institutions which have been communalised.

Role of the Judiciary

The ostrich-like attitude of the Indian judiciary when such mass crimes take place as never more evident as in Gujarat. To quote again from *Crimes Against Humanity*, “. While we are clear that as a rule the courts cannot play the role of government or executive and take charge of the maintenance of public order, there comes a time when the judiciary is looked upon as the last resort. At such times, and such moments of time were evident during the Gujarat carnage and remain important to date, the judiciary is expected to rise to the full capability of its Constitutional Obligations and Duties, take swift and clear *suo motu* action if necessary to restore the belief of disillusioned, marginalised and alienated sections of our population who have been victims of state sponsored massacres. *In not doing so, the courts fail in their primary duty.* We state with regret that the casualness with which matters relating to the Gujarat carnage have been handled by the court(s), high and low, is a matter of serious concern for the rule of law and the survival of constitutional principles in any real sense in this country.

“Even open acts of threats against two High Court judges belonging to the minority community, did not stir the high judiciary into any action against the government. This is a sad reflection on the judiciary which in the past had considered the slapping of a magistrate a sufficient enough reason to invoke the contempt jurisdiction of the Apex Court! ”

Limitations of the Struggle for Justice

The struggle for justice to the victim survivors of the Gujarat genocide has narrowed itself down today. The weight of the system that we are battling forces us to pick and choose cases even in our struggle for justice. The magnitude of what happened in Gujarat has died in public memory; worse, even our battles are today constrained to attempting to get justice for only those victim survivors of the *worst* incidents where over a dozen persons were butchered and slaughtered.

What of the innocent victims, many minors who were shot dead by an unaccountable police? What of the girls and women who were killed after brutal sexual violence? What of some of whom survived and have been forced back to live in the same villages where the crimes were committed? ¹

What of the 10,000-odd homes that were destroyed so thoroughly that the pathetic Rs 5,000 –Rs 40,000 paid in compensation to only a few is barely enough to pick

¹ CCT, Volume II, Short Term Recommendations of Reparation, Relief and Rehabilitation

up the threads and start living again? What about the reparation for the businesses destroyed and the agricultural lands seized?

No less than 1,16,000 persons were internal refugees thrown out of home and hearth and living in relief camps for over seven months last year. During this period, the state of Gujarat refused to give them food, water and medicines despite their Constitutional Mandate that they bear the cost of this internal displacement. Again, it took legal interventions in the Gujarat High Court –two writ petitions supported by *CJP* which included flying down a senior lawyer from Mumbai since the atmosphere was so communally surcharged in the state that few wanted to appear in defence of minority community victims!² As a result of this legal intervention Rs 10 crores had to be paid out from state government coffers to the relief camp organisers.

International aid that flowed easily into the state just a year before the carnage when a tragic earthquake struck Kutch in Gujarat close to the Indo-Pak border (on January 26, 2001) was sorely missing as an utterly callous central and state government simply did not allow international aid agencies to come to the aid of the victim survivors of the genocide. This raises serious questions of the ethics of the international aid, issues that have arisen before whether it is during the UN sanctions in Iraq and what this meant for children and women or in Afghanistan.

The violence in Gujarat in 2002 was preceded for some months by the systematic distribution of material, some anonymous, that systematically spewed hatred and venom against the Muslim minority in the state. Even during the outbreaks of violence thousands of these pamphlets could be found –some advocated systematic economic boycott of Muslims and even printed an address of the Vishwa Hindu Parishad's office at the bottom³; others that were even more graphic and vicious advocated mutilation and rape.⁴

The systematic use of hate speech and hate writing has been a crucial part of the politics of communalism within India especially since the mid 1980s when the movement of the construction of a Ram temple at Ayodhya began. This period saw the sharp rise of communal forces from both within the Hindu majority and the Muslim minority. The opening of the locks of the Babri Masjid in 1986 was preceded by Parliament's enactment of a law that excluded rightful maintenance rights to Muslim women, a demand made by the patriarchal and communal Muslim male leadership. The cleverly constructed movement to 'construct' a Ram

² Mr Aspi Chinoy along with Mr Suhel Tirmizi argued the matter for over five hours before the Judge actually appointed a committee and thereafter passed orders that made the state government liable to make good the damages to the organisers of relief camps.

³ Pamphlet Poison, *Gujarat Genocide 2002, Communalism Combat March-April 2002*

⁴ *Ibid*

temple at Ayodhya was in fact (and remains to date as again October 17, 2003 is a deadline set by Hindu fanatic groups to begin construction of the temple with utter disregard for the law) always to *destroy* a Mosque and thereby teach a much-deserved lesson to the Muslim minority. Brute violence and threat was an integral part of this movement led and inspired by none less than India's deputy prime minister, LK Advani when he began his *rath yatra* from Somnath, in Gujarat in 1990. His close aide and organiser of the procession was none less than Narendra Modi, today Gujarat's chief minister and 'chief architect of the state sponsored genocide'.⁵

No Actions Have Been Initiated on Grave Violations of Indian law on Hate Speech and Writing that Provoke and Demonise Sections of the Indian people, especially the minority

Seious questions for the Indian Police Force

The utter collapse of confidence in the police among the citizenry and the dismal deterioration in their collective conduct in the state is more than serious cause for a national debate and concern. It is linked seminally with the wider issue of drastic police autonomy and reform. Senior policemen who have dealt with communally volatile situations have recommended, repeated and at various fora, the urgent need for accountability and reform within the police. Three reports of the National Police Commission,⁶ a professional body that studies, reflects and analyses on the state of police functioning in the country have also noted with alarm growing reported evidences of prejudicial conduct and made harsh and specific recommendations. The content of these have unfortunately never become the basis for national debate and concern..⁷

After some in the Los Angeles Police were found through videographic evidence to be kicking suspected criminals or innocents simply because they were black; attempts were made to inject institutional safeguards against racial discrimination within the police in America. Post-WTC, the numerous unrecorded and unaccounted arrests of innocent immigrants has been the focus of a studied campaign by the American Civil Liberties Union. The Stephen Lawrence case in the United Kingdom lead to the Macpherson Commission that has attempted some reform within the British police, also on the issue of racial bias. The issue then is not whether we will have institutions and set-ups that are entirely bias-free

⁵ CCT, Volume II State Complicity

⁶ Sixth Report of the National Police Commission, March 1981: "Several instances where police officers and policemen have shown an unmistakable bias against a particular community while dealing with communal situations" adding that the composition of the police is "heavily weighted in favour of the majority community."

⁷ Who Is to Blame?, CC, march 1998

but whether we have the moral and ethical preparedness to accept that the maliase exists and thereafter set about attempts to cure it.

For this to happen, institutions and those individuals that symbolise or man them need to purge themselves of the state of denial. Psychologists say this is the surest form of defensiveness. Defensiveness suggests that the emotion hides a truth. So it is with communal bias in the Indian Police Force. First there needs to be strong and committed effort to get out of the constant state of denial. Simply because, since 1981 there are just too many concrete examples to show that communal bias not only exists but seriously affects, detrimentally, professional and neutral functioning, trampling on therefore the fundamental rights of a section of the citizenry to equal treatment by and protection from the law.

The radical measures then needed include a re-vamping of the structure of the police. As important are prompt and punitive measures against officers and men guilty of crude and gross misdemeanors that include ethnically driven criminal acts including murder, loot and arson. In Hashimpura, Meerut, 1987, the Provincial Armed Constabulary of the UP police shot dead, in cold blood, 40 Muslim youth.⁸ Not a single man in uniform has been punished to date. In Bombay 1992-93, the then Joint Commissioner of Police, RD Tyagi shot dead nine innocent men believing them to be Kashmiri terrorists.⁹ Though chargesheeted, his trial for conviction is yet to begin. This author tapped police wireless messages during the second round of Bombay riots, in January 1993, the transcribed text of which reveal a deep and abiding anti-Minority hatred operating and affecting actions among a section of the Indian police. (see Annexure Two)¹⁰ In Gujarat, too, in all the scenes of recent massacre significant sections of the police were party to the crimes committed. It is unlikely that the struggle for justice against the criminals in uniform will chart any new path this time, without an outcry following a relentless national debate for drastic and radical police reform.

Teesta Setalvad—Background Materials for International Conference on Impunity for Mass Crime

⁸ “No Riot Can Continue for More than 24 Hours Unless the State Wants it to Continue’, Cover Interview of then DIG, BSF, V.N.Rai by Teesta Setalvad for *Communalism Combat*, February 25, pg

⁹ Damning Verdict, Report of the Srikrishna Commission, published by Sabrang Communications, pg 114

¹⁰ see Annexure 2, from Saffron in Uniform, *Communalism Combat*, pg 5

