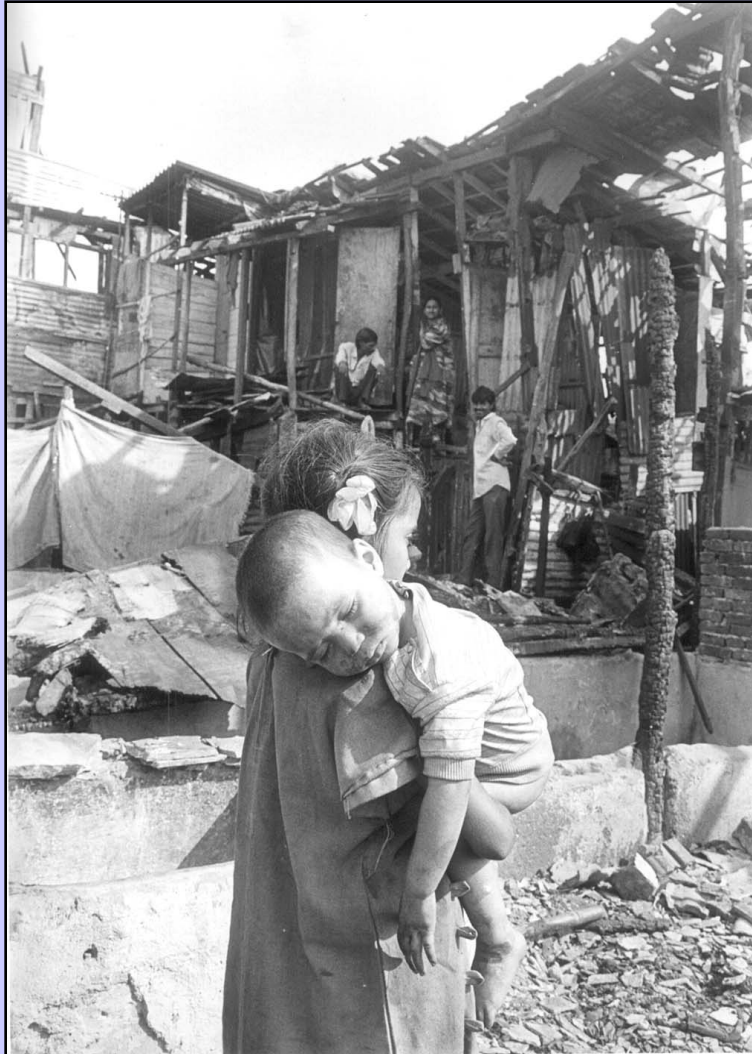


Communal Violence and Justice



Communal Violence

Communal violence plays a unique role in the process of polarising different sections of the population along lines of religious identity. In the short span of a few days, or weeks or months local populations become victim to irrationality and unreason, fed by prejudice and poison, which are often sustained and spread by rumour.

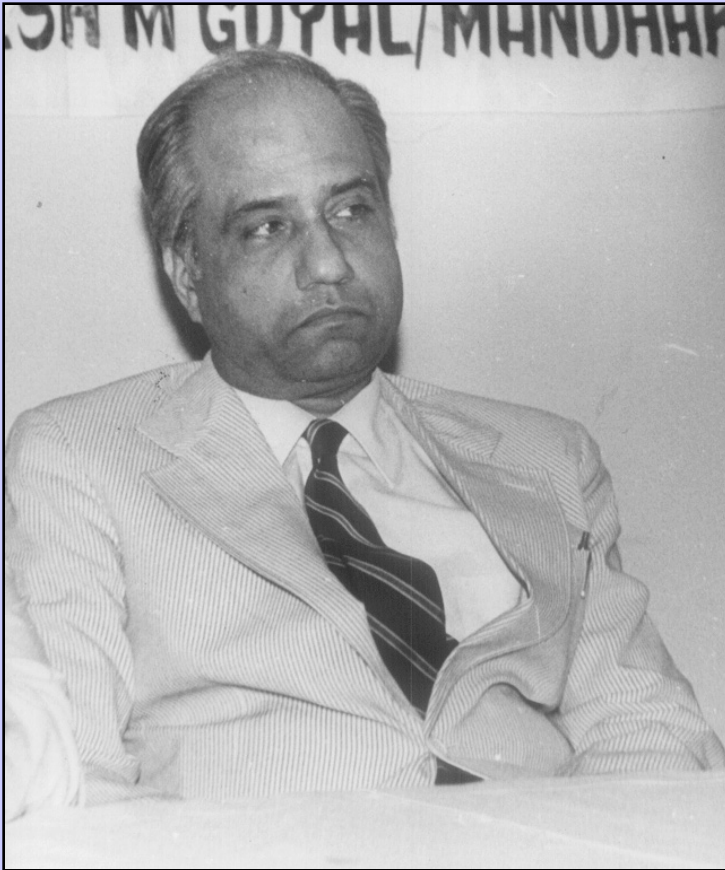
The State

The record of communal violence in post- India reveals the indifference of the state in:

1. Putting down the violence;
2. Punishing those guilty of blatantly communal activity that prepares fertile ground for the spark to ignite and
3. Punishing those guilty men in uniform with proven criminal and biased conduct and
4. Rewarding the rarer examples of brave and exemplary conduct



Judicial Commissions



Every single judicial commission report that has inquired into post-Independence communal riots since the first that occurred in Jabalpur in 1961 document both these trends discernible in the attitude of the Indian state vis a vis communal riots :

- A soft approach towards the agent provocateur organisations and
- Non-punishment of the guilty policemen or rioters themselves.

Demonisation

Myth making and Stereotype – Vital Characteristics of Communal Violence

Much myth making precedes the occurrence of a communal riot. Current day incidents, tensions and disputes are blown up by playing on a “enemy view” of the victimised community that helps justify the violence being unleashed on innocent children, women and men.

“Kill the infant before it turns into the snake that kills you.”

Demonisation of the victim community relies upon historical misrepresentation as “marauding invaders” and “rapists” that are then cleverly positioned with present-day myths and stereotypes of “fanatical”, “violent”, “intolerant”, “anti-national” and “terrorist”.

The unique characteristic of a myth or stereotype that is, almost never, completely or wholly untrue. There is an aspect of it, a grain within it that has an element of truth.

This is what makes it so believable.

This is what makes it so potent and easy to transmit.

Communalism: Two sides of the same coin

As the politics of the pre-Independence struggle shows, communalisms within the 'majority' and the 'minority' feed on each other consolidating into a physical, social and political divide.

At no time was this more relevant than during 1986 when the political leadership played footsie with both. Within weeks of the SC verdict in the Shahbano case, an unjust legislation called The Muslim Women [Protection of Divorce] Act was passed and in the same weeks the locks of the now-demolished Babri Masjid were re-opened.

The spectre of Muslim communalism through the aggressive and reactionary speeches of sections of the clergy marginalised Muslim women from the debate, isolated the rational and liberal sections. Muslim communalism succeeded in further demonising it's own community.

While, Hindu communalism played the unique role of de-sensitising large sections of the majority populace in not simply turning a blind eye to, but justifying rank brutality and inhuman violence against Muslims, including communal rape because of ‘their’ ‘backward’ and ‘reactionary’ nature.

Surat Mass Violence Against Women

Even before the horrors of the Gujarat carnage of 2002 had shaken the core soul of this nation, Bombay 1992-1993 had taken place. On December 8-9, 1992, Surat in Gujarat was the locale of the first instances of mass communally driven rapes and sexual violence against Muslim women. Public memories are short and aid the denial of justice.

The strange aspect of mass crimes and communal violence is the behaviour of sections of the populace that perceives itself as 'majority' and the 'minority'.

For instance within the wider reality of a Muslim minority in India there are pockets and cities that have a dominant minority population. In such areas, often the record of lack of governance has shown that the minority behaves like a majority, bullying and in the belief that it can break the law and get away with it.

Malegaon in Maharashtra and Marad in Kerala are two recent examples of such mass behaviour. In all such cases the need for an adherence to the basic rules of governance must and should be an inalienable commitment to the equity and non-discriminatory provisions of the Indian Constitution.

Characteristics of the Stereotype

For instance, in the context of communal violence, this subcontinent has undergone Partition along religious lines, spearheaded by a party and politics that held a worldview much akin to the worldview that today seeks to re-define India into a “Hindu state.” The Muslim League.

Who Cast the First Stone?

Much of the myth-making around communal riots has revolved around the theme of “Who cast the first stone?”

Public amnesia, the proverbial short memories have helped agent provocateur organisations to perpetuate a distorted reality in response to “*who cast the first stone?*”

The blatant verbal and written provocations (hate speech and hate writing) inflicted for weeks and months *before* the outbreak of communal violence are deliberately glossed over and the *start* of violence dated to a particular incident when a Muslim casts the first stone.

The media by *not reporting on processes and fallouts*, also becomes party to the myth behind “who cast the first stone?”

This is then used cleverly to justify the “Hindu outrage, Hindu backlash and retaliation” .

The Radhabai Chawl arson when all members of a Hindu family were burned alive on January 6, 1993 then justifies the post facto pogrom against the minorities in Mumbai. The Godhra mass-arson justifies the post-Godhra genocide.

The first public event after the demolition of the Babri Masjid on December 6, 1992 was at 2 p.m. on that Sunday when the Dharavi unit of the Shiv Sena was granted permission to take out a victory procession. (Justice BN Srikrishna Commission report)

The *mahaartis* launched by the SS-BJP combine on December 22, 1993 were justified because Friday *namaaz* was being allowed outside many Mosques in Mumbai that resulted in blockage of traffic and civic nuisance.

Mahaartis that were conducted every Tuesday to begin with and then every day thereafter were streetside rowdy prayer meets that were accompanied by violent slogans against the Muslim minority and supporters gathered there were led to attack homes and establishments. (Justice BN Srikrishna Commission report)

Hence civic inconvenience was equated with violent prayer and *mahaartis* continue to be justified.

Detailed investigations by most judicial commissions reveal that these commissions, have, in their findings held the systematic poisoning of the atmosphere through provocative acts by Hindu communal organisations like the RSS, Jana Sangh, Shiv Sena, Vishwa Hindu Parishad Bajrang Dal and affiliates responsible for injecting the poison of communalism into the atmosphere that successfully manoeuvres Muslims into apparently throwing the first stone.

Justice Srikrishna Does Not Spare Muslim Aggression

From his report:

“Dharavi: Muslim meetings held on October 21 and December 1, 1992 by the Muslims advocating protection of the Babri Masjid and opposing the construction of Ram Mandir at the disputed site at Ayodhya had provocative speeches—

‘One of the speeches advocated that if the Hindus were to snatch away the Babri Masjid from Muslims, there would be no stopping of disintegration of the country; that if Hindus were to build a Ram Mandir at Ayodhya and usher in Ram Rajya, then the Muslims would, through the Babri Masjid Committee, fly the green flag on the Red Fort at Delhi and rule the country.

‘In one of the meetings organized by the Muslims on November 15, 1992, one Maqsood Khan declared that 25 crores of Muslims in India would not remain passive without demanding and getting a partition of the country, as they would not like to remain slaves in this country. Once again, no action ensued, since the police considered that, though objectionable, the speeches were not actionable in law.’

Similarly the Judge did not spare aggressive and violent acts by Muslims in Deonar, Nagpada, Mahim and Dongri including stabbings by Muslim criminals.

‘Kafirs.. The police has been remiss in not keeping tabs of the activities of known Muslim organisations, Jamait-E-Islam-E-Hind, Muslim League and SIMI (Students Islamic Movement of India), who were known to have participated in some of the previous protests. Similarly, no watch appears to have been kept nor intelligence gathered about the activity of Raza Academy.

From Judicial Commissions Inquiry Reports

Ranchi Riots, August 1967

Justice Raghubar Dayal Commission of Inquiry into the Riots in Ranchi, Sholapur, Malegaon, Ahmednagar, Sursand, Jaipur and Suchetpur, 1967

“In 1967, the riot apparently began on August 22, 1967 when a procession of Hindu boys protesting against the imposition of Urdu were stoned by some Muslims. But if we look at the events 10 days preceding August 22, the provocative slogans raised by the agitators and their conduct throws more light on the methods and motives of the agent provocateurs...

The context was the promise by a United Front government that came to power with the promise of making Urdu the second official language of the state

- When a non-official bill to make Urdu the second official language introduced in the state legislature, the Jana sangh, some Congress members and a non-official organisation called the Hindi Sahitya Sammelan announced a state-wide agitation against the Bill from August 12 to 26.
- Various anti-Urdu programmes were launched during the anti-Urdu week including the distribution of anti-Urdu pamphlets and taking out processions raising anti-Urdu slogans.
- The language of the leaflets was most offensive and provocative and objectionable arguments posited against Urdu and Muslims.
- One such titled, “A Challenge to the Manhood of the Next Generation”, Muslims were declared anti-national, and the new generation of students exhorted to stand up against them
- These series of provocations had been openly carried out for ten days before the first stone, by a Muslim, was cast..

Justice Jagmohan Reddy Commission of Inquiry investigating the Ahmedabad riots of 1969

“Some writings in the Gujarati newspapers and most leaflets, handbills and appeals made in the name of the *Dharm Raksha Samiti* related the story of the stray incident of the hitting of the glass panel by an street-child, who happened to be a Muslim to the “historical” role of Muslims as destroyers of Hindu temples and *dharma* (religion).

- Rumours were spread of the rape and molestation of Hindu women
- This is an oft-repeated technique in many riots with manipulated historical images of the “rapes of Hindu women by Muslim invaders”
- On the walls of the large Muslim-owned hostel, Qamar hostel, wall-writings read, “Muslims Quit India.”

Justice D.P. Madon Report of the Commission of Inquiry into the Communal Disturbances at Bhiwandi, Jalgaon and Mahad, 1970:

- “If the events surrounding the Shiv Jayanti procession in Bhiwandi, Jalgaon and Mahad are looked at more closely, the start of the riot was not with the simplistic reaction of the procession being attacked by a group of Muslims. Tension, as the Commission of Inquiry report itself suggests, did not begin with the Shiv Jayanti celebrations of that year but began in 1964, the first year that the practice of publicly celebrating Shiv Jayanti had been started and had seen an annual build up in tensions since.
- **The Shiv Jayanti procession was used by the organisers to shout anti-Muslim slogans and provocative floats were part of the celebrations from the very beginning, the first year.**
- **The organisers made every attempt to incite rioting by insisting on taking their procession through Muslim-dominated areas, throwing gulal (coloured powder) at Mosques and shouting incendiary slogans like “we will ground any one who opposes us into dust.” Slogans like “*Galli galli mein shor hai, Sab Mussalmaan chor hai*”, “*Shiv Sena Zindabad*”, *Rashtriya Utsav Mandal Zindabad*”, “*Aala re aala Hindu aala, Gela re Gela, Laandya gela.* (point 10)**
- **“In his report to his superiors, The SP, Thane district has stated, “ I found that a section of Hindu elements, particularly the RSS and some PSP men were bent upon creating mischief. Their idea in accompanying the procession was not so much to pay respects to the Great Shivaji but to establish their right and if possible to provoke and humiliate Muslims.” (Vol,1, pg 165)**

Justice Venugopal Commission of Inquiry into the Kanyakumari riots of 1982 (prolonged confrontation between Hindus and Christians)

“ The RSS adopts a militant and aggressive attitude and sets itself up as the champion of what it considers to be the rights of Hindus against minorities. It has taken upon itself to teach the minorities their place and if they are not willing to learn their place to teach them a lesson...The RSS methodology for provoking communal violence is

- Rousing communal feelings in the majority community by the propaganda that Christians are not loyal citizens of this country;
 - Deepening the fear in the majority community by a clever propaganda that the population of the minorities is increasing and that of the Hindus decreasing;
 - Infiltrating into the administration and inducing the members of the civil and police services by adopting and developing communal attitudes;
- Training young people of the majority community in the use of weapons like dagger, sword and spear;
spreading rumours to widen the communal cleavage and deepen communal feelings by giving a communal colour to any trivial incident.” *

Justice B.N. Srikrishna Commission of Inquiry Report investigating the riots of 1992-1993

“From or about July 1992, the Bharatiya Janata Party orchestrated its campaign for construction of a temple at Ayodhya by holding *Ram Paduka* processions, *Chowk Sabhas* and meetings, using these occasions for delivering inflammatory speeches exhorting the Hindus to become united on the issue. Not only were these occasions used for exhorting Hindus to unite, but some speeches and slogans on such occasions were down right communal, warning the Muslims that dissent on the Ram Janma Bhoomi–Babri Masjid dispute would be an act of treachery for which the Muslims would be banished from the country. Slogans like “*Mandir Vahi Banayenge*” and “*Is Desh me rahana hoga to Vande Mataram kahana hoga*” rent the air. Though ostensibly religious, the *Ram Paduka* procession had less of religion and more of politics. Under the attractive garb of advocating one’s own religion, the *Hindutvawadis* politicised the issue and tried to pre-empt the issue pending in the Court of law, by their strident clamour for construction of Lord Shri Ram’s temple at Ayodhya...

The irresponsible act of the *Hindutva* parties in celebrating and gloating over the demolition of Babri structure was like twisting a knife in the wound and heightened the anguished ire of the Muslims. The celebration rally organised by Shiv Sena in Dharavi jurisdiction is an example. The Muslims protested, and protested angrily on the streets. Large number of Muslims congregated near Minara Masjid in Pydhonie jurisdiction at about 11.30 p.m. on December 6, 1992 and came out protesting.

- Even at this stage, if the mobs had been handled tactfully and with sensitivity by the police and accepted leaders of both communities, the protest would have peacefully blown over.
- The police mishandled the situation and by their aggressive posture turned the peaceful protests into violent demonstrations during which the first targets of the anger of the mob became the municipal van and the constabulary, both visible signs of the establishment. .

- It is significant that the mobs were not armed, not even with stones and sticks, though they were angry and wanting to vent their spleen against anyone in authority. This situation was misdiagnosed, mishandled and turned messier
- As far as the causes for January 1993 phase of the rioting is concerned, the Commission does not accept the theory that it was merely a backlash of the Hindus because of the stabbing, Mathadi murders incidents and the Radhabai Chawl incident.



- The events which took place between the period December 12, 1992 and January 15, 1993 indicate that there were attacks going on against the Muslims and their properties in different areas; there were also several stabbing incidents carried out by professional criminals in different areas of the city, with the intention of whipping up communal frenzy, in which the majority of the victims happened to be Hindus (two of the notorious Muslim criminals Salim Rampuri and Feroz Kokani were subsequently identified to be behind the Hindu stabbings); the communal passions of the Hindus were aroused to fever pitch by the inciting writings in print media, particularly *Saamna* and *Navakal* which gave exaggerated accounts of the Mathadi murders and the Radhabai Chawl incident; rumours were floated that there were imminent attacks by Muslims using sophisticated arms. These factors impelled some of the irresponsible and hot-headed Hindu elements to take to violence.

From January 8, 1993 at least there is no doubt that the Shiv Sena and Shiv Sainiks took the lead in organizing attacks on Muslims and their properties under the guidance of several leaders of the Shiv Sena from the level of Shakha Pramukh to the Shiv Sena Pramukh Bal Thackeray who, like a veteran general, commanded his loyal Shiv Sainiks to retaliate by organised attacks against Muslims. “ *(Who Is To Blame, Teesta Setalvad, Communalism Combat, March 1998)*

Fanatic Hindu outfits have, in most cases of brutal communal violence post-Independence been responsible for creating a conducive and volatile local situation *before formally the first stone is cast.*

Fanatic Muslim organisations have also been responsible for *irrational and violent acts* like burning down the office of a national daily, demanding an undemocratic ban on a book that “hurts their religious sentiments”, demanding and succeeding that Muslim women being denied the protection of a secular law ensuring maintenance in case of divorce and in some stray cases, post September 11, 01 even valorising Osama Bin Laden.

The major difference was the 1984 mass-pogrom against the Sikh community following the assassination of former prime minister Mrs Indira Gandhi by her Sikh bodyguards. “Terrorist action” was used as brutal vendetta against over 3,000 Sikhs in Delhi, Kanpur and many other parts of India.

Bombay, 1992-1993 and Coimbatore 1997-98, Gujarat (Akshardham) 2002 are frightening examples of what forms a deepening alienation of India’s largest minority can take. Both Bombay and Coimbatore were hosts to ghastly anti-Muslim pogroms where the administration failed in its prime duty, giving adequate protection to the life and property of every citizen. Police bias was rampantly visible in both cases. Gujarat, post-Godhra was a state sponsored and orchestrated genocide.

The increasing evidence of biased conduct in the Indian Police Force has been evidenced in riot after riot in post-Independence India, documented faithfully by the commissions of inquiry headed by Indian judges, the most recent of which are the findings of the Justice B.N.Srikrishna Commission riot into the Bombay riots of 1992-1993.



Is the Indian police biased?

Justice Shiv Dayal Srivastava's Report on the riots at Jabalpur, Sagar, Damoh and Narasinhapur, February 1961:

“The Intelligence department...was entirely inefficient and the law and order authorities were responsible for a laxity in investigation and prosecution which resulted in large acquittals. ...There is also a visible tendency towards formality rather than reality. Instead of going to the root cause in search of truth, padding is resorted to. Then it is said that most important feature is that the police does not command the confidence of straightforward investigation as it should.”(para 107, page 74)



Justice Raghubar Dayal Commission of Inquiry into the Riots Ranchi, Sholapur, Malegaon, Ahmednagar, Sursand, Jaipur and uchetpur, 1967

“The general impression has been that either there was no police force available to deal with the mischief makers or it had no directions to act....354 Hindus and 594 Muslims were arrested for violating the curfew orders between August 22 and 27. On August 22, 4 Hindus and 61 Muslims were arrested 7 Hindu and 19 Muslim homes were searched, 184 persons were killed – 19 Hindus, 164 Muslims and one, unverified. During investigations, 409 Hindus and 102 Muslims were arrested. The Commission found the intelligence system to be unsatisfactory.(paras 5.9,5.12, page 38 onwards)



Justice Jagmohan Reddy Commission of Inquiry investigating the Ahmedabad riots of 1969

“This commission of inquiry has cited more than half a dozen of instances where Muslim religious places adjoining police lines or police stations were attacked or damaged. The argument advanced by the police officers that because they were busy quelling riots at various other places, these police stations were shorn of adequate strength and hence these attacks on religious places could not be punished, did not impress the Commission. It made this observation because not a single Hindu place of worship near a police station was reported to the Commission. (pages 173-174).

Justice D.P. Madon Commission of Inquiry into the Communal Disturbances at Bhiwandi, Jalgaon and Mahad in May, 1970:).

“Several instances have been proved before the Commission in which police officers and policemen either did not prevent Hindu rioters from indulging in rioting, looting or arson or showed communal discrimination in dealing with the rioting mobs or gave incorrect information to the control room or lodged incorrect FIRs, in order to make out that the persons who had rioted or were responsible for looting or arson in particular incidents were Muslim rioters not Hindu, or actively assisted Hindu rioters in burning and looting Muslim properties.”(103.145)

“Discrimination was also practised in making arrests and while Muslim rioters were arrested in large numbers, the police turned a blind eye to what the Hindu rioters were doing. Some innocent Muslims were arrested knowing them to be innocent. Some innocent Muslims who went to take shelter at the Bhiwandi Town Police Station were arrested instead of being given shelter and protection. (103.148)

The Commission's comments on the Special Investigation Squad of Bhiwandi:

- The working of the Special Investigation Squad is a study in communal discrimination.
- The officers of the Squad systematically set about implicating as many Muslims and exculpating as many Hindus as possible irrespective of whether they were innocent or guilty.

To achieve their aforesaid object the officers asked the Bhiwandi Town police station not to enter the CR numbers in the Muddemmal registers but leave it to them to enter subsequent CR numbers, as they wanted,

Classification and grouping of offences were conducted in such a fashion that the complaint registered by a Hindu was taken as an FIR and those of Muslims as mere police statements recorded in that case that therefore remained uninvestigated

Cases of many Hindus belonging to the Shiv Sena, Rashtriya Utsav Mandal (an extension of the local branch of the Jana Sangh) were wrongly classified as 'A' category and investigations closed and no proper investigation was undertaken into several complaints of murders of Muslims and arson of their property.

Cases against Bhaskar Mali, the President of the RUM and Datta Punyarthi, one of the leaders of the local Jan Sangh were dropped after pressure was brought to bear on the DIG (Crime) B.K.Govardhan and S.P. Bhave to drop the cases.

No investigation was conducted into the composition and activities of Hindu communal and allegedly communal organisations operating in Bhiwandi but only in respect of Muslim communal and allegedly communal organisations.

14. A false case was made up against 223 Muslims in which it was alleged that 16 out of them had entered into a criminal conspiracy to attack the Shiv Jayanti procession on May 7, 1970.

Deputy Superintendant of Police S.P.Saraf held private conferences and discussions with several leaders of Hindu organisations including many who were implicated by Muslims in offences of arson and murder. Some of the leaders with whom Saraf held private conferences and discussions were Dr. B.P.Vyas who was president of the Bhiwandi branch of the Jana Sangh and the guiding spirit of the RUM, Baliram Mahadeo More, *shakhapramukh* of the Bhiwandi branch of the Shiv Sena, Mohanlal Parshram Karwa who was one of the founders of the Nagrik Hiarakshak Mandal, a body set up to present the case of Hindu parties before the Commission and many others.

The frauds and manipulations committed by the officers of the Squad in the investigation of riot cases were done partly under the instructions of Deputy SP, P.J.Saraf, DIG (Crime) Govardhan, SP(Crime) C.P.Kurle and SP(Research) Dr. H.G. Abhyankar and partly with their connivance..

These officers are directly responsible for the manipulation and bias reflected in the actions of the Squad. “



Report of the Commission of Inquiry, Tellicherry Disturbance, 1971

Justice (retd) Joseph Vithyathil:

“Through the evidence of the Deputy SP, he says that while on patrol duty he had to curb many among his rank and file who could not restrain themselves when they met Muslims on the road. Similar evidence was given by the Sub-Collector and other witnesses who have testified saying that while chasing away some Muslims many policemen yelled at them to go to Pakistan. At Mattambaram one or two of them got into the mosque and besides beating Usmakutty Haji, a very respectable person, broke the tube-light and chandeliers in the mosque. There is nothing to show that there was any justification for this action..I am inclined to think that this was a high-handed act done by some policemen who made use of the opportunity to exhibit their anti-Muslim feelings.

“255.The attitude adopted by the rank and file of the police in Tellicherry during the disturbances shows that they were infected with the virus of communalism. This is a matter that should be taken serious notice of.

- “It is of the utmost importance for the maintenance of law and order that all sections of the public, particularly the minorities , have confidence in the impartiality of the police.
- “Policemen who are found guilty of communal hatred or prejudices should be immediately dismissed from service. It is also necessary that in recruitment to the police adequate representation is given to minorities.



Report (majority) of the Commission of Inquiry into the Bhagalpur Riots of October 1989, signed by Justices R.C.P.Sinha and S.Shamsul Hasan, published in 1995, said:

“The role of Magistracy was no different from that of the police. In general they were cowardly, communal and indifferent to the sufferings of the common man.” The report also noted that “ the mob consisted of thousands of armed, slogan-shouting people. One wonders how a mob acting like the will-o’-the-wisp disappeared, undeterred, undetected and uninhibited, enjoying the total freedom of action and safe from arrest or police bullets which they deserved.....

“Admittedly hoards of Hindus, the number going up to thousands, attacked the localities and villages of Muslim inhabitants, but nobody was arrested in the process of attacking an area. Nobody cared to enquire from where these massacering invaders descended upon Bhagalpur and the villages.

“The figures expose the group and individuals responsible for the pre-planning (of the violence) and how successful this plan proved to be with the able assistance of the District Administration, especially the police...from the officers to ordinary police constables, and the smaller functionaries of the administration, barring a few exceptions, they were totally infected with an anti-Muslim bias

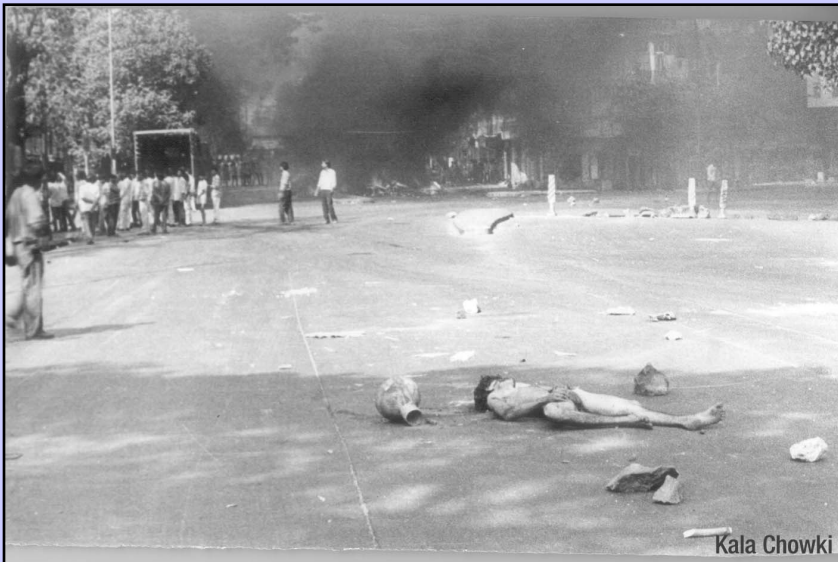
Report of the J.Ranganath Misra Commission of Inquiry into the 1984 riots in Delhi

“The riots occurred broadly on account of the total passivity, callousness and indifference of the police in the matter of controlling the situation and protecting the people of the Sikh community. .. The Commission is satisfied that firearms had been taken away from the Sikhs during that period...Several instances have come to be narrated where police personnel were found marching behind or mingled in the crowd. Since they did not make any attempt to stop the mob from indulging in criminal acts an inference has been drawn that they were part of the mob and had the common intention and purpose.



Justice B.N. Srikrishna Commission of Inquiry Report investigating the riots of 1992-1993

The most recent indictment of biased police conduct is contained in the recently tabled Justice B.N. Srikrishna Commission of Inquiry Report investigating the riots of 1992-1993 that has raised so much controversy. Quite apart from the well-researched administrative and corrective measures made by the sitting Judge of the Bombay High Court, 15 police officers have been directly named for biased, criminal conduct



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.”



Bias on the Wires

Dongri 1 to Police Control: Two military trucks have come carrying milk and other rations, led by Major General (retired) Syed Rehemtullah. Therefore, a crowd has gathered at IR road near Bhendi Bazar, please send some more men.

(Voice): Why the f—are you distributing milk to them *laandyas* (abuse for a circumcised person)? Do you want to f—their mothers? *Miyan* (Muslim), bastards live there.

Dongri 1, (agitated): There are lots of police here. Let them distribute milk.

Voice: Why are you distributing milk to them? Are you doing them a favour or what?

V.P.Road to Control: A mob has gathered outside Maharashtra garage, Ghas galli, Lamington road with the intention of setting it on fire. Send men.

Voice: Must be a laandya's garage. Let it burn. S— don't burn anything that belongs to a Maharashtrian. But burn everything belonging to a *miyan*, the bastards.

(Excerpts from transcripts of police wireless messages taped by Teesta Setalvad between January 10 and 18, 1993)

As these incidents and the more recent Gujarat genocide reveal, the conduct of the Indian police force at times of communal conflict *increasingly reveals a strong tendency to violate the basic rules of his/her uniform.*

His/her conduct is influenced more by religious identity that in political form is communal and pitted against the “other”, often the minorities.

“Given the wide variation in the performance of public servants in the discharge of their statutory responsibilities, action should be initiated to identify and proceed against those who have failed to act appropriately to control the violence in its incipient stages, or to prevent its escalation thereafter. By the same token, officers who have performed their duties well, should be commended.”

-The National Human Rights Commission Report on Gujarat genocide, April 2002

More and more, senior serving and retired officers have also been raising the issue of the need and desire of a culturally more diverse force. Representation of the minorities within the force is poor. Should not the Indian police force reflect the diversity of Indian society? Recommendations of the National Police Commissions and National Integration Council –toothless bodies whose sagacious warnings on communal conflagrations have hitherto gone unheeded –also need attention

More than anything else this debate on the conduct of the police in the emerging scenario of heightened communal tensions, has pointed out how the state can, by legislative changes be made directly accountable to the victims of communal violence

The argument being mustered is that, since it's the state that allows the violence to go unchecked, it should be compelled to pay relief and damages.

Moreover, the police and state administration should be made legally bound to carry out relief and rehabilitation measures. This entire aspect needs detailed attention. Positive experiments with community policing also deserve some attention as well as the quality of training that needs to be available for the police force.

The crux of the analysis of members of the IPS like Vibhuti Rai (IG, BSF)*3 *Communalism Combat*, 1995), Padma Rosha, former DG, Jammu and Kashmir, Julio Ribeiro, former DG, Punjab, Shankar Sen, (former chairperson of the National Human Rights Commission) is that where communal rioting not put down firmly within a few hours, it must be accepted as a major failure of the State administration and the State must accept responsibilities for fully compensating loss injury to innocent victims of communal rioting and restoration of their homes and sources of livelihood.

That has to be done not as ad-hoc disbursement of charity but as something to which citizens are entitled as of right and according to norms which are known before hand.

The citizens must have the feeling that they are insured against such loss or injury.

The law

Offences punishable under the Indian Penal Code

Section 153A : *Promoting enmity between different religious groups on grounds of religion, race, place of birth, residence, language etc and doing acts prejudicial to the maintainance of harmony.*

Punishment—Imprisonment upto 3 years or with fine or both

Section 153B: *Imputation, assertions, prejudicial to national integration.*

Punishment-Imprisonment upto 3 years or with fine or with both

Section 295A: *Deliberate and malicious acts intended to outrage religious feelings of any class by insulting his religion or religious feelings*

Punishment—Imprisonment upto three years or with fine or both

Section 298: *Uttering words etc with deliberate intent to wound religious feelings.*

Punishment —Imprisonment upto one year or with fine or both

An Example of Hate Speech

Saamna Box

Thus wrote Thackeray: December 8, 1992: 'Muslims should draw a lesson from the demolition of Babri Masjid otherwise they will meet the same fate as Babri Masjid. Muslims who criticise the demolition are without religion, without a nation.'

Thus ruled the HC: 'According to these articles, by the fissiparous mentality created in the minds of Muslims by the aforesaid anti-social elements, Muslims

started drifting from the mainstream of life...

these articles do not criticise Muslims as a whole but Muslims who are traitors to India....

'It is true that in some of these articles due to the emotional outburst, high-flown and caustic language is used but this per se will not fall within mischief of sections 153A and 153B of the Code.'



An Example of Hate Speech

Thus wrote Thackeray:

January 9, 1993: 'The ugly and violent form of Muslim traitors was witnessed by the city yesterday. During the 26-year tenure of M.K. Gandhi, Muslims from Malabar to Noakhali grew progressively violent and Hindus became non-violent... Our prophecy has come true. A Muslim whichever country he belongs to, whichever position he occupies, is first a Muslim. To him his religion is the first concern. Nation is of secondary importance to him. In the last two days patriotic people have been subject to attacks. These attacks constitute attacks on the nation.'

Thus ruled the HC:

'The aforesaid article when read as a whole, refers to the activities of Muslim traitors who were destroying culture, tradition, piety, family, law, truth, affection, public administration and other such cherished values and showing their cruelty before the police and army... according to this article, the army, the police in the city instead of stopping the traitorous activities of anti-national Muslims, are taking the role of bystanders, mutely looking at the scene. This attitude of the army and the police is abhorred. This article does not create feeling of ill-will, spite and hatred in the minds of Hindus against Muslims.' *

("Crime and Punishment", CC, January 1995)

SC says No to Hate Speech



On March 31, 2004, the Supreme Court for the first time delivered a significant judgement against hate speech when it upheld the District Magistrate's powers to bar the entry of persons prone and known to whip up communal hatred.

“Past conduct and antecedents of a person, or group, or an organisation, may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in (the) public interest and (for) maintenance of law and order”.

SC says No to Hate Speech



“No person, however, big he may assume or claim to be, should be allowed, irrespective of the position he may assume or claim to hold in public life, to either act in a manner or make speeches which would destroy secularism recognised by the Constitution of India, 1950 (in short the ‘Constitution’). Secularism is not to be confused with communal or religious concepts of an individual or a group of persons”.

SC says No to Hate Speech

“(Secularism) means that State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic State. Persons belonging to different religions live throughout the length and breath of the country. Each person whatever be his religion must get an assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and freedom of conscience. Otherwise, the rule of law will become replaced by individual perceptions of ones own presumptuous good social order”.



सत्यमेव जयते

Gujarat and the struggle for Justice



The principle laid down in the Best Bakery case judgement - ordering retrial and reinvestigation in the cases in which all the accused had already been acquitted - would guide future cases wherever injustice was done. The apex court performed its raj dharma in protecting victims and witnesses in the worst-ever case against humanity.

-- VN Khare, Chief Justice of India, in an interview to The Times of India the day after he retired.

Historic Verdict

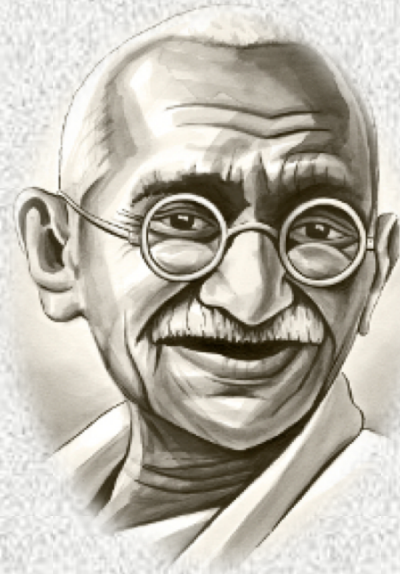


The historic judgement in the BEST Bakery case delivered by Justices Doraisamy Raju and Arijit Pasiath on April 12, 2004 is a vindication of the struggle for justice over decades. The collective struggle for justice for mass crimes, be it the Judicial Commissions of Inquiry or citizens efforts to intervene have been legitimised by this judgement.

What is the import of this judgement?

Interpretation of Communal Crimes

‘When the ghastly killings take place in the land of Mahatma Gandhi it raised a very pertinent question as to whether some people have become so bankrupt in their ideology that they have deviated from everything which was so dear to him. When large number of people, including innocent and helpless children and women, are killed in a diabolic manner it brings disgrace to the entire society. Criminals have no religion. No religion teaches violence and cruelty-based religion is no religion at all, but a mere cloak to usurp power by fanning ill-feeling and playing on feelings aroused thereby.



‘The golden thread passing through every religion is love and compassion. The fanatics who spread violence in the name of religion are worse than terrorists and more dangerous than an alien enemy.

Imperative for Fair and Impartial Governance



‘In a country like ours with heterogeneous religions and multiracial and multilingual society, which necessitates protection against discrimination on the ground of caste or religion, taking lives of persons belonging to one or the other religion is bound to have dangerous repercussions and reactive effect on the society at large and may tend to encourage fissiparous elements to undermine the unity and security of the nation on account of internal disturbances. It strikes at the very root of an orderly society, which the founding fathers of our Constitution dreamt of.

Scathing Indictment of Governance in Gujarat



‘Those who are responsible for protecting life and properties and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation. The modern day “Neros” were looking elsewhere when Best Bakery and innocent children and women were burning, and were probably deliberating how the perpetrators of the crime can be saved or protected. Law and justice become flies in the hands of these “wanton boys”. When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as public interest become martyrs and monuments.

No Due Process of Law, Cardinal Principle of Governance Followed

'If one even cursorily glances through the records of the case, one gets a feeling that the justice delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial without any definite object of finding out the truth and bringing to book those who were responsible for the crime. The public prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court. The Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice.The role of the State Government also leaves much to be desired. One gets a feeling that there was really no seriousness in the State's approach in assailing the Trial Court's judgment.

Charting Reform within the Criminal Justice System

The historic judgement sets precedent for independent investigation and a locality of neutrality for mass crimes.

At such critical times, barely some institutions of the system remain immune to it and stay committed to time-tested norms of constitutional equity and non-discrimination. For the first time, through the historic Best Bakery judgement, there is a judicial vindication of this argument.



Charting Reform within the Criminal Justice System

By ordering the historic transfer of this trial outside Gujarat to Maharashtra, the highest court has deliberated upon and accepted the arguments being made for decades – that were amplified a thousand times in the case of the Gujarat genocide – that such incidents underline the need for the system to operationalise areas and mechanisms of neutrality to avoid subversion of the process of fair investigation and justice, in short, due process of law. Besides the judgement paves the way for reforms in the area of criminal justice jurisprudence by introducing hitherto absent Victimology.

Witness Protection

An All-India Witness Protection Programme



Time Bound Deliverance of Justice

Our ongoing interventions through the Citizens for Justice and Peace in the Gujarat sessions courts, High Court and Supreme Court have also intervened in critical governance issues like Witness Protection and the responsibilities of the trial court.

The Role of the Public Prosecutor



Compensation as Reparation for Mass Crimes, Police Reform

Besides specifically we have prayed for the transfer in investigation and trial of the Godhra mass arson case as well as four others to out of Gujarat. Hindu victims of the Godhra arson as well as Muslim victims have placed their faith in CJP's secular struggle for justice. These come up through the months of July-August 2004 and will require intense and studied interventions.



The Citizens for Justice and Peace is a registered trust. On it's board are members who have been concerned and committed to the issue of governance and the rule of law for decades. They were active during the violence that tore the cosmopolitan fabric of Bombay in 1992-1993.

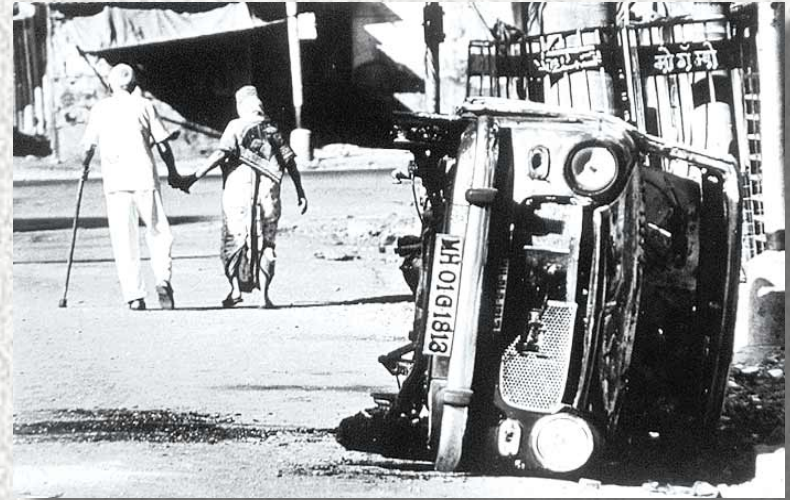
Governance Secularism and Business

When violence and social strife break out, economic activity and tranquility are severely affected, businesses are often specifically targeted and normal productive activity grinds to a hold. Costing conflict is a new dimension for study and scrutiny for rights' activists and one with whom engagement has begun. Buisness associations and federations too have been exploring in-depth studies in this direction.



On it's board are Mr, Anil Dharker, Mr IM Kadri, Mr Alyque Padamsee, Mr Cyrus Guzder, Mr Nandan Maluste, Ms Shakuntala Kulkarni, Mr Ghulam Pesh-Imam, Mr Javed Anand, Fr Cedric Prakash, Mr Rahul Bose and Ms Teesta Setalvad. The speaker is secretary of this organisation.

Hate Hurts, Harmony Works



A study by the Indian Merchants Chamber after weeks of violence in Bombay [now Mumbai] in 1992-1993 put the combined loss at Rs 1,100 crores. An internal community assessment of the immediate loss to Muslim businesses and properties during the Gujarat carnage was a staggering Rs 3,500 crores. Further authenticated studies need to be made two years later since even today the economy in Gujarat is not showing clear signs of bouncing back.

Hate Hurts, Harmony Works is an axiom that the business community may silently believe in. The time has come to stake capital, publicly on peace, harmony and justice.

Victim Survivors

In the same week of the historic judgement in the Best Bakery case, the CBI filed its charge-sheet (on April 19, 2004) after the Supreme Court directed investigation into the Bilkis Yakub Rasool gang rape and massacre case.

Bilkis and four others were brutally raped and she was witness to the killings of 14 persons including her 3-and-a-half month baby girl Saleha. Bilkis has stoically stuck to her account of the horror since March 4, 2002 when she sent her FIR to the DySP Dahod. We had earlier reproduced the FIR in full in, 'Genocide: Gujarat 2002. All the seven persons named by her in her FIR at the height of her trauma, are included in the CBI's charge-sheet.

Among the accused are five policemen who did their best to hide the evidence including the chargesheet says possibly severing heads off dead bodies to prevent detection. Two are state doctors who manipulated the post-mortem reports.



Victim Survivors



The struggle that the Citizens for Justice and Peace is engaged in, is just that. To make governance and justice delivery just and humane.

There is a lesson here for the system that treats victims of violence with contempt and insensitivity: victims of mass crimes do not lie, they do not manufacture facts; even in the midst of such brutalisation and trauma, they speak the truth. The reason is simple: their motive is, never was, revenge.

Their motive is, simply, to ensure that justice is done: For the sake of their own peace of mind, for the vindication of their deep commitment to their loved and lost ones, and most importantly, so that such violent and heinous crimes do not happen again, anytime, anywhere. It would be good for our lofty institutions of democracy to internalise and remember this fact. Only then can they become more humane.

Issues

- **Cases Need to be Transferred** (Jurisprudence, Precedents)
- **Integrity of the Investigation needs to be ensured**
- **Independence of the Prosecutor**
- **Victimology:** Introduced in Indian Jurisprudence Availing of Amendments (24(8)(2) and 272 of the Code of Criminal Procedure that was brought in through an amendment in 2009 due to the experience(s) in the Gujarat 2002 cases especially the Best Bakery and Bilkees Bano cases

Role of a Court

Discovery, Vindication and Establishment of Truth



Established Principles:

- These are the fundamnetal principles underlying the very existence of courts of justice. **But what is the reality?**
- In the Best Bakery case, (the Supreme Court has also enunciated the following fundamental legal principles:

Role of a Court

“....Discovery, vindication and establishment of truth are the main purposes underlying existence of courts of justice;

“In a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as *persona non grata*. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice – often referred to as the duty to vindicate and uphold the ‘majesty of the law’”

See: Zahira Habibulla Sheikh v.s State of Gujarat, (2004) 3 SCC

...contd

Role of a Court

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to courts of law. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson’s eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm..... “

See: Zahira Habibullah Sheikh supra....

contd...

Role of a Court

The court “has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself..... If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the frame work of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

See: Zahira Habibullah Sheikh supra, pp.182 to 184, paras 30 to 36, page 192, paras 55 & 56.

Justice has no favourite, except truth. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

See Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble: (2003) 7 SCC 749.

Role of the Trial Court

Failure of the Trial Court to Act Under Section 311

“The trial Court should have exercised power under Section 311 of the Code and recalled and re-examined witnesses as their evidence was essential to arrive at the truth and a just decision in the case. The power under Section 165 of the Indian Evidence Act 1872 (in short the “Evidence Act”) was not resorted to at all and that also had led to miscarriage of justice.

“The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses.....

See: Zahira Habibulla Sheikh v.s State of Gujarat,

(2004) 3 SCC 158

contd...

Role of the Trial Court

“....Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.....”

See: Zahira Habibullah Sheikh supra....

..contd

Role of the Trial Court

“..The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Court to examine a witness if his evidence appears to be essential to the just decision of the Court.

See: Zahira Habibullah Sheikh supra....

Role of the Trial Court

“...The Trial/First Appellate Courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The Court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself. ..

See: Zahira Habibullah Sheikh supra...

..contd..

Role of the Trial Court

“..In the case of a defective investigation the Court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

See Karnel Singh v. State of M.P. (1995 (5) SCC 518.

Role of the Trial Court

In *Paras Yadav and Ors. v. State of Bihar (1999 (2) SCC 126* it was held that if the lapse or omission is committed by the investigation agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of the Courts getting at the truth by having recourse to Section 311, 391 of the Code and Section 165 of the Evidence Act at the appropriate and relevant stages and evaluating the entire evidence;

...It is no doubt true that the accused persons have been acquitted by the trial Court and the acquittal has been upheld, but if the acquittal is unmerited and based on tainted evidence, tailored investigation, unprincipled prosecutor and perfunctory trial and evidence of threatened/terrorised witnesses, it is no acquittal in the eye of law and no sanctity or credibility can be attached and given to the so-called findings. It seems to be nothing but a travesty of truth, fraud on legal process.

See Paras Yadav and Ors. v. State of Bihar (1999 (2) SCC 126

Locus is a Concept Foreign to Criminal Law

Anyone can set the Criminal Law in Motion

Citations on Locus Being a Concept Foreign to Criminal Law

See Dr. Subramanian Swamy vs Dr. Manmohan Singh And Anr. on 31 January, 2012

“...To pursuean offender in the event of commission of an offence, is to sub-serve a social need. Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus the doctrine of locus-standi is totally foreign to criminal jurisprudence.

This observation of ours however obtains support from the decision of this Court in *A. R. Antulay vs Ramdas Srinivas Nayak And Another on 16 February, 1984* Equivalent citations: 1984 AIR 718, 1984 SCR (2) 914

Also See Manohar Lal vs Vinesh Anand & Ors on 9 April, 2001

Locus is a Concept Foreign to Criminal Law

Citations on Locus Being a Concept Foreign to Criminal Law

See (2001) 6 SCC 338 Head No. E- para 14 – Puran Shekhar & Anr v/s V. Rambilas & Anr, State of M'tra & Anr, INSC 269, 3 May 2001

“...If the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated. Here in the present case, the offences charged against Dr. Jagannath Misra and others are offences of corruption, criminal breach of trust etc. ’and therefore any person who is interested in cleanliness of public administration and public morality would be entitled to file a complaint; equally he would be entitled to oppose the withdrawal of such prosecution, if it is already instituted. [739C-H; 740A]

*See Sheo Nandan Paswan vs State of Bihar & Ors, 20.12.1986
(alternate: 1987 (1) SCC 288 (para 13, 14 and 15 at page 315)*

Written Arguments drafted by Teesta Setalvad, Citizens for Justice and Peace, Mumbai 28-29.5.2013 for Intervention by By Mohd Assad Hayat in Case Nos 2339/2009 (Varun Gandhi Hate Speech Case)

What is Victimology?

Victimology introduced in Indian Jurisprudence post Gujarat 2002

➤ The Right of the Victim Survivor Complainant to be Heard during a Criminal Trial

This Right has been established through an Amendment in 2009 to the CRPC

...Thanks to the Struggle of Survivors and Citizens Groups (CJP) in the Gujarat 2002 Carnage Cases

This had been a major step forward in the struggle for a human rights based jurisprudence



CrPC (Amendment)

Extract of the THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2008 NO. 5 OF 2009, [7th January, 2009.]

An Act further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:-

1. Short title and commencement. - (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2008.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2. Amendment of section 2. - In section 2 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), after clause (w), the following clause shall be inserted, namely:-

'(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;'

3. Amendment of section 24.

3. Amendment of section 24. - In section 24 of the principal Act, in sub-section (8), the following proviso shall be inserted, namely:-

"Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section."

4. Amendment of section 26.

4. Amendment of section 26. - In section 26 of the principal Act, in clause (a), the following proviso shall be inserted, namely:-

"Provided that any offence under section 376 and sections 376A to 376D of the Indian Penal Code shall be tried as far as practicable by a Court presided over by a woman."

5. Amendment of section 41.

5. Amendment of section 41. - In section 41 of the principal Act,-

(i) in sub-section (1), for clauses (a) and (b), th...

New Jurisprudence (2010, 2011, 2012)

Section 372 Right to Prefer Appeal

Section 24(8)(2) Right of the Victim to Engage Lawyer in Criminal Trial

Victimology Jurisprudence

Several High Courts have Established Victimology Jurisprudence

Judgements on Section 372 and 24(8)(2) of the CRPC

1. Guru Prasad Yadav vs The State Of Bihar & Ors, In the High Court of Judicature at Patna Cr. App (DB) No.582 of 2011 dated on 02.08.2011.
2. Commissioner of Income Tax (Central) Calcutta Vs. B. N. Bhattacharjee & Anr. In Supreme Court of India dated 04.05.1979.
3. Smt. Ram Kaur @ Jaswinder Kaur Vs Jagbir Singh alias Jabi and others in the High Court of Punjab and Haryana at Chandigarh, Crl Appeal No. 205-DB of 2010 dated 01.04.2010.
4. Balasaheb Rangnath Khadse vs The State Of Maharashtra & Ors, In the High Court of Judicature at Bombay Criminal Appellate Jurisdiction Amk Criminal Appeal No. 991 OF 2011 with Criminal Appeal No. 992 OF 2011 dated 27.04.2012
5. Bhikhabhai vs State, In the High Court of Gujarat at Ahmedabd Criminal Misc. Application No. 5522 of 2009 with Criminal Appeal No. 783 of 2010 dated 10.05.2010.
6. Guru Prasad Yadav vs The State Of Bihar & Ors, In the High Court of Judicature at Patna Cr. App (DB) No. 582 of 2011 dated 02.08.2011.

„contd.....

Victimology Jurisprudence

Several High Courts have Established Victimology Jurisprudence

Judgements on Section 372 and 24(8)(2) of the CRPC

7. Jagmohan Bholu vs Dilbagh Rai Bholu & Ors, The High Court of Delhi at New Delhi CRL.A. 793/2010 dated 24.01.2011.
8. Mr. Balasaheb Rangnath Khade vs The State Of Maharashtra & Ors, In the High Court of Judicature at Bombay Criminal Appellate Jurisdiction Criminal Appeal No. 991 OF 2011 with Criminal Appeal No. 992 OF 2011 dated 21.09.2011.
9. Roma Sukhajitsingh Saini Vs. Nirmalsingh Habhansingh Saini & 4 Ors, In the High Court of Judicature at Bombay Appellate Side Criminal Appeal No. of 2010 {Stamp No. 978 of 2010} dated 04.08.2010.
10. Smt. Ram Kaur @ Jaswinder Kaur vs Jagbir Singh Alias Jabi And Others, In the High Court of Punjab and Haryana at Chandigarh Crl. Appeal No. 205-DB of 2010 dated 01.04.2010.
11. Suhas Bhaskar Musale Vs. Sameer Anant Nalwade & Anr. In the High Court of Judicature at Bombay Criminal Appellate Jurisdiction Criminal Appeal No 241 of 2011 dated 20.04.2011.

Jurisprudential Related to Prevention of Communal Violence and Its Outbreak

References :

Transfer of trials outside the State (in Cases of Communal and Caste Violence)

April 12 2004:-Best Bakery case reported as

Zahira Habibulla Sheikh v.s State of Gujarat, (2004) 3 SCC 158:

In most of the cases, besides the prosecutor being supportive of the accused and other allied factors, almost all the witnesses have been intimidated and are extremely wary of deposing before the court due to fear of their lives.

This fact was evidenced by the behavior of Zahira Sheikh, the principal witness in the case relating to Best Bakery when she turned hostile in the court and thereafter filed an affidavit before this Hon'ble Court indicating to this Hon'ble Court under what circumstances she had to turn hostile. In these circumstances, it is evident that it is extremely difficult for the victims to fearlessly depose in the Court.

contd.....

Jurisprudential Related to Prevention of Communal Violence and Its Outbreak

In *GX.Francis and others versus Banke Bihari Singh and another (AIR 1958 SC 309)* the **Supreme Court of India** has held that “Public confidence in the fairness of a trial held in such an atmosphere would be seriously undermined particularly among reasonable Christians all over India, not because the judge was unfair or biased but because the justice is not geared to work in the midst of such conditions. The calm detached atmosphere of a fair and impartial judicial trial would be wanting and even if justice were done it would not be seen to be done. This court has ordered a transfer on previous occasions when such conditions are found to be present, particularly in certain cases in South India when feelings ran high over the merger and reorganization of certain States in that area and also in certain cases where Communists were accused and the local feelings against them were strong. In our opinion, the position is the same here.

.....We therefore direct that this case be transferred to such Magistrate in Sambalpur in the State of Orissa competent to try it as the District Magistrate of that place shall direct.”

Other Case Law Important in Communal Violence Cases

1. Biased Investigation

1. (1992) 1 Supreme Court case 397, Gudalure M.J. Cherian and Others Vs UOI and Others

Unfair police investigation with regard to alleged rape of Christian nuns. Instead of arresting the real culprits, the police arrested four people and asked the victim to identify four arrested persons as the culprits. the Hon'ble Court held that

“Entrusting the investigation to the CBI and transferring the case from a Sessions Judge, Moradabad (U.P.) to a Sessions Judge. Delhi”

“It is not for the SC, ordinarily, to reopen the investigation by entrusting the same to a specialized agency like the CBI, but in a given situation, to do justice between the parties and to instill confidence in the public mind the court may ask the CBI to investigate the case, but transfer of the case was not accepted”.

Other Case Law Important in Communal Violence Cases

2. (1996) 3, Supreme Court case 682, State of Bihar and Another Vs Ranchi Zila Samta Party and Another

Bihar Animal Husbandry Scandal - Whether the HC under this article can direct an investigation by the CBI without consent of the State concerned - direction given by the HC for the CBI is just and proper and calls for no interference by the SC

3. 1995 Supp (3) SCC 736, Secretary, Hailakandi Bar Association Vs State of Assam & Anr

Letter of Bar Association containing allegations of torture by police of Prisoners and undertrials resulting in death of the victim.

Police denying the allegations of torture and stating that the death occurred because of being beaten by public and then handed over to the police. Report of the Superintendent of Police that there was no external injury over the dead body found factually incorrect. The Court held that:

“The police having caused injuries to the victim not ruled out, CBI directed to make investigation in regard to murder of the deceased.”

Other Case Law Important in Communal Violence Cases

4. (1994) 6 SCC 275, Inder Singh Vs State of Punjab & Ors.

Seven persons ranging in age from 85 to 14 years by senior Police officer (DSP) and sundry policemen using the official machinery for the purpose alleged.

State police acting in leisurely and in irresponsible manner.

This Hon'ble Court directed investigation to be made by Director CBI and a report to be submitted.

5. 1994 Supp (1) SCC 145, Mohammed Anis Vs Union of India & Ors.

Pilibhit police encounter deaths. The Supreme Court held that

“Supreme Court’s power to do complete justice under Articles 142(1) and 32 is not confined by any statutory provision. Whether a court can order CBI to investigate a cognizable offence committed within a State without consent of that State Government or without notification or order having been issued on that behalf as required by Delhi Special Police Establishment Act would not hinder Supreme Court to order investigation by CBI into offence committed within a State in public interest to do complete justice in the circumstances of the case.”

Other Case Law Important in Communal Violence Cases

6. (1992) 4 Supreme Court Cases 591, Navkiran Singh and Others. Vs State of Punjab through Chief Secretary and another.

Police atrocities, kidnapping and murder of advocates by the Punjab Police. Police were able to file untraced reports in respect of two other cases which were accepted by the Magistrate by a cryptic order. Reply filed by the State of Punjab found to be unsatisfactory.

The Supreme Court held that

“CBI directed to appoint a senior officer to investigate the kidnapping of the advocates and send a report to the Supreme Court within four months. Directions issued to various Punjab authorities to render all help and assistance to the CBI in conducting the investigation. State of Punjab directed to provide security to advocates who genuinely apprehend danger to their lives.”

Other Case Law Important in Communal Violence Cases

7. (1996) 7 Supreme Court Cases 20, Paramjit Kaur (Mrs). Vs State of Punjab and other.

Habeas Corpus petition – Police excesses –Kidnapping by the Police of a Human Rights activist who exposed the elimination of suspected extremists by allegedly disposing their bodies as unclaimed/unidentified.

This Hon'ble Court directed as under:

“To install confidence in the public mind and to do justice to the victim's family, the CBI is directed to appoint an investigation team to look into the kidnapping of the Human Rights activist and also appoint a high-powered team to investigate alleged human rights violations, regarding cremation of suspected militants by the police as unidentified bodies.”

Other Case Law Important in Communal Violence Cases

8. (1999) 2 Supreme Court cases 131, Paramjit Kaur (Mrs). Vs State of Punjab and Other.

It was held that:

“The Supreme Court by its order can confer jurisdiction on a body/authority to act beyond the purview of its statutory jurisdiction/function.”

“The Supreme Court requested by its order to the NHRC to examine the matter of human rights atrocities in Punjab in accordance with law.

“The Investigation of some other facets including culpability of those responsible for human rights violations entrusted to the CBI”.

Other Case Law Important in Communal Violence Cases

9. (1998) 1 Supreme Court cases 226, Vineet Narain and Others. Vs Union of India and Another.

“...Rights to equality not merely of a few individuals but the Indian polity as a whole – Hawala case. Questioning the CBI’s inaction regarding politicians and bureaucrats named in the Jain Diaries. Need for scrutiny of conduct of people holding high public offices and consequent need to insulate the CBI from extraneous influences for effective investigation and also the need for a strong and competent prosecution machinery involved question of such rights of equality as well as human rights. In the absence of appropriate legislation and executive orders, the Supreme Court can issue orders and directions to fill the gaps for the enforcement of fundamental rights and doing justice to the cause. Frequent transfers of Superintendent of police by State Govts for whimsical reasons are also deprecated.

“Where the executive also fails to fill the gap in legislation, the Judiciary must step in and provide a solution till legislature acts and covers the field”.

List of Criminal Cases pursued by CJP team

Gujarat 2002 Convictions							
Case	Incident	Trial Court					Status
		Convicted	Death/ Life	Acquitted	Remarks	Date	
Best Bakery Re Trial in Mumbai Sessions Case Nos 315/2004	14 killed when a mob set fire to Best Bakery on 1.3.2002	9	9	8	4 of 21 absconding	24/02/20 06	(2012): HC acquits 5 of 9 Re 3 lakh to each victim CJP Directly Involved.
Sardarpura Sessions Case No. 275/200 2, 120/200 8 and 7/2009	33 burnt to death in Sardarpura village, Mehsana	31	31	43	11 given clean chit; 31 benefit of doubt guilty for murder, attempt to murder, rioting not criminal conspiracy	9/11/201 1	Appeal in HC; CJP legal team has appeared for Victim survivors Under Section 24(8)(1) of the CRPC; Directly Involved

Odh 1	23 people,	23	18	23	18 life; 5 for 7	12/4/201	CJP legal
Sessions 44/2008	including 9 women and as many children were burnt alive by a riotous mob at Ode village in Anand district in central Gujarat on March 1, 2002, and 1 person killed the next day				yrs in jail attempt to murder, abetment to crime unlawful activities	2	team has appeared for Victim survivors Under Section 24(8)(1) of the CRPC; Directly Involved
Odh 2 nd case Sessions Case No 45/2008	Three persons of a minority community were killed in Malva Bhagol area of Ode village on March 1, 2002	9	9	32	Charges of murder & criminal conspiracy All 9 life sentence		CJP legal team has appeared for Victim survivors Under Section 24(8)(1) of the CRPC; Directly Involved
Dipda Darwaja (5) Visnagar (Mehsana) Sessions Case No 180/2008	11 persons from a family that was were burnt alive by a mob (Mehsana) led by the then BJP MLA of Visnagar Prahlad Gosa. SIT did not implicate but response to witnesses court Arraigned MLA and ex municipal president Dayabhai Patel.	22	21	61	Acquitted Includes MLA, Prahlad Gosa 307; not 302 murder and 120 B criminal conspiracy; PI gets 1 year 51 of 61 given benefit of doubt	30/7/201 2	CJP legal team assisted Victim survivors only no direct appearance s; Indirectly Involved

Naroda Patiya (6) Sessions	In the worst massacre incident of 2002	32	32	29	Maya Kodnani, 28 yrs; Bajrangi, Till death;	29/08/20 12	
Case No 235/2009	(Feb 28), 97 persons, including many women killed. The mobs were led by then BJP MLA Maya Kodnani and Bajrang Dal Leader Babu Bajrangi. Kodnani was Charged by SIT in 2010 only after CJP complaint to SC that powerful being spared; she was arrested and had to resign as minister				7 get 21 years; 23 get 14 years. Rs 5 lakh compensation to a surviving victim of gender violence		
Naroda Gaam Sessions Case Nos 203/2009	11 killed on February 28, 2002				Trial Ongoing		
Gulberg Trial Sessions Case No 152/2002	69 killed on Feb 28 including Ehsan Jafri (former Cong MP)				Trial Ongoing		

END



(Source: Much of the material for this presentation has been from Written Arguments made by Citizens for Justice and Peace (CJP) in various courts from Trial Court(s) to Supreme Court of India, *Communalism Combat* and the research papers, *The Communal Demon—A Deepening Challenge for Human Rights and Media and Minorities* by Teesta Setalvad)

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