Homeless in their homeland, Muslims in Shamli refugee camp post-Muzaffarnagar violence. (*Photo*: Reyazul Haque)

Battling Impunity

Legal Justice for Survivors of Communal Violence as a Public Good

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Long after the fires of torched homes, looted shops and desecrated places of worship are doused and the blood on the streets dries; after slaughter, rape, plunder and expulsion are accomplished; wounds rarely heal. Survivors of communal violence in India live out their lives haunted by the fear of recurrence, the anguish of betrayal, injustice, and the dying of hope and trust.

India won her political independence in 1947 amidst a cataclysm of bloodshed and hate violence which targeted men, women and children only because of their religious identities. It left according to some estimates one million people dead, more than ten million people displaced permanently from their homelands and thousands of women abducted, raped, converted and forcibly married to their abductors on both sides of the border.

This ancient country, traumatically reborn after two centuries of colonial bondage as a secular democratic republic, laid great stress therefore in its Constitution on the equal citizenship, security and rights of its religious minorities. Heading the writing of the Constitution, Babasaheb Ambedkar was perturbed about the future of the fledging nation and the manner in which it would treat its oppressed castes and religious minorities. The Constitution underlined equal citizenship and freedom to religious communities to follow personal laws, but so far as the violence against women across faiths during Partition was concerned, the new nation indulged in public forgetting, and there was no framework and no name for the crimes committed on women's bodies beyond shame, dishonour, and humiliation. India was a patriarchal Hindu-majority nation dominated in every sphere of life by advantaged castes, in which already visible was a strong current of an often-violent Hindu-communal or majoritarianism. A force that sought to emerge from the peripheries to capture the national imagination, an enterprise which still continues seven decades after freedom.

Ambedkar warned presciently during the Constituent Assembly debates:

> If Hindu Raj does become a fact, it will, no doubt be the greatest calamity for this country... It is incompatible with democracy. Hindu Raj must be prevented at any cost.[1]

Hindu Raj is still at bay, but is making massive inroads into the practice of India's political and social life. Unfortunately, even before this, except for the first dozen years after freedom and Gandhi's assassination under Nehru, India's state machinery[2] has time and again failed to rise above the dominant majoritarian common-sense; and the political leadership across the spectrum that increasingly caved in to majoritarian prejudices. So much so that the ideology of Hindutva has on several occasions over

1 Ambedkar, B. R., & Pritchett, F. W. (1946). *Pakistan or partition of India*. Thacker.

2 We here refer to instruments and apparatus of the state – police, administration, lower judiciary, bureaucracy – wherein collusion, inaction and complicity during and after instances of majoritarian violence is the norm. Higher judiciary on several occasions has been the only exceptions along with a handful of committed officials whose record of integrity has been few and far spaced.

the decades come to thwart the ideas of secularism enshrined in the Constitution, massively so in recent years.

Beginning with a communal conflagration in 1961 in Jabalpur, many parts of the country have witnessed sporadic episodes of hate violence which scapegoat people due to their religious identity through most years since then. While mostly the targets have been Muslims, in other times they have been Christians or Sikhs. And there has been not a single year of complete nation-wide communal peace. The same has acquired a new lease in recent times inflected now with a state supported Hindutva agenda. The cow vigilante attacks on Muslims and Dalits are manifestations of the current landscape of violence.

This has been the case despite various constitutional safeguards. India's secular, democratic constitution contains several important guarantees for the protection and equal rights of religious and other minorities. Article 14 guarantees equality before and equal protection by the law. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex and place of birth. Article 25 guarantees freedom of conscience and the right to freely profess, practise and propagate religion. Article 26 ensures the right to manage religious institutions and religious affairs, and Article 29 protects the minorities' right to conserve their language, script or culture. Successive instances of targeted assaults on the minorities over the decades have however severely undermined the practice in public life of the constitution.

While there may seem to be a veneer of spontaneity or even temporary collective madness in the frenzy each time, but when observed closely, one actually finds a method in the madness. Two features are common to all episodes of communal violence. The first is almost universal impunity, by which we mean a) the deliberate but unpunished inaction of the law-enforcers to reign in forces that instigate and orchestrate such crimes through persistent hate-mongering and plan and execute the violence; and b) failure of the criminal justice system to punish – and often even bring to trial – persons who commit these communal hate crimes. Even less than the foot-soldiers who commit these crimes, the law almost never catches up with those who instigate and organise these mass attacks, and with senior members of the police, civil administration and political leadership who deliberately fail to prevent, enable through inaction, encourage and sometimes actively participate in these acts of mass violence. The other feature of all episodes of communal violence in independent India is the failures of the state to extend reparations to survivors of the violence at levels which could enable them to rebuild their lives, livelihoods, habitats and social relations.

The public good of legal justice delivered by the machinery of the state is found on the aspiration that the state intervenes on behalf of the wronged and delivers justice to preclude the worst excesses of individual revenge. If a citizen has been harmed by another, the stepping in of the state on her behalf precludes the citizen from taking revenge personally or slipping into a state of despair and alienation born out of an expectation of the denial of justice. The promise of state acting on behalf of the harmed and wronged to deliver justice takes out of the hands of the aggrieved the possibility of private resolution based on individual retribution, causing violence to ever-spiral. This spiral is what the public good of justice can obviate. But if on the other hand, the state brazenly sides with the tormentors and grants them impunity with a majoritarian bias, it ends up fermenting feelings of betrayal and retribution.

We regard legal justice for survivors of communal violence to be a paramount public good for many reasons. Without it, India's religious minorities cannot be assured security and a confidence of non-recurrence, thereby denying them the substantive equality assured to them in the Constitution. But with these denials, not only are religious minorities diminished, other citizens too are diminished because it erodes the secular democratic character of the Constitution.

We, in fact, asked survivors of communal violence who stake a great deal to persevere against great odds to struggle for legal justice, about why legal justice is so valued by them[3] What emerges is a far more ethically and politically nuanced range of motivations which underlie survivors' pursuit of legal justice in a secular democracy, than the conventional two-dimensional paradigm of retribution or forgiveness. We found that it is not revenge which the

3 Hoenig, Patrick, and Navsharan Singh, eds. *Landscapes of fear: Understanding impunity in India*. Zubaan, 2014.

survivors primarily seek, but to claim their rights of equal citizenship in a secular democracy, a breaking of silence (including women about sexual violence), the restoration of social relations with the community of attackers based on equality and respect, and above all the fulfilment of what they perceive to be their ethical duty to later generations. Similarly, the public nature of justice ensures protection of group rights, the right to manage religious institutions and religious affairs, and the minorities' right to conserve their language, script or culture.

Taking off from this idea of the public good, we will in the rest of the chapter, examine who tend to be excluded from this public good of legal justice during or in the aftermath of communal violence. While identifying those excluded, we would bear in mind the intersections with other identities (like gender) that may make a person doubly excluded. The section thereafter deals with the processes of exclusion, which forms the core of the chapter. Cutting across instances of communal violence through the decades, we highlight here ten tried, tested and perfected strategies of exclusion and subversion of justice. Finally, the last section highlights certain policy recommendations that are a must if we are to safeguard and retrieve the public good of justice for the minorities living under the shadow of communal violence. [4]

Who is Excluded from Security and Justice?

Many had hoped that Independence would progressively bring an end to violent communal strife and pogroms in India. But such a possibility still eludes the religious minorities, especially Muslims. We have spoken to ordinary people of Muslim faith in many corners of the country. When they recall their lives, it is always as life lived in the space *between* riots. Each of them negotiates everyday living with unspoken trepidation that one day – any day – everything that they love and live for can be destroyed in one brief storm of hate. And in many tribal areas, communal organisations have succeeded in driving deep and dangerous wedge between people who converted to Christianity, and others – often of the same tribe – who have not.

The question that this section asks is – which communities carry the greater burden of loss of life, limb, property and sexual violence in communal violence in India? And who is more excluded from justice and reparations after these episodes? The popular imagery fostered by the majority Hindu community in India is of violent and aggressive hordes of Muslims attacking non-violent Hindus. The reality of virtually every episode of communal violence in post-Independence India has seen quite the reverse: of most violence being borne by India's religious minorities – Muslims in most cases, but also on occasion Sikhs (in the 1980s); and Christians accused of duplicitous conversions of innocent Hindus (in the 2000s). India, we argue, sees mostly pogroms rather than riots.

During our field visit in Kandhamal, one of the church functionaries accompanying us said with some satisfaction that one of the main culprits in engineering the 2008 carnage against the Christians had a painful death as he was suffering from a chronic disease. He felt this was justice ordained by a divine intervention. Excluded from all avenues of justice, and its pursuit being sabotaged at every stage, they recount tales of one culprit after the other being let off scot free. Being disproportionately at the receiving end of violence to start with, and then again being let down by the instruments of justice, the minorities are left either to reconcile, or as in this case rely on "divine interventions".[5] Effectively, this ends up eroding the very credibility of the founding values of the Constitution for a vast section of the people of India.

So, while the idea of equal citizenship on the face of it conveys uniform rights, in practice it is evident in India that citizenship is hierarchical excluding minorities – religious, caste, gender and ethnic – from realising full citizenship. There is also the politics of disenfranchisement. Muslim citizens today are bat-

4 For substantiation, we have drawn upon largely on the long engagement (writings, ground visits, understandings, observations) of the authors with this issue. That aside we draw upon reports, civil society findings, judgments, and relevant secondary literature produced around the subject. That aside, we also draw upon unstructured interviews (of survivors and civil society members) taken in course of the field visits conducted by CES researchers to contribute towards the People's Archive of Communal Violence. The data sources collected during this (ongoing) archiving exercise has also helped us in cementing the evidential base for several of the observations or claims made here.

5 Anonymous, 29th April, 2018, Personal Communications

tling vigilante justice and there is a breakdown of hard won constitutional guarantee of equal rights. There is also an increasing exclusionary violence against a series of marginalised groups, with more and more groups added to it. Muslim dairy farmers and Dalit leather workers are the latest target of violence and vigilante justice aided by the change in state policies. There is thus an 'erosion of community through the soft knife of policies that severely disrupt the lifeworlds of people'.[6] Kalpana Kannabiran argues that the increasing scale of exclusionary violence against a series of marginalised groups and atrocities on entire communities are constantly spiralling.

And finally, the added layer in this exclusion is gender. In all these episodes of violence women from the minority communities were specifically targeted and sexual violence against women was specifically deployed to 'humiliate' the community.[7] Given the multiple layers of hierarchies in our society, patriarchy being one of the most persistent among them, the violence against women as a phenomenon cuts across the decades. But reporting, awareness and discussions around the same has increased with the turn of the millennia. Though still widely under-reported, there were considerable discussion around the subject during communal attacks after Gujarat 2002. And in this respect, it serves as a landmark. The testimonies of Bilqis Bano, Madina Mustafa ,Ismail Sheikh, Yasmin, of the multiple rapes in Gulberg society and elsewhere shook the conscience of the nation. One of the most wrenching being the episode of Kausar Bano in Naroda Patia who was eight months pregnant and whose abdomen was split open, the foetus extracted and killed. Testimonies collected by Women Fact-Finding Commission to inquire into Gujarat riots and other such women's initiative brought several such gruesome tales to the fore and also helped in the pursuance of justice in some of the cases.[8] All of these contributed towards increased awareness on the subject.[9]

Rapes and sexual violence still remain largely under-reported in our caste-divided patriarchal society. Journalists and civil society teams speak of scores of Muslim women in relief camps after Muzaffarnagar violence who spoke of having been assaulted, raped or gang-raped, but were unwilling to file official complaints fearing social stigma and reprisal. Though seven women came forward eventually to report, however, till date, there has not been a single conviction in any of the cases. Two of the women have changed their statements owing to threats and intimidation. One died in 2016. And in two cases, trials have not even begun.[10]

Direct violence during instances of communal pogroms is however, just one of the several ways women are made more vulnerable by majoritarian communalism. Kalpana Sharma, in the aftermath of the Mumbai violence (1992), noted that 'women might not be always direct target of attacks' but they suffer the consequences in 'very specific' ways, which are in relation to long-term economic burden for them. That aside, many Muslim women, for instance, even stopped reporting about domestic violence as they realized that "their men" were anyway disproportionate and unjust targets of police wrath and harassment during and after the violence by virtue of being Muslim men.[11] Deepa Dhanraj and

6 Das and Klieman 2001, cited in Kalpana Kannabiran ed., Violence Studies, OUP, 2016.

7 In the 2002 Gujarat carnage, sexual violence against Muslim women was large scale and brutal. It emerged as the backbone of communal violence and played a decisive role for mobilizing hatred against and destruction of Muslim community. See for instance, the report, *Threatened Existence: A Feminist Analysis of the Genocide in Gujarat*, International Initiative for Justice in Gujarat, 2003. The report underlines the centrality of sexual violence in the Hindutva project. See also, Saumya Uma, "Law Reforms on Sexual and Gender Based Crimes in Mass Violence, in Vahida Nainar and Saumya Uma eds., Pursuing Elusive Justice: Mass Crimes in India and Relevance of International Standards, OUP, 2013.

8 *Feminist Perspectives on Post-riot Judicial Inquiry Commissions in India* B. Rajeshwari, http://journals.sagepub.com.ezproxy.library.qmul.ac.uk/doi/full/10.1177/2347797017710747

9 *Threatened Existence: A Feminist Analysis of the Genocide in Gujarat*

10 Amnesty International India (AII) report, *Losing Faith, The Muzaffarnagar Gang Rape Survivors' Struggle for Justice,* https://amnesty.org.in/losing-faith-muzaffarnagar-gang-rape-survivors-struggle-justice/
Mander, H., Chaudhary, A. A., Eqbal, Z., & Bose, R. (2016). Wages of Communal Violence in Muzaffarnagar and Shamli. *Economic & Political Weekly*, *51*(43), 39. https://www.epw.in/journal/2016/43/insight/wages-communal-violence-muzaffarnagar-and-shamli.html

11 *Feminist Perspectives on Post-riot Judicial Inquiry Commissions in India*, B. Rajeshwari, http://journals.sagepub.com.ezproxy.library.qmul.ac.uk/doi/full/10.1177/2347797017710747

K. Lalitha in their oral history work which brings together narratives of Muslim women survivors of targeted violence from Mumbai, Gujarat and Hyderabad, conceptualise women's loss as *rupture* which manifests as complete displacement – physical, economic, domestic and emotional.[12]

What Causes Impunity?

Based on the experience as a district officer of one of the writers of this chapter, directly handling, and observing – and subsequently studying – many riots, we are convinced that no riot or anti-Dalit massacre can continue for more than a few hours without the active collusion of the state machinary. But the recurring feature of most brutal episodes of blood-letting in anti-Dalit and anti- minority hate crimes and mass violence, is that elected and selected public officials fail to uphold their most sacred constitutional duty. They fail not because they lack the mandate, authority or the legal powers. They fail because they *choose* to fail; because of the pervasive prejudice and bias against these disadvantaged groups which permeates large segments of the police, magistracy, judiciary and the political class.

However, this enormous moral crime of public officials enabling massacre is not recognised explicitly as a crime for which they can be criminally punished. Far from it, officials who have been named as guilty of bias and worse in numerous Judicial Commissions of Enquiry have very rarely been even administratively penalised; contrarily, guilty police and civil officers have enjoyed illustrious careers, and political leaders under whose watch such carnages have occurred have reaped rich electoral harvests of hate.

It must be stressed here that there are always – fortunately for the survival of constitutional democracy in India – outstanding public servants who do their duty with courage and fairness in the darkest times, and their examples only further highlight the enormity of the failures of the others. Taking just Gujarat, the roll-call of these fine public officials would include police officer Rahul Sharma who controlled the violence and protected the minorities in the district Bhavnagar as well as collected crucial evidence relating to phone records in Ahmedabad at great personal cost, Neerja Gortu, another police officer who courageously investigated the mass violence, magistrate Tamang who held that the killing of Ishrat Jehan was a fake encounter staged by the police, and Jyotsna Yagnik who sentenced several people including a minister for life imprisonment for their role in the Naroda massacre. But these remain exceptions in an otherwise arid landscape of denial and complicity.

A similar culture of impunity surrounds those who instigate and participate in the killings, arson and rape. Impunity is the assurance that you can openly commit a crime and will not be punished. This impunity admittedly does arise from infirmities in and corrosion of the criminal justice system, which require long-delayed police and judicial reform. But it is important to recognise that the collapse of the justice machinery is massively compounded when the victims are disadvantaged by caste, religion, or minority language. You are more likely to be punished when you murder a single person in 'peacetime' with no witnesses, than if you slay ten in broad daylight observed by hundreds of people.

Salim Akhtar Siddiqui, a journalist we interviewed in Meerut about 36 years after it was ravaged by communal violence, has no expectations of justice. "I don't think that in riots people get any justice. Hashimpura was such a stark incident wherein 42 people were killed by PAC and their bodies were dumped in the river. And no one found a single evidence. Everyone has been acquitted. So, I don't think that someone will ever be convicted in riots cases. Such is the confidence of the victimized community on the systemic impunity granted to the perpetrators of violence."[13] As Paul Brass points out, the riots of 1982 had almost been overshadowed by and therefore forgotten in the aftermath of the "more horrendous massacres of 1987 in Meerut and nearby localities of Maliana and Hashimpur." He writes, that 1987 in a sense was a culmination of the institutionalized riot system that existed in Meerut which was facilitated by the "trial-run" of 1982.

Pushpanjali Pander, whose husband was killed in the Kandhamal massacre of 2008, narrates her agony as she was repeatedly threatened by local RSS

12 Rupture, Loss and Living: Minority Women Speak about Post-conflict Life, K. Lalitha and Deepa Dhanraj, Orient BlackSwan, 2016.

13 Salim Akhtar Siddiqui, 12th May, 2018, Personal Communication

leaders to desist from pursuing the case against her husband's killers. As she narrated her past to us she did not hide the fact that she had resigned to the fear that if they pursue justice again, "they" will attack again and may even kill her and others in her family.[14] Monalisa, her teenage daughter who was a child when her father was killed ten years back, however, stressed upon the necessity of pursuing justice even today. "If we don't take action for justice then future generation will suffer", she said.

Clearly, the law is not an abstract set of rules enforced by detached impersonal institutions like the police and courts. These are all located in the political society from which they emerge, and are continuously both influenced by them and vice versa. The failures of legal justice after mass communal violence in India are not the outcome only of a creaky and flawed criminal justice system, which rarely works for disadvantaged people even in normal times. They are the outcome of the systematic planned subversion of legal justice by organs of the criminal justice system (Mander 2009, 89-101) and (Mander 2010). See also (Chopra and Jha 2014, 249-283). The predicament of minorities in situations of communal violence is that, despite egalitarian constitutional guarantees, they encounter a criminal justice system that is frequently majoritarian, prejudiced, even hostile to minorities.

In the Centre for Equity Studies, we have carefully studied several major episodes of targeted violence, and discovered that despite these being separated vastly by time and geography, despite the victims sometimes being Dalits, sometimes Muslims, sometimes Christians, and sometimes Tamils in Karnataka – there is a chillingly similar pattern of systematic and active subversion of justice. It is our finding that impunity is planned and built into the response system of the criminal justice system, almost as systematically as the actual violence.

It is our finding that impunity is planned and built into the response system of the criminal justice system, almost as systematically as the actual violence. This is evident because of the finding that similar stratagems to secure impunity are deployed in episodes vastly separated by time and geography, and under diverse political regimes. The following is a list, inter alia, of some of the major strategies to secure impunity of the perpetrators (and even more so of the planners and culpable officials) of communal violence.

1. Delayed, ambiguous and omnibus FIRs
2. Deliberately shoddy investigation
3. Delayed arrests and early bail
4. Cross-cases
5. Closure of cases for lack of evidence
6. Creating social pressures to 'compromise'
7. Faulty charge-sheets
8. Biased prosecution and limited role for lawyers of the victims and witnesses
9. Failures to appeal against acquittals
10. Court bias and delayed hearings

We shall consider each in turn.

1. Delayed, ambiguous and omnibus FIRs

Dispossessed, often terrified and bereaved persons are crowded typically in relief camps, often makeshift and sometimes set up by the state government. As they are struggling desperately for safety and bare survival for themselves and their families, and coping with many traumas, filing FIRs are often not an early priority, and therefore FIRs are frequently delayed. Delays are even greater when the only survivors in the household are women, and further more so when there are only children. Likewise, in cases of sexual violence, while social shame leads often to silence or delays in filing the complaints, the police and hospital for medical exam are out of women's reach and, often not a priority when women are in the middle of monumental destruction of lives and livelihoods. Courts later dismiss cases because of delays and defects in the FIR, unmindful of the circumstances of the case.

Rarely does the police actively camp at the relief camps and record FIRs. Instead it frequently finds it expedient to itself file the FIRs. There can only be one FIR of an incident: it is after all the *First* Information Report. By the time the survivor comes to

14 Pushpanjali Pander, 28th April, 2018, Personal Communication

file the complaint, she or he is often told that the complaint has already been filed.

The police FIRs compared in many locations have common features: these tend to be deliberately ambiguous: they talk about anonymous mobs, without names of the perpetrators of violence, or witnesses. There are numerous instances of omnibus FIRs wherein the police records under one FIR a series of separate incidents and offences, which occurred to different persons, by different persons, at different points of time. What ties these together is a loose geographical and chronological connection: for instance, all crimes in one village over one day or sometimes several days maybe reported in one FIR. This bunching of multiple discrete incidents creates a great deal of confusion and delay during investigation and trial, and a hostile witness or absconding accused in one matter may confuse the case for other complainants, witnesses and accused who are part of the same case. The police FIRs also often contain almost a rationale for the violence, such as the police FIRs in Gujarat start with a reference to the train burning in Godhra and that the attacking mob was enraged by this incident. In the case of the anti-Sikh violence in Delhi in 1984, the FIRs mention the assassination by her Sikh guards of the Prime Minister. We have also found that the language in many police FIRs are very similar, again suggesting that they are written in a certain format which later facilitates impunity, in a deliberate and systematic way.

Trilokpuri, for instance, was one of the worst affected areas in Delhi during 1984 pogrom. As per officials figures almost 200 people were killed and 100-150 jhuggies were burnt and looted in Block No.32 of Trilokpur, within a span of 72 hours, between 1st to 3rd November, 1984. ASJ S.N. Dhingra in State vs. Kishori (Karkardooma, Delhi S.C. No.52/95 FIR No.426/84) observed that "despite all of these facts coming to the knowledge of police, day after day from 1.11.84 till the investigation of this case was going on, the police did not investigate the murders of several persons properly and carefully nor did it register the separate cases." The police here deployed the method of omnibus FIR to record and investigate the criminal offences and killings that is totally contrary to the Criminal Procedure Code 1973 and the Indian Panel Code, 1898. A single omnibus FIR was recorded on basis of statement of Rjju Singh, for almost all the killings, arson and looting in Block No.32 of Trilokpur. This effectively rendered any further investigation in the crimes futile.[15] In Kandhamal, survivor Deobhanja Pradhan testified how the officers of the Tikabali police station did not allow the recording of individual FIRs of the villagers but instead made them write an omnibus FIR on a single paper.[16]

In the case of Nellie[17], our research reveals that in 240 FIRs out of 525 FIRs, the complainants' account was almost identical across all the FIRs. The basic text of the handwritten FIRs was as follows: *'I have the honour to report you that on 18/2/83 at 8 am, Friday, a good number of miscreant equipped with guns, daos, lathis, arrows attacked our villagers and following things were destroyed and burnt our houses and looted all the properties.[sic]'.* The pro forma statements in each FIR renders it impossible to conclude whether the complainant is a direct victim of violence, a family member or a witness. The police clearly did not seek, or ignored, or actively suppressed individual accounts, and the resulting individual crimes.

In Delhi 1984[18], **t**he Jain Aggarwal Committee commented on strategies to obscure facts in FIRs related to the commission of cognizable offences. Instead of registering a distinct FIR with regard to each and every cognizable offence reported at the police station, a general, vague and omnibus type of FIR was recorded at the concerned police station on the basis of a report couched in general terms and signed by some police official. It also observed that the police had devised a format for receiving complaints. This format contained various columns including the names and addresses of the complainants, the damage to the person, the kind and description of the looted/burnt property and the quantum of loss suffered by them. Significantly there was no column or space for recording facts about incidents of murders, the names of the deceased persons and the names of the culprits if these were known. Further,

15 Carnage 84: Massacre of 2000 Sikhs in Delhi, Analysis by Vrinda Grover http://www.carnage84.com/judge/analysis.htm

16 KANDHAMAL: Introspection of initiative for justice 2007-2014; pg 133 https://works.bepress.com/saumyauma/48/

17 Nellie 1983, Page 65-66, On their Watch.

18 Delhi 1984, Page 92-93, On their Watch.

only 5 FIRs recorded the crime of rape, even though it is widely and credibly believed that a number of instances of sexual violence took place in Delhi.

In Bhagalpur 1989[19], by government officials' own reckoning, the police delayed filing FIRs, and failed entirely to file FIRs in many grave incidents. The ADM, Law & Order, estimated that 982 people were murdered (official estimates are much higher). However, police registered only 595 FIRs in the months following the violence, covering only 354 of the officially reported 982 deaths. Similarly, although Amarpur saw mass killings, only 2 FIRs were lodged in relation to that violence even as late as the early 1990s. The Commissioner of Bhagalpur noted that major incidents like the Logain massacre in Jagdishpur went undetected for almost a month[20] and the FIR related to the massacre was registered 41 days after it took place.[21] Mass killings in areas close to Bhagalpur town, including Parwatti, and Sahibganj in Kotwali were also ignored for about a fortnight.[22]

Our interviews in Bhagalpur also reveal the mistreatment and even intimidation of Muslim complainants, by the police: 'after reaching the police station, when Shamshool asked the police officer to report the FIR the officer started beating him. The police shouted at him that "you are the ones who create all the riots and now you also want to file an FIR?' He then locked Shamshool in prison".

In Gujarat 2002[23], in 74 cases that we analysed, there was delay of 8 days in registering the FIR, and the delay was not explained by the police. Where the police do not accurately record the reason for a gap in the incident in question and the registration of the FIR, the delay becomes something that can later be used by the defence to cast doubt on the complainant's account of events.

Out of another 400 Gujarat FIRs analysed by us, the police were complainants in 148 cases (amounting to 37 percent of total). In 113 of these 148 FIRs with police complainants (70 percent), the accused were described as an 'anonymous mob'. Out of 400 FIRs, including the ones where victims or third-party witnesses were the complainants, the accused are described only as an anonymous mob in 291 cases, i.e. in nearly three quarter of the FIRs registered. This suggests deliberate erasure of names by the police, a finding also of the National Human Rights Commission.[24] The police refused to register FIRs in some instances, according to many victim testimonies and interviews recorded by various NGO inquiries and reports. The most significant noted failure of the police was to doctor the informant's version, especially their refusal to note the names of the accused, which led to closure of many cases.

2. Deliberately shoddy investigation

The local police often conduct a deliberately shoddy investigation into these deliberately weak FIRs. It makes no effort to identify the 'anonymous' members of attacking mobs. It delays arrests (see next section) of the named accused, and it also often wrongly records the statements of the witnesses. Police investigators, we find, often again refuse to record the names of the accused and witnesses, even when they are part of the verbal statement. The police is not required under the law to give a copy of the statement to the witness. The witness discovers these lapses only – if at all – during the stage of trial, and then the names supplied by the witnesses are treated as after-thoughts. The police also does not record the scene of the crime, the sequence of events and the material evidence on the ground accurately. Mr. Julio Reibero, (ex-Director General of Maharashtra Police), for instance, told Times of India in an interview that in the instance of the communal violence in Mumbai (1992), the police was either not taking

19 Bhagalpur 1989, Page 121-124, On their Watch.

20 Report of the Special ADM, Law & Order, Bhagalpur.

21 "Recalling Bhagalpur: Aftermath of 1989 Riots," Economic & Political Weekly, Vol.21, No.18, (May 1995), 1057.

22 Report of the Special ADM, Law & Order, Bhagalpur.

23 Gujarat 2002, Page 169-173, On their Watch.

24 There is evidence of this in victim testimonies filed before the Supreme Court in the victim petitions and also in interviews given by many survivors to activists and journalists in fact finding reports; see in particular, the Criminal Justice section of report, "Crime against Humanity"; also see chapter four "Role of the Police" in PUDR report entitled "Maaro! Kappo! Baalo! State, Society, and Communalism in Gujarat", People's Union for Democratic Rights (Delhi, May 2002). Also see International Initiative for Justice in Gujarat, "Threatened Existence: A Feminist Analysis of the Genocide in Gujarat" (Forum Against Oppression of Women, December 2003), 49-52, Section 4.4.

FIRs or not writing the names of rioters and noting them as "unidentified" instead.[25]

In Kandhamal, writes Ajay Kumar Singh, hundred odd cases were closed citing no evidence which makes a mockery of the investigation. "It is reported that out of 30 murder cases, except for a couple of cases, there are acquittals. There were such allegations that imaginary statements were recorded and produced in the courts without even visiting the crime sites or meeting the victims/survivors concerned.[26]

In particular, there emerges a pattern wherein the police particularly tries to distort the possibility of a fair investigation when it comes to instances of targeted violence against women during communal violence. Interviews conducted by MARG for its study recorded victims detail several instances of refusal by the police to register the crimes suffered by them in general.

Similar was the case of Bilqis Bano in the aftermath of the 2002 carnage in Gujarat. Bilqis, then 19 years old, and her family were hiding and caught by mob on 2nd of March 2002. Bilqis was three months pregnant and was gang-raped by the mob. She survived and decided to approach the police. After dilly-dallying the police recorded an incorrect statement and took Bilqis' thumb impression. She was suspicious and when the Collector visited her refugee camp, she drew his attention. The Collector reprimanded the police and asked them to record a proper FIR and file case on the basis of the second FIR. However, meanwhile the Collector was transferred and the police filed the case on the basis of first incorrect FIR and attempted to destroy the case. It was however the perseverance of Bilqis and sections of the civil society that eventually brought the culprits to justice.[27] In the context of Gujarat 2002, Ashgar Ali Engineer observed several such instances where the police were either "not recording FIRs or framing very minor charges against the killers, looters and murderers."[28]

The Naroda Patiya case was another extremely serious massacre in Gujarat in 2002 where the police went beyond gross negligence, to actively destroy evidence. The following defects were identified by analysing charge-sheets of the Naroda Patiya case by the magazine Tehelka in conjunction with an advocate from the NGO Action Aid[29]. The police did not carry out post-mortems on 41 bodies recovered from Naroda Patiya and Naroda Gaon. No explanation was offered for this act of grave negligence and omission[30]. Crucial evidence was destroyed. The pit in which a large number of people were burnt alive was not even examined by the police. No samples were taken of the soil, of the traces of human tissue or of the remains of burnt fuel. The pit does not even figure in the police version of the massacre. The dying declarations were not taken[31] of as many as seven victims; two of them died on 11 March 2002 after prolonged treatment, but no explanation is forthcoming in the charge-sheet on why their statements were not recorded. No mention was made of rapes[32], although dozens of survivors reported that women were raped. At least one post-mortem indicated a possible case of sexual assault, yet no investigations were carried out. No proceedings were launched against the absconding prime accused[33].'Many important accused were allowed to flee after the police was forced to register FIRs against them. Babu Bajrangi, Kishan Korani, Prakash Rathod and Suresh Richard, for instance, were arrested three months after the FIR was issued. Bipin Panchal was arrested after a year and a half. But the police did not follow any of the usual procedures when an accused absconds, such as pasting notices outside the house of the accused declaring him an absconder, confiscating his properties, or anything of the sort'.

25 Julio Ribeiro cited in Engineer, Asghar Ali. *Role of police in Gujrat Carnage. Secular Perspective June 16-30, 2002* http://www.csss-isla.com/wp-content/uploads/2015/06/June-16-30-02.pdf

26 https://www.countercurrents.org/aksingh290814.htm

27 Engineer, Asghar Ali. No justice Nanavati, what you say is not correct.*Secular Perspective 1-15 June 2003* http://www.csss-isla.com/wp-content/uploads/2015/06/June-1-15-03.pdf

28 Engineer, Asghar Ali. Gujrat-An area of darkness.*Secular Perspective April-16-30,2002 http://www.csss-isla.com/wp-content/uploads/2015/06/April-16-30-02.pdf*

29 "A Window to Horror," Tehelka, Vol. 5, Issue 16, (26 April 2008).

30 Ibid.

31 Ibid.

32 Ibid.

33 Ibid.

The district court in Gandhinagar acquitted all 22 accused in a riot and plunder incident in Pimplaj Village of the Dehgam Taluka where a mosque was destroyed and a farm house owned by a Muslim family was plundered in 2002. Exposing lapses in the investigation, the judgment noted that the investigating agency had not been able to recover the arms believed to have been brandished by the mob. The additional session's judge Mr. Ramesh Bateriwala noted that "there was no attempt made by the investigating officers to parade the accused for identification." These were basic minimum protocols of an investigation which were deliberately scuttled and flouted.[34]

Allauddin Siddiqui, local advocate whom we interviewed in Meerut for instance recalled that in Maliana (1987) an injured man was found with two injuries. One of them was on his neck. On examination it was found that there were two shots that were fired on him and this was written in the report. But even after that, when he eventually died, just four stab wounds were shown in his post-mortem report. He asked whether goons entered the hospital and stabbed the patients or did the doctors kill them. There were no answers, he said. He said that it was clear that the police controlled the doctors and ordered them to not show bullet injuries since that would have implicated the armed constabulary.[35]

The majoritarian biases of the police leave their imprint not just in its inaction or disproportionate response on the minorities, but also in the legalities that follow. After the Feroze building massacre in 1982 in Meerut, the then SSP of Meerut, JP Rai in his affidavit to the Parikh Commission evidently perceived the riots as instigated by the Muslims, to which the Hindus were 'merely reacting'. It said that the Muslims after being released from police custody had given exaggerated accounts of police beatings. And that Muslims had attacked from the Feroze building with firearms, bombs and grenades. Saxena rightly points out that the affidavit did not even mention the 16 Muslim deaths that was the official count of casualty during this phase of the riots.

Judge S.N. Dhingra in *State v. Ram Pal Saroj,* a trial that began 11 years after the anti-Sikh carnage in Delhi (1984), remarked that "the police investigation in each of the riot cases filed in the court has been wanting in quality." He further observed: "The manner in which the trail of the riot cases had proceeded is unthinkable in any civilised country. In fact, the inordinate delay in trial of the rioters had legitimised the violence and the criminality. A system which permits the legitimised violence and criminals through the instrumentalities of the state to stifle the investigation, cannot be relied upon to dispense basic justice uniformly to the people. It amounts to a total wiping out of the rule of law."[36]

It is apparent from the above that as a logical conclusion of the token investigation that was carried out, weak charge-sheets made sure that even if the witnesses were ready to depose before the court either their names were struck off or they were not examined by the prosecution and this paved the way for clear acquittals.

3. Closure of cases for lack of evidence

A direct consequence of the deliberately weak FIRs and police investigation is that in all sites of mass targeted violence, the majority of cases are closed without trial for 'lack of evidence', although this 'lack' is deliberately manufactured by police action. In Gujarat we found that more than half the cases were closed by the police within less than a year of the carnage, and successfully challenged the matter in the Supreme Court. But similar large-scale closures occurred in all the sites: Delhi 1984, Bhagalpur, Mumbai, Gujarat, Kandhamal and now Muzaffarnagar. In this way, in the majority of matters, the police proposes, and magistrates unquestioningly accept their claim that no evidence is forthcoming. This is the most effective and widely used instrument for ensuring impunity.

According to an affidavit filed by the Odisha government, of the 827 cases registered in relation to the Kandhamal carnage, chargesheets were filed in 512 cases while final (closure) reports were submitted in 315 cases. In 2016, eight years after the Kand-

34 Engineer, Asghar Ali. Justice aborted in Gujrat. *Secular Perspective July 16-31, 2003 http://www.csss-isla.com/wp-content/uploads/2015/06/July-16-31-03.pdf*

35 Allauddin Siddiqui, 13th May 2018, Personal Communication

36 India: No Justice for 1984 Anti-Sikh Bloodshed https://www.hrw.org/news/2014/10/29/india-no-justice-1984-anti-sikh-bloodshed

hamal carnage, a bench of Chief Justice T S Thakur and Justice Uday U Lalit observed that they found it "disturbing" that of the 362 trials that were completed, only 78 had resulted in conviction. The Supreme Court expressed grave concern over the fact that almost one-third of the cases registered were closed by the state police on the ground that either the offenders could not be traced or no offence was made out. "Such a large proportion is quite disturbing. The state could do well in looking into all these 315 cases and see that the offenders are brought to book." It further noted that "The concerned authorities must see to it that the matters are taken up wherever acquittals were not justified on facts." Its been two years since, and nothing has moved towards the direction of justice.[37]

We interviewed one of the five survivors and witnesses of the notorious Hashimpura massacre wherein 42 Muslim men were rounded up and shot dead and their bodies thrown away into canals by PAC men. And despite him being one of the witnesses, he was not allowed to identify the accused. All the 19 PAC men were acquitted and it is claimed that there is no credible evidence to hold anyone accountable for such a mass-scale killing by those in uniform.[38]

But even within these many massacres we have studied, the most notorious example is Nellie, in which every single criminal case was closed, and *not a single* person has or will face trial for the crimes of that carnage, one of the most brutal since Independence, in which around 3000 men, women and children were slaughtered in the matter of a few hours. A political accord signed with the agitators– the Assam accord – facilitated this universal closure of all criminal cases, which amounted to an undeclared amnesty to the perpetrators of this massacre. Not only the police and prosecution, but the courts as well mechanically accepted a political mandate to close all cases, failing to consider the facts of each case, before deciding whether or not it deserved to be closed.

The Assam Accord explicitly denied immunity to those accused of "heinous" crimes. The Accord only stated that all cases except heinous crimes would be reviewed, but this provision was deliberately misinterpreted to close all crimes, including of murder, without submitting any of these to trial. Had the courts functioned independently, they would, at a minimum, have queried the withdrawal of cases related to the Nellie massacre. We examined copies of 100 charge-sheets from Nagaon district, and these are fairly detailed – certainly, detailed enough to initiate criminal trials, had the state been willing. There is very little opposition or outrage against this de facto amnesty anywhere in the country.

Human Rights Watch reports that the Delhi police filed only 587 FIRs for three days of violence that resulted in 2,733 deaths in 1984. Out of these, the police closed 241 cases without investigation, claiming inability to trace evidence.[39] 37 percent of the cases from Delhi 1984[40], from the 418 FIRs analysed by us, resulted in summary closure and the grounds recorded for closure is that the accused person/s were untraceable. The anti-riot cell got 255 new FIRs registered in and around the years 1987, 1991, 1993. Of these 123, which means 49.8 percent cases, are recorded as closed on grounds of the accused being untraceable, and the FIR was cancelled, or the proceedings were abated.

The police simply stood by, and were often complicit in the attacks. Instead of holding those responsible for the violence to account, many police officials and Congress party leaders involved have been promoted over the last 30 years.

By the end of December 1989, the Bhagalpur [41]administration had registered 564 cases in relation to the mass violence. Of those 564 cases, 174 were charge-sheeted, while 390 were closed summarily. As the Commissioner of Bhagalpur noted, this meant that of the cases initially registered in the aftermath of the Bhagalpur massacre, almost 70 percent were closed summarily and about 30 percent resulted in charges being framed against the accused. The 85 percent summary closure rate in Kotwali Police Station is particularly striking, since Kotwali Police Station dealt with some of the worst violence in Bhagalpur town. The Commissioner ascribed the high rate

37 http://www.newindianexpress.com/states/odisha/2016/aug/05/Revisit-cases-SC-tells-Odisha-1505486.html

38 Anonymous, 13th May, Personal Communication

39 India: No Justice for 1984 Anti-Sikh Bloodshed https://www.hrw.org/news/2014/10/29/india-no-justice-1984-anti-sikh-bloodshed

40 Delhi 1984, Page 95, On their Watch.

41 Bhagalpur 1989, Page 129-132, On their Watch.

of summary closure to 'very bad drafting of FIRs, delay in commencing investigations, not allowing a roving inquiry by police officers, elections, the need to complete investigations in time. Be...[that]...as it may, this would result in lower convictions'[42]

The Bhagalpur Commissioner's Report includes information on the percentage of cases that have resulted in charge-sheets being filed, disaggregated by the religion of the accused and the complainant[43]. The highest percentage of FIRs that led to charges being framed against the accused were the ones where the police filed the complaints against Muslim accused – 77 percent of these complaints were 'charge-sheeted'. By contrast, only 30 percent complaints by police against Hindu accused resulted in charge-sheets.

It was during the Shiv Sena-BJP government's tenure that most of the cases pertaining to the communal strife in Mumbai were closed down siting that no proper records were available or the cases could not be substantiated. In June 2000, the Deputy Chief Minister and Home Minister, Chagan Bhujbal announced that 112 closed riots cases out of the total of 1358 were to be reopened.[44] Justice moved in a snail's pace and in many instances nothing moved.

The government of Gujarat[45] reported to the Supreme Court that of 4252 cases registered, 2020 were closed summarily. Therefore, 47.5 percent of cases registered never proceeded to trial. A high rate of 'Summary A' (accused untraceable) cases means that if the police find enough evidence to mount a charge in the future, the case can be re-opened. If the police are doing their jobs diligently, we should see a significant number of re-opened cases. We examined a sample of 400 cases to see how many cases summarily closed as "Summary A" were subsequently re-opened. We found that out of 400 cases, 157 cases were initially concluded summarily, amounting to 39 percent of cases analysed (which was 11 percent less than the approximately 50 percent summary closure rate in 2003). Thirty three of the 157 summarily closed cases (around a fifth of total summaries in a sample of 400) were re-opened, and thirty of these were charge-sheeted which amounts to 19.74 percent of cases initially closed being re-opened.

4. Delayed arrests and early bail

There is widely found to be selective delay in the arrests of the accused from the majority community, and far more alacrity in arresting accused persons from the minority community. Even within the majority community, far more arrests are noted in many sites of SC and ST, as well as working class, accused persons, who tend to be at most the foot soldiers of the violence, rather than the leaders, planners or organisers, who tend to go scot free. In Muzaffarnagar, even a year after the violence, less than 10 percent of the accused were arrested.

Our studies across sites also reflect a reluctance of police to oppose the bail to the accused if they are from the majority community, and to stoutly oppose the bail to minority accused persons.

'The pattern of arrests during and after mass violence in Bhagalpur[46]reflects strong bias against Muslims. The Commissioner of Bhagalpur admitted this: 'Notwithstanding the fact that...Muslims were at the receiving end for most of the time the number of Muslims arrested in substantial cases or in preventive cases was originally much higher than those of Hindus. After the new administration took over the arrests were examined and innocent persons released and by middle of January the number of Muslims in custody became less than those of Hindus'.[47] The Commission of Enquiry that was appointed noted, 'Not a single (Muslim) house was spared even though the cause of action for such searches in most cases was revengeful'.[48] Several months after the vi-

42 Commissioner's Report, para 39, in the "Report of the Commission of Inquiry to inquire into the communal disturbances at Bhagalpur, 1989," RCP Sinha and Shamsul Hasan.

43 Commissioner's Report, para 39, in the "Report of the Commission of Inquiry to inquire into the communal disturbances at Bhagalpur, 1989," RCP Sinha and Shamsul Hasan.

44 Engineer, Asghar Ali. Srikrishna Commission Report- Will it be implemented?*Secular Perspective* Feb. 16-28, 2001http://www.csss-isla.com/wp-content/uploads/2015/06/Feb-16-28-01.pdf

45 Gujarat 2002, Page 174-177, On their Watch.

46 Bhagalpur 1989, Page 125-128, On their Watch.

47 Commissioner's Report in the "Report of the Commission of Inquiry to inquire into the communal disturbances at Bhagalpur, 1989," RCP Sinha and Shamsul Hasan, para 37.

48 "Report of the Commission of Inquiry to inquire into the communal disturbances at Bhagalpur, 1989," RCP Sinha and Shamsul Hasan, para 111.

olence, the Commissioner told the commission of inquiry that 'whatever village are visited [sic] they still complained that prime accused have not been arrested and they are threatening the riot affected persons.'[49]

In Gujarat 2002[50], we requested RTI information about bail applications made by the defence in trials related to the 2002 riots. We received information from 118 police stations. Amongst the cases registered at these 118 police stations, a total of 4858 accused applied for bail and a total of 4516 accused were granted bail. The prosecution opposed only 283 applications; 445 applications were rejected. Again we note that the information we received is incomplete[51] as many police stations failed to respond. However, unlike for other episodes of mass violence where this information was unavailable, we did receive this information from over a hundred police stations. What is clear from these figures, despite their partial nature, is that the vast majority of bail applications were successful. Based on the records we have, 93 percent of accused who made bail applications were successful. Their success is unsurprising – the prosecution opposed less than 6 percent of bail applications.

The NHRC[52] noted discriminatory treatment on account of a larger percentage of Hindus being granted bail compared to Muslims. The allegations of discriminatory treatment of Muslim accused also appear in victim testimonies,[53] and in the affidavit of RB Sreekumar to the Nanavati Commission. In his affidavit to the Commission, Mr. Sreekumar asserted that accused persons belonging to the Hindu community, who were arrested for non-bailable cases, were immediately released on account of the partisan stance taken by the government public prosecutor, and also due to lack of keenness of the police. These allegations are supported by a comparison of the bail and remand experience of the 105 Muslim accused in the Godhra trial (one of the nine SIT trials) to those of the Hindu accused in the other eight SIT trials.[54]

One of the starkest instances of such double standards was for instance the delay and drama around the arrest of Bal Thackeray in the midst of the Mumbai riots. Despite the knowledge of his involvement in inciting the Hindus, the Bombay police sought Government of Maharashtra's permission before arresting Bal Thackeray. Permission for arrest is only needed for government servants. Probably the police was afraid of the consequences and did not want to take any responsibility. The Government took more than 10 days to stage the drama of arresting him.[55] Similarly, while the Srikrishna Commission Report clearly named about 32 senior and junior police officials who were guilty of showing raw prejudices against the minority and even killing them in the course of the violence, Mumbai police refused to arrest and instead to delay the same constituted a Task Force to "examine" the charges.[56] From Anita Pradhan whose husband was killed and dismembered with axes, to Praful Digal whose house was ransacked both in 2007 and 2008 for having "converted to Christianity", there are instances strewn across the blocks in Kandhamal where the victim survivors' complaint against the easy access to bail for the attackers or the accused in matter of months who then threaten them of dire consequences if they wish to pursue the cases. And in many if not most of these instances there has been a planned silence on

49 Commissioner's Report in the "Report of the Commission of Inquiry to inquire into the communal disturbances at Bhagalpur, 1989," RCP Sinha and Shamsul Hasan.

50 Gujarat 2002, Page 182-183, On their Watch

51 There are gaps and inaccuracies in the information in that in many cases the total figure for total bail does not tally with bail granted broken down by number of Hindus, Muslims, Scheduled Castes and Scheduled Tribes. We surmised that in response to some applications, the concerned Public Information Officer has confused the number of cases where bail was granted with the number of persons who were granted bail.

52 National Human Rights Commission's Order on Gujarat, (April 1, 2002), available at http://nhrc.nic.in/gujratorders.htm#no2. The NHRC noted discriminatory treatment from the figures it obtained for arrests of Hindu and Muslim accused.

53 Many victims complained about the grant of bail to Hindu accused charged with serious offences.

54 See section on "Special Investigation Team's trials", in current paper.

55 Engineer, Asghar Ali.The politics of arrest of Bal Thackeray.*Secular Perspective Aug. 1-15, 2000*. http://www.csss-isla.com/wp-content/uploads/2015/06/Aug-1-15-y2k.pdf

56 Engineer, Asghar Ali. Punishing guilty police officers in Mumbai riots.*Secular Perspective July 1-15, 2001* http://www.csss-isla.com/wp-content/uploads/2015/06/July-1-15-01.pdf

the part of the public prosecutor who do not challenge the bails for the accused.

The sordid saga of brazen impunity to culprits in the form of early bails and shoddy investigations continue in the mounting instances of hate crimes in the name of "*gau-raksha*" against the Muslims and Dalits that we have been witness to in the last few years. While instances of actual arrests in such cases are rare as the attackers are often identified as "mob", in the handful of cases where arrests were made, the accused were granted bail on flimsy pretexts while they were very much part of the vigilante leading or actively participating in the hate attacks. (Hapur Mob Lynching Case, Days After NDTV Sting, Top Court Orders Security For UP Lynching Survivor, 2018),

5. Cross-cases

Another standard practice we find across sites is of registering what are informally called 'cross-cases', or in other words, to file criminal charges against the complainants and/or strong and active witnesses from the majority community. These cases are sometimes both investigated or even heard in trial together, back-to-back. These cases are openly used to coerce witnesses to 'compromise' (see next section) and turn hostile in the matter, in return for which they will also be freed from investigation and arrest in the cross-case.

In Gujarat 2002[57] (Surabhi Chopra, 2014), for instance, the police filed "cross cases" – false cases against Muslims – under the influence of powerful persons with the sole aim of using the cross case as a bargaining tool to facilitate "compromise", or pressure the complainants to drop the case against the accused. This clearly amounts to abuse of process by the police and has led to a serious loss of confidence by Muslims in the criminal justice system.[58]A dramatic example of this was in the Naroda Patiya matters, in which for over 100 killings of Muslims, there was one Hindu who was killed. The accused in the former were quickly given bail. But the main and active witnesses were all charged with the single murder of the Hindu man, and were denied bail for 4 years, in order to weaken their resolve to pursue the matter.

The case of Pehlu Khan's lynching death where his sons are facing grave charges is a case in point. This is the experience in most cases of lynching of Muslims. The Muslim victims are charged with crimes as cow-smugglers and killers, while the police treats the members of the lynch mobs with kid gloves.

6. Creating social pressures to 'compromise'

We met Kanakrekha Nayak and her two young daughters in an urban slum in Bhuvaneshwar. Her husband was brutally murdered in 2008 and she was determined to fight for justice. She filed a case and started receiving threats even while they were living in the relief camps. They threatened to kill my children, she said. She persevered, but this meant that she had to leave Kandhamal and come as far as Bhuvaneshwar, such were the pressures and threats to force her to compromise, to give up. She and her elder daughter (then 6 years old) despite all odds and offers and dire threats identified the killer in open court. But at long last, she failed. She regretted as we spoke that she was forced to reconcile finally as none of the other villagers were willing to testify in the last hearing as they were being threatened. "I know because of this compromise, his soul will never be at peace even after death, neither is mine."[59]

One of the writers of this paper has in a detailed paper[60] described the processes by which witnesses and complainants after any carnage are weighed down upon to 'compromise' these cases. Indian law does not provide for compromise in matters involving heinous offences, but we find these to be the actual norm in cases involving communal, caste and gender violence. We find that compromise is often openly discussed not just by public prosecutors but even magistrates, and there are magistrates who term complainants who persist with their cases 'trouble-makers' and encourage illegal compromises

57 Gujarat 2002, Page 171, On their Watch

58 This insight is drawn largely from the grassroots work of the legal justice project, Nyayagrah.

59 Kanakrekha Naik, 29th April 2018, Personal Communication

60 Mander, Harsh. "Broken Lives and Compromise: Shadow Play in Gujarat." *Economic and Political Weekly* (2012): 90-97.

as contributing to social (or in the case of gender violence family) harmony. A compromise leads to the witnesses 'turning hostile', denying their own earlier statements and ensuring the acquittal of the accused.

There are many strategies to secure such compromise. We have already noted some, most importantly filing of cross-cases accusing the complainants and witnesses of crimes. In addition delayed arrests and early bail selectively secured for majority community accused persons leaves them free to intimidate witnesses with threats of violence. In rural riots in particular, we find that if the witnesses wish to return to their old homelands, the first price they have to pay is to compromise the cases involving men from that village. Survivors who are economically dependent on persons from the community of the accused – as farm workers, tenants, employers, moneylenders or buyers of their products – also are vulnerable to pressure to compromise only because their economic survival hangs from such a slender string. People who are rendered destitute by the violence are also vulnerable to offers of money to 'settle' the dispute. We have found that the amounts offered are very meagre, but for poor people reduced to destitution, even this sometimes offers a chance of bare survival.

The Supreme Court in the Best Bakery matter expressed astonishment that witnesses in the case had turned hostile en mass but the prosecution and the trial judge had not bothered to find out why.[61] Most stark example being of Zahira Sheikh and her mother Sehrunissa who were key witness in the Best Bakery Case. Zahira had openly demanded justice in front of everyone including the Chief Election Commissioner and NHRC Chairperson. However, after turning "hostile" Zahira and her family members refused to talk to anybody. BJP MLA Madhu Shrivastav was seen in her vicinity in the court premises.[62] Both of them much later admitted that they turned hostile as they received death threats. Before the Best Bakery case the NHRC had directed the Gujarat Police Director General to provide protection to the witnesses who were to appear before the trial courts. But of course neither the police nor the Gujarat government who were complicit in the crimes, paid any heed. This brazen tampering of witnesses played a critical role in the acquittal of all those accused in the Best Bakery case.[63]

The Supreme Court thereafter reiterated the importance of witnesses to the criminal justice system, the court asked the state government to ensure their protection in order to prevent erosion of public confidence in the justice system.[64] The apex court repeated this call for a robust witness protection system in 2009 while setting up an SIT to reinvestigate some cases of the carnage. The court ordered that all witnesses who felt the need for protection must be given the same. Pritarani Jha[65] observes that 'The state did comply with the order and provided security, but made no efforts to ensure it was effective. A "protect-

61 See, Best Bakery judgment, para 7: "When a large number of witnesses have turned hostile it should have raised a reasonable suspicion that the witnesses were being threatened or coerced. The public prosecutor did not take any step to protect the star witness who was to be examined on 17.5.2003 especially when four out of seven injured witnesses had on 9.5.2003 resiled from the statements made during investigation."

62 Engineer, Asghar Ali. No justice Nanavati, what you say is not correct.*Secular Perspective 1-15 June 2003 http://www.csss-isla.com/wp-content/uploads/2015/06/June-1-15-03.pdf*

63 *Engineer, Asghar Ali. Justice aborted in Gujrat. Secular Perspective July 16-31, 2003 http://www.csss-isla.com/wp-content/uploads/2015/06/July-16-31-03.pdf*

64 See, Best Bakery judgment, para 41: "Witnesses, as Benthem said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their bench men and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smoother and trifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice."

65 Pritarani Jha is a legal activist and researcher based in Ahmedabad. She led the Nyayagraha Campiagn for justice for survivors of mass violence and violence against women. She has worked extensively on the Gujarat carnage (2002).

ed" witness told us that despite the security, agents of some politically powerful accused had contacted her several times and offered bribes to turn hostile. She refused and went on to give evidence, but the experience left her feeling insecure. Not without reason: Nadeem Saiyad, a witness in the Naroda Patiya massacre case was murdered in broad daylight on November 2011, and this study found -- as previous research done by CES had[66] -– quite a few instances of the police harassing, intimidating and bribing survivors to not testify against the perpetrators'.

More recent example is of course Muzaffarnagar. There have been constant efforts here by political parties to reconcile/compromise on cases between communities. Khap panchayats have been specially organised towards this end. Purpose being to flex muscles and effect a compromise. It is, after all, the Muslim (minority) community that bears the major share of the compromise as they are the ones who were attacked and who had filed 594 out of the 634 originally filed FIRs.[67] Khap panchayats is just one such route towards compromise, there are others too. Political parties for instance also attempt to influence the District Magistrate to effect a compromise. There were for instance two such (failed) attempts around Muzaffarnagar.[68]

7. Faulty charge-sheets

As we noted, typically more than half the cases connected with mass targeted violence are closed even before submitting them for trial. The others which go for trial are enfeebled also at the stage of filing the charge-sheets. Among the typical devices to weaken the cases at this stage is to apply less grave sections of the IPC, to erase crucial names from the list of accused and the list of witnesses.

There is widespread evidence of sexual violence against women in the unofficial reports on mass violence in 2002[69]. Detailed and chilling testimonies of rape survivors are recorded in various civil society reports[70], but the responses from police stations to our RTI applications suggest that very few cases of sexual violence were actually reported and recorded. There were three sexual offences reported by Panchmahal district, but the FIRs provided do not record any sexual offences, indicating either that witness statements specifying sexual assault were taken after a complaint that didn't include specific allegations of rape, or that the police deliberately excluded such references, or that they erroneously undercharged the accused despite the complainant alleging sexual assault. This error was made in one of the cases where Nyayagraha a civil society campaign, is supporting the victims. Despite one of the witnesses alleging gang rape and having undergone a medical examination, the FIR did not include a rape charge. In this case the charge-sheet was also similarly defective, and was only rectified to include the rape charge upon an application by the victim's advocate. At least one post-mortem in the Naroda Patiya case indicated a possible case of sexual assault, yet no investigations were carried out.[71]. The Bilqis Bano case, discussed above, is the only rape case that has been successfully prosecuted so far. Six police officers and two doctors were also names in the charge-sheet in that case.

In some cases, as in Kandhamal, the police deliberately charge sheeted the accused under an offence entailing a lesser punishment. Sunil Kumar Naik, was charge sheeted the accused under Section 435 IPC instead of Section 436 IPC thereby holding him culpable for a lesser offence.[72]

66 See, "Acquittals and Appeals" section of Gujarat Chapter, CES report, pp 199-202.

67 Muzaffarnagar Riots: In the Denial of Justice, Politics is Never Far Behind, https://thewire.in/communalism/anatomy-justice-politics-muzaffarnagar-riot-cases

68 Muzaffarnagar Riots: In the Denial of Justice, Politics is Never Far Behind, https://.in/communalism/anatomy-justice-politics-muzaffarnagar-riot-cases

69 International Initiative for Justice in Gujarat, "Threatened Existence: A Feminist Analysis of the Genocide in Gujarat" (Forum Against Oppression of Women, December 2003).

70 See "Hard Facts", 42-45, which covers details of three rape cases in Naroda and one in Gulbarg; also the IIJ Report, and the sections on Naroda Gaon, Naroda Patiya, Sardarpura and Gulbarg in the Concerned Citizens Tribunal, "Crimes Against Humanity", Vol. 2, (Mumbai: Citizens for Justice and Peace, 2005), available at http://www.sabrang.com/tribunal/tribunal2.pdf.

71 "A Window to Horror," Tehelka, Vol. 5, Issue 16, (26 April 2008).

72 Kandhamal: Introspection of initiative for justice 2007-2014: pg 134 Original source: 'Kandhamal: The law must change its course' by Saumya Uma, edited by Vrinda Grover,New Delhi, MARG 2010, , see Pg. 115. https://works.bepress.com/saumyauma/48/

While a charge-sheet against the majoritarian community doesn't materialise in decades, that against the minorities gets made in months. In Marad for instance, the government ordered the constitution of a special investigation team (SIT) of the Crime Branch of the police and within two months, the SIT finalised a charge-sheet against 150 persons! Of course all were Muslims. It included five children and the others were easy picks or rather they were picked up based on a certain profile based on their professed political/religious beliefs. The key accused were brothers and sons of a local Muslim leader who was killed in the communal violence in 2002. It did not seem to be a product of any credible investigation but were all part of suitable narrative. Such are the shoddy nature of charge-sheets prepared by a biased police administration.[73] Even the Judicial Commission appointed in the aftermath of the 2006 instance of violence, recognized that in the preceding instance of violence where Hindus were also involved, the charge-sheet did not get prepared for years, in fact not even till the 2006 violence. But in the latter instance, it got made in months. The Judicial Commission also noted that the delay in filing charge-sheets in the preceding January 2002 incident at Marad contributed to the feeling of vengeance amongst the minorities in Marad contributing towards the 2006 violence. It could have been averted had justice been delivered timely in 2002 itself.[74]

8. Biased prosecution and limited role for lawyers of the victims and witnesses

We have found that often the public prosecutor in cases related to communal violence play a very dubious role. They are many a time actually on the side of the accused, and connives with the defence lawyer to weaken the prosecution case during the lower court trial. If this happens the victim is virtually helpless to intervene effectively to ensure justice.

The victim is not barred from appointing her own lawyer, but she is usually too impoverished and unfamiliar with the law to do so, unless supported by human rights organisations. But even when she does have a lawyer, the latter's role is largely of a watching counsel. She does not lead evidence independently from the public prosecutor, and does not have the right to cross-examine the witnesses, nor present arguments. If the public prosecutor is honest and unbiased, they can work together as a strong team. But if not – as is often the case – then the lawyer is largely reduced to mutely watching the proceedings and protesting in writing only when she observes clear illegalities. Recent changes in the Cr PC have at last recognised victims' rights in the legal process but in practice these rights remain limited.[75]

In Bhagalpur (1989), some survivors expressed worries about the public prosecutors interacting with the accused and their families outside the courts. Mohammad Bhoju, 42, whose father was killed, says he felt the judge, the government-appointed prosecution lawyer and the police were in collusion with the accused. His case continued for over four years. He would go for court hearings regularly. His eyewitness account was crucial to the case but in 1994, in his last deposition, he refused to identify the accused in court out of fear of reprisals. However, if the case is reopened now, he says, he would do all he can to see the accused punished.

One of the worst, and most commonly cited, issues among survivors in Kandhamal that is impeding justice, is the complete absence of any witness protection system or even a semblance of it. Ania Pradhan's husband was axed and killed in 2008, Kandhamal. His body dismembered and left in the jungle. It was only after a week that they located the body parts. But by the time they called the police and returned to the same spot, the head was missing which she presumes was an attempt to avert identifi-

73 Between hope and fear R. KRISHNAKUMAR *in Marad https://frontline.thehindu.com/static/html/fl2022/stories/20031107004902000.htm*

74 Verdict on Marad Violence, Frontline Volume 26 Issue 03 https://frontline.thehindu.com/static/html/fl2603/stories/20090213260310400.htm

75 The 2009 amendments to the Code of Criminal Procedure (CrPC), by bringing in Section 372, allowed the victim to challenge an acquittal even if the state (represented by the public prosecutor) was not willing to do so. But this wasn't enough as an acquittal can only be challenged at the end of a trial process. As far as the question of bail being granted to the accused is concerned, the victim was completely excluded from the process and was left dependent on what the public prosecutor would –or would not – do.

The Madhya Pradesh high court, in its order in July 2018 has made space for the victim to challenge bail thereby giving the victim more say in the legal process. See, https://thewire.in/law/by-allowing-them-to-oppose-bail-mp-high-court-leads-the-way-on-victims-rights

cation. Their house was also burnt down and all this just because they had converted to Christianity years back. "I would have been happy if they were given life sentence, but they were let off in a few months. They bribed their way out of it", said Anita. "I want to pursue justice. But no one is willing to help. Witnesses are not ready to testify." And this seemed to be story strewn across Kandhamal. An elusive justice that was sabotaged through the entire course of the ten years since the carnage.

With such a dubious role of the public prosecution and such deliberately adverse conditions for the witnesses, it is no surprise that justice has been successfully sabotaged at every juncture.

9. Failures to appeal against acquittals

Related to the earlier point, the right to file an appeal against the order of the trial court in any criminal matter again lay with the accused or the prosecution, and not with the victim. If the state institutions and officials who operate the criminal justice system are biased, then they simply choose to not appeal against an acquittal, and the case is even more firmly buried than the closure of the case without trial, in which at least the opportunity exists in theory for the case to be reopened on a later date. The victim's rights were only to file a review petition, the grounds of which are much more limited than that of an appeal, and can move the higher court not on grounds of disagreement with the ways the evidence was evaluated by the trial court, but only if they charge outright illegality in the process of the court.

10. Court bias and delayed hearings

Salim Akhtar Siddiqui says that cases were filed immediately after the killings in Maliana in 1987 when the region had hardly recovered from the violence in 1982 in Meerut. "But even after thirty years lawsuits are still running and that too supposedly in 'fast-track' so to speak, but it's in a condition that is worse than a slow-track case. No statement has been recorded till now."[76]

Our analysis has already revealed ways in which trial courts can exhibit (or permit) bias and contribute to impunity, such as by allowing or even encouraging compromise. The Supreme Court noted this in the landmark Best Bakery matter, in which it said the lower court had functioned merely like a 'tape-recorder', mutely observing witness after witness turning hostile and the prosecution case collapsing. It found the bias of the judges so pronounced, that it ordered that the matter be heard outside the state of Gujarat.

Another very common ploy to ensure impunity is to endlessly delay proceedings. This does burden the accused, who has to appear for hearings over many years, with uncertainty about one's future, and sometimes curtailment of rights such as to travel overseas. But more importantly it serves to tire the witness out – they age, and may even die during these prolonged hearings stretching over long years, sometimes even decades. More pertinently, with the passage of time, witnesses can forget and get confused. This further compounds many infirmities which we referred to in the sections above, sealing the fate of the case even more firmly.

Judges have wide discretionary powers under various provisions of the CrPC to issue orders regarding further investigation if they are convinced the initial investigation is defective, incomplete or biased. They have extensive powers to summon witnesses and ask for relevant documents in the interest of justice. The Supreme Court ruled in the context of the Best Bakery massacre. 'The courts, at the expense of repetition we may state, exist for doing justice to the persons who are affected. 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 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.'[77]

In more recent cases, two more trends can be seen. The first is intimidation through the use of

76 Salim Akhtar Siddiqui, 13th May, 2018, Personal Ccommunication

77 Best Bakery judgment, MANU/SC/0322/2004, para 55.

videos of the crimes. In a visible pattern across cities during hate attacks against Muslims and Dalits, the attackers' film videos of the lynching and upload them. As is documented in the Karwan-e- Mohabbat journey to Ramgarh in Jharkhand, on the morning of June 27, coal trader Amiluddin Ansari left home in his car. About an hour later, his 17-year-old son Shahban received a video on WhatsApp that featured Amiluddin being lynched by a mob of young self-styled cow vigilantes. Similar videos were circulated from Rajasthan involving Shambhulal Rehgar on Mohammad Afrazul's gruesome lynching, on Muhammad Qasim and Samiuddin in Hapur. These videos are circulated not only because the attackers are convinced of the impunity but they also use it to inflict fear among the victim's community.

The second is what can be termed as 'anti forensic', the tricks and techniques that are used and applied with clear aim of forestalling the forensic investigation.Many years ago the photographer and writer Allan Sekula coined the term 'counter forensics'to describe the deployment of forensic techniques by human rights investigators and their colleagues (including forensic anthropologists, photographers, and psychotherapists) in order to challenge oppressive regimes or respond to their aftermath. Counter-forensic practices seek actively to block the deposition or collection of traces and/or to erase or destroy them before they can be acquired as evidence by the oppressive regimes. In our recent visits to sites of lynchings, we discovered blood soaked mud, footwear of the victims, blood on the floors and walls, blood-soaked hand prints of attackers, none of which were collected by the police or the investigating authorities. The areas, with visible signs of attack were neither cordoned off nor protected for forensic investigation. The families of the victims confirmed that no samples were collected by anyone. This pointed to a clear 'anti forensic' technique being used by the police to destroy the evidence and weaken the cases.

What can be done – some first steps to a reform agenda

Our analysis of what causes communal violence focussed on the one hand on the role of communal organisations like the RSS in fomenting hatred and organizing riots, and on the other hand on the role of state authorities who enable this hate and violence to occur and continue, and who fail to secure justice and succour to the victim survivors of the violence. What must be done to fight the power and reach of communal organisations and ideologies is very critical, but are beyond the scope of this chapter, simply because this must encompass every aspect of the social and political life of the country, its education, media and political culture. This section will deal more narrowly with what must be done to prevent state actors from enabling, condoning or even participating in communal violence.

1. Creation of a new crime of dereliction of duty by public officials, with command responsibility:

Communal and hate crimes that disproportionately target Muslims, Christians and Dalits are, as we have seen, in the large majority of cases accompanied by the openly partisan role played by police officials and the executive magistracy. These special crimes that target people because of their identity need to be carefully defined. The law needs to create a new crime of dereliction of duty of public officials in crimes that target people because of their identity, with enhanced gravity for those who exercise command responsibility. There should also be a clear onus on the DM and SP to ensure that charges are filed expeditiously against all people who engage in targeted violence, and to secure both reparation and support to the victims.

This was central to the Communal and Targeted Violence Bill proposed by the National Advisory Council of the UPA government (full disclosure that one of the authors of this paper, Harsh Mander, was a member of the National Advisory Council). Eventually, this version of the Bill was not even permitted introduction in the Rajya Sabha in 2014. Before the NAC draft, the union government drafts of the Communal Violence Bill mainly aimed to greatly enhance the powers of the police, on the premise that these increased powers are needed to enable police and governments to take decisive steps to prevent and control mass communal violence. The official draft Bill provided for governments to declare areas in which communal violence is imminent, or has actually broken out, as 'communally sensitive'

areas. In these areas, for the duration of the notification, the police would function with expanded powers, and there would be enhanced punishment for crimes committed in this area, and special courts would hear the criminal cases that arise.

The assumption of the government drafts was that if only the powers of police and governments are augmented in communally charged times and areas, they would control communal violence effectively and decisively. This assumption flies in the face of the actual evidence and experience of successive episodes of communal violence, as noted in this chapter. It is not that governments were *unable* to control violence because they lacked the legal muscle. Instead, we observe often that state officials deliberately enabled the violence by deliberate inaction, or active participation and encouragement of the violence. We saw that communal carnages occur because they are systematically planned and executed by communal organisations, and because governments which are legally and morally charged to protect all citizens, deliberately refuse to douse the fires, and instead allow rivers of innocent blood to flow.

We are convinced, therefore, that we need a very different law, not one which makes police and public officials more powerful, but instead one which forces them to be legally answerable to the people. They are responsible to serve and protect effectively and impartially. In present law, public officials can at best be charged with active conspiracy and participation in mass violence (although even this is rarely done). But the worst crimes of police and civil authorities, and those in command positions like Chief Ministers, are of deliberately refusing to take action to prevent and control violence. We need law to recognise such deliberate inaction – because of which killings, rape and violence continue unchecked for days and sometimes weeks – to be grave and punishable crimes against humanity. And this needs to be tied to the idea of command responsibility, so that not just the officer on the ground, but those on whose command they act or fail to act in ways that enable and encourage communal violence, should be held guilty of this dereliction of duty.

2. Recognition of new crimes, specially of gender violence

The law also needs to recognise new crimes, especially of forms of gender violence during communal carnage. The narrow definition of rape does not envisage the many forms of gendered crimes that are common in mass violence situations, such as stripping and parading women, mass disrobing by the attacking men, insertion of objects into bodies of women, cutting breasts and killing of children in the womb. The procedures for recording complaints, investigating and trials also need to be sensitive to the suppression, fear and sense of public shame which shrouds in silence most such episodes of targeted violence against women.

3. Reparations for Communal and Hate Crimes

In most episodes of communal violence, as we observed, states are partisan also in extending relief and compensation. Such an implied hierarchy of official valuation of human lives of people of different persuasions and ethnicity is intolerable. The government in Gujarat in 2002 refused even to establish relief camps, and forced the pre-mature closure of the privately established camps. The law therefore must establish binding standards for awarding compensation after communal violence, and duties relating to rescue, relief camps, rebuilding of homes, livelihoods and places of worship.

Communal and hate crimes are not ordinary crimes, as they are built on hate and prejudice, causing serious harm to the physical and moral integrity of individuals and the very existence of the entire communities of the same religion/caste. This requires also an "atonement model" of reparations, in which public apology is central and monetary and other reparations are necessary to send a clear signal that the state understands the harm committed, that it takes full responsibility. The objective should be to make reparations transformative; to repair relations damaged by injustice; and not to merely return to a state of affairs that existed before the injustice was done.

Compensation should include a minimum of 15 lakh rupees to the nearest beneficiary of those who were killed; and monthly pensions of 5000 rupees to the widows of men who died and, in case

the men who were not married, to the mothers of those killed; 2) scholarships for children of persons killed, or seriously disabled during hate violence, up to higher education; 3) Full reimbursement of medical expenses or treatment for disability or injury resulting from hate attacks for as long as the treatment lasts, including life time medical support; and 4) Compensation for persons whose real or personal assets of moveable and immoveable properties, such as cattle, trucks, vans, shops, farms were lost or damaged during hate attacks, covering the real value of these assets.

4. Administrative and Police Reforms

The partisan role of the police in investigating hate crimes against religious minorities and disadvantaged castes also requires early implementation of the Fifth Report of the Second Administrative Reforms Commission envisaging a clear separation of the investigation functions of the police from its law and order functions; and the creation of independent District Grievance Redress Councils to deal with complaints against the police. Special fast track courts and independent public prosecutors should be instituted which dispose of all cases of lynching and hate crime within a span of six months to a year.

5. Enact a comprehensive Anti-Discrimination law and constitute an Equal Opportunity Commission to oversee implementation of such a law

Today, India is almost alone among modern democratic nations in that it lacks any comprehensive anti-discrimination law or central implementation agency (like an Equal Opportunity Commission) to realize its constitutional commitment for social and economic justice and inclusion. Therefore, in order to promote inclusion, and provide legal redress for widespread and systemic discrimination against all deprived and discriminated groups – whether on the basis of gender, caste, religion, race, ethnicity, disability, sexual orientation, or any other – the government must commit to enacting a comprehensive Anti-Discrimination legislation and constituting an Equal Opportunity Commission (EOC) to oversee implementation of such a law.

This anti-discrimination law and mandated EOC must protect against multiple forms of discrimination and cover multiple spheres of activity—in both the public and private sectors. These include, but are not limited to, the arenas of employment, education, housing, financial sector services such as banking and loans, and provision of public services. (This incidentally was one of the key recommendations of the Justice Sachar Committee).

6. Stronger Penalties for Use of Religious Hatred in Elections

Election law must be amended and strengthened to incorporate much stronger penalties including disqualification and deregistration of parties for the use of religion during elections, and more generally for hate speech during elections.

Afterword

Having said the above, we ought to recognize that what we need most is a recognition of the malady and a political will to confront it. If the majority in the country remain in the grip of a majoritarian consensus as they seem to do today, none of these reforms would see the light of day or even be conceived. So, the foremost task today is to highlight and emphasize the secular foundations of the republic as enshrined in the Constitution and embrace our pluralistic heritage. Access to legal justice for victim survivors of targeted communal violence is essential to reinstill faith and confidence on the democratic credentials of our nation.

We have spoken to victims of caste and communal carnages in many parts of the country, and found that the most important reason that they cannot find closure even years later is because legal justice is not delivered. 'How can we forget, even less forgive, if we see every day the man who raped our daughter or killed our father, walk free; when not once has he had to even see the inside of a police station or a court? How can we believe we are equal citizens of this land?' These questions still await an answer.