

Anatomy of despair The Situation...

As more bizarre events unfold in the state of Gujarat, media attention on the stories of riot victims are slowly disappearing with attention exclusively focussed on the election process. CHRI keeps the issue alive by bringing you snippets of the "real stories".

This article summarizes a speech made by Maja Daruwala on 15 August, 2002, India's Independence Day, at a conference on Human Rights and Minorities in India. It captures the Gujarat riots in a social, political, legal and human context.

It is difficult for me as an Indian and someone who loves my own country very deeply and cares about every little thing that happens there to be standing here before you to discuss such a tragic circumstance as Gujarat on the 55th birthday of the nation. I would have liked to be standing here talking about the great strides we have made in development, democracy, the successful way we have managed our diversity and realised our human rights. But uppermost on our minds is the huge challenge to these core values of our Constitution that the events in Gujarat have thrown up.

It is useless to say that we must not speak of this. Or speak of it only in whispers or at home. If we love truth and justice and love our country, our culture and our constitution, speak we must.

Gujarat should not have happened but it did and to my mind it is inevitable that it should have happened and will happen again and again unless there is a great shift in the way politics and governance have come to work in India today.

It is not possible to itemise the many historical, cultural and sociological dimensions that went into the making of a Gujarat but as a lawyer and a constitutionalist my concern is for the challenge that targeted violence supported by state complicity poses for rule of law, human rights and the accommodation of diversity which are all part of the unalterable basic structure of our Constitution and core values on which we agreed to build a modern nation 55 years ago.

There is a myth that the State machinery failed and could not cope but that is not true. There was functional machinery that worked and is working; but is not working to any constitutional tune but to the agenda of a high jacked state. The State has not eroded or weakened. Rather Gujarat is the quintessence of what governance and politics have become.

Money, muscle power and a strong nexus between criminals and politics throws up such leadership material from within which the conscientious voter is forced to choose between the bad and the worst. The dynamics of politics ensures that manifesto promises mean little and do not form the mandate against which performance can be judged and voters must make an expedient choice based on short term advantage.

There is now a strong political class that is supported in ruling according to individual dictates and ideologies; which are not necessarily constitutional, - by the steel frame of the bureaucracy - or the iron cage of bureaucracy depending on your point of view. Their will which is willy nilly now the State's will is enforced by its coercive arm the police. They all function in tandem and they all function very efficiently when they want to. In the absence of an effective, speedy and accessible justice system all these entities, politicians, bureaucrats and the police depend on each other for protection and are part and parcel of one class for example a recent study indicates that contrary to belief 95% of all candidates come from the top docile of rich and are basically not willing to call anyone to account.

But if that is the leadership what of the people? Many commentators are mystified and ask but how could ordinary people suddenly have turned on each other? The answer lies in the erosion of rule of law. When

this breaks down and law and order is wilfully subverted by those in power there emanates a strong message that it is okay to break the law. Communities that had been living in amity with one another at a subsistence level and who are not prone to doing wicked things realise there is a benefit and incentive to break the law especially when impunity is near assured. So the agenda is set at the very top but the operationalisation and resultant suffering happens at the bottom.

The relationship between citizen and state envisaged in the Constitution has not, in these 55 years, evolved on the basis of sovereign citizen and elected representative but rather it is the relationship between patron and pleader. As you go down the economic and gender scale it becomes the relationship between master and servant.

This will continue to be the case in the absence of easy, speedy and effective access to courts. In the absence of an impartial inexpensive and nearby mechanism to adjudicate disputes people will turn to wicked patrons and corrupt the police in order to ensure their own safety and security. Equally in the absence of knowledge about constitutional norms of equality, pluralism and non-discrimination the large mass of the population will continue to live with an age old and living system imbibed from childhood that is based on social exclusion whether it is Dalits or Muslims or any other community; or whether it is based on social stratification as we see with women.

But if social separateness of communities is a living norm so is coexistence. You have to deliberately introduce nurture and spread communal poison to turn it into killing, carnage and the intolerance that we are seeing in Gujarat today.

But, when things go wrong a powerful state has the ability to send strong signals of approval or disapproval and bring things quickly back on to the paths of constitutional norms.

So what has been the response of the state? You have heard endless accounts of the targeted killing, rapes etc. Every report most particularly that of the NHRC has strongly castigated the state government and made accusations that the police did not do enough and could have done more. In my view from the response of the Gujarat government to the NHRC it becomes clear that the police were alive to the danger especially right after Godra and were taking all steps to ensure that things did not escalate but bent to the alleged orders of the Chief Minister made on the night of the 27th to let peoples feelings have full expression and not to come in the way of what he assuredly knew would be fulsome blood letting.

To my mind this changed the course of events. The police politicised and communised as they are, felt they had no choice but to comply. The Ahmedabad Police Commissioner admitted that where the whole society has opted for a certain colour in a particular issue, it is very difficult to expect the policemen to be totally isolated and unaffected. The administration has said as much. Both display bias and both are wrong. All must be held accountable.

How else has the state responded;

- There was an initial refusal and tardiness in setting up camps
- Refusal to recognise the gravity of the situation or to stem it
- Discrimination in awarding compensation - 2 lacs to the Godra victims and 1 or less to those killed in the subsequent carnage; the NHRC has commented on this and this was withdrawn – even then this compensation is nugatory. It is blood money and does not touch on accountability. It is basically a way of saying shut and sit down
- The use of Prevention of Terrorism Act immediately against people involved in the Godra incident was too withdrawn for its patent misuse.
- Refusal of the government on grounds of political expediency to dismiss the Gujarat government - or even to rap Mr. Modi over the knuckles and in fact to say that he was doing a good job and should not resign even though he had presided over the deaths of 2000 people; the destruction of an estimated 3000 crores of property; and seriously jeopardised development within the state and its future;
- Inadvertently or not, our top most leadership speaks in terms of “we” and “they” and this has

been much remarked on. In doing so they articulate the feeling at the sectarian heart of the VHP/RSS combine that reinforce notions of segregation that the Constitution of India tries to remove.

- One of the most cynical response must surely be the unseemly desire to hold early elections in order to gain party political advantage from the momentary arousal of the most base sentiments in the public consciousness. This in a situation where a whole community has been virtually disenfranchised and even the majority of the population who did not take any part in the carnage are intimidated and insecure. At the best of times money, muscle power and the well known criminal political nexus skews elections. But add to that the new religious and communal intimidation and ones hopes for a genuine well informed choice is not available.

The government insists that normalcy has returned.

I refute that: it cannot be normal for an entire population and more particularly a segment of it to live in insecurity. It is not normal for men and women deprived of their children and life partners, of their livelihoods and loves, to be asked to go back into communities where they are forced to be in daily contact with gangsters, looters, rapists, arsonists and unrepentant purveyors of hatred. It is not normal to offer them nugatory compensations of as little as £3 and ask them to sign "unofficial" bonds that they will not file criminal complaints and not ask for more. It is not normal to pretend that there are systems of redress in place which will eventually provide them with just compensation. It is not normal to pretend that there are homes available for people to go back to in safety - especially for women who have been raped or lost their breadwinners. It is not normal to ask them to hold their peace and vote for those who may be in close proximity to their tormentors.

What normalcy means is well illustrated in the story of Adambhai. Adambhai lived in the Kalol area from where it was rumoured some of the perpetrators of the Godra outrage came. It was a high risk area. Kalol is close to Godra. But despite prohibitory orders and full knowledge that trouble was a certainty, the police pleaded little could be done. In the event a mob of about 100 people came on the day after the train incident and looted shops and houses. Muslims ran away into the field hoping peace would be restored next day but next day much large mob of at least 1000 Hindus entered the village, and armed with weapons, hunted down members of the community. Adambhai and others witnessed the deaths of more than 18 people of which 8 were of his own family. Other eye witnesses say that their own local policemen lead the mob. Bereft and traumatised Adambhai fled to the relief camp that had been set up in Godra by members of the Muslim community to provide shelter. In March when he had gathered some courage Adambhai sent a written complaint to the district superintendent of police because he could not bring himself to go and file it personally with the station. Adambhai has no way of knowing what happened to his complaint or if it is being investigated. He has not been summoned to provide witness. An "omnibus" first information report has in fact been filed in relation to the incidents in his village by the local police themselves. It does not mention murders, looting, arson. It talks of anonymous mobs responsible for violence without mentioning any individual instance of murder looting or arson. This is typical of how incidents are recorded. Investigations based on such loose wording can take any turn since there is little in specific that needs to be followed up. Convictions are guaranteed to be impossible.

Since February Adambhai has moved from Godra to a camp near his home. When that shut down he went back to his village. He has no business to support him and no family any more. Adambhai has received a total of £18 toward rebuilding his house. He is entitled to £2000 as ex gratia payment for each family member killed. But Adambhai can't find the remains of his loved ones. The police refuse to declare them dead, only "missing". Even if the police agree to accept that Adambhai has 8 missing members in his own family he will have to promise to return the money in case the "missing" person turns up in future. He needs to give a guarantee of "solvency". It is unlikely that he can. This is a return to normalcy for Adambhai.

It is in this context - of the life of an ordinary family man and good contributing economic entity and full fledged citizen of India who has been reduced to a terrified grovelling half - life- that we must decide what is it we must do.

Our hosts have asked us-how we may work for peace.

There are two types of peace: Peace with honour based on justice and the Peace of the grave.

For the living that passive peace is equivalent to being amongst the dead who have no choice in the matter. It is compromise. It is a badge of second class citizenry. It is unacceptable. Peace must be built on accountability. I don't speak of revenge but of ensuring justice through law.

So how do we ensure that there is access to justice and no impunity; that no act of human rights violation by the state or simple criminal bestiality by people, goes unpunished in a situation where there are already 20 million cases pending in the lower courts and the lack of access to justice is a scandal?

We join together in international solidarity; we unite across jurisdictions to insist on accountability; we commit to keep things under review even when others have forgotten. We follow individual cases; monitor and report on trends; lend assistance to those working for justice in -country; ensure that they have help and are not themselves in danger or intimidated; we ask for reform of systems such as police reform - this is so basic and so vital that we cannot hope to avoid a repeat of Gujarat without it; Since 1977 the Government of India and the State governments have sat on recommendations of the National Police Commission and resisted all efforts at reform of the police. Why would they when the police serve political ends so well.

There are many areas where reform is overdue but to my mind we cannot get anywhere unless we prioritise the reform of the justice system and we fight for electoral reform - you may have seen how stoutly all parties in our fractious democracy came together to resist the perfectly reasonable directive of the Supreme Court and the Election Commission that potential candidates reveal their criminal antecedents – their incomes and educational level.

If secularism and democracy are to survive in India the way we would want them to, we need to fight at many levels and on many fronts. International society must signal their disapproval of bad behaviour in-country.

This is a real challenge. How do you deal with perpetrators without punishing the whole country or restricting their access to aid and development assistance. Organisations like the Commonwealth keep countries under review at CMAG and trust to quiet diplomacy; the EU as in the case of Mugabe in Zimbabwe has imposed smart sanctions that prevent him and his close family from being welcome abroad.

Apart from diplomatic nicety there is the real possibility of private citizens filing complaints and States recognising them even when crimes are alleged outside the jurisdiction. There are precedents for invoking universal jurisdictions a la Pinochet.

This could possibly make it both an embarrassment and a serious legal hazard for people who have implemented, abetted or presided over human rights violation, to travel.

There are opportunities to air issues and get comments from the Committee on All Forms of Discrimination; at the human rights commission; etc. International Dalit solidarity has achieved this very well and only very recently.

We must not be inhibited by narrow definitions of who has legitimacy to speak out against human rights violations in any country and who has not. The language human rights has become common coin and it is the recognised basic value system of the international community of nations of which India is a part. Once a country whether India or Britain has submitted to the great covenants that guarantee our citizens' political and civil rights and assure non-discrimination we must submit ourselves to their disciplines and abide by their codes.

I believe India is a great experiment in constitutionalism, it is an unprecedented challenge to the notion that the quintessence of democracy is the accommodation of diversity and acceptance of dissent and differentness. Gujarat is the face of everything that went wrong .We here, talking with each other, symbolise what is possible and what is potential. With so much that has gone bad it is a time of pessimism but not. I hope, of defeat.

Someone once said that the only way to be optimistic about the future is to invent it. That is what we, living in India ,and many of you living outside, must do in solidarity with each other. So it is on us then that next year be one of celebration rather than one more of mourning for the India of our dreams.