

Anatomy of Despair

- Stories of Gujarat

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It is eight months since communal frenzy first gripped Gujarat. The government behaved like a servile spectator. An undeclared emergency suspended all basic rights of a section of society and gave license to the vandals of the majority community.

All emergency security services were suspended. The fire fighting and ambulance services only arrived at the scene of the crime after houses were burnt and bodies fully charred. The police remained passive witnesses of bloody violent enactments by unruly Hindu mobs. The situation cannot be termed very different today. The spectre of violence still haunts the victim compounded by the uncertainties of survival with each passing day. There is very little to be proud of in the areas of relief and rehabilitation and the Government has little to show to its credit. At the same time justice is being systematically denied.

In the beginning *First Information Reports* (FIRs) were tailor made to suit the motives of the police or substituted with cyclostyled FIRs, which replaced the names of the accused with terms like 'unruly mobs,' ensuring that there will never be any prosecutions. Today the legal system is loaded with sympathizers of the Hindu nationalist parties. Public Prosecutors often act more like defense attorneys for the accused murderers and as prosecutors of their own clients. Some of them are known office-bearers of Vishwa Hindu Parishad (VHP)! From these grim statistics one point emerges loud and clear- the elected government of Gujarat will not take any responsibility to rebuild people's lives or ensure justice, shifting that impossible burden to overstretched NGOs and private citizens.

And ordinary victims who try to rebuild their lives get caught in the spiral. Medinaben, a resident of Eral village, which falls within the jurisdiction of the Kalol police station, witnessed the rape of three girls including her daughter on March 2nd. Medina held onto her four-year-old son and five-year-old daughter as she watched eight members of her family being killed. Her father in law and mother in law were hacked to death. Even today Medina hears the cries of her 17-year-old daughter Shabana begging them to get off her and leave her alone. The screams of her niece Suhana, sister-in law Ruqqaiyya and Shabana begging, crying and pleading deafen her. She saw three men throwing her daughter around from one to another, raping and torturing her and then cutting off her breasts. Medina identified all the rapists and murderers. She named seven of them in her FIR. Of these only two have been arrested. A number of other arrests have also been made. But these are not the people that Medina named.

From March to June Medina stayed at Halol Village where she felt safe and protected from the rapists and looters. In September she finally gathered the courage to return home. However on October 1st, the situation took a sinister twist. Two people, Suresh Kalubhai

Odh and Raju Chandulal came to the village drunk, entered the house of Ismail Adam and Umar Adam, two other witnesses in the same case. Raju is the brother of Narendra Chandulal one of the main accused in the case. Both these men repeatedly threatened to kill all the witnesses if they opened their mouths in court.

Anyone who spoke against any Hindu would be burnt alive. Medina's case came up for hearing on October 9th. Medina is the prime witness in this case. She wants justice and she wants to see the men who raped her daughter behind bars. But she is also scared. Who can guarantee her safety? On October 6th, Medina was shifted back to Kalol where prominent leaders of the community reside. But how long will these people protect her? Today Medina is in no position to stand before a court and reiterate what happened to her family.

Neither are any of the other witnesses. So the only option left is to approach the court for a date. That is being arranged. But does that mean every time a case comes up for hearing this will be its fate? Will prime witnesses have to be shifted from one place to another just to ensure that they are alive before every hearing?

Medina asks for justice. What she asks for does not go beyond the law of the land. The people's trust in rule of law has been broken. But the Government insists that normalcy has returned!

The scar of communal frenzy that swept Gujarat runs deep. A section of society has been deprived of a basic ingredient of civilised existence. Their faith in the impartiality of the democratic system has been trampled upon. If we are to heal wounds and wipe out the shame of our barbarity we must ensure that Medina gets justice. She is a test case. She is the test for us to fulfill the divine design of creating man in its own image.

And if we cannot get rid of the callousness that is engulfing our existence, if we fail to get Medina justice, billion heads must bow down in shame.

The Forgotten and Foresaken in India's Prisons

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What kind of democracy would leave a man incarcerated for 38 years, give no final verdict on his murder trial, depriving him of his basic human right—a sane existence. The case of Ajay Ghosh from West Bengal who spent almost forty years in prison without trial is not an exception. In fact, more than 80 percent of the prison population consists of these undertrials, forgotten prisoners potentially following the fate of Ajay Ghosh. Neither judgements by the Supreme Court or guidelines by the National Human Rights Commission have been able to shake the stupor of this nation towards one of its primary responsibilities—prisoners and the prison system.

If there is one group that is most neglected, one section of the Indian population that is most derided, it is those confined to the four walls of a prison. The very mention of the word 'prisons' initiates a trail of negative thoughts for the common man. Yet, how do four walls make someone so different that they can actually be referred to as social garbage? Rather than serving as an important component of a civilized society, India's penal institutions have evolved into a symbol of man's inhumanity to man.

CHRI's mandate to work towards the practical realisation of human rights could not ignore the issue of prison reforms. We first searched for mechanisms of redress already available within the system. As CHRI scanned through the statute books to explore the possibilities of intervention, the system of Visitors came across as a channel that could be explored.

The law provides for two kinds of Visitors - Ex-Officio and Non-official Visitors [NOVs]. Ex-officio Visitors inherit the position by virtue of the official government posts they hold. Non-Official Visitors are appointed from the community to visit the prisons periodically and address issues, give suggestions and devise intervention strategies for the welfare of the prisoners.

The combination of Official and Non-Official Visitors forms the Board of Visitors, thus adding more teeth to the advisory power of the NOVs. A brief consultation with various individuals concerned with prisons revealed that the system has for decades been almost defunct and non-existent in spite of the potential it holds for change and reforms in prisons.

CHRI therefore began with a study of the system in Madhya Pradesh to look at the procedure more closely and determine what went wrong and where. The study facilitated a better understanding of the various gaps in the criteria for selecting NOVs, their appointment procedure, their experience and exposure to the ideology of corrections, etc. CHRI began endeavours to bridge these gaps and started with a series of training programmes and workshops (the first of which was held in July 2000) for the prison staff,

the NOVs, Non- Governmental Organisations, the Human Rights Commission and the legal fraternity.

This was the first instance ever when all the relevant actors and players were able to meet on a common platform. The differences in the way the staff and the NOVs had till then perceived each other's role did kindle a few sparks. However the outcome was very positive, enabling the NOVs to understand the difficult circumstances in which the staff worked and the limitations they experienced in carrying out their functions. The staff on the other hand were able to look at the NOVs as a medium for change, particularly in providing access to additional resources.

Having laid the foundation, CHRI is now looking forward to facilitate institutional participation in the area of prison reforms. In October 2002, CHRI organised a state level workshop, which brought together the State Human Rights Commission, Women's Commissions, various Government Departments, NOVs and the Prisons Department. The objective of the workshop was to encourage sustainable collaboration between all the participants to resolve the various issues ailing prisons. CHRI's long term goal is the active cooperation of all those mandated with the cause of prison welfare. By enabling the Visitors to network with institutions in resolving the problems that they come across in the prisons, CHRI will help them to carry out their roles effectively.

The attempt to carry the mandate forward continues. The nature of prisons keeps them isolated from the community. Therefore, we must take the community to the prisons, bring the public into the reality of those who have been forgotten. CHRI looks forward to playing the role of a facilitator and catalyst to the entire process.

Gujarat 'pieces'

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, held in London, 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 events in Gujarat have thrown up.

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.

There is a myth that the State machinery failed because it could not cope but that is not true. There was functional machinery that worked. The tragic fact is that it worked not 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 today.

On February 27, 2002, 58 party workers from the Vishwa Hindu Parishad (VHP), travelling in coach S-6 of the Sabarmati Express were burnt alive at Godhra, a town in Gujarat, after tensions erupted between the Muslim and Hindu community there. Subsequently violent riots erupted in many parts of the state where the Muslim community was specifically targeted. These riots resulted in thousands being brutally killed and maimed, besides leaving a 100000 homeless and dispossessed.

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 willfully subverted by those in power there emanates a strong message from the power centres 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 that in times of chaos, 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 and impact is felt only 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 assumes the relationship between patron and pleader. And 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. This system is fundamentally based on social exclusion whether it is Dalits or Muslims or any other community; and 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. Equally a powerful state does have the unique and singular ability to send strong signals of approval or disapproval and bring things quickly back on to the path of constitutional norms.

So what has been the response of the state? You have heard endless accounts of the targeted killing and rapes.

Every report most particularly that of the National Human Rights Commission (NHRC) has strongly castigated 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 Godhra and were taking all steps to ensure that the situation did not escalate beyond control. But this situation took a nasty turn on the night of the 27th after the police acquiesced to the orders of the Chief Minister to let peoples feelings have full expression and not to come in the way of what he assuredly knew would be fulsome blood letting.

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: 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 - £2600 to the Godhra victims and £1300 or less to those killed in subsequent carnage; the NHRC has commented on this and this was withdrawn - this is nugatory; it is blood money and does not go to accountability, it is basically a way of saying shut up and sit down
- ▶ The use of Prevention of Terrorism Act immediately against people involved in the Godhra incident, that too withdrawn for its patent misuse.
- ▶ Refusal of the government on grounds of political expediency to dismiss the Gujarat government
- ▶ Inadvertently or not, the top most leadership speaks in terms of we and they and this has been much remarked on. In doing so they articulate the feeling in the very sectarian heart

and the norms of the VHP/RSS: combine reinforcing notions of segregation that the Constitution of India tries to remove.

One of the most cynical responses must surely be the unseemly desire to hold early elections in order to gain political mileage from the momentary arousal of the most base sentiments in the public consciousness. At the best of times money, muscle power and well-known criminal political nexus skews elections but add to that the now religious and communal intimidation and ones hopes for genuine well informed choice are 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 ask them to hold their peace and vote for those who may be in close proximity to their tormentors.

What “normalcy” is returned, is well illustrated in the story of Adambhai of Dehlol village. On the first days of the riot large Hindu mobs entered the village armed with weapons and a motive to kill. Muslims fled into the fields but were hunted down by the mobs. Adambhai witnessed the deaths of more than 18 people of which 8 were of his own family. He recognised the attackers.

Bereft and traumatised he fled to the relief camp in Godhra. In March Adambhai sent a written complaint to the district superintendent of police because he could not bring himself to go and file it personally. Adambhai was denied any information on the status of his complaint. An omnibus first information report (FIR) was filed in relation to the incidents in his village by the local police themselves. This FIR talks of anonymous mobs responsible for violence without mentioning any individual instance of murder, looting or arson. Investigations based on that can take any turn since there is little in specific that need be followed.

Convictions are guaranteed to be impossible. When the camps shut down Adambhai went back to his village. He has no business to support him and 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 cannot find the remains of his loved ones. So the dead continue to remain missing. Unless proof positive can be produced for the charred and dismembered no compensation is given unless the already pauperized Adambhai can produce £6000 in collateral just in case they turn up alive in the future.

It is in this context - of the life of an ordinary family man and well contributing economic entity and fullfledged citizen of India reduced to a terrified groveling half-life that we must decide what is it we must do.

We must work for peace but 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 twenty 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 the country; we ask for reform of systems such as police reform - this is 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? If secularism and democracy are to survive in India we need to fight at many levels and on many fronts.

International society must signal their disapproval of bad behaviour in-country. We must not be inhibited by narrow definitions of who has legitimacy to speak out against human rights violation in a country and who has not. The language of 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 has submitted to the great covenants that guarantee our citizens political and civil rights 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 and we are here talking with each other to symbolise what is possible and what is potential. For us with so much that has gone wrong, 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 that next year be one of celebration rather than one more of mourning for the India of our dreams.