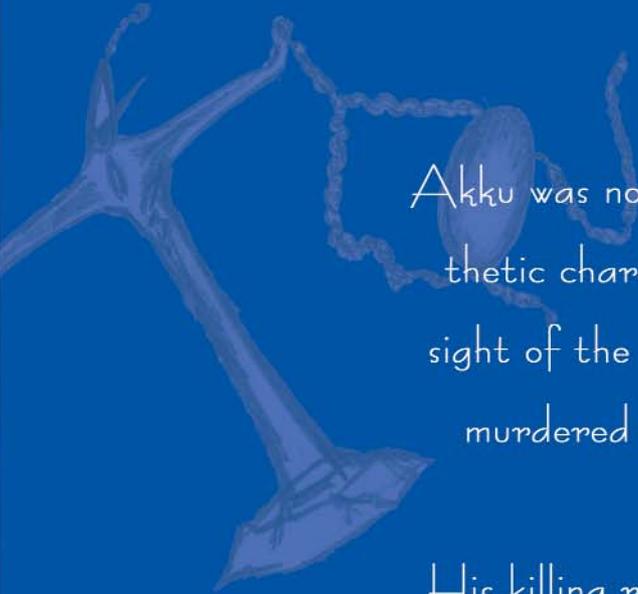


KILLING JUSTICE: VIGILANTISM IN NAGPUR



Akku was not a lovely person or sympathetic character. So it is easy to lose sight of the essential point that he was murdered under the very eyes of the law.....



His killing raises many questions about the efficacy and the justification for the existence of the present criminal justice system. Yet in the aftermath, the players remained busy in defending themselves and blaming their counterparts or decrying each other's attitude.....



The **Commonwealth Human Rights Initiative (CHRI)** is an independent, non-partisan, international non-governmental organization, mandated to ensure the practical realization of human rights in the member countries of the Commonwealth. CHRI advocates for effective systems that ensure access to justice for all citizens especially the marginalized and the underprivileged.

CHRI educates and advocates for the greater adherence to internationally recognized human rights standards. Advocacy and education are core elements of CHRI's approach. By focusing on police and prison reforms, constitutional education and access to information CHRI seeks to strengthen democracy and good governance to ensure greater accountability, increased citizen participation and incorporation of human rights standards into government functioning.

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KILLING JUSTICE: VIGILANTISM IN NAGPUR

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FOREWORD

The Commonwealth Human Rights Initiative [CHRI] has, for the past several years, been working on police reforms in the Commonwealth. In doing so, it examines the role and working of the criminal justice system as a whole.

On 13th August 2004, Mr Akku Yadav, an accused person in police custody was killed by a group of people in the precincts of the District and Sessions Court in Nagpur, Maharashtra. For a short time this incident became a media sensation because even in a country where vigilante justice is not uncommon, reports of ordinary women, housewives and daily wage earners proudly claiming to be the killers are unusual.

The media alternately portrayed the alleged killers as victims and heroines compelled by the infirmities of the criminal justice system to take the law into their own hands. CHRI decided to examine the popular perceptions around the incident that could lead 'ordinary' people to such extreme steps and the implications this had for the criminal justice system.

Very soon after the incident (20th -25th August, 2004), the author travelled to Nagpur and met people from various sections of the society including the police, prosecution, lawyers, media, activists, civil society and the people of the Kasturba Nagar basti where the story had been lived out. The circumstances of the killing were in fact murkier than initial media reporting had indicated. There were several versions of what happened on the day and many more about the causes that led to the incident. Nevertheless, people across the board blamed the killing on the infirmities of the criminal justice and CHRI decided to wait a year to see how in fact the system dealt with the murder. A year later (18th - 23rd July 2005), the author once again travelled to Nagpur and met the people from the basti, journalists, activists, and police investigators from state Criminal Investigation Department (CID) who are handling the investigation.

Based on personal interviews and the documents made available to CHRI, this is a report about people's perceptions immediately after the event and a year later and a factual account of the response of the system. It was never the intention of CHRI to establish the 'true story' or to champion one or the other version. The purpose of the study is to examine popular perceptions of the criminal justice system with a view to pointing out to policy makers the deepening feeling within the popular mind that there is no trustworthy system of criminal justice available for it to access, and this case provided ample opportunity to do so.

CHRI deeply appreciates the cooperation of the police, the basti people, the media and others in accessing information and understanding the debates around the issue. In particular CHRI would like to thank, Ms. Shobha Sakharwade and all from Prakriti, a Nagpur based NGO that works on women and development, who provided the much needed assistance in familiarising the author with the terrain and providing invaluable orientation about the place and people.

The Akku Case in 2004

Bharat Kalicharan alias Akku Yadav lived and did business in Kasturbanagar basti, a small area with 70 odd hutments under the Jaripatka police station. The basti has typically narrow lanes and overcrowding. Most of the people there are daily wage earners who work as construction labourers and domestic servants. The locality has its share of criminals and according to the police at least two rival gangs work the area. By all accounts, a child of the neighbourhood, Akku had graduated from milkman's son to local menace.

At the time of his death Akku had been charged in 26 criminal cases. His history sheet begins at 1991 with a gang-rape and goes on to include murders, robberies, dacoities, housebreakings, assaults, criminal intimidation and extortion. In most instances, he is charged along with others who the police describe as his gang members. Prior to his death, he had been arrested about 14 times. In late 1999, he was detained for a year under the Maharashtra preventive detention law (The Maharashtra Prevention of Dangerous Activities of Slumlords, Boot-leggers, Drug Offenders and Dangerous persons Act 1981). Since then, he had thrice been bound over to keep the peace under the Criminal Procedure Code. Finally in January 2004, Akku was externed or banned from entering Nagpur City and Rural under the Bombay Police Act, 1951. Nevertheless, he returned and during the period he was supposed to be outside the area, two other complaints of robbery, trespass and criminal intimidation were registered against him.

Just prior to his death, Akkku Yadav was once again taken into police custody, in the course of which he was taken to court three times on 8th, 10th and 13th August 2004. He was killed in the court premises on the 13th August.

The place where he was killed is a small room at the back of the District and Sessions Court premises known as Court No 7. This is actually a documentation room where the accused are brought for proper documentation prior to being produced before the judge. A third of this room is taken up by a judge's podium, which is a raised and cordoned platform put hard against the wall at one end of the room. Some chairs, filing cupboards, and two large tables for staff occupy much of the rest of the available floor space. The room has two doors and both of them open into a narrow corridor, which has a dead end to its left. To the right the corridor stretches further for about 6-7 yards then turns right and broadens into a passageway. An entrance set in the left wall leads to the court building and can be closed by sliding shut its iron channel gate. There is another older

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entrance to the corridor from the outside courtyard just opposite the entrance to the Court No.7. An old-almost-rotten small wooden door, it is always locked. The public can gain access to Court No 7 only through the first entrance with the iron channel gate.

On 13th August 2004, at about 2:30 p.m., Akku along with three other accused persons was brought to the court premises to be produced before the Judicial Magistrate of the First Class. Three unarmed constables of the Jaripatka police station escorted all the four accused. As the police brought Akku and other accused near the entrance, they noticed a mob moving towards them. On seeing the approaching mob, Head Constable Damodar Chaudhary slid shut the iron channel gate at the entrance of the court. He also sent one of the escorting constables to run to the police control room, which is about 150 yards from the court premises, to fetch adequate back-up. However, in the meanwhile, the mob broke opened the bolted near rotted wooden door opposite the entrance to the Court No.7 and entered the room, through the corridor, where Akku and the other accused were standing. The court staff present there ran away to save their lives and the remaining two constables could not save Akku from the fury of the mob. The post-mortem report records 73 stab injuries and chop wounds on Akku's person.¹ Even ten days later, there were bloodstains on some of the files in the filing cupboards and on the roof of the room attesting that Akku had come to a bad and gory end.

These are the facts.

The Legend Of Akku

Even soon after his death, several differing versions surrounded Akku's life and death. From his reputation as a serial killer and rapist, to the identity of his killers, to the reasons for his murder, to the implications of his death, different sections and groups of society had different things to say.

There was little doubt that the people of Kasturba Nagar including women and children were victims of Akku's brutality. The people of the basti were very willing to talk. Many of them shared their experiences of how Akku along with his gang members regularly harassed and intimidated them and extorted money. The majority spoke of how he would hurt people if they failed to give money or angered him in any manner. A woman told us, "He would threaten us all. If we did not pay, he would threaten to come armed".

From his reputation as a serial killer and rapist, to the identity of his killers, to the reasons for his murder, to the implications of his death, different sections and groups of society had different things to say.

Pratibha Urkude and her husband, Dattu, run a small grocery shop in the basti and Akku had been bothering them for years. He would take away stuff from the shop and not pay for it or pay much less, as and when he felt like it. From time to time he would demand money and be very violent if they were unable to pay. "Akku's increased violence had become unbearable and the police and the courts were no help at all for all this while". The small children standing around laughed and said "fighter tha woh" (he was a fighter). Clearly Akku had a well-grounded reputation for wickedness.

Clearly too, he also wanted to ensure his ascendancy as local tyrant over his patch. Men in the basti had stories to tell about Akku's very suspicious nature. Always worried that that he was being plotted against, he would not allow even two men or boys to get together and talk. The women added that even women could not get together and chat. Young boys could not play together without him breaking it up. Suspicious of outsiders who he imagined were there asking questions about him, he would warn people against informing the police about his misdeeds or whereabouts and constantly doled out threats of what would happen to them if they did. He would never allow any obstruction in the lanes and by-lanes that could impede a hasty escape and would beat up people if their belongings obstructed free passage in any manner.

Both national and local media had stressed that there were 24 cases of rape and murder against Akku who was alleged to have raped more than 40 women. Though the media had highlighted this as being the main cause of women being involved in Akku's murder, the folks in the basti appeared reluctant to elaborate on this aspect of his criminal behaviour. Neither men nor women volunteered information on rapes and molestation. At first specific queries about rapes and molestations drew only the comment that Akku was of a very bad character and always had a "bad eye" on the young girls and women of the basti. No woman was safe. Any house he entered for extortion would also see him harassing the women there. At other times he was reputed to have kidnapped and raped women. Women did not complain because of social stigma and also because they were scared of reprisals.

Usha Naraine, an activist and one of the very few educated people in the basti, told us that many who had been raped had left the basti. Most of them were wives and daughters of tenants in the basti, and the families had moved away for the fear of Akku and because of the social stigma. Her brother-in-law, Vilas Bhande, a lawyer practicing in the same court premises where Akku was killed, explained that the reason why women did not complain against Akku to the police was because they were scared of him. He had lots of gang members and family members who could have exacted revenge even if he were in jail. He also alleged that the police was "hobnobbing with Akku and the people had no faith that the police would not harass them or inform Akku about complaints against him." In any case, he felt that the social stigma of rape or even molestation was a huge reason for never lodging complaints of rape especially where the women were young and unmarried.

Illustrating the reluctance of people willing to further complaints of rape or molestation against Akku, Vilas Bhande specifically mentioned the case of a woman² who had earlier appeared on Aaj Tak, a national television news channel and did not now want any further exposure and avoided talking with us. Her story is taken from what Vilas told us.

The police gave little credence to these stories and insisted that there was not even one complaint of rape and molestation registered against Akku.... A senior police official, who asked not to be named, felt that the media were exaggerating the matter.

Akku went to the woman's house where she lived with her husband at around 4:00-5:00 in the morning. He knocked sharply at the door, called out loudly that he was a police official and asked them to open the door. Once in, he hit the husband on the thigh with a knife and locked him up in the bathroom. Then he dragged the wife by her hair to some place where he raped her and then allowed her to return after 3-4 hours. She did go to Jaripatka police station but the police there were very insensitive and cruel. They asked her why Akku had chosen only her house to visit so early in the morning and suggested that may be she was having an affair with him. After that, the woman did not pursue the matter.

The police gave little credence to these stories and insisted that there was not even one complaint of rape and molestation registered against Akku, except for an old gang-rape case of 1991. Notably, in this case of 1991³ both Akku and Vilas Bhande, the lawyer from the basti are named as the accused. The police had their own explanations for the lack of registration of rape cases. A senior police official, who asked not to be named, felt that the media were exaggerating the matter. He was of the belief that if the basti folk could summon the courage to register complaints against Akku about use of obscene language, criminal intimidation and even extortion of 'petty amounts' like ten or fifty rupees, then surely they would have summoned the courage to complain about rapes. If social stigma were a concern, then surely complaints about molestation at least would have been made. He told us that it was possible that "one or two women might have been raped", some might have been molested and yet others might have made their own compromises to keep Akku happy, but at this stage all this was being embroidered and clubbed together as numerous rapes.

In reality, it is impossible to judge whether or how many women had been raped or were the brunt of Akku's unwanted attentions. Certainly, as mentioned by the police, there were no complaints on record save the 1991 one. The community concurred that there were no registered complaints but put it down to the difficulties associated with filing complaints, let alone proving them. The women who came forward would have needed extraordinary courage in dealing with the two fold obstacles of fear of the man and his gang and social stigma in the community. Their treatment at the hands of the police, which was so much in keeping with reports of police insensitivity from across the country, put the final seal on the commonsense of not reporting harassment or rape.

The Build Up To The Death

In the days immediately following his death, the basti people were very willing to share how they had been bearing Akku's tyrannies for more than a decade and neither police nor the courts had been able to give them any semblance of security or justice. Despite the fact that Akku was banned from entering Nagpur city since January 2004, he stepped up his activities in the basti and appeared to have become particularly vicious and unreasonable since then. His violence, paranoia and extortion stepped up right after the festival of Holi in March 2004.....

Harichand Khorse, an extremely old man, mentioned that even he who merely earns a pittance by playing baja (a musical instrument) had been badly beaten up by Akku because he was unable to hand over 100 rupees on demand.

The men and women of the basti pointed out about 10-15 houses that had been abandoned by people for the fear of Akku. Many had broken doors and in one, even the roof was totally broken. In confirmation of Akku's ability to threaten people to the point where they left their homes, Lehamdass, a thin middle-aged man, told us that he had only just returned to his house two days before on 20th August 2004 after the news of Akku's death reached him. He had been forced to leave his house with his family in April 2004 after Akku had become increasingly violent. The people were unanimous that after Holi in 2004, Akku increased the magnitude and incidence of violence in the basti. Clearly, Akku's removal brought great relief and afforded people an opportunity to live their modest lives in the slum with less fear. Something the police and court system had not assured them over the years.

Eknath Chavan, now a prime accused in the Akku murder case, also alleged that Akku would force young boys and men to roam around with him and so anyone in the basti could be forced into crime extorting money etc. Interestingly, the police cited Eknath Chavan himself as a co-accused with Akku in at least two cases involving extortion, criminal intimidation, and causing hurt. According to the police, Akku and Eknath were in the same gang till about 2000-2001. Eknath now claimed that Akku forced him and his father who lived in an adjoining house to flee the basti. In fact, the dilapidated roof that had been pointed out to us was that of Eknath's father's house. It had been destroyed when Akku had stormed in at night and vandalised the place breaking the television, fridge and terrorising the people.

Maya Ramesh Jhambhulkar was among one of the last victims of Akku before his death. Shy and quiet spoken, she recalled that Akku had entered her house and after stripping her husband, asked her to dance for him. Akku had burnt the inner thighs of her husband with cigarette butts while their young daughter watched. She was very glad that Akku had died but feared that his nephew, Dangria might exact revenge on the people of the basti.

Many people in the basti mentioned the role of Vilas Bhande, a lawyer, and his sister-in-law in getting the people of the basti together to resist Akku. Vilas claimed that Akku was angry with him for not representing him legally. There was bad blood between Akku and Vilas and according to the police they were once friends and had now fallen out.

Interestingly, both Vilas and his sister-in-law are now prime accused in the Akku murder case.

A flurry of activities: 27th July to 8th August 2004

On July 27th, Akku allegedly threatened Vilas's wife's brother and warned him that he would harm Vilas. He also abused Vilas in front of the brother-in-law. Next day, Akku went to Vilas's sister-in-law, Usha Naraine's house and threatened to abduct and rape her. He then went directly to Vilas' house on the night of 30th July and threatened to kill him. He accused Vilas of being a police informer. To save himself, Vilas called the police late at night. Vilas complained to the police and an FIR (First Information Report) was registered on 2nd July. On the same day, Vilas also complained to the DCP about the threat to his life.

In rapid succession in the days that followed, Vilas called a press conference on 4th August 2004 where he detailed Akku's atrocities. Two days later he organised a mass complaint to the police signed by 96 residents complaining that despite being externed under the Bombay Police over 7 months before, Akku had remained in the basti and was energetically carrying on, under the very eyes of the police, the same nefarious activities for which he had been externed. That same day⁴ the people of the basti attacked Akku's house destroyed household goods and damaged the structure.

Vilas's persistence paid off. On 7th August 2004, one day after the basti people's mass complaint, Akku was in police custody. There remained a controversy whether he surrendered himself into police hands or was arrested by them. The official version stated Akku was arrested when found in Nagpur City for violating the externment order, but Vilas and the others say that Akku surrendered or else his gang members, who were always at his side, would have been arrested with him. This seems to indicate that Akku who had been king of the walk was astute enough to know that he had perhaps overplayed his hand with the community and was in grave danger himself. Surrendering to the police who would either extern him or keep him in lock up seemed an easier option to being in a churning hot spot teeming with enemies. His experience in repeatedly getting bail with utmost ease would have encouraged him to surrender so that he was out of harms way yet able to win freedom with usual ease when necessary.

In accordance with the law that requires all accused to be produced before a Magistrate within twenty-four hours, Akku was duly produced in court next day.⁵ Concerned that he may yet again get bail, many people including women from the basti gathered in the

The DCP, Zone II, himself came to ensure that law and order was not disturbed. The local newspapers⁶ reported the incident widely. Vilas confirmed that the people of the basti were very angry and they would have harmed Akku on 8th of August itself, but the police saved him.

court premises to ensure that somehow Akku did not get bail. Eyewitnesses including Usha Naraine stated that they saw one of his accomplices, Vipin Balaghati passing knives to Akku along with his clothes and tiffin containing food. They say they stopped this by overpowering the accomplice and handing him over to the police after beating them up. The DCP, Zone II, himself came to ensure that law and order was not disturbed. The local newspapers⁶ reported the incident widely. Vilas confirmed that the people of the basti were very angry and they would have harmed Akku on 8th of August itself, but the police saved him.

The Stories Around The Killing

Akku was produced in the court twice after the incident on 8th August 2004. On the second occasion,⁷ he was killed right there in the court premises.

Immediately after the killing, there were different versions about how this happened. The sequence of events in those fatal last moments is unclear because few we spoke to admitted to being at the location. The people of the basti though were keen to take collective responsibility perhaps in the hope that there is safety in numbers. Embroidered and reworked stories doing the rounds from mouth to mouth evidenced both pride and solidarity in the deed.

Everyone, man or woman, we spoke to was at one in maintaining that it was the women who had got together and killed Akku in a spontaneous act of collective retribution. They were steadfast in their story that it was the women who had killed Akku and that it was well deserved. According to them, in the demonstrable absence of the law and order machinery, they were in the simple position of killing or being killed. To rid their area of Akku was a practical solution to ensuring personal security, which is the prime reason for having a police force in the first place.

Ms. V. Chandra, an activist leader stressed the fact that women were miserable and could not bear Akku's aggression any more. "They did not have faith in the police and courts and so they took the decision to deliver speedy justice". She debunked the notion of gang rivalry. She felt the police had cooked up the story to save face for failing to provide redress to women when they needed them. Chandra was very critical of the role played by the criminal justice system in forcing these women to take the law into their own hands. She was clear that it would only be the continued determination of the women and their solidarity that would force the truth to come out.

Usha Naraine, Vilas Bhande's sister-in-law, put the number of women at court that day at 500 and claimed that women from all the neighbouring bastis and not just Kasturba Nagar were present in the court premises. She was, however, quick to mention that she had not been in the court that day. So her story could be part of the rapid myth and legend building around the incident. She, like many others in the basti, was not apologetic for the act of killing. In fact, she was proud that the women of Uttar Nagpur had the courage to get rid of a menace. She was clear that the police are of no help to the common person. While she was saying this, many women of the basti present in her house were nodding their heads in total agreement. She was happy that the women's organizations and media had

The police... lent no credence to the claim, widely reported in the press and confirmed by the basti folk, that it was the women had killed Akku.

supported the women and warned that acts of self-help like these were likely to increase every time the criminal justice system failed the people of Uttar Nagpur. She was scornful of the police version that Akku's death had been plotted by a rival gang and opined that the police were now giving the tale a new twist but the people of the basti will not allow this and warned that "revolution may begin from here if the police persists in its false propaganda".

Vilas Bhande was present in the court premises that day, but it is not clear where he was and what he saw. Vilas admitted that that there were men present in the court premises where Akku was killed but clarified that women far outnumbered them. He put the numbers at around 100-150 women and 60-70 men. This is the largest number of men that has been mentioned by any of the groups of people that we interacted with. Vilas stressed that women took the lead in the preparing and executing the act. Asked how Akku was done to death, Vilas stated that knives, shoes, lathis, stones, chilli powder, huge glass that covered a writing table in the room, all were used to kill Akku. Blood splattered as far as the ceiling at the scene of the crime certainly attests to the vigour and enthusiastic brutality of the final acts.

The police version

The police at this stage were very cagey with information and refused to make statements on record or reveal any documents including the FIR or the post-mortem report. Nevertheless, they lent no credence to the claim, widely reported in the press and confirmed by the basti folk, that it was the women had killed Akku. The police claimed that there were at least two rival gangs working the basti and Eknath Chavan, who had fallen out with Akku, was the member of the rival gang. Until about 2000-2001 Eknath Chavan and Akku had worked together but had broken up over sharing booty or bootlegging. The police were firm in their belief that Eknath Chavan and his gang members had manipulated the women into providing them the cover to kill Akku. Consequently women were present in the court premises to shield the rival gang members from the same basti and who were also the brothers, sons, husbands and fathers of some of these women. For the police, "it was professional killers that committed the actual murder with long knives". The post-mortem report also indicates that death was due to both multiple stabs and chop wounds indicating that it was not brought about only by lathis, stones or chilli powder as initial media reports indicated.

When asked why women would show solidarity to the extent that they would risk being prosecuted for actions of some gang members, the police seemed to think that this is because they want to protect their

men folk. The police also feel that these so called, four hundred women who claim that they have killed Akku also laboured under the false belief that they cannot be charged and prosecuted successfully for lack of evidence and would be well shielded by public sympathy and the institutional support they were likely receive from women's organizations including the National Commission for Women.

Initial Response of the Criminal Justice System

Soon after Akku's killing, the police arrested five women. The basti people claimed that in making initial arrest, the police came around on the very day of Akku's murder and picked out five random women. This was done on the basis of the statements of an autorickshaw puller who claimed to have dropped off these women from the court to the basti. Though stringently denied by the police, the basti folk say that, in fact, the police actually 'bartered' one woman who was pregnant and two other young women on 'humanitarian grounds' for three older women. At bail proceedings shortly after the arrests, the police and prosecution admitted they had no evidence against women and the judge released them without more.

On being asked why these particular women were arrested in the first place if there was little or no evidence against them, as admitted at the bail proceedings, the police claimed that the women were arrested because they were seen to leave the court premises in a hurry after the incident. The arrests seemed to have been hastened by the need to show some action was being taken when media attention was high and to tide the police over to the time when things cooled down a bit. A senior official, again refusing to be identified, actually stated, "You know how these things happen. We arrest someone to pacify the people. We would suspend a person or two and reinstate them after a month or so after things cool down."

Clearly, all the criminal justice institutions were under immense public pressure and succumbed to it. The bail proceedings of five women initially arrested in connection with the case confirms, in part, the influence of public pressure. While the proceedings were still pending before the Judicial Magistrate, the Sessions Judge took over the case himself and granted them bail while both the police and public prosecutor provided no objections. Usually, as a matter of practice, when a case is pending before a subordinate Court, the Appellate Court does not entertain petitions to hear the matter although they certainly have the power to do so.

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The police claim they could not have done any better. But for the people of the basti and activists working in the area, this does not explain why a dreaded criminal with 26 cases against him including rape, murder and extortion was roaming freely in the basti even after he was externed from Nagpur.

The Blame Game

The Nagpur police defended their role and mentioned that they had taken all the action that they could against Akku. They pointed out that they had arrested the man 14 times but in all the instances the courts had released him on bail or otherwise acquitted him.

The police claim they could not have done any better. But for the people of the basti and activists working in the area, this does not explain why a dreaded criminal with 26 cases against him including rape, murder and extortion was roaming freely in the basti even after he was externed from Nagpur.

The police blame the courts for granting Akku bail. The courts decide who gets bail and who does not. The police and public prosecutor agree or oppose bail. The general rules governing bail require that it should be given unless there are good grounds to believe that the accused might flee the jurisdiction of the court, or that he might intimidate witness, interfere with investigation or commit other offences while on bail. In addition, the moment a person commits an offence while on bail, his bail is liable to be cancelled by the court on an application made to it by the police. Since there were so many cases pending against Akku and he was on bail, every time any new offence was complained of, the police had numerous opportunities to ask for the cancellation of bail.

Clearly Akku was well within the category of habitual and repeat offender and public menace. Why was it then so easy for him to get bail? Did he have a brilliant lawyer each time to ensure that he would not be put in? Or were the police and prosecution so lax that they presented no strong case? Did the judiciary apply its mind to the circumstances of Akku's life and arrests and press to know more before deciding to grant bail each time? Or, did it routinely apply the maxim 'bail not jail' and passively accept that it need do no more than release the man if it saw no opposition from the police? People we interviewed seemed to feel that it was all of these infirmities that allowed Akku to walk free time after time and they were convinced that nothing different would happen this time around. The law would go through the textbook formalities, Akku would be out and free again and they would be left to deal with the terrible realities of their lives with him.

Public Perception of the Police

The people of the basti and the activists were certain that the police did not pursue Akku with any seriousness. They bitterly averred that had the cases of extortion been against the rich and powerful Akku

would have been a goner long ago. "There is no justice for poor. What if this had happened to a minister's wife or daughter?... So, we decided to do it ourselves," an ordinary woman of Kasturban Nagar said capturing essence of the feelings of the basti.⁸ The failure to contain Akku illustrated to them the consistent dereliction and neglect of duty to protect the people by ensuring that such an accused was, at least, not allowed out on bail. For them, the repeated lack of successful prosecutions, at a minimum demonstrated bias and at worst smacked of outright complicity. In any case, it established that cases were not properly investigated or presented in court. Nor were witnesses assured that they could give evidence free of fear or harm. In fact, many in the basti narrated an incident involving the killing by Akku of one Asha Bhagat who had dared to appear as a witness in another murder case.

Police failure to implement the externment order: complicity or negligence?

The basti folks reasoned that even if it were to be believed that the police were unable to get satisfaction at court in keeping Akku out of the public domain due to reasons outside their control, there is no rational explanation, except police collusion, for Akku's ability to actively pursue his criminal career under their very noses after he was supposed to be externed. It was well within the police power and ability to have made sure that Akku kept to the terms of his externment but they did not, with the fatal consequences that followed.

It doesn't appear to be open to the police to say, as they did to us, that these days externment orders cannot be enforced because of the huge population and large areas involved. If the reality of policing today is that they cannot enforce externment orders it appears to be a great waste of public money and manpower resources to go through the motions of seeking such orders in the first place. Even accepting the police version that externments cannot be enforced as it is not possible for policemen to be present everywhere, it is hard to fathom the difficulty in this particular case as Akku's prime area of operation was limited to Kasturba Nagar. Even if short staffed and working under difficult conditions, monitoring the externment of one bad character operating out of a small specific area whose activities were regularly being complained of cannot be said to be outside the competence of the police without admitting to such serious infirmities in the force that its existence as a public service must come into question.

Ms. Chandra summed up popular sentiment when asking for an open inquiry into the police conduct in this case with the guilty being

Even if short staffed and working under difficult conditions, monitoring the externment of one bad character operating out of a small specific area whose activities were regularly being complained of cannot be said to be outside the competence of the police without admitting to such serious infirmities in the force that its existence as a public service must come into question.

Three unarmed constables to escort four accused... seemed inadequate even in normal circumstances. Given the fact that the incident on the 8th was in the full knowledge of the police, they needed no special intelligence gathering to figure out that people may gather once again to harm Akku.

punished. "Why was Akku not booked under The Maharashtra Control of Organised Crime Act, 1999? How was it that this man was roaming free on the streets after committing over 25 offences?"

Did police allow Akku to be killed?

Public safety apart, so deep is scepticism against the police that many lawyers and journalists we spoke to, cited police negligence as the primary and proximate cause of Akku's death and even hinted at connivance. They reasoned that the police had enough warning that there was a deal of public anger against Akku. In the run up to the murder there was increased crime in the area and much less safety and security. There was growing fear in the community. There were repeated complaints. Public anger was boiling over. A flurry of activities to organise against Akku indicated that there was a move to harness anger into something more. The possibility that mass petitions would turn into active self-help showed itself on the 8th August itself when barely 5 days before the fatal incident Akku was produced in court and the police had to intervene to prevent people from taking the law into their own hands and lynching Akku.

Why then, the lawyers asked, did the police take so little precaution at the next hearing just a few short days later? It was pointed out that Akku should have been better protected. The problem of providing scores of escorts to and from daily court hearings is perennial as the police are inevitably short staffed or on other duties. Nevertheless, it is the law. It fastens the police with the duty to guard their prisoners properly: not only to prevent escape but to ensure that they are, as the expression goes, in safe custody and free from harm while in the keeping of the state. This rule flows from the principle that all people are innocent unless proven guilty, punishment can only flow from a fair trial and can be awarded only by the judge and no one else. Three unarmed constables to escort four accused when one of them included an accused charged with heinous crimes like murder, robbery and extortion seemed inadequate even in normal circumstances. Given the fact that the incident on the 8th was in the full knowledge of the police, they needed no special intelligence gathering to figure out that people may gather once again to harm Akku.

To make matters worse, a high ranking police official and some women of the basti confirmed that in addition to poor escort protection, the final attack had been made that much easier because Akku was tied to another accused so that he could not break free or protect himself from the fatal assault when it came. Although, the FIR, merely says that Akku was handcuffed and does not mention him being tied to another accused, the very fact four accused were

being escorted by three unarmed policemen and the other accused were also injured in the incident lends credence to the claims of the basti folks that all accused were tied together by a rope. By law, prisoners can only be handcuffed with the permission of the court. In this case, to our knowledge, the permissions had not been asked for or given.

A culmination of all these acts of omission and commission taken together have forced conjecture that the police too would not have been unhappy at the turn of events that so conveniently took away a major nuisance from their midst.

The police themselves admit to certain lapses on the part of certain officials and claim that initial departmental action has been taken, which will be followed by departmental inquiry. The police had suspended the three constables who had escorted Akku and the officer in-charge of the Jaripatka Police Station for dereliction of duty. But the malaise seems much deeper and of much longer origin and requires deeper inquiries than focussing down on the lowest rung on the ladder of culpability

Public Does not Exonerate the Courts

In their condemnation of the system, the basti folk as well as outsiders did not exonerate the courts and reiterated at every discussion that they have no faith in the efficacy of the courts to grant timely justice or any justice at all. They judged the quality of the courts interest in justice through its past performance in granting bail. They could not help feeling that the court had failed them in granting a known extortionist and murderer bail in the past without reference to his profile, his past history or the consequences of his release and would do so again and again.

People faulted the long time taken by the courts to decide matters and claimed that it disheartens people and makes them wary of using the criminal justice system at all. Many asked what good would Akku's conviction have done after they were dead and their daughters raped? They cited the 1991 case that was still pending and many other cases pending against Akku that might have gone on for the next 15-20 years before he had exhausted all his appeals Stating that "While his trial would have dragged on, Akku would have raped 10 more women while on bail and courts cannot hang anyone 10 times", the women claimed that their actions had probably saved many lives and the dignity of many women.

They complained that another barrier to justice was the gag against speaking out candidly against the behaviour of courts. They didn't think it "fair that people are not allowed to even voice their concerns against judges." Basti folk asked the simple direct questions that are made visible in the great debates around justice in the country and tax the minds of all from academic to the milkman: what is a person to do, if a judge is apathetic, inefficient, lazy or corrupt? Against the police, at least, you can lodge complaints but against the judge they felt helpless and frustrated. Many expressed their helplessness in a situation where even public discussion of a corrupt judge may invite the wrath of the judge under the Contempt of Courts Act. Ms. Chandra again summed up some of the pent up anger and was emphatic that the role of the courts had to be examined. "How could the Magistrates grant him bail on all occasions when he was dreaded criminal?" Public

Everyone we met, without exception put the primary blame of the killing of Akku Yadav at the door of the failed criminal justice system.... They voiced the common collective and long time grievances of the country's public against police functioning, their inability to control crime, their nexus with criminals and the delays and apathy at court that together destroy any possibility of justice.

confidence in the criminal justice system, she stated, will come only if action is taken against all officials who have not conducted themselves properly.

Surviving the Failure of the Criminal Justice System: Kill or be Killed?

In the absence of a system that is effective and responsive, the women felt it was their civic duty to ensure their own right to life and freedom from fear. All the women we spoke to said that he had to be killed. Then thinking on it, one said "We should have cut his fingers and hands and feet, his private parts, then cut him into pieces and thrown the pieces to dogs." Lila Prakash Kumbherkar was clear that this was a case of "manav aur danav ki ladai" (fight between good and evil) and women of the basti destroyed the danav like Goddess Chandi. For the women, the death of the tyrant two days prior to the Indian Independence Day had liberated them and brought them independence in any true sense.

Everyone we met, without exception put the primary blame of the killing of Akku Yadav at the door of the failed criminal justice system. 73 per cent of people surveyed by local organisations said they had lost faith in law and order machinery of the city following the incident.⁹ Typifying the mood Usha Naraine said, "Police is in cahoots with the criminals. Politicians use these very criminals and at times even police personnel in their elections and provide protection to them later on. Lawyers defend these criminals knowing how bad they are. For money, lawyers let dreaded criminals on the roads free to kill innocents. How are we in the wrong? Courts take ages to give justice. We may die before they give a decision. What is the point in going to courts? We gave 15 years to the courts. Now, the women of Kasturbanagar have given a clear message to the courts. You could not do it; we have done it. How are we in the wrong?"

No one we interviewed questioned the motive of the women; some questioned their tactics, some the level of their involvement but almost without exception popular sentiment was sympathetic to their plight. In fact the survey mentioned above, showed 81 per cent of the respondents as supporting the action taken by the women against Akku.¹⁰ Such empathy also had the very practical effect of putting the police on the back foot and on the defensive.

Despite overall sympathy for motive, not unnaturally, opinions varied by class, gender and by distance from the event. Those furthest from the incident felt whatever the provocation, the law should have been allowed to take its course. The legal fraternity saw the incident as one of mob violence at best and premeditated murder at worst.

Others felt that the system is so degenerate now that the people of the basti had more than enough justification for their actions. There was a particularly deep and instinctive sympathy with the idea that women had done whatever was needed in order to protect themselves and it gained a certain popular romantic appeal.

Slum dwellers living daily with the menace of Akku and their complete distrust of the police and criminal justice system were united in their belief that self-help was the only way to be safe and secure. Activists, women's groups and public opinion premised its reactions on the scenario that only the women driven by desperation had killed Akku. The media showed pictures of unrepentant women standing in solidarity with each other and speaking out against a collapsed criminal justice system. They voiced the common collective and long time grievances of the country's public against police functioning, their inability to control crime, their nexus with criminals and the delays and apathy at court that together destroy any possibility of justice. This reading clearly struck a true chord and many joined in the justification for dispensing summary justice.

Intellectuals and concerned citizens gathered at a town meet had strikingly different views. They were unanimous in their belief that citizens, whoever they are, should not have taken the law into their own hands. The role played by some leading women's rights organizations in celebrating the case was questioned; the media was chastised for playing to the gallery, being sensation hungry and not presenting a balanced or even factual presentation to the public. The statement of the Chairperson of the National Commission of Women that these women had the right to self-defence was condemned. Everyone accepted that Akku was a well-known bad character and that his litany of crime was a reality, but to celebrate his killing was unacceptable. A judge speaker argued that such attitudes put India in the category of nations we ourselves consider backward and uncivilized for celebrating lynchings and mob frenzy and passing it off as justice.

The police were fairly neutral about whether the incident should or should not have happened. Throughout our interviews, they were keener to justify how they had done all they could rather than concerned to get the bottom of the matter through serious investigations and professionalism. In the glare of publicity, they were keen to 'manage' the situation. Very few in the public or even in the legal fraternity thought that future investigations would get to the bottom of exactly what had taken place or that there would now be a just and certain outcome to the murder of Akku Yadav.

The Akku Case: One Year Later

A year later, not many are really following the case. The activists, women's rights groups and national and international media who had jumped into the fray had only fragments of information and had not kept up enthusiastic visits to the basti or assisted in providing legal or other support after the first flush of excitement had died. A few activists who had ensured bail for the five women who were initially arrested were now busy with other cases. Local journalists occasionally report the progress of Akku's case or mention it in the context of other vigilante killings.

Soon after the incident, bowing to public pressure from the media and the opposition, the State government handed over the investigations in the case to the state Criminal Investigation Department (CID). In an atmosphere where it was alleged that women had claimed to kill a man in court because of the failure of the city police to protect them from his menace, the CID was asked to investigate the case to ensure impartiality.

The Legal Process

Akku was a citizen of India and entitled to the equal protection of its laws. He was in the safe custody of the State when he was murdered and there needs to be accountability for that. In addition, his murder, however popular the act, is an affront to the rule of law which the state is charged with upholding, and therefore there needs to be investigation and punishment for that.

One year after the incident, investigations are still on going. The First Information Report (FIR), that initiates the investigation, was registered on the very day Akku was murdered. This, as its name suggests, is a report first in time, made to the police, about an incident that has taken place. It can be filed by anyone and also be registered by the police themselves as took place here. The FIR in this case was filed by Head Constable Damodar Chaudhary who had escorted Akku to the court and was an eyewitness to entire incident. The FIR mentions that a mob comprising approximately 25-30 men and 10-12 women had gathered in the court premises threatening to kill Akku. Describing how one of the constables ran to get additional police force, the FIR states that about 15-20 people including 5-6 women entered the room where Akku and three other accused were standing and killed Akku with weapons that they were carrying. Eknath Chavan, who according to the police was a former member of Akku's gang and now a rival, is the only person named in the FIR. Eknath was recognised by another police official present in the premises. This police official, the FIR says, told the head constable that Eknath was provoking people and leading them to attack Akku.

The circumstances mentioned in the FIR will guide the directions the investigation will go in. The police have enormous discretion when investigating and cannot be interfered with, though people can complain about their tardiness or careless handling of the matter. In developing a sustainable charge against a suspect, the police must be diligent in preserving and gathering evidence.

Evidence includes the situation and materials found at the scene of the crime, eyewitness accounts, forensic and post mortem reports, and circumstantial evidence that can complement and corroborate what people have said about where they were and what they did or saw others doing. Evidence will not only indicate the physical circumstances of the case but also establish the mental state of the accused and point to the motive for doing something. All this taken and fitting together will make out the grounds for a chargesheet. Charge sheets are prepared by investigating officers. They are then scrutinised by seniors and filed before a magistrate. A sessions judge would then frame charges against each individual accused and the case would be tried against him or her.

Akku's case requires no great sleuthing and no Sherlock Holmes skills. How Akku was killed is not in dispute at all. The motivation, whether it was gang rivalry or popular resentment equally go to eliminating any possibility of spontaneity or self-defence and the facts in the lead up are hardly in dispute. All that needs to be established is which individuals chopped, stabbed and hit Akku and inflicted those 73 injuries, which the post mortem report speaks of, that finally did Akku to death.

The law requires very fine measure. It allows for degrees of culpability to be established for each actor in a case. On the facts, there will be the main accused, aiders and abettors, and those who may or may not have acted in concert if, for example, there was a previous conspiracy to murder. Each individual person out of a mob has to be differentiated and charged with only that infraction of law that he or she may look responsible for and the guilt or innocence for just those acts will be decided by the courts on the facts investigated by the police that tested against the best defence in court prove beyond any reasonable doubt that this is what happened. Nevertheless, according to the law if a person is proved to be a member of an 'unlawful assembly', then whatever crimes are committed by this assembly can well be imputed to each person in the mob. For this, the prosecution needs to prove that an assembly of five or more people had a "common object" to commit an offence and those that did not have such a common object cannot be covered as a part of the assembly unless they continued to be a part of the assembly after coming to know of its "unlawful" "common object".

The theory informing the course of CID investigations is set out in a summary chargesheet.¹¹ Much emphasis is given to the circumstances that led to the killing and the role of Akku's one time friend turned lawyer, Vilas Bhande. The CID "investigations reveal" that after Akku had threatened Vilas on 27th July 2004, all the actions taken by Vilas led to an instigated mob committing murder. Getting the people together to resist Akku, the spate of complaints to the police and press conference are all seen as part and parcel of a careful plan. Vilas' statement in the press conference where he allegedly threatened that the basti people would be forced to take law into their hands if the administration failed to prevent Akku's criminal activities is seen as indicative of the preparation towards his future plan of action. The document avers that Akku feared for his life. On 6th August 2004, local youth armed with wooden sticks and weapons had in fact gone to Akku's house, threatened his family and damaged his property. Next day, Akku surrendered before the local Crime Branch and in the CID version there is no controversy on whether the police arrested Akku

The evidence available includes the chemical analysis report of Akku's viscera that revealed traces of alcohol in his body despite the fact that he was in the custody of the police since 7th August 2004.

on the 7th August or he surrendered. Any mention of the fact that the local police and the crime branch had alleged to the contrary last year does not find supporters this year.

Witnesses and Evidence

In identifying those who conspired the killing, those who actually committed the deed and those who aided and abetted the crime, the police relies on eyewitnesses and evidence such as post mortem reports and other forensic data available in a case.

Akku's murder was committed in broad daylight in court premises on a working day. There were lawyers, court staff, other police people and the general public about. The three constables who escorted the accused, the other three accused accompanying Akku and members of the mob who were in the crowded room proximate to the actual murder were all eye witnesses to the 73 wounds which must have taken a while to inflict. Others would be able to corroborate that there was indeed a marauding mob and speak about their numbers and mood. In addition, the police official who identified Eknath and lastly members of the mob who were not in the room but present on the premises would be witnesses. According to the FIR, at a minimum the two constables and the other three accused tied close to Akku and several members of the mob would have seen the entire incident at close quarters.

These witnesses would be crucial in identifying the people who merely hurled abuses at Akku, those that threw chilli powder or other things at Akku and those who actually chopped and stabbed him with deadly weapons. The documents, including the bail orders, available to us limit the material witnesses assisting the police to Akku's relatives, his friend (a former gang member) and one neighbour, and the police officials. None of these documents indicate the whereabouts of the three accused that were escorted to the court along with Akku on that fateful day and would be material witnesses.

Some of the evidence gathered by the CID includes the recovery at least two weapons used in the murder from the homes of two the accused, Eknath Chavan and Pankaj Bhagat. A blood-splattered shirt allegedly belonging to Eknath Chavan was recovered from his house. Forensic test conducted later identified the blood on this shirt to be Akku's. The evidence available also includes the chemical analysis report of Akku's viscera that revealed traces of alcohol¹² in his body despite the fact that he was in the custody of the police since 7th August 2004.

The Chargesheet

Chargesheet is a document prepared by the investigating officer in the case and filed in the court. It gives details about the nature of the offence, names those who the police have evidence against, the offences for which the accused are to be charged in the court and tried, and the evidence that is available before the police to implicate each accused for the different crimes that he or she may have committed. In a case like Akku's, the chargesheet would give a list of accused and mention which of them have conspired to kill Akku, who actually killed him and those who merely aided and abetted in the commission of the offence.

Till date, 21 accused are named, of which only 7 are women including the 5 women who were originally arrested on the very day of the killing. Chargesheet has been filed against 11 people. The first chargesheet was filed in the court on 21st November 2004 - within 90 days of the offence as required by the law - listing the names of 5 male accused including Eknath Chavan. A supplementary chargesheet was filed against 6 other persons including one woman, Usha Naraine on 31st March 2005. Another supplementary chargesheet is expected to be filed against the remaining 10 accused including Vilas Bhande and the 5 women who had been arrested initially.

Nature of the Chargesheet

Interestingly, the CID has charged all the 21 accused under similar provisions. Apart from being charged for rioting,¹³ being a member of unlawful assembly,¹⁴ murder,¹⁵ grievous hurt,¹⁶ causing hurt to deter public servant from his duty,¹⁷ all the accused are also charged for criminal conspiracy¹⁸ and unusually even for conspiracy to overawe the state government by means of criminal force or show of criminal force.¹⁹

In developing a sustainable charge against a suspect, the police must be diligent in preserving and gathering evidence. Using the same sections to charge all the accused in a case where some may have conspired to kill, others planned the execution and yet others may have actually killed the person serves no purpose. To sustain the case, the police would have to prove each and every element of each and every crime against each and every person, unless they can establish that each person was present as a "member" of an "unlawful assembly" and therefore each person individually is guilty of all the crimes committed by that assembly. If charges against each individual accused in the chargesheet are differentiated on the basis of his or her culpability, it will ensure an effective and streamlined investigation, as police will need to gather evidence for only those charges that are to be used against him or her. However, it is common practice for the police to file omnibus and undifferentiated chargesheets as here and leave it to the judge and the prosecutor to individualise the cases on the basis of the evidence available. But this loose methodology means a deal of time is wasted in perusing all the elements of every case while investigating, and wasting courts time in winnowing out unrealistic cases. Additionally, it causes enormous tension and loss of reputation of people caught in the coils of broadly worded charge sheets who are perhaps only marginally concerned with the incident or even wholly unrelated to it.

The Accused in Custody

Of the 21 accused, only 5 remain in custody. Of these, Eknath Chavan and Pankaj Bhagat are the only two who have been denied bail. Both are 'history sheeters'. Bail was denied because prosecution was able to show some evidence of their involvement through the recovery of weapons and blood stained clothes from their homes. The other 3 people who remain in custody have been arrested recently after May 2005 and are still in the process of seeking bail.

The Accused on Bail

Sixteen people, including Usha Naraine and the five women who were arrested on the very day of Akku's murder, are on bail. These five women were released on bail within five days of their arrest because the prosecution admitted that they did not have any "direct evidence to connect" them "for the offence except their presence in the court premises".

The law on bail is well settled and the basic rule has been succinctly described as 'bail and not jail',²⁰ which means that grant of bail is the rule and refusal an exception.²¹ However, courts have to ensure that the order granting bail is in the interest of justice and must consider the gravity of the offence committed, whether there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating troubles in the shape of repeating offences or intimidating witnesses and the like by the applicant.²²

All the accused on bail including Usha Naraine and Ajay Mohad, who is also a history sheeteer with 11 cases registered against him for offences as heinous as rape, robbery, causing hurt during robbery, attempting dacoity and abetment of suicide, managed to secure bail from the trial court. The main ground was that there was no "circumstantial evidence that prima facie establishes" their "link with the crimes registered" against them. In Ajay's case, the bail court noted that one head constable who was an eyewitness and had taken Ajay's name in his statement "failed to identify" Ajay "as the person who was present when the deceased Akku Yadao was attacked in court premises". Sumedh Karwade, another 'history-sheeteer', managed to get bail from the High Court, which held that the statements of the witnesses did not specifically link the applicant to the incident and merely mentioned his presence in the courtroom. The court also took into view the fact that the investigation with respect to the accused was over and chargesheet had been filed and there was no reason to deny him bail.

Anticipatory Bail

The only person to get an anticipatory bail from the court is Vilas Bhande. Perhaps concerned by the directions of the investigation as evidenced in the chargesheet that mentions conspiracy to commit crime and even conspiracy to overawe the state government, Vilas filed an application for anticipatory bail immediately after the filing of the chargesheet.

Anticipatory bail is granted by the court to a person expecting to be arrested. Where a heinous crime like murder is concerned, getting anticipatory bail is usually very difficult

because "to some extent intrudes in the sphere of investigation".²³ However if the court feels no prima facie case is made out, it can grant bail even in these matters.²⁴

Though the summary chargesheet provided to us carefully details Vilas' activities leading up to the killing, no chargesheet had been filed against him till the end of July 2005. In granting Vilas anticipatory bail in December 2004, the court took into account that even after 4 months into the investigation, the police had not chargesheeted Vilas though they had the same witness statements with them that they were relying upon to resist his pleas for anticipatory bail. This, the court felt, probably indicated that the prosecution itself was not convinced about the existence of a prima facie case against Vilas. Given all this there was no reason not to grant Vilas bail.

The order granting anticipatory bail to Vilas indicates the courts concern with the quality of investigations. The bail court hints that the available evidence might not stand the scrutiny even in case of the offence of criminal conspiracy to commit a crime, let alone a conspiracy to "overawe the state". Conspiracy to commit crime, the court explained, requires an agreement between the concerned persons so that there is a "meeting of the minds" and is distinct from a "mere exhortation to take law into own hands". According to the court, all that the evidence indicates is that what Vilas was "doing all along was just to prima facie resort to legal recourse in the first place and then to appeal to the masses against what he felt to be atrocities of deceased Akku Yadao so that at least public pressure upon the police and law enforcing agencies would goad them into legal action against deceased Akku". There is no evidence available to show that after Vilas "had appealed to the masses, all of them or some of them specifically agreed to join the hands of the applicant and hatching a conspiracy with him, they agreed to do or cause to be done an illegal act and accordingly did the same." This indicates the kind of evidence that police needs to collect in order to secure his conviction under this charge.

Over-Awing the State?

Notably, one of the offences all the accused are charged with is conspiracy to "overawe the government" by means of criminal force. To 'overawe the state' is in the category of treason and falls under the heading of "Offences against the State" in the penal code. To 'overawe' the state requires more than creating alarm or fear, but requires "the creation of a situation in which the government is compelled to choose between yielding to force or exposing the government or the members of the public to a very serious danger."²⁵

Using provisions such as "overawing the state" not only requires the police to use its limited resources to find sustainable evidence that would not stand the scrutiny of the court but also alienates the public.

This is hardly the kind of terrible conspiracy or average motivation one would expect to find in a group of working class women or even rival gang members involved in their own small lives in a basti in Kasturba Nagar. Nevertheless, clearly the CID is convinced and has presumably spent time and resources in gathering evidence to ground the unusual charge.

With particular, though perhaps misguided, tenacity the CID insists that it is on the right track here. The rationale for this is particularly remarkable. The CID claims that the very fact that the accused was killed in a court of law is enough proof that the accused conspired to overawe the government. If this is not enough, they point out, that Vilas Bhande's senior counsel is well known TADA lawyer who managed to get an order from the Nagpur Bench of the Bombay High court directing the state government to establish a TADA court²⁶ in Nagpur city. The summary of charges goes on to say that this senior Vilas is a member of one Navjawan Bharat Sabha, which according to the CID is an anti-government organisation of naxals, and argues cases of the accused Naxals. For the CID, this shows Vilas' sympathy for naxalites and the fact that Akku was murdered on 13th August 2004 when the case of a particular naxalite charged under TADA was to be tried illustrates that the purpose of the killing was to overawe the court into releasing the accused Naxalite. With this, the CID seeks to establish the case that all the accused in fact wanted to 'overawe' the State. Apart from the fact that this line of reasoning may seem farfetched to many people, its very use may confuse the motivation for the killing and weaken the CID case that Vilas conspired to kill Akku because of some gang rivalry or personal enmity.

Using provisions such as "overawing the state" not only requires the police to use its limited resources to find sustainable evidence that would not stand the scrutiny of the court but also alienates the public. Strangely the people of the basti are more affronted angry at the inclusion of this particular provision than concerned at the inclusion of other serious crimes, as they feel offended at being dubbed anti national and clubbed with Naxals.

The Blame Game Continues

Whatever the controversies surrounding the case, a few constants remain - the blame game goes on and the people are confirmed in their belief that the criminal justice system does not and will not work.

Even though the investigations have gone on in routine fashion, the confidence in the criminal justice system is so low that people do not believe that they are impartial. The fact that the State CID, and not the city police, is investigating seems to make no difference and people in the basti believe that birds of a feather flock together and will defend each other. True or not, they are convinced that the prime motivation in the investigations is to save the police embarrassment and deflect attention away from any failure of the system. The basti folk allege that the CID has cooked up the gang rivalry story to deflect the blame from the police. They point out that the local police were commonly seen hobnobbing with Akku and ignored their plight. They therefore resent the investigations and distrust its outcomes.

Wild rumours about CID planting false evidence and witnesses are quickly believed. For example, the presence of three family members of Akku along with one of his friend and gang member as prime eyewitnesses instead of say, the members of the crowd or the three

accused who were escorted together with Akku to the court on that fateful day, has raised eyebrows. In their bail applications, the accused have stated that the statements of Akku's relatives have been antedated to the very day of his death.

The presence of alcohol in Akku's stomach as revealed by the chemical analysis report of the forensic department has fuelled other rumours. The basti folk point to this fact and question how someone in police custody for the past five days would have liquor in him in the middle of day. The CID investigating officer's responses range from 'we don't know yet', 'investigation is still going on', to the more incredible, 'the accused may have changed the viscera' without fully realising that claims of the accused being able to change the viscera reflect the failure of the police and the criminal justice system to safeguard evidence from being tampered with. Those who surmise that the police as well may have found it convenient to get rid of a goon by making it easy for the basti people to kill him suggest that there was no better way to ensure that he could not protect himself: "Get him drunk and tie him with three other accused."

The lack of confidence in the investigative process is heightened by the inclusion of the offence of overawing the State in the list of charges against the accused. This extremely grave charge used in cases of revolutions, treason and selective grave terrorist attacks and is hardly the stuff that people in the slum would be concerned with. Mortally offended by being labelled as anti-national and clubbed with 'naxalites', the people of basti point to the use of this provision to argue that the police are anti-poor and will go to any lengths to hide their own shortcomings.

Even after a year chargesheets are still being filed and the court will not proceed with the substantive hearings unless all the chargesheets have been filed. Then a winnowing process will take place. The judge will examine evidence with the assistance of the public prosecutor and defence counsel and frame the exact charges that each individual must face. The defence counsel will have a chance to say that there is really no charge to answer or that particular charges are not applicable to a particular accused as the evidence is so slim that it won't support even a prima facie court case. Many of the accused may be discharged at this stage and will not have to stand trial. Meanwhile, the year long wait has deeply affected the lives of those accused. For example, Usha Nariane, like others is having a tough time and has to appear in the court after every 15 days. There are no substantive hearings as they wait for the CID investigations to be completed. They still have to file supplementary chargesheet(s). For the casual workers, this means loss of wages for that particular day. Many women working as domestic servants lost their jobs and

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had to look for new places to work. For the few like Usha Naraine, who are educated and want to work, this has meant loss of opportunities to better themselves. Belonging to a lower-middle class family that lives on her father's meagre pension, she wants to make a career for herself but laments "who will give me job, if I need to take a leave every 15 days for my court appearances. I wanted to go to Delhi and try my luck but now I am stuck."

The basti people feel the investigations have been unfair and just a few of them have been targeted. Usha Naraine asks why she, who wasn't present at the courtroom that day, is being targeted? "They (the police) make criminals and terrorists out of innocent people", claims Usha angrily and mentions that she had to stay 12 days in jail for no crime of her own.

A reminder that Akku's killing remains murder in the eyes of law irrespective of how horrible he was and how harassed the women in the basti were, invites the ire of the basti folks. Usha Naraine says that she had no hand in his killing but she is relieved that he no longer exists. "He had threatened to rape me. If he had raped me or thrown acid on my face would these keepers of law had come forward and said 'Usha you are a good girl, educated and nice; law abiding. Sorry you have been raped - please marry my son.' My life would have ended and it would not have mattered to these keepers of law. What law? Why must we abide by it? It sure never protected us. It only helps the bad, corrupt and the powerful. It is not that we did not explore legal avenues. The man had 25 cases against him but was roaming free."

A year after the killing, when tempers had cooled down and emotions were not running so high, Akku did not seem such a large man in public perception. Many journalists we spoke to the second time around admitted he certainly did not have 24 cases of rape and molestation against him. Many of those who had highlighted the spontaneous killing no longer believed it themselves. Journalists we met now believed that it was a pre-planned murder, whatever the motive. They were still divided on whether the people of the basti killed Akku to be rid of his threat or rival gang members manipulated them. "Akku was a menace no doubt, but there are probably another 2000 Akkus in Nagpur city and he was not extra-ordinary. What made the case stand out was not Akku's death but the initial mismanagement of the case by the police."

The police do not accept that they failed the people of the basti in any manner. The only failure they are willing to accept is their negligence in failing to provide adequate manpower to protect Akku in custody. For this, the police feel they have taken appropriate departmental action against the concerned police officials. The three constables escorting Akku to the court had been suspended immediately but have been reinstated in March 2005 after a preliminary enquiry revealed that they did what ever they could but were overpowered by the mob. The Police Inspector of the Jaripatka police station who failed to provide adequate police protection as required in this case, especially given the previous attack on Akku on 8th August, remains suspended and is facing a disciplinary enquiry in the matter. Akku, a citizen of India, was in the safe custody of the State when he was murdered and there needs to be accountability for that. Fixing culpability in the lowest rungs of the ladder when the public faith in the criminal justice system is fast dwindling might not be the answer.

Endword

The object of our investigation was not to establish what happened that fateful day - that is for the courts to unravel - but to probe some of the causes of vigilantism and reactions to it.

Vigilantism takes an upward turn when people feel that the established order will not give them satisfaction and when they also perceive that few consequences will flow from their actions. Extra-judicial killings by police and paramilitary must come in this category, and across the country there is certainly no dearth of occasions where mobs turn on hapless women and burn them as witches, or dispense summary justice to reckless drivers or beat pick pockets to death for small transgressions. In South Africa, where vigilantism is a major problem studies explain the post-apartheid phenomenon "largely in terms of high crime levels, public perceptions that government is unable to respond, the poor delivery of services associated with safety and the inaccessibility of justice to most South Africans".²⁷ This explanation in all its elements could equally apply to India. Here access to justice is simply no longer available to the majority.

Nagpur itself has had more than its fair share of vigilante activity. In April 1998, harassed citizens beat up local don Gaffar, who was a known womaniser and then burnt him alive. In July 1999, an angry mob lynched Babloo Langdya, an extortionist and a criminal wanted in several cases. In the same month, residents of Panchsheel Nagar lynched and then set ablaze Ranjit Dahat who was wanted in cases of extortion, rape and murder. In December 1999, in Vaishali Nagar, his former partner burnt local goon Aziz Bhurya alive with the help of the local residents.²⁸ Not three months after Akku's death on 12th October 2004, another mob in Nagpur, again comprised mainly of women, killed two gangsters who had been harassing the residents of Kharbi village for the past four years.

Akku was not a lovely person or sympathetic character. So it is easy to lose sight of the essential point that he was murdered under the very eyes of the law. While his death may not be a moment of deep mourning for most, we may all have serious cause to mourn the demise of the rule of law. His killing raises many questions about the efficacy and the justification for the existence of the present criminal justice system. Yet in the aftermath, the players remained busy in defending themselves and blaming their counterparts or decrying each other's attitude. The gravity of the fact that a person was murdered in broad day light while in police custody within the premises of a court where he was to be tried seems to have escaped

While there are many private opinions and agreement that the system is not working at all, it has not translated into introspection of what went wrong and why people have no faith in the system, or any impetus to bring about institutional changes....In the absence of state sponsored effective and efficient criminal justice machinery, routine mob justice may indeed become the most effective justice model for the future.

official notice. The incident itself was spoken of with either outright relief by the public we interviewed or in police circles as little more than a slip-up that had nevertheless led to an overall positive outcome. Akku as a citizen with rights was certainly on no ones radar. Most were concerned about 'image,' keeping out of the public's gaze and avoiding accountability.

One year later has seen little demonstration of concern and introspection from the courts, the prosecutors and the police. While there are many private opinions and agreement that the system is not working at all, it has not translated into introspection of what went wrong and why people have no faith in the system, or any impetus to bring about institutional changes. The judiciary has not indicated that it is horrified and its majesty tarnished by the fact that people are being killed in its premises. Nor has it sought to know why hurt to an accused was made so much easier when contrary to clear law there were three handcuffed accused tied close together. Akku's killing has not changed anything and one year later we saw the accused being brought to court tied to ropes and dragged along until just before being presented, they are released before a judge for the few moments they appear and then retied.

After the usual opaque internal inquiry, the police are content to have 'managed' the situation and defused the heat of the moment by suspending the head of the Jaripatka police station. There is nothing to demonstrate that they have seriously taken on moral culpability for permitting someone in their care to be butchered while they could only watch helplessly. Having found scapegoats there is little need to investigate the causes and learn from it to improve their systems.

Similarly, after the first crop of questions in the assembly, the representatives of the people did not feel the need to examine why the majority of the ordinary citizens feel so alienated from their own criminal justice system that they universally justified and mostly approved of murder. There was certainly no talk of the ghastly incident stirring long-standing recommendations about police and judicial reform into new life. The regular vigilante murders of Nagpur have not prompted the State authorities to put in place any research or study to recommend to them what needs to be done to prevent such acts nor have city corporators and leadership asked for it. In fact, a sense that more of the same was to come in future seems accepted by all.

Capturing popular sentiment, Usha Naraine of Kasturba Nagar stated "Nagpur is an example to the rest of the country." In the absence of state sponsored effective and efficient criminal justice machinery, routine mob justice may indeed become the most effective justice model for the future.

Endnotes

- ¹ Dr. Wankhede, A. and Dhawane, S, Post Mortem Report, PM Report No. 916/2004/AGW, 14th August 2004, Indira Gandhi Medical College, Nagpur. It records that "stab injuries to the trunk and chops injuries to head are sufficient to cause death individually, in the ordinary course of nature".
- ² Name withheld on purpose since as per our information she does not want further "publicity".
- ³ FIR No. 116/91, under section 366, 376, 506 (b), 354, 323 read with section 34 IPC registered at Koradi police station. Both Vilas Ram Bhande aged 21 years and Bharat@ Akku Kalicharan Yadav aged 19 years are co-accused in this FIR.
- ⁴ On 6th August 2004.
- ⁵ Section 57, Criminal Procedure Code, 1973; Also see Article 22(2) of the Constitution of India.
- ⁶ The Lokmat Times, Lokmat Samachar and The Hitavada.
- ⁷ On the 13th August 2004.
- ⁸ See Vivek Deshpande (15-08-2004), This is justice, say his victims, Indian Express dated 16-08-2004 at page 3.
- ⁹ The survey conducted jointly by Tirpude Institute of Social Action and Research and Mahila Vikas Kendra interviewed 9, 253 persons in Nagpur was published in Lokmat Times, a local newspaper.
- ¹⁰ Ibid.
- ¹¹ This summary chargesheet was given to us by the CID investigating officer.
- ¹² Regional Forensic Science Laboratory (2004) Chemical Analysis Report, M.L. Case No. AD-2820/2004, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur dated 30-10-2004.
- ¹³ Sections 147 and 148 Indian Penal Code.
- ¹⁴ Sections 143 and 149 Indian Penal Code.
- ¹⁵ Section 302, Indian Penal Code.
- ¹⁶ Section 326, Indian Penal Code.
- ¹⁷ Sections 332 and 353, Indian Penal Code.
- ¹⁸ Section 120B, Indian Penal Code.
- ¹⁹ Section 121A, Indian Penal Code.
- ²⁰ State of Rajasthan v/s Balchand, AIR 1977 Supreme Court 2447.
- ²¹ Mazhar Ali v/s State, 1982 Cr LJ 1223 (J&K).
- ²² State of Maharashtra v/s Balchand AIR 1977 SC 2447; Prahlad Singh Bhati v/s NCT Delhi, (2001) 4 SCC 280.
- ²³ Pocker Ram v/s State of Rajasthan and Others AIR 1985 Supreme Court 969.
- ²⁴ M. Krishnappa v/s State of Karnataka, 1992 (1) Crimes 618 (Kant).
- ²⁵ Arvindan v/s State of Kerala 1983 Cri LJ 1259.
- ²⁶ This court tries cases under the anti-terror laws.
- ²⁷ Sekhonyane, M. and Louw, A. (2002) "Violent Justice; Vigilantism And The State's Response", Monograph No, 72, April: <http://www.iss.co.za/PUBS/MONOGRAPHS/No72/Content.HTML> as on 11 November 2004.
- ²⁸ Kanate, G. (2004), "Nagpur's history of violence, retribution", Mid-day, August 22: <http://ww1.mid-day.com/news/nation/2004/august/90619.htm> as on 10 August 2005.



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