

Short Background on Communal Conflict now transformed into Genocide

Mass Crimes in Gujarat: Questions Unanswered

Teesta Setalvad

Nearly nineteen months after the genocidal violence that rocked the western Indian state of Gujarat, searing questions that the tragedies have raised related to justice and rehabilitation remain completely unanswered. Specifically, issues of state accountability after mass violence, independent policing, adequate reparation and the response of democratic institutions of the judiciary to such crimes hang suspended in mid-air, as the proverbial shortness of public memory betters the best efforts to keep some of these issues alive.

Post-Independence, India has had its shocking share of mass violence driven not just by community but equally, brutally, by caste during which the archaic Code of Criminal Procedure, penned by colonial masters has proved itself inadequate. Often official or other Commissions of Inquiry have sat, examined these lapses and made suggestions. One common feature of these has been is that the political class, whatever its ideological hue, have simply not bothered to publicly debate or implement these suggestions. The Indian judiciary, at all levels has restrained itself to minimal intervention in matters of social justice and violence.

What happened after Gujarat 2002? Something similar. Senior jurists and others, sat in a Concerned Citizens's Tribunal and actually recommended the establishment of a Statutory National Crimes Tribunal that must contain its own evolved jurisprudence drawn from the International Law on Genocide¹ and further urged urgent and quick reforms in the Indian Police Force. Drastic reforms in the Indian police system including guaranteeing its independence and ensuring representation and diversity had been recommended as far back as 1981 by the official National Police Commission itself.² The work of the Concerned Citizens Tribunal that lasted several months with no assistance from any official machinery is available in a two-volume report published from Mumbai.³

Today, judicial matters related to the genocidal violence in Gujarat have been brought centre-stage through two pivotal cases currently being heard in the Supreme Court. The fact that this has happened at all is due in large measure to the initiatives taken by the statutory National Human Rights Commission (NHRC)

¹ *Crimes Against Humanity, Volume II, Long Term Recommendations* –Concerned Citizens Tribunal Report; Tribunal headed by Justice VR Krishna Iyer and with members like Justice PB Sawant, Justice Hosbet Suresh, KG Kannabiran, KS Subramaniam, Aruna Roy, Tanika Sarkar, and Ghanshyam Shah.

² *Ibid*; section on Recommendations--Police

³ *Ibid*, published by Sabrang Communications for *Citizens for Justice and Peace, Mumbai*.

since the justice process in the state was systematically de-railed⁴ backed by a gritty citizens group, *Citizens for Justice and Peace*, that has mandated itself the responsibility to continue the struggle for justice and reparation for the victim survivors, however tough this may turn out to be.

Efforts are alive through these judicial interventions to move the criminal trials of the worst carnages outside the state of Gujarat.⁵ This argument for turning over both the investigation and conduct of the criminal inquiries to an area outside the control of the current chief minister, Narendra Modi and the state administration under him has been made since the start of the carnage last year, both by the NHRC (April 2003) as also by public interest litigations filed in the Supreme Court in April 2003 itself.⁶ If these had been heard judiciously and promptly by the Apex Court when it had been first approached last year, concerns related to the utterly subverted and paralysed local atmosphere in the state of Gujarat would have been met and more promptly answered.

Unfortunately, judicial record in dealing with such mass community-driven carnages remains pathetic. Sikh widow survivors of the 1984 pogrom against their community in the country's capital (that followed the assassination of former prime minister Indira Gandhi by her Sikh bodyguard)⁷ battle in vain for justice that nineteen years later cynically and brutally evades them. Similarly Muslim women survivors of 53 young males shot dead in cold blood in Meerut-Hashumpura (a town in western Uttar Pradesh) in 1989⁸ still struggle for justice. The recent conviction of Dara Singh and associates for the burning alive of Christian pastor Graham Staines and his two sons in January 1999 is a rare case of a sessions court punishing those guilty of communally driven crimes. Most pertinently, the examples of these and many more such survivors to see justice done decades after the crime are living testimonies to the fact that human beings need to believe and find justice for unspeakable crimes before peace and reconciliation can be effected. A failure to administer to this cry for justice renders a system vulnerable; torn from within by festering wounds and hurts that do not heal but in fact create their attendant aberrations. This is the unfortunate reality in India today.

⁴ NHRC Report and Recommendations during and after last year's carnage in Gujarat proved particularly embarrassing for the State

⁵ Plea in the SLP filed by the NHRC, dated August 1, 2003 and the SLP(Criminal) filed by *CJP* and Zahira Shaikh dated August 8, 2003 in the Supreme Court of India

⁶ Two petitions filed by DN Pathak and others and Mallika Sarabhai and others prayed for the transfer of key cases to the CBI and Investigations in these through this Independent agency

⁷ Darpan Kaur, a Sikh widow who lost 12 family members and even filed a First Information Report with the police against former Congress minister HKL Bhagat was first offered a bribe of Rs 25 lakhs and when she refused, was even beaten brutally. She has refused to give in.

⁸ The FIR in this crime was filed by a police officer of the rank of SP in his own name, Vibhuti Narain Rai who today is the IG of Uttar Pradesh

Teesta Setalvad, Background Materials for International conference on Impunity to Mass Crimes