

Broken Lives and Compromise

Shadow Play in Gujarat

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Victims of mass violence often fail to get justice from the legal system, at least within reasonable time. In the meanwhile, the clamour for “compromise” and for “moving on” often come to dominate public discourse. This article, based on a decade-long intense involvement with the relief and rehabilitation of the victims of the 2002 Gujarat killings, tries to understand what motivates the victims to agree to such “compromises” with the perpetrators of violence on them. It identifies various forms of inducement, coercion, fatigue and despair as probable reasons. It argues that forgiveness can only happen when the victim is empowered enough to decide but in our context, such acts merely hide the victims’ inability to receive justice.

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In all sites of mass violence in which women, men and children were attacked because of their religious or disadvantaged caste identities; I have observed that survivors grapple painfully for decades, even lifetimes, with burdens of memory, fear, betrayal, penury and a permanent sense of loss (Mander 2008b, 2010). I have found that their psycho-social struggles are further aggravated by the all-pervading culture of impunity amidst which they wrestle to rebuild their broken lives and ruptured social relations. Impunity means the certainty that people who committed mass crimes will not be punished by the law of the land. Impunity is even more difficult to reconcile with when those who committed these crimes against you were your own neighbours.

In this paper, I will examine the common extra-legal phenomenon of compromise in post-violence criminal cases, which is a major vehicle by which impunity is accomplished. I will attempt, with the example of experiences of survivors with the criminal justice system in Gujarat after the mass communal massacre of 2002, to understand the circumstances in which survivors submit on occasion to compromise, and thereby paradoxically become partners in the impunity of those who committed grave crimes against them. I will argue that victims are not widely indifferent to legal justice, or merely susceptible to be purchased, but that “compromise” has become a mode of survival for victims, in their highly unequal battle to rebuild their lives after mass violence.

This paper is based on nearly 10 years of ongoing engagement and solidarity with the struggles of the survivors of the Gujarat carnage of 2002 for justice and reconstructing lives. In this sense, it does not claim to be the detached research of a dispassionate observer. On the contrary, its observations are based on several hundred conversations with survivors in the course of our work with them for almost a decade (at the time of writing – October 2011), from the earliest days in relief camps to their protracted ongoing struggles for legal justice and dignified survival. It is the outcome of a joint enterprise of community-based research with the peace and justice workers (whom we call *aman pathiks* and *nyaya pathiks*, or literally those who walk the paths of peace and justice), many of whom are themselves survivors of the violence, and lawyers. These are my colleagues in a campaign which we call Nyayagrah, or the demand for justice.¹

Because “compromise” is a contravention of the legal process, punishable under the law, I will take care in this paper to keep the identities of the survivors confidential.

1 Compromise and the Law

For anyone engaged in efforts for legal justice with survivors of the mass violence in Gujarat, a word you are certain to hear frequently is “compromise”. The Gujarati equivalent is *samadhan*, but one is much more likely to hear people refer to it as “compro”, an interesting local coinage which has entered the everyday discourse of survivors, the accused, lawyers and judges.

Compromise is so openly discussed and strenuously advocated, not just in village courtyards and slum corners and the homes of survivors, but also in police stations and court corridors and even courtrooms, that most lay observers and participants in the criminal justice system in Gujarat would understandably believe that “compro” is a legitimate and legal device of law. My Nyayagrah colleague and law scholar Pritarani Jha has tracked the conduct and discourse of police officers and public prosecutors in deliberately weakening many criminal cases which we are pursuing, thereby creating space for compromise and out-of-court settlements between victims and the accused. There are many instances where they explicitly encourage such illegal settlements, which become an attractive option for the victims given the weak legal foundations that have been carefully laid by the work of the prosecuting machinery.

Section 320 of the Criminal Procedure Code, 1973, lists a number of criminal offences which can be “compounded” or legally compromised by persons specified in the statute, mainly those who are victims of such offences. These include crimes like adultery, simple hurt or illegal confinement. For all other grave and heinous offences, such as murder, rape, arson, looting and other crimes which are also common in episodes of mass violence, there is no legal provision for the accused and aggrieved parties to meet outside court and arrive at a settlement or compromise.

The Supreme Court has clarified that even when the victim of a non-compoundable crime like murder wishes to compromise with the accused, this is not permissible because

...Maintenance of rule of law is the prime duty of the State. In violation of the statutory provisions, except in some marginal cases, the court shall not allow composition of offence. If parties have settled their disputes they may live in peace in future but the same by itself cannot be a ground to pass a judgment of acquittal.²

The Supreme Court has also observed:

This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies.³

The underlying premise of law seems to be that grave crimes are not merely crimes against the directly affected individual, but against society. It is for this reason that, unlike in civil disputes, it is not the affected individual, but the State, who prosecutes the accused persons. It therefore is not merely a private matter which can be left to be resolved between two parties.

The question then arises that if compromise in serious crimes is illegal, how are such compromises accommodated into the legal process? If the matter has been brought to trial, this is done mainly through the device of encouraging witnesses to turn “hostile”, which means the resiling or backtracking from earlier statements or submissions made by the witness to the police or courts. In simple words, if a witness earlier testifies that she witnessed the accused committing a crime, and then contradicts this statement in a way that absolves the accused from the crime, the witness turns hostile. She may also refuse to identify the accused. Even after the compromise is reached, the case usually continues in court formally, although its results are forgone. The magistrate rarely questions why witnesses have turned hostile. The prosecutor mechanically asks witnesses if they were coerced into making their current statements, and the court records their denial. The ultimate judgments sometimes for the record decry “poor investigation”, but rarely recommend action against the police, or reinvestigation.

It is significant that contradicting one’s earlier statement with mala fide intent of deliberately weakening evidence with falsehoods to protect the accused is a crime under law. Under Section 191 of the Indian Penal Code (IPC),

“whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence”, a crime punishable by seven years imprisonment and fine.

There is no doubt that compromise in these matters is illegal, and witnesses deliberately falsifying their statements to benefit accused persons a serious crime. Despite this, it has been our consistent observation that it is routine for both public prosecutors to passively accept, and defence lawyers to openly encourage, compromise before tacitly supportive judges. This has been the common experience of lawyers and justice workers in Nyayagrah, as we assisted several hundred witnesses who wished to pursue legal justice in criminal cases connected with the Gujarat massacre of 2002. It is less routine but by no means unheard of for prosecutors and even judges to openly support and encourage compromise. One of the resolute witnesses in a case involving the murder of a *maulvi* (priest) and the destruction and looting of 92 houses in village Bilol in Kheda, Abdul Bhai recalls sardonically his experience in courts: “Almost 11 to 12 dates were given for ‘settling’ the case but not even one for letting us get a lawyer”, adding “We didn’t do anything wrong, why should we compromise?” (Mander 2008a). In this and a few other cases, we found the sessions court judge encouraged the witnesses to reach a “compromise”, and was openly hostile to our human rights lawyers, who were said to be “misleading” the witnesses by supporting them to give truthful evidence in the cases. I found remarkable how this complete subversion of the letter and spirit of the law was accomplished in a manner that few participants in the criminal justice system found problematic.

In effect the judges in these instances were openly abetting crimes of perjury under Section 191 of the IPC, and intimidating witnesses and their lawyers. Defence lawyers both inside and outside courts actively encourage such illegal, indeed criminal compromise, sometimes as we shall see, with the active encouragement of victims' lawyers as well. In effect, there is a formal law, and actual practice which turns the law entirely on its head, but this is considered somehow more legitimate than what the law prescribes.

What is the unstated social and ethical philosophy which supports "compromise" in post-conflict criminal cases? I speculate that it derives from the belief that the crimes against minorities in a carnage like Gujarat, if not righteous, were at least understandable, given the gravity of initial "provocation" by minorities themselves, in this case by allegedly torching the train compartment in Godhra on 27 February 2002, killing 58 Hindus. The alternate morality that supports compromise in Gujarat 2002 is an unspoken agreement that "they deserved it" and if no one gets punished then there was nothing wrong done in the first place. If Muslims affected by such violence stubbornly pursue legal justice, it will provoke fresh social disharmony between communities, and open fresh wounds. Instead, let the accused at best financially assist persons for their damaged property, and together the accused and victims will be able to close the unpleasant chapter amiably. But I have argued separately about the impossibility of authentic healing and closure for victims without justice (Mander 2009).

The real effect of compromise is to reaffirm impunity, and those individuals who engage in such violence get emboldened to undertake such crimes again in future. Nyaya pathiks have numerous stories about such individuals, some of whom fear no one, not magistrates and certainly not the police.⁴

2 Reasons for Compromise

In our work over several years with those survivors of the mass violence in 2002, my Aman Biradari colleagues – justice workers and lawyers working in the Nyayagrah campaign – offer support to several hundred survivors who wish to pursue legal justice. We consciously try not to be morally judgmental about those complainants and witnesses who refuse to pursue legal justice, or compromise in the course of the investigation or trial. Despite continuing support and solidarity with the survivors fighting criminal cases, it is not uncommon for criminal cases to collapse, sometimes unpredictably, because witnesses suddenly turn hostile. Justice workers belong to and live in local communities, therefore they are alert to initiatives to broker "compromises", and step in when these become known. But there are times when these are successfully executed in secrecy, and witnesses unexpectedly rescind their statements, because of which the cases unceremoniously collapse. These are moments of disappointment and heartbreak for the nyaya pathiks (justice workers), who may have spent years working with the witnesses, almost like members of their family, never expecting them to break down.

This research was a joint enterprise with the justice workers and lawyers engaged in Nyayagrah to understand why some

witnesses compromise. The complexity of this research is that transactions leading up to compromise often occur behind closed doors, although as we observed compromise is often also openly discussed in or outside courts. We have noted that with encouragement by the police, judges, prosecutors, even defence lawyers, compromise is often openly negotiated and advocated; even NGO workers often support this. But with the intervention of Nyayagrah and its committed position against compromise, which it regards to be subversion of law and justice, many of these negotiations are now more hidden from us. And narratives of witnesses who resorted to compromise are often understandably garbled and defensive. However, because the justice workers, drawn from both Muslims and Hindus, are located within the same communities, they are able to observe and verify.

It is important to note here that most witnesses are victims as well, and in the rest of this essay I will mainly use the term witness-victim, to underline this duality. Of course there were hundreds of Hindu witnesses to the crimes. But although we have recorded literally hundreds of cases of Hindus who heroically and compassionately saved the lives of their Muslim neighbours during the carnage, there is almost not a single criminal case among the several hundreds that we are engaged with in Gujarat in which Hindus have agreed to give evidence against their own Hindu neighbours for the crimes of 2002. Therefore, our conclusions here relate entirely to witness-victims who compromised, and turned hostile, in cases in which they or their loved ones suffered loss of property, life, limb or sexual assault.

With these disclaimers, we conclude that there are four major reasons for witnesses opting to compromise criminal cases in the mass violence. These are (1) Inducement, (2) Coercion, (3) Fatigue and despair, and (4) Forgiveness.

We shall consider each in turn.

2.1 Inducement

There is no doubt that in many (but by no means all) cases of compromise, victim-witnesses accept cash as part of the agreement to refuse to give evidence against the wrongdoers, or change their statements which earlier indicted them, or to refuse to recognise them in court. We have observed the following general patterns:

(i) In early stages of the case, especially investigation, there are rarely efforts from the accused to initiate any compromise. There seems an underlying expectation that the case will be closed or subverted effectively by the police even before the matter comes up for hearing, such as by fraudulently eliminating the names of the accused from the complaint or the police statements, or by deliberate defects in the final charge sheet, or better by ensuring that the case is closed for want of evidence, instead of being submitted to trial.

(ii) Typically, efforts for compromise enter at two stages. The first is during investigation, if the witness has been successful in recording the names of the accused, and there is danger that they will be arrested. Accused persons from the majority upper caste Hindu community are usually able to ensure early bail even if they arrested, but they are liable to seek a

compromise to avoid the social ignominy of arrest. The stage at which these efforts climax is when the depositions of the witness-victims are due in the trial court. People recognise this to be the make-or-break stage, and if matters go in the “wrong” direction, the accused may even be punished.

(iii) The efforts to reach a compromise through the offer of money are usually brokered by the elders of the village, or friends of the accused, and often the defence lawyers. Typically the negotiations are between men from both sides, and women witness-victims usually do not participate. They sometimes bring with them persons of the Hindu community who saved lives and gave shelter to Muslim communities during the carnage. It has been observed that witness-victims find it hardest to resist compromise when it is advocated by people who had extended to them protection when the violence was under way.

(iv) The venue of the negotiations is usually the home of the witness-victims, which delegations of those who are brokering the compromise visit; or especially when lawyers are primarily encouraging the compromise, in the courtyards or corridors of courts.

(v) If compromise entails the offering of money, the discussions are usually courteous, with negotiators addressing the witness-victims with honorific titles such as *kaka* (uncle), or affectionate kinship titles like *bhai* (brother). Some witness-victims recount this sardonically and with hurt, asking why they had forgotten that they were uncles and brothers of the village before the threat emerged that they could be arrested or convicted.

(vi) Witness-victims rarely seem proud that they had accepted money in the compromise deal with the accused. They seemed ashamed, often in public denial, with a sense of being morally compromised.

(vii) We rarely found that princely sums of money were offered as compensation. The amount is usually calculated based on an agreement about the value of the property which the witness-victims lost during the carnage, and the amount offered would be a proportion of this deemed value. There usually are a large number of accused persons in each case, and the amount would be collected by contributions from each of them. Loss of life is usually valued cheap in these transactions, and the trauma of sexual violence deserves little compensation in negotiations undertaken usually exclusively by men.

(viii) These small sums of money need to be understood also in the context of the politics of “compensation” in the aftermath of the Gujarat carnage. Witness-victims were typically offered very small sums of compensation, if at all, often after negotiating a hostile bureaucratic maze. The money offered by the terms of “compromise” are often their only real source of livelihood reconstruction, or the rebuilding of their homes.

(ix) Our final finding was that money is rarely the exclusive or even predominant consideration for witness-victims to accept it in a compromise. If one probed deep enough, one discovers simultaneously other spurs to compromise, especially coercion and sometimes fatigue, that act along with offers of money in influencing the witness-victim to submit to compromise.

The overall picture which emerged from our research was that the stereotype of rapacious and greedy witness-victims,

who was primarily motivated to make money out of their suffering, was largely absent in reality. Even if they accepted money, it was usually small amounts received with reluctance as part compensation from the accused for their looted or damaged properties, in a climate of fear, boycott, weariness or despair.

I will end this section with one story, in which a witness-victim ultimately refused the money offered by the accused. I find it difficult to decide whether it was fear, fatigue or forgiveness that led him to refuse the money. Perhaps it was a little of all the three.

The witness-victim, let us call him Akhtar, was a street vendor who owned his *laari* or wooden cart which he had plied for 35 years in a busy street market in Ahmedabad, selling *pakodas*.⁵ During the carnage, a mob of 15 men with sticks shouting slogans destroyed his cart, and injured him badly. In his police complaint, he said he could recognise the men who attacked him. Around eight years later, he was summoned to give evidence in the court. The defence advocate approached him before the hearing, asking him what his losses were, offering that the accused would pay him this in return for his refusal in court to identify them. Akhtar said that his ruined cart and its wares had cost Rs 8,000. The advocate said the accused were very poor, and could afford to pay him no more than Rs 3,000. He claimed that they had not even paid him his legal fees. Akhtar responded, “Let them spend this money in charity. Let them feed it to the cows and birds. I will not accept it. Tell them I have forgiven them.” In court, he said he could not identify any of his attackers from among those gathered in the court.

When we asked him later why he chose to compromise even without accepting money, he said “I am not the fighting type”. He said he lost a day’s earnings in each hearing, and no one could predict how long the case would continue. He added that he forgave his attackers. Maybe this was true. Maybe he was just wearied. But maybe what actually most prevailed on him was that in the market in which he plies his new cart, among around a hundred carts owned by Hindus, there are only two owned by Muslims. And that the majority of his clients are Hindus.

2.2 Coercion

It is our experience that most compromise occurs under duress, because of various forms of coercion, mostly covert. In a highly inequitable social and political context, in which boycott, fear, segregation and discrimination are daily lived realities of victim-survivors of mass violence (Mander 2009 and 2010), compromise is embedded in the complex ways they negotiate unequal survival.

Coercion within the Criminal Justice System

Let us first look at forms of coercion exercised by actors from within the criminal justice system. Witness-victims report grave and widespread intimidation by the police in not allowing them to file their complaints just after the carnage. If they do succeed in filing these, the police refuse to include the names

of the accused, largely referring to “anonymous mobs” among whom none could be identified and therefore prosecuted. They also report deliberately shoddy investigation. With such devices police are facilitating impunity, thus weakening the legal case, magnifying the chances of acquittal and creating the space for compromise, even if they are not directly compelling compromise.

There are two main ways that police directly contributes to compromise. One is by deliberately turning their face away when the accused and their cohorts criminally intimidate the accused. And, much more gravely, by registering what are popularly called “cross-cases” against the witness-victims.

A cross-case is a criminal case filed against witness-victims, in which they are alleged to have themselves committed crimes. The alleged crimes by witness-victims are usually connected with the carnage itself, but sometimes especially if the witness-victim becomes active in the case years after the episodes of mass violence transpired, criminal cases regarding fictitious incidents unrelated to the original carnage are also registered by the police. We have found this a standard and highly effective practice of intimidation widely used against active and determined witness-victims. Judges often tacitly support this intimidation, by hearing the cross-cases together. Magistrates and court lawyers often use the terminology of “Hindu accused” and “Muslim accused”. By bringing the perpetrator of communal crimes on par with the witness-victim, and ensuring that both face the rigours of arrest and trial, it is easy to wear down witness-victims, bring them to the negotiation table. They are then coerced to consent to a “joint compromise”, the terms of which are that the witnesses against the “Muslim accused” would agree to turn hostile in court, in return for which the witness-victims would also rescind from their truthful but incriminating statements against the “Hindu accused”. We have watched this happen over and over again, and even most determined and brave witness-victims are ultimately brought to their knees, their spirit broken. We have observed exactly the same device used to break the spirit and resolve of witness-victims of violence against Scheduled Castes and Tribes as well.

I recall being an ultimately helpless and heart-broken observer of this process in a particular high profile massacre in which more than a hundred Muslims were brutally killed. Some of the key witnesses were also our most active and spirited justice workers and members of their families. But some of these young men were picked up by the police, along with their fathers and uncles and charged with killing the single Hindu who also died in this episode. Police resisted their bail, and unlike the Hindu accused who were out on bail in weeks, these “Muslim accused” spent months and even years in prison, in spite of their stout defence by competent lawyers. Four years later, some of them were still in jail. The justice workers sent us the good news that their elders were finally released from jail, and all of them were acquitted, because the witnesses against them had turned hostile. I joined the celebrations, eating biryani with them, sharing their great relief, but with a great weight on my heart. None spoke of a compromise, but I

know that it must have occurred. And despite everything, we were powerless to stop it.

Zahira as Example

Defence and victim lawyers often pressurise witness-victims to compromise, taking advantage of their social vulnerability and legal illiteracy. We know cases in which the compromise is actually notarised on judicial stamp paper, with the signatures of all the accused and witness-victims appended. It is hard then for the witness-victims to understand that compromise is an illegal process, and that the notarised stamp paper has no legal validity.⁶ Ironically, lawyers often use the example of Zahira Sheikh⁷ to intimidate witness-victims from rescinding from their false statements which absolve the accused! I find that the word Zahira has become a verb in local discourse: “Zahira will be done to you”, meaning you will be sent to jail if you further change your statement (and incidentally speak the truth before court).

As an illustration, justice workers of Nyayagrah were approached by witness-victims in a case in which they had employed their own lawyer (indicating that the witness-victims were already committed to secure justice in this case, even without any prompting or support from Nyayagrah, or availing of its offer of free legal aid). In the socially polarised context of Gujarat after 2002, it was rare for a local Hindu lawyer to accept the brief of Muslim witness-victims in criminal cases connected with the carnage. The small number of Muslim criminal lawyers therefore gained a huge windfall of legal business, and they were known to charge high fees. In this case as well, the senior Muslim criminal lawyer was paid well by the witness-victims, although they could ill afford his fees. But they were dismayed because he had begun to broker a compromise behind their backs, and had already persuaded several of the witness-victims in the case to turn hostile. Therefore they sought the support of Nyayagrah, which, they said, did not have senior “star” lawyers, but did not enter compromises without knowledge or consent of their clients.

The ejected defence lawyer was furious with the witness-victims and the Nyayagrah team. He contacted Nyayagrah lawyers and demanded that they withdraw from his case. He described Nyayagrah’s intervention as irresponsible. My colleague Ishak Arab recounts:

Given the likelihood of acquittal of accused and the cross case facing the Muslims, he said he thought that compromise was the best solution, as it would ensure both sets of accused could get on with their lives and the victims would receive some money.

The victims had a far less charitable interpretation, and said he was really against compromise because this senior advocate was to receive more than a lakh of rupees as per the terms of the compromise settlement! For the record, however,

this advocate’s main argument for supporting compromise was in the interest of promoting peace and harmony between Hindu and Muslims in the aftermath of 2002. The ongoing case would only serve to keep alive the bitterness between the communities.⁸

The role of trial-court judges in coercion is usually one of tacit abetment, by remaining silent and passive spectators of the

illegal processes of compromise, sometimes even in their presence in the court-room, but mostly in cases in which witnesses en masse turn hostile. But we have also seen cases in which judges openly facilitate compromise. One case⁹ was exceptional, in which the magistrate “actually noted in her judgment that she had granted an adjournment to facilitate compromise in a murder case, which is clearly non-compoundable”.¹⁰ My colleague Pritarani Jha adds, “The treatment meted out to the advocates and activists challenging the compromise process was quite shocking and incredible...In their world...the victims willing to stand up for the truth were the mischievous trouble-makers.” The magistrate shouted at the Nyayagrah team present in the court, and asked them to vacate her court.

In two other cases, my colleagues have observed the conduct of the trial judges in indirectly coercing compromises. In one criminal case in Ahmedabad, which had been going on for more than eight years, the judge made his pro-compromise stance by stating in open court that he thought compromise was the best solution. The judge’s reason for encouraging parties to compromise was that “you have to live together side by side, if you don’t compromise the case will go on forever, as whatever the result one of the parties can appeal and everyone knows that appeals will take a long time to be heard”.¹¹

In another case from Anand, where the accused are charged with serious non-compoundable criminal offences such as looting and arson, the judge asked the victim aggressively why he was not compromising, when so many accused and victims were open to compromise, or had already compromised. In this case, there was a conflict between different groups of victims, in which one group wanted to compromise and another did not; the judge, by stating his pro-compromise position openly, placed considerably more pressure on those witness-victims who wanted to fight the case. The judge’s words and actions impact the victim’s hopes and aspirations for justice. The Nyayagrah advocate for the victim in this case was quite dismayed by the judge’s intervention; he felt that there was little chance of getting justice from this judge.¹²

Coercion in the Community

We have encountered a smaller number of cases of open intimidation and threats by the accused, such as a case¹³ in which the accused came drunk to the house of the sole eyewitness, and threatened him, shouting at the gate of his house, “*Chacha!* (uncle!), the case is coming up for hearing soon. Don’t you dare give evidence against me, otherwise I will kill you.” With the help of the justice worker, the witness filed a complaint in the police station. The man accused of riot crimes remained aggressive even in the police station. But since then he has not repeated his threats.

In another case in Sabarkantha district, the accused persons threatened to set fire to the business of the witness if he persisted with his evidence in court. The witness refused to be cowed down, and they actually torched his shop. The police refused to register his complaint, but after he persisted with filing his complaint with the help of justice worker, the police concluded that the fire was an accident.

There was also an extreme case of a woman, born into a Hindu home but married to a Muslim, who was mass-raped in 2002 violence. Two accused persons kidnapped the 16-year-old daughter of this witness-victim, and threatened to rape her, unless she signed an affidavit claiming she had filed a false case against them. She consented, got her daughter back, but an upright senior police officer, Nirja Gortu, heard of the matter, and intervened to ensure that a FIR was registered by the police for threats, intimidation and kidnapping; she also met the rape-victim and assured her of all support. But there is an ironical twist to this last story: The woman suffered a serious road accident, her legs turned gangrenous and had to be amputated. By then her husband had lost interest in her, and she had no money for her treatment. The accused paid for her medical expenses, and in return she compromised in the case concerning the kidnapping of her daughter. But she is still persisting with her appeal in the rape case of 2002, in which the accused had secured an acquittal at the trial court.

However, cases of open criminal intimidation of witnesses by the accused and their supporters, years after the carnage, are relatively few among the cases we are pursuing in Nyayagrah, possibly because the accused know that the witnesses are supported by active and alert justice workers who would register and persist with police complaints. However witness-victims face a wide range of covert and overt forms of coercion, to pressurise them into submitting to compromise.

The most potent form of social coercion that we encountered was of social and economic boycott, which is particularly effective in the relatively close-knit and socially intimate context of a village. In the largest number of narratives of compromise which we have heard, the threat would be openly held out that if you persisted with offering truthful witness in the criminal case, no one in the village would trade with you, employ you in their fields as workers, sell you milk, tea and groceries; or often even more disastrously, would socially ostracise you, boycott your weddings and funerals, and exclude you from all public meetings and gatherings. Such threats would successfully dampen the resolve of all but the most determined seekers of legal justice. There are several occasions in which even the Muslim households of the village would join the boycott. These Muslim boycotters include not just persons who had chose to compromise, but also ordinary Muslims unconnected with any criminal cases, who fear retaliation if they are seen to oppose the social directives of boycott. I have described at length elsewhere (Mander 2009, 2010) how boycott has been deployed powerfully in village after village in Gujarat to reduce the minorities to subjugation, and to tame any assertion. This applies also to the resolve to fight for legal justice.

In cities, boycott is not so open, but a more understated fear of giving evidence against one’s attackers from the majority Hindu community persists. For instance, a Muslim factory worker in Naroda saw his house being burnt down by his neighbours, but his life was saved by his friend, a member of the Rashtriya Swayamsevak Sangh. He is one of the few Muslim residents of Naroda who has returned to live there after the

massacre, and has started a new property business. He is afraid to pursue his case because it would cause ill will among his Hindu neighbours. We have already encountered the cart-owner who sells pakodas in a busy city market, in which almost all other carts are owned by Hindus. He refused the money offered to him, but still compromised. Another cart-owner who sells vegetables around the city worries because his livelihood depends on daily visits to the Sabzi Mandi or wholesale vegetable market, and most of the accused who destroyed his market live around there; some have explicitly threatened him. I met a rich Muslim businessman who owns a truck business with a Hindu partner. He sent a message through the justice worker that he wanted to meet me secretly. I did so one evening. He said he knows that his partner had organised the attack on his business in 2002. But he cannot give evidence against him in court, because he continues to partner his business with him. But in his heart he wants to see him punished, and hopes others would give evidence against him.

As the result of the 2002 violence, an estimated 2,00,000 people were displaced. Around 25,000 are still in relief colonies, nearly 10 years later, unable to ever return. An uncounted number shifted to the safety of Muslim ghettos. But those who did wish to return were usually forced to negotiate the terms of their return to the village. And one of the most important conditions for those who were “allowed” to return to the land of their birth was that they would compromise cases of legal justice.

But even many of those who chose to never return to their homelands – probably because of fear, betrayal and memory – were not spared the coercion to compromise. In a major case in rural Ahmedabad, the entire joint family except one, a heroic matriarch, compromised, even though they had decided not to return to their village. This was because they wanted to sell their agricultural lands and houses, and the elders of the village said they would ensure that they would not get a decent price for these unless they agreed to the compromise. They knew it was a distress sale, and none except Hindus would be willing to purchase these properties. Ultimately they knew they were defeated.

There is one more particularly poignant form of invisible coercion, faced sometimes by those who themselves, or their loved ones, suffered sexual violence. In one village, a family of seven was attacked brutally by a mob. Two daughters were disrobed and raped. The daughters were later married off, and the families of the bridegroom were never informed about the sexual assaults. The rapes do not figure in the police complaint, but the other crimes do. Even so, the parents are terrified that if they or the children give evidence in the case, the facts of their rape may be raised in court. The lawyer told them that maybe they would be asked in the open court: “where did he place his hand? or where did he put his leg?”⁴ Their one son is permanently disabled by the violence, one daughter attempted suicide, another remains psychologically disturbed and they lost possession of their small piece of land. They want desperately that those who committed these

terrible crimes are punished, but in the muffled social silences around rape, they have silenced also their longing for justice.

3 Fatigue and Despair

Another recurring motif through the majority of narratives of compromise is of fatigue and despair. Each court hearing involves loss of a day’s earnings, and the cost of travel and food in the courts. If there was any reasonable chance that they would win the case in the end, then all these costs, combined with risking threats, social ill will, boycott, ejection from their homes, and refusing offers of compensation, would still seem worthwhile to some. But experience has shown them that chances of victory are so slender, that weariness and hopelessness contribute significantly to treading the pathways of compromise.

Even in the normal course, home-spun local wisdom is that the legal process will further impoverish the poor, and leave them ultimately empty-handed. The only ones to prosper from protracted litigation stretched over several years are the lawyers! But in a post-mass violence situation, all institutions of the criminal justice system are usually openly hostile to the disadvantaged victim, making the possibility of eventual success even more remote. We have separately argued that in the aftermath of targeted mass violence, we witness not merely the collapse of justice, but its systematic planned subversion (Mander 2009; Chopra et al, unpublished study). From deliberately ambiguous police complaints to shoddy investigation, to cross-cases, to encouraging compromise, to prosecution lawyers who act like defence attorneys, to biased judges, the legal course is a minefield, for witness-victims who are anyway dealing with the challenges of reconstructing their broken lives in a hostile social and political environment. Defence lawyers are skilled in ensuring that these cases are unendingly adjourned, on a vast variety of pretexts. The inherent flaws of the criminal justice system, aggravated in a post-conflict situation, wear down all but the most robust of witness-victims.

4 Forgiveness

In this investigation, my last question is, do witness-victims also compromise simply because they have forgiven their tormentors? When the wooden cart-owner selling pakodas whom we encountered in the earlier pages of this paper refused the small amount of money offered to him, suggesting instead that it be distributed to birds and cows, he said he had forgiven his attackers. But had he really done that, or was it fatigue, or the unstated fear of working among sellers who were almost entirely of the majority Hindu faith? NGO workers, village elders, the accused and witness-victims who justify compromise in order not to disturb the fragile social “peace” of their communities, often dignify these choices with the word “forgiveness”. But to me, these are all acts of surrender.

I believe that authentic forgiveness after mass violence is only possible if a victim is restored to a situation in which she has the capacity to freely choose whether she wishes to forgive or not, and her choice would have consequences on the person

forgiven. Forgiveness can only be taken or given authentically without duress. If I “forgive” so that I or people of my family or religious faith are not attacked, not prevented from working or living in our chosen home, not boycotted, humiliated or ostracised, then I am not forgiving, I am negotiating the terms of unequal survival. But if the person accused of crimes against me no longer can cause me or those I regard to be mine any of these harms, and I extend pardon, then truly I can be said to have forgiven.

I have searched these many years for stories of such authentic forgiveness, and I believe that I found at least one. On a busy street in a commercial hub of Ahmedabad city, a middle aged Muslim man owned a modest business selling construction materials. Among those he employed was an impoverished Hindu worker, who plied the construction materials on his cycle rickshaw cart. In the wake of the burning of the train compartment in Godhra on 27 February 2002, a mob looted his shop, and when he resisted, even attacked

him. He was dismayed to find that in the mob was also his cycle rickshaw driver employee. It was he who knifed him in his arm. He filed a complaint against the attacking mob, naming also his worker. In the months that passed, his knife wounds healed, and he took a loan and rebuilt and restocked his shop. One day his former employee came to him, dishevelled and contrite. He said that on the day of the riot, he was drunk and misled by the mob, which is why he attacked him. He would visit often, expressing remorse each time, until one day the shop-owner re-employed his attacker. He called our justice worker and said to him that he no longer wished to pursue the case.

Our justice worker tells us that the shop-owner often counsels his attacker not to drink, and even loans him money from time to time. “I have forgiven him”, he explained to me simply, when I went to see him, asking him why he refused to pursue the course of legal justice against his attacker. I believe he had forgiven him.¹⁵

NOTES

- 1 Nyayagrah is a mass community based and ethically bounded campaign for legal justice. It attempts a resistance of collective courage, shoulder to shoulder with survivors who have been able to rise above their own often intense suffering to volunteer as peace and justice workers. It aims at approaching survivors with the assurance of support if they wish to fight for legal justice, and helping them with legal and moral support to contest these several hundred cases, mainly through the agency of the survivors, community justice workers and a number of young lawyers.
- 2 Para 35, *Zahira Habibullah Sheikh and Anr vs State of Gujarat and Ors*, AIR 2006 SC 1367.
- 3 Para 33, *Zahira Habibullah Sheikh and Anr vs State of Gujarat and Ors*, AIR 2006 SC 1367.
- 4 Noted by Moyukh Chatterjee, anthropologist researcher.
- 5 Case study recorded by Moyukh Chatterjee.
- 6 Recounted by Pritarani Jha.
- 7 Zahira Sheikh was a prime witness in the high-profile Best Bakery case, but was punished with one year's imprisonment and fine by the Supreme Court for repeatedly changing her statements: *Zahira Habibullah Sheikh and Anr vs State of Gujarat and Ors*, AIR 2006 SC 1367.
- 8 As recounted by one of Nyayagrah's state coordinator Ishak Arab.
- 9 This case was in Balol, Gujarat and was documented by Pritarani Jha.
- 10 Recorded by Pritarani Jha.
- 11 This conduct of the Judge was noted by anthropological researcher, Moyukh Chatterjee in one of his many court observations.
- 12 Information analysed from interactions with the concerned advocate in Anand.
- 13 This was a case in Ahmedabad, the information comes from a recorded interview by researcher, Moyukh Chatterjee.
- 14 Recounted to researcher Moyukh Chatterjee.
- 15 I reproduce, however, penetrating observations of Patrick Hoenig who commented on my penultimate draft: “I wonder whether there is not something systemic in the way society in Gujarat debases any attempt at reconciliation, something that has prevented you from finding, as you write, a single case of forgiveness in years and years of research. The one case that you actually do cite as truly marking forgiveness

...seems open to a variety of interpretations. Yes, your argument is sound that there was no inducement at play, or coercion or fatigue factor, but does that mean forgiveness is the only other option? Given the power of inequality between the shopowner and the “dishevelled and contrite” cycle rickshaw wallah I wonder whether the re-employment of the latter by the former, complete with the occasional admonishment and loan, cannot also be read as an attempt at re-establishing control over something, or someone, after the experience of a complete loss of control during the riots. The broader philosophical question really is whether forgiveness is possible between persons of greatly divergent economic and social status, irrespective of who is on which side in that equation”.

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