Dr Iqbal Ansari Memorial Lecture

Communal Violence in India: Ending Impunity

Harsh Mander

For any teacher, the highest tribute is the love of one's students. It is Dr Iqbal Ansari's students who have organised this annual Memorial Lecture series to honour his memory. It is an extraordinary privilege for me to speak this evening in memory of a great son of India, a teacher of English, and a man who was a passionate human rights worker until his last day. Much of his adult life, he battled he recurring blood-letting in organised episodes of mass communal violence in India. The organised hatred, the suffering of the survivors, and the impunity of the perpetrators of these targeted hate crimes, caused him life-long anguish. But never once did he lose hope and faith that the secular democratic foundations of the Indian republic would ultimately prevail. Each new episode of violence and impunity only stirred him into even greater urgency to seek solutions, within the framework of the Constitution.

In the later decades of India's struggle for freedom from British colonial rule, an immense groundswell of popular support and mass mobilisation had surged behind Mahatma Gandhi. The majority of people of this land shared his vision for the new India, of a resolutely secular nation, with freedom and equal rights of citizenship for people of every faith, community, caste, class, colour and gender. There was also influential mass support for more radically egalitarian and democratic ideologies of the left and dalit movements. However, leaders of the Muslim League fought for and secured an independent Islamic nation carved out from Muslim majority segments of India, convinced that people of diverse faiths cannot live together with peace and equality. Extremist Hindu organisations were also implacably opposed to Gandhi's humane and inclusive Hinduism and nationalism, and one from among their ranks assassinated him just months after India became free.

The tolerant and pluralist secularism of modern India is rooted in millennia of the civilisational experience of Indian people, a civilisation in which every major faith in the world found a home, was nurtured, and evolved, alongside a rich and challenging diversity of sceptical, rationalist, atheistic and agnostic beliefs. Indian secularism entails therefore not a denial of faith, but equal respect for all faiths - including always the absence of faith - with all the symbols, philosophical trappings and ethical imperatives of these different systems of belief. It derives from an unbroken multi-hued tapestry of practice and teachings of tolerance and love, including those of Buddha, Ashok, Akbar, Kabir, Nanak, the Sufi saints and Bhakti reformers, and Gandhi. It is overlaid in its modern incarnation of democratic secularism with not just equal respect for all faiths, but also the guarantee for the practitioners of these diverse faiths of equal rights and protection under the secular law of the country.

Two years after Gandhi fell to the bullets of his assassin, the Constitution of independent India - drafted by one of India's most revered leaders from a community which traditionally was subjected to the most savage caste discrimination, BR Ambedkar - secured further the secular, socialist and democratic foundations of the nation reborn. This secular Constitution pledged equal freedoms and rights to all citizens regardless of the god they worshipped or chose not to

worship, regardless of whether they were women or men, regardless of their caste, wealth, ethnicity, the colour of their skin, and the language they spoke. Although the state had no religion, the Constitution guaranteed all people the freedom to not just follow but also to propagate their own religion.

The struggle for freedom was never just a battle against colonial bondage, but also one for the India that would be rebuilt when the colonial rulers left Indian soil. It is significant that many of those who gave most for the secular democratic idea of India, such as Gandhi and Maulana Azad, were deeply devout practitioners of their respective religious faiths. And foremost among those who fought for religious states, Jinnah –father of the Pakistani nation - was not a practising Muslim most of his life, and Savarkar, founder of militant Hindu nationalism which he called Hindutva, was an avowed atheist. The battle is not, and never indeed was, between the actual teachings of any religion. It was about whether political mobilisation and institutions should be build around identity and difference, or on acceptance of, respect for and even celebration of diversity.

Despite the solemn guarantees of the Constitution of free India and the proud and shining legacy of Gandhi and the non-violent struggle that he led – dimmed a little but by means extinguished by the slaughter that accompanied Partition - psuedo-religious fascistic organisations continue to challenge the secular democratic vision for India. Their onslaughts grew more militant since the 1980s, with a resurgence of their aggressive alternate politics of difference and hate, and their propagation of a homogenised, combative, patriarchal and upper-caste version of the essentially pluralist majority Hindu faith. Since then, their mobilisation has been organised most powerfully around the symbol of a crumbling medieval mosque, the Babri Masjid, in a small town called Ayodhya, which they claim had been constructed after demolishing a temple built to commemorate the birth-place of revered Hindu deity Ram. A massive mob assault on this Muslim place of worship in the sacred Hindu town of Ayodhya resulted in its brutish demolition in 1992. As the highest courts of the country unconscionably prevaricated in their attempts to arbitrate the rival claims to the disputed site, extremist Hindu organisations continued to demand stridently that the site of the destroyed mosque be handed over for the construction of the Ram temple regardless of the decision of the courts, or independent historical and archaeological evidence. The movement to build a grand Hindu temple at the precise site of the Babri mosque, is not about competitive reverence for Ram or Allah, but an assault on the idea of secular democratic India itself, and the ancient traditions of equal reverence for all faiths, as well as the modern Constitutional guarantees of equal protection and equal rights as equal citizens before the majesty of the secular law of the land.

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Since Independence, India has seen scores of group attacks on people targeted because of their religious identity[1]. Such violence is described in South Asia as communal violence. While there is insufficient rigorous research on numbers of people killed in religious massacres, one estimate suggests that 25,628 lives have been lost (including 1005 in police firings)[2]. The media

[1] Engineer, A.A. Communal riots after independence : a comprehensive account. Delhi: Shipra, 2004

[2] Rajeshwari, B. 2004. Communal Riots in India: A. Chronology (1947-2003), Institute of Peace and Conflict Studies.

has regularly reported on this violence, citizen's groups have documented grave abuses and State complicity in violence, and government-appointed commissions of inquiry have gathered extensive evidence on it from victims, perpetrators and officials. Despite this, it has been remarkably difficult to hold perpetrators and State authorities accountable for committing, encouraging, aiding or enabling (including through deliberate inaction) such violence.

There are many who believe that the pursuit of legal justice by the survivors actually blocks prospects for reconciliation, because the testimonies of survivors would result in the arrest and trial of their disjoined neighbours. In Gujarat after the 2002 carnage, some well- meaning organisations in fact have actively and successfully brokered the negotiated return of Muslims to their villages, accepting on behalf of the victims the condition that they would not give evidence of the names their attackers to the police or in courts. They regard such negotiated home-coming of internally displaced people on highly unequal conditions, to be processes of forgiveness and reconciliation.

However, I believe that no authentic reconciliation is possible if it is built on the foundations of persisting injustice. The return of survivors transacted on the condition of abandoning all their prospects of securing justice as guaranteed under the law of the land for all citizens, for slaughter, rape, arson or loot, is not reconciliation in the sense of a restoration of trust and goodwill, but it is capitulation by a crushed and hapless people. Forgiveness is authentic only if the person who forgives has the option not to forgive. In Gujarat, we are witnessing not forgiveness but abject surrender. It is interesting that Gandhi also stressed that real forgiveness can only come from a situation of strength and agency of the person who has suffered. He says that 'Abstinence is forgiveness only when there is power to punish; it is meaningless when it pretends to proceed from a helpless creature'. He illustrates this with a metaphor: 'A mouse hardly forgives a cat when it allows itself to be torn to pieces by her'.

Contemporary India has a troubled history of sporadic blood-letting in gruesome episodes of mass violence which targets men, women and sometimes children because of their religious identity. The Indian Constitution unequivocally guarantees equal legal rights, equal protection and security to religious minorities. However, the State's record of actually upholding the assurances in the secular democratic Constitution has been mixed.

The Centre for Equity Studies is engaged in an on-going study which tries to map, understand and evaluate how effectively the State in free India has secured justice for victims of mass communal violence. It does so by relying primarily on extracting the State's own records relating to 4 major episodes of mass communal violence - beginning with Nellie 1983, Delhi 1984 , Bhagalpur 1989 and Gujarat 2001, primarily using the powerful democratic instrument of the Right to Information Act 2005. In this way, it tries to hold up the mirror to governments and public authorities and institutions, to human rights workers and to survivors themselves - of official documents, supplemented by reports of Judicial Commissions of Enquiry (which are routinely set up after major episodes of mass communal violence, and typically forgotten subsequently) – to evaluate the accountability and impunity of public officials after episodes of mass violence.

International law lays down that States owe victims of gross human rights violations reparation[3], and reparation includes (1) access to justice in the form of criminal prosecution, (2) access to truth, and (3) material and non-material restitution. The Indian State has substantially failed victims of mass violence on all these counts. Particularly in the massacres before Gujarat in 2002, there have been very few criminal trials relative to incidents of serious violence. The record of cases brought at least to trial has been a little better in Gujarat, only because of greater civic activism, not because of the efforts of State institutions to secure justice. On the contrary, the State in Gujarat has resisted efforts to ensure justice to the survivors of the brutal mass violence.

Many of those who are engaged with this study have experience of working directly with survivors of mass communal violence, and learning from the narratives and experience of victim survivors. There is also a very large body of information, of reports of judicial commissions, of investigations by civil rights groups, of academic research and journalism available on episodes of mass communal violence. All of these suggest a recurring pattern of structural injustice and impunity leading up to, during and in the aftermath of such mass violence. These lay out the broad hypothesis of this study, which we tried to test against the State's own records.

The study does not investigate the build-up and prevention of such episodes of mass communal violence. It investigates the access of victims to protection, justice and reparation after communal violence actually breaks out. Our hypothesis is that many victims of mass communal violence do not succeed in registering their complaints with the police. Where the State has a shaky record in failing to protect people from mass violence, and is perceived as partisan, victims have little confidence in its ability to pursue their complaints. But the greater problem is the climate of fear and both official and non-official intimidation which renders it difficult to register complaints after episodes of communal violence. Where victims have complained, the police is known to often refuse to register these complaints, or to register complaints but deliberately leave out crucial details narrated by the victims about the events, perpetrators and witnesses. Investigation is often found to be slipshod, and large numbers of complaints are closed without the alleged perpetrators being charged with and tried for offences. Trials are long, and have often been unsuccessful. As with criminal trials, the process of compensating victims is also typically very protracted. Survivors and activists, also testify that securing compensation is very cumbersome, and can take many years, and rates and standards of financial assistance extended to survivors of mass communal violence tend to be far too low to enable survivors to rebuild their lives. And finally, there is scant official disclosure on the State's response to mass violence, and therefore a denial of survivors to 'truth'.

In summary our hypothesis is that the Indian State has failed, in very large measure, to prosecute perpetrators, to account for its own failures, to compensate victims, and to tell citizens about what it did or did not do.

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[3] , UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law

Communal violence and its aftermath in India has always been characterised by injustice and partisanship by State authorities. But the carnage of Gujarat in 2002 stands apart not only because of the unprecedented denial of relief and rehabilitation to the survivors by the elected State government of Gujarat, but also because of the extent of the open, deliberate and defiant subversion that it witnessed of the criminal justice system, with the complicity of all its arms: the police, the prosecution and the judiciary. The charge of deliberate justice subversion is of course consistently denied by the State government, and indeed by the central government that was in office at the time of the carnage. For instance, the then Deputy Prime Minister Mr. LK Advani in a television interview dismissed the claim that there has been an extremely grave and deliberate subversion of justice in the aftermath of the Gujarat carnage 2002. He suggested that whatever failures occurred were the routine outcome of the general collapse of the criminal justice system in country, and that there was nothing distinct in the experience of Gujarat. But in fact what Gujarat witnessed after 2002 was not a spectacular State failure, but a remarkable State success, because the State succeeded in achieving what it set out to accomplish, and this was the subversion of all institutions of criminal justice with the sole objective of ensuring that those guilty for the massacre are not punished.

In the scathing words of the judges of the Supreme Court of India[4], the bench of the highest court in the land gets 'a feeling that the justice delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge'. The National Human Rights Commission earlier spoke in a similar vein of 'a large-scale and unconscionable miscarriage of justice' and stressed the imperative of the restoration of 'justice and the upholding of the values of the Constitution of the Republic and the laws of the land. That is why it remains of fundamental importance that the measures that require to be taken to bring the violators of human rights to book are indeed taken.' The failures of the state government to heed its counsel ultimately moved the National Human Rights Commission to respond to what it described as the 'damage to the credibility of the criminal justice delivery system and negation of human rights of victims', by the extremely unusual step of itself filing an application before the Supreme Court for transfer of five major criminal cases connected with the 2002 carnage for their trial outside the state of Gujarat.

These damning observations about these large cases applied equally to literally thousands of cases in which justice has been cynically and efficiently subverted by State authorities in Gujarat, in the aftermath of the carnage if 2002. My colleagues and I applied to the Supreme Court that out of a total of 4252 FIR's registered after the carnage, 2208 'summary reports' were filed with the magistrate's court. This means that these cases were closed even without submitting them to trial, based on police claims that they were unable to collect any evidence against the accused, or that the crime itself did not take place. If this was not challenged, it would mean that one could kill, rape and pillage openly, and would not have to even once see the inside of a police station or court-room. The impunity with which the next slaughter could be executed can then well be imagined. The extent of bias of the lower judiciary is evidenced by the fact that more than 200 courts in 17 districts passed these completely illegal orders of closure. Also, more than 300 accused had been acquitted in a short time span of over a year, with very few appeals filed by the State government. The closure of cases or acquittal of the

[4] in the Zahira Habibiullah Sheikh v. State of Gujarat case, better known as the Best Bakery case

accused in more than half the cases registered after the massacre in the short space of around one and a half years, was all the more extraordinary, given the normally sluggish pace of criminal justice in our country. It was the cumulative outcome of deliberately faulty police complaints and investigation, discriminatory arrests and bail and the intimidation of witnesses and biased prosecution and judges.

Many of the cases that were closed were deliberately destroyed in this way at the stage of the filing of the police complaint, known as the FIR or First Information report, itself. The accused were not named, and instead the violence was attributed to anonymous mobs. In many cases, omnibus FIRs were filed in advance by the police, clubbing large numbers of incidents involving sometimes hundreds of witnesses and accused in single complaints to render investigation completely unwieldy and confused, and in which often the victims were accused of instigating the mobs. Subsequent complaints by victims were then subsumed under the police FIRs, and the names of many of the main accused eliminated. Even those of the accused who were charged with grave crimes were released on bail frequently without opposition from the local police, enabling them to intimidate witnesses at will. Often false complaints – informally called 'cross cases' - were filed against the few complainants who managed to get their complaints registered, to browbeat them into not pursuing their complaints. There was also a discriminatory communally motivated pattern in the persons arrested and released on bail.

Investigation in many cases was assigned to tainted police officers accused of abetting or even participating in the massacre. The observations of the Supreme Court (again made in the context of the Best Bakery slaughter) apply to the large majority of the cases: that 'the role of the investigating agency itself was perfunctory and not impartial… it was tainted, biased and not fair… without any definite object of finding out the truth and bringing to book those who were responsible for the crime'. Witnesses and survivors allege that the police did not take down their testimonies properly, deliberately omitting details and the names of the accused.

Once trials began, prosecution was frequently deliberately shoddy and partisan, and it was not unusual for public prosecutors to be often openly active members of the Sangh and affiliated organisations. The accused were frequently not arrested, under the specious claim that they are 'absconding', whereas they openly walked free, threatening and intimidating the witnesses with impunity. Once again, the Supreme Court expressed anguish about the 'improper conduct of trial by the public prosecutor' and added that when 'a large number of witnesses have turned hostile it should have raised a reasonable suspicion that the witnesses were being threatened or coerced'. It added: 'The public prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court. … The prosecutor who does not act fairly and acts more like a counsel for the defense is a liability for a fair judicial system, and courts could not also play into the hands of such prosecuting agency .'

The Supreme Court reserved its gravest strictures for the trial court. It stated: 'The courts…are not expected to be tape recorders to record whatever is being stated by the witnesses. … They have to monitor the proceedings in aid of justice… Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. ' It observed significantly that truth should prevail over technicalities which protect the innocent and punish the guilty and the confidence in courts must be restored. 'When the investigating agency

helps the accused, the witnesses are threatened to depose falsely and prosecutor acts in a manner as if he was defending the accused, and the Court was acting merely as an onlooker and there is no fair trial at all, justice becomes the victim.'

The injustice was further compounded by the large-scale arrest of people of the minority community, and the strenuous resistance by the police to their applications for bail. Men and even boys were charged with murder and attempted murder in cases where police fired and killed innocent people, or powerful people were sought to be charged, in order to build pressure on the victims by filing 'cross cases' against them. All of this continues. Witnesses remain under great pressure to not give evidence against those who attacked them and destroyed their homes, even as a condition for returning to the homes of their ancestors or under threat of being prosecuted themselves on false charges. With openly biased police, courts and prosecution, criminal cases against the accused are sinking like stones in a turgid pool.

The brazenly partisan exercise of state authority is even more evident in the unapologetically discriminatory application of the draconian Prevention of Terrorism Act 2002 (POTA) exclusively against minorities. Several hundred youth arrested under cases of POTA in Gujarat have been Muslim, except for one Sikh. Most of the POTA accused have languished for years in prison without bail. By contrast, despite the brutal carnage which took more than 2000 lives, not one of the accused were booked by the state government under POTA. The central government refused to repeal POTA retrospectively, so these cases persist.

The comprehensive and wanton failure of every institution responsible for criminal justice in Gujarat - the police, prosecution and judiciary - and the deliberate denial of justice with the objective of securing freedom for those accused of the gravest crimes of massacre, rape and arson from even the processes of the legal system let alone ultimate penalties, is clearly not a routine collapse. It seems reasonable to speculate that this was the outcome of systematic planned subversion of justice in a manner not unlike the planning of the massacre itself.

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There are many groups of people, and State as well as non-State institutions who bear responsibility for the crimes and inhumanity of the Gujarat carnage and the dishonour of its aftermath. These are the elected political leadership of the government, fascistic communal organisations, the judiciary and the prosecution. I choose to focus in particular here on the special culpability of one of them – with which I have served for two decades - the higher civil services (including the police). This is a vocation whose central calling is the upholding of justice, of law, order and the protection of vulnerable people. Default in the performance of one's duty by a civil or police officer in a riot is not only the crime of a citizen who turns one's face away from injustice, because of indifference, fear or complicity. It is a crime of much graver magnitude, akin to that of a surgeon who wantonly kills his patient on the operation table.

Half a century after India shed its colonial shackles, it continues to retain a peculiarly hybrid bureaucratic framework that is in many ways essentially incongruous in a democracy. On the one and, it holds on to many of its colonial trappings, and public servants who are not elected

exercise enormous unaccountable power over several aspects of the lives of ordinary people, both at the local level and in the framing of policy and law. But, at the same time, during the decades that the State in India assumed leadership of nation-building and social justice, this same bureaucracy was charged with combating poverty and protecting the rights of dalit and tribal people, women and the working classes. It is this that attracted many of us to the civil services.

I spent 20 of the best years of my life in the Indian Administrative Service, living with my family in remote, tribal, districts of Madhya Pradesh and Chhattisgarh, I do not regret a single day. No other employment could have enabled me to see and learn so much from the resilience, struggles and humanism of people in distant corners of my land. Like many colleagues I found enormous opportunities to implement my beliefs about land reforms, laws and programmes for tribal and dalit equity, justice and programmes to combat poverty as well as to fight corruption.

And yet, even as I worked with the opportunities that the system afforded, I could see from the start its fatal flaws and rapid corrosion as a democratic institution. It recruited many of the country's better talents, but did little to make them genuinely accountable to the people they were mandated to serve. There were and continue to be in the ranks of the civil service women and men of the highest integrity and moral courage. But increasingly there are signs of a spirit of abject, sometimes humiliating subservience, as several civil servants habitually obey without protest even illegal and unjust directions of political superiors.

In the aftermath of the grim and bloody birth of a dismembered Indian nation in 1947, the leaders of the struggle for Indian Independence had resolved to retain a powerful bureaucracy inherited from the colonial legacy of governance. Their expectation was that it would act as a sturdy bulwark, a 'steel frame' to strengthen the unification of a vast, diverse, volatile land. In the decades that elapsed after Independence, a slow but steady decline set in, not only with the growth of indifference, unaccountability, corruption, sloth, arrogance, but most dangerously, partisanship and complicity with injustice and sectarian politics. One low was hit during the Emergency from 1975-77, where few stood up against dictatorship and the subversion of the entire Constitution. And with the shameful abetment of mass violence in the anti-Sikh riots of 1984, the decline became precipitous in conjunction with the ascendancy of fundamentalist fascistic militant ideologies in the country. Sections of the police, civil and military administration bared their active sympathies with these divisive ideologies –ignoring that these contradict fundamentally the letter and the spirit of the secular democratic Constitution of India that they are pledged to uphold - while the large majority opportunistically aligned with these to advance their careers.

As a result, the corroded 'steel frame' dissolved and in the 'laboratory' of Gujarat in 2002, the country witnessed its complete ignoble collapse. The savage carnage in many parts of Gujarat that followed the horrific burning of a railway compartment in Godhra on February 27, 2002, and the systematic and wanton subversion of all civilised norms of relief and rehabilitation of the survivors in the bleak months that followed, are testimony to the collapse and perversion of the State machinery to an unprecedented degree. The majority of State authorities in Gujarat not only actively connived with a planned and orchestrated massacre of a section of the population, specially targeting hapless women and children. In the months that followed, they abetted and assisted for the first time in the country's history the deliberate subversion of all civilised norm

of relief and rehabilitation of the survivors. In other words, they enabled and assisted not only the murder, rape and plunder of legions of innocent people and their properties. They went further to assist the ruling political class of the State to prevent the organisation of even elementary temporary shelters with basic facilities in relief camps, or grants and loans to assist the destitute and bereaved survivors to rebuild their shelters and livelihoods. This brazen, merciless treatment, with State abetment, of victims of mass violence like unwanted diseased cattle, or like enemy populations, marks a new low in the governance of this nation. It heralds the completion of the unresisting transition of the civil and police administration from protectors to predators of the people.

Until the 1980s, there was an unwritten agreement in our polity that even if politicians inflamed communal passions, the police and civil administration would be expected to act professionally and impartially to control the riots in the shortest possible time, and to protect innocent lives. There were several failures in performance, and minorities were targeted in many infamous riots, but the rules of the game were still acknowledged and in the majority of instances adhered to, which is why the higher civil and police services were regarded to be the steel frame vital to preserve the unity and plurality of the country.

The 1980s saw the breaking of this unwritten compact which has led to the corrosion and near-collapse of the steel frame. It became the frequent practice for the higher civil and police authorities to be instructed to actively connive in the systematic slaughter of one community, and to do this by delaying sometimes by several days, the use of force to control riots. Local State authorities complied, and rioters were unrestrained by State power in their mass murder, arson and plunder.

Why is the decisive and timely use of State coersive force-lathis, tear-gas and bullets by police, para-military and military contingents – so vital a duty of the State in a communal situation? In every other kind of public disorder – such as labour, student or peasant protests – the broad consensus across a wide section of liberal opinion is that a democratic State must never use brute force to suppress democratic dissent. Only in the rarest of cases, and with a wide range of checks and balances to prevent human rights abuse, may a democratic State apply the principle of minimum necessary use of force to restore public order and security, respecting the right of democratic dissent and the expressions of public anger against perceived injustices and grievances.

In situations of sectarian violence, the responsibility of the State is completely different from any other. A humane and responsive democratic government must apply in all such situations – of communal riots, or violence against minorities or dalits – the principle not of minimum necessary application of force, but instead the responsible, accountable, lawful but *maximum possible* use of force that the State can muster in the shortest possible time, while always still respecting and safeguarding human rights. This is because unlike other expressions of public anger, communal violence targets almost invariably people who are most vulnerable and defenceless, it is fuelled by perilous and explosive mass sentiments of irrationality, unreason, prejudice and hatred, and its poison spreads incrementally over space and time. Its wounds do not heal across generations. The partition of our country continues to scar our psyche half a century after its bloody passage. A whole decade of terrorists in Punjab traced their origins to the maraudings of the 1984 rioters. As I held on my lap the six year old boy in a camp in

Ahmedabad, recounting the killings of his parents and six siblings, I felt broken by his pain that can never heal, but wondered at the same time how he would deal with his anger when he grows up. Likewise, the ashes of the horrific burnings in Godhra have stirred up their own poison. But it is important to understand that the cycles of hatred did not begin in the railway compartments of Godhra, and they will not end in the killing fields of Gujarat.

It is for this reason that every moment's delay by State authorities to apply sufficient force to control communal violence is such an unconscionable crime: it means more innocents will be slaughtered, raped and maimed, but also that wounds would be opened which may not heal for generations. Civil and police authorities today openly await the orders of their political supervisors before they apply force, so much so that it has become popular perception that indeed they cannot act without the permission of their administrative and political superiors, and ultimately the chief minister. The legal position is completely at variance with this widely held view. The law is completely unambiguous, in empowering local civil authorities to take all decisions independently about the use of force to control public disorders, including calling in the army. The magistrate is not required to consult her or his administrative superiors, let alone those who are regarded as their political 'masters'. The law is clear that in the performance of this responsibility, civil and police authorities are their own masters, responsible above all to their own judgement and conscience. There are no alibis that the law allows them.

It may be argued that this may be an accurate description of the legal situation, but the practice on the ground has sanctified the practice of political consultation before force is applied. Only to convince the reader that I speak from the experience of myself handling many riots, I could contest this with my own experience in the major riots of 1984 and 1989, where as an executive magistrate I took decisions about the use of force and in the former case calling in the army, without any consultation. I could similarly contest this with the experience of many women and men of character in the civil and police services across the country, who would similarly testify to salutary application of force, to control more difficult communal violence, without recourse to political clearances. There can be no dispute that given administrative and political will, no riot can continue unchecked beyond a few hours.

However, I will not substantiate this with my own experience, or those of older officers. It gives me greatest pride and hope, amidst the darkness that we find ourselves in today, to talk of the independent action taken by a few young officers in Gujarat and neighbouring Rajasthan during the 2002 crisis itself. Rahul Sharma was posted as the Superintendent of Police, Bhavnagar for less than a month when Godhra killings and the subsequent massacre all over Gujarat unfolded. Following the Godhra tragedy, he deployed a strong police contingent for the Gujarat Bandh called by the VHP the next day on 28 February, 2002. Unlike the rest of Gujarat, the day passed off without much trouble in Bhavnagar. But the next day, Rahul learned that a mob of around 2000 men armed with swords, *trishuls* (tridents), spears, stones, burning torches, petrol bombs and acid bottles, was about to attack a madrassa with around 400 small Muslim boys between the age of 12 and 15. Rahul rushed there was a police force of around 50 people. Seeing that the force was hesitant to open fire on the armed mob, Rahul himself took the rifle from a fellow constable and opened fire. As some attackers fell to police bullets, the crowd stopped in its tracks and faded away.

Rahul then made an entry in the logbook saying that he had fired from the constable's gun to save the lives of the children. He also gave an order that any policeman with a gun not opening fire to save human lives from a violent mob would be prosecuted for abetting murder. This gave a clear signal to the police force that their leader the Superintendent of Police meant business, was willing to take full responsibility for his actions and was prepared to stick out his neck any distance to uphold his duties. This had an immediate effect on his force, and Bhavnagar was a town where more rioters were killed in police firing than innocent victims in actual rioting. For this, Rahul was moved out from Bhavnagar in a mere month of his assuming charge. He is quoted in the Outlook as saying, 'I'm not one to run away from transfers. I take these things in my stride.'

In neighbouring Rajasthan, the Superintendent of Police of Ajmer, Saurabh Srivastava, with a young sub-divisional magistrate in his first charge and his small force, doused communal fires in Kishangarh on March 1, 2002, which had the potential of inflaming the tinder box of the entire State. They controlled an enraged armed mob of over a thousand men bent on attacking minorities in a pitched battle for over four hours.

It is sometimes also argued that the entire higher civil and police services have become politicised beyond repair, therefore whatever their legal and moral duties they today lack the conditions in which they can reasonably be expected to perform them. Once again, I would strongly contest this alibi. In the twenty years of my life in the civil service, I always found that despite the decline in all institutions of public life, there continue to survive democratic spaces within it to struggle to act in accordance with my beliefs without compromise. One may be battered and tossed around, in the way that young police officers who opposed political dictates to control the recent rioting in Gujarat were unjustly transferred. But in the long run, I have not known upright officers to be terminally suppressed, repressed or marginalised. On the contrary, I value colleagues, in the civil and police services, usually unsung and uncelebrated heroes, who have quietly and resolutely performed their duties with admirable character and steadfastness. Few in the civil and police services can in all honesty testify to pressure so great that they could not adhere to the call of their own conscience.

It is not that there are no costs, but then if the performance of duties was painless, there would not be many who would fail in the performance of their duties. The costs are usually of frequent transfers, and deprivation of the allurements of some assignments of power and glamour, which are used to devastating effect by our political class to entice a large part of the bureaucracy today.

When I stand witness to the massacre in Gujarat enabled by spectacular State abdication and connivance – or to the national disgrace of the subversion of all civilised norms of relief and rehabilitation – I confront the cold truth that the higher civil and police services are today in the throes of an unprecedented crisis. The absolute minimum that any State must ensure is the survival and security of its people, and elementary justice. If State authorities wantonly let violent mobs target innocents without restraint – or connive with the most cynical and merciless designs to deny them the elementary means for human survival – and they continue to do this with impunity and without remorse or shame, then citizens of the country need to resolutely demand accountability and fundamental reforms. They cannot permit the collapse or subversion of the State, and its metamorphosis from an institution for justice and security, the

protection and welfare of the people, into one that victimises as State policy a segment of its population, treating them as 'children of a lesser god'.

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Many hoped that Independence would progressively bring an end to violent communal strife and pogroms in India. But after 63 years of freedom, millions of Indian people continue to live with lurking fear in their hearts: fear of violence which can snuff out their lives and loved ones, violate their bodies, and devastate their homes and livelihoods. Among these are persons of the Scheduled Castes and Tribes, religious minorities, especially Muslims, and in tribal areas, Christian converts, and linguistic minorities. I have spoken to ordinary people of Muslim faith in many corners of the country. When they recall their lives, it is always as life lived in the space *between* riots. Each of them negotiates everyday living with unspoken trepidation that one day – any day – everything that they love and live for can be destroyed in one brief storm of hate. And in many tribal areas, communal organisations have succeeded in driving and deep and dangerous wedge between people who converted to Christianity, and others - often of the same tribe - who have not. Scheduled Castes and Tribes have lived with subjugation and fear of violence for centuries. And migration has fuelled fear and violence against linguistic minorities who travel to other states in search of dignified work.

Long after the fires of torched homes, looted shops and desecrated places of worship are doused and the blood on the streets dries; after slaughter, rape, plunder and expulsion are accomplished; wounds rarely heal. Survivors live out their lives haunted by the fear of recurrence, the anguish of betrayal, and the dying of hope and trust.

We have witnessed too often in this country women, men and children attacked only because of their identity as dalits or tribals, religious or linguistic minorities. As we have observed in this lecture, a recurring feature of most such brutal episodes of blood-letting in anti-dalit and anti-minority hate crimes and mass violence, is that elected and selected public officials fail to uphold their most sacred Constitutional duty - to secure equal protection to every citizen, regardless of their caste, faith or linguistic identity. They fail not because they lack the mandate, authority or the legal powers. They fail because they *choose* to fail; because of the pervasive prejudice and bias against these disadvantaged groups which permeates large segments of the police, magistracy, judiciary and the political class.

But this enormous moral crime of public officials enabling massacre is not recognised explicitly as a crime for which they can be criminally punished. Far from it, officials who have been named as guilty of bias and worse in numerous Judicial Commissions of Enquiry have very rarely been even administratively penalised; contrarily, guilty police and civil officers have enjoyed illustrious careers, and political leaders under whose watch such carnages have occurred have reaped rich electoral harvests of hate.

A similar culture of impunity surrounds those who instigate and participate in the killings, arson and rape. Impunity is the assurance that you can openly commit a crime and will not be punished. This impunity admittedly does arise from infirmities in and corrosion of the criminal justice system, which require long-delayed police and judicial reform. But it is important to

recognise that the collapse of the justice machinery is massively compounded when the victims are disadvantaged by caste, religion, or minority language. You are more likely to be punished when you murder a single person in 'peace-time' with no witnesses, than if you slay ten in broad daylight observed by hundreds of people.

We have carefully studied several major episodes of targeted violence, and discovered that despite these being separated vastly by time and geography, despite the victims sometimes being dalits, sometimes Muslims, sometimes Christians, and sometimes say Tamils in Karnataka - there is a chillingly similar pattern of systematic and active subversion of justice. The impunity of the accused begins immediately after the violence. Preventive arrests and searches usually target dalits and minorities. Police refuse to record the names of the killers, rapists and arsonists, and instead refer to anonymous mobs. If victims assert excessively, 'cross-cases' are registered against them, accusing them of crimes. Arrests are partisan, and the grant of bail even more so. Accused persons from the dominant group find it easy to get bail in weeks, or at most months, while those caught in cross- cases are not released sometimes for years.

This openly discriminatory treatment of the accused based on whether they are from dominant or discriminated groups, is one way to coerce them to 'compromise'. This means extra-legal out-of-court 'agreement' by victims to turn 'hostile', to retract from their accusations in court. To accomplish this, victims are also widely intimidated and threatened, offered inducements or threatened with exile or social and economic boycott. Police investigation is deliberately shoddy, and the majority of cases are closed even before they are submitted to trial. Those few cases that reach the court are demolished by prosecution who often do not even disguise their aim to protect the accused rather than establish their guilt, and judges who often share their bias.

Therefore many in this country pin great hopes on a law which could help end communal violence. This Communal Violence Bill has been in incubation for an extended seven years, ever since the UPA government was first elected in 2004 with a mandate to end the politics of fear, hate and division in the country. But despite two drafts by the Government, in 2005 and 2010, there was wide rejection of, and disappointment with, what the government has on offer. The government versions of the law had very little in common with what secular opinion, and minority leaders, believe are essential to such a law.

Successive government drafts of the Communal Violence Bill mainly aim to greatly enhance the powers of the police, on the premise that these increased powers are needed to enable police and governments to take decisive steps to prevent and control mass communal violence. The draft Bill provides for governments to declare areas in which communal violence is imminent, or has actually broken out, as 'communally sensitive' areas. In these areas, for the duration of the notification, the police would function with expanded powers, and there would be enhanced punishment for crimes committed in this area, and special courts would hear the criminal cases that arise.

The assumption of the government drafts is that if only the powers of police and governments are augmented in communally charged times and areas, they would control communal violence effectively and decisively. This assumption flies in the face of the actual experience of successive

communal pogroms. Did governments in Assam in 1983, Delhi in 1984, Mumbai in 1992-93, Gujarat in 2002 or Kandhamal in 2008 fail to prevent slaughter and arson because they lacked sufficient powers? Do we really believe that these governments were *unable* to control violence because they lacked the legal muscle? Or was the truth that they did not want to control the violence; but instead they deliberately enabled the slaughter? That they wanted to reap political advantage from a violently polarised polity, and were assured that they would legally be able to get away with such a crime?

If government officials and political leaders wish to act, the law as it stands is more than adequate to empower police and officials to prevent and control communal violence. No riot can continue for more than a few hours without the active will of the political leadership of governments that violence should persist and indeed spread; and the active abetment of police and civil officials to prolong the slaughter and arson. Communal carnages occur because they are systematically planned and executed by communal organisations, and because governments which are legally and morally charged to protect all citizens, deliberately refuse to douse the fires, and instead allow rivers of innocent blood to flow.

As already observed, I regard such abetment of slaughter by public officials to be one of the gravest crimes possible in public life. To protect minorities from communal pogroms and mass violence, we do not need a law which adds further to the powers of police, civil authorities and governments. Ironically, such a law will achieve the exact reverse of what it claims to seek. The consistent experience of minorities is that greater powers in the hands of police would only be used *against* them. There is great unease with declaring regions as 'disturbed areas': in large swathes of India's North-East and Kashmir, people have lived in the shadows of similar declarations, which give extraordinary powers to security forces. These routinely lead to crushing of people's elementary democratic freedoms.

We need a very different law, not one which makes police and public officials more powerful, but instead one which forces them to be legally answerable to the people who they are responsible to serve and protect effectively and impartially. In present law, public officials can at best be charged with active conspiracy and participation in mass violence (although even this is rarely done). But the worst crimes of police and civil authorities, and those in command positions like Chief Ministers, are of deliberately and maliciously refusing to take action to prevent and control violence. We need law to recognise such deliberate inaction - because of which killings, rape and violence continue unchecked for days and sometimes weeks - to be grave and punishable crimes against humanity.

The law also needs to recognise new crimes, especially of forms of gender violence during communal carnage. The narrow definition of rape does not envisage the many forms of gendered crimes that are common in mass violence situations, such as stripping and parading women, mass disrobing by the attacking men, insertion of objects into bodies of women, cutting breasts and killing of children in the womb. The procedures for recording complaints, investigating and trials also need to be sensitive to the suppression, fear and sense of public shame which shrouds in silence most such episodes of targeted violence against women.

In most episodes of communal violence, states are partisan also in extending relief and compensation. The survivors of the Nellie massacre of 1983 were paid a mere 5000 rupees for

each death, against a total of around 7 lakh rupees for the families of those killed in the Sikh massacre of 1984. Such an implied hierarchy of official valuation of human lives of people of different persuasions and ethnicity is intolerable. The government in Gujarat in 2002 refused even to establish relief camps, and forced the pre-mature closure of the privately established camps. The law therefore must establish binding standards for awarding compensation after communal violence, and duties relating to rescue, relief camps, rebuilding of homes, livelihoods and places of worship.

The National Advisory Council has produced a draft law to prevent communal violence and end impunity, by making public officials legally answerable to the people for their acts – and failures to act – which lead to the brutal and criminal loss of innocent lives. The NAC draft law is currently under debate, and we are sure it can be further improved in many ways. However, to discourage targeted hate-crimes in future, we are convinced that what is required is a law which creates the offence of dereliction of duty of public officials who deliberately fail in their Constitutional duty to protect targeted vulnerable groups. This must be coupled with the principle of command responsibility, which ensures that responsibility for failing to act is carried to the level from which orders actually flow. This public accountability is at the heart of the NAC draft Bill. We are convinced that if such a law existed, the massacres at Khairlanji and Chundur, Delhi, Gujarat and Kandhamal, would have been controlled and justice better accomplished.

We also need a law which established binding duties and standards for relief and rehabilitation, because these do not exist. Indian criminal law is also based on the assumption that the State is always on the side of the victim, against the accused, and therefore primarily the rights of the accused need to be protected. The State investigates, prosecutes, and also adduces evidence and appeals. The victim has limited rights in this process. The reality of targeted violence against non-dominant groups is that a biased State may in these cases, be on the side of accused and actively hostile to the victim. This Bill seeks to correct this bias, by incorporating a number of rights and protections of victims in post-conflict criminal justice..

I have spoken to victims of caste and communal carnages in many parts of the country, and found that the most important reason that they cannot find closure even years later is because legal justice is not done. 'How can we forget, even less forgive, if we see every day the man who raped our daughter or killed our father, walk free; when not once has he had to even see the inside of a police station or a court? How can we believe we are equal citizens of this land?'

The Right to Information changed on its head the relationship of public servants with the people, by enabling them to question them for the probity of their actions. We believe that the Communal Violence Bill must carry this further, by enabling them to ask whether them whether they did all they should to protect all citizens against mass violence, regardless of their religious faith, gender, caste and ethnicity. Only such a law can stem the rivers of innocent blood that flow periodically across this land. Only such a law can secure secular democracy in India. Only such a law would be a true tribute to the memory of persons like Dr Iqbal Ansari who struggled through their lives for the dream of an India free from fear and riots.