

The International Initiative for Justice in Gujarat

An Interim Report

December 19, 2002

The International Initiative for Justice in Gujarat is a response by national and international women's groups to the horrific violence unleashed against the Muslim community of Gujarat since February 27, 2002, in which women were a central target. As part of this initiative, members of women's groups from India accompanied nine women from Sri Lanka, Algeria/France, India, Israel/UK, Germany and the USA who visited areas in and around Ahmedabad, Vadodara and Panchmahals between 14 and 17 December 2002. During these visits, we met with survivors of the violence as well as with members of women's groups, human rights groups, and other citizens' groups from Gujarat.

Many civil society groups and statutory government bodies have already documented the scope and systematic nature of the violence against the Muslim community, and in particular sexual violence against women in Gujarat. In our visit, we have heard many confirmations of the information contained in these reports. We find it regrettable that the Indian government has not paid attention to the facts provided through this process, nor ensured the enforcement and implementation of the recommendations set out in, for example, the report of the National Human Rights Commission. We are also concerned by the fact that in spite of the totally inadequate legal and other responses to the violence in Gujarat, the government has continued to deny permission for international scrutiny of the situation.

The situation that has arisen in the context of the post-election scenario in Gujarat exposes the fallacy of India's claim to be the world's largest democracy and raises a clear question about whether a 'free and fair' election alone is a sufficient indicator to guarantee and assert the existence of democracy in any society. The key principles that underpin the democratic functioning of any system of governance consists of a series of closely balanced interlinkages of institutions that allow for accountability and transparency. A democratic system must also guarantee respect for human rights and freedoms on the basis of non-discrimination and equality. In a pluralist society such as India, ensuring the equal representation and participation of all communities and guaranteeing the rights of women and of minorities are among the most important tests of a genuine democracy. The propagation of fear and hatred among communities is anathema to these principles and is inconsistent with both national and international law.

We are also concerned about the various complex ways in which the post September 11 political climate and the 'war against terror' is being used to deepen divisions and conflicts in Indian society through the manipulations of prejudices and fears. The consequences of the conflation of the Muslims of Gujarat with the international construction of 'the Muslim' as 'terrorist' and the demonization of the community as a whole can also lead to a potentially explosive situation.

We have no doubt that the state has been complicit both in the perpetration of the violence in the state of Gujarat, and in the failure to redress it. Nine months later, we are appalled to discover the continuing levels of violence and the inadequacies of existing mechanisms to deliver justice to the victims and survivors. This violence, which reflects a longer and larger genocidal project, in our view constitutes a crime against humanity and satisfies the legal definition of genocide, both of which are crimes of the most serious dimension under international law. In addition, the results of the recent election in Gujarat give the instigators and perpetrators of violence in that state the power and potential to continue with their campaign of hate and terror against the Muslim community. As we heard so often, 'They will never let us survive'. This constitutes a frightening exacerbation of the genocidal conditions prevailing in Gujarat with the potential of spreading to other parts of India, and calls for an urgent and concerted international and national response.

The use of systematic rape and sexual violence as a strategy for terrorizing and brutalizing women in conflict situations echoes experiences of women in Bangladesh in 1971, and in countries such as Rwanda, Bosnia and Algeria. In Gujarat, as in all these other countries, women have been targeted as members of the 'other' community, as symbols of the community's honour and as the ones who sustain the community and reproduce the next generation. This has become an all too common aspect of larger political projects of genocide, crimes against humanity and subjugation. In Gujarat, sexual violence against Muslim women as well as against women in inter-religious marriages is central to the organized political project of Hindutva. During our visit, we have been struck by the explicit use of male sexuality as the mechanism and mobilising tool for recruiting members for the 'cause' and as a means of imposing 'Hindu' dominance upon the Muslim community. We find chillingly unique the incitement to sexual violence as a means of proving the masculinity of the 'Hindu' man, as reflected in the political propaganda of the forces of Hindutva prior to, during and after the violence in February/March 2002 and as carried out through patterns of men stripping and exposing themselves to women in an aggressive and threatening manner, and committing acts of mass rape and burning of victims.

The impact of sexual violence experienced by Muslim women of Gujarat continues. The medical system has proved to be unresponsive to the needs of women who have been victims of violence including sexual violence. Survivors of sexual violence have little access to counseling, and issues relating to their sexual and reproductive health and rights are neglected. We found very little attention paid to issues relating to pregnancy, abortions and sexually transmitted infections as a consequence of sexual violence, and were appalled at the lack of safe spaces for women to recover and defend themselves. The medical system has also proved to be unresponsive to the needs of women who have been victims of violence including sexual violence. Survivors of sexual violence have little access to counseling, and issues relating to their sexual and reproductive health and rights are neglected. We found very little attention paid to issues relating to pregnancy, abortions and sexually transmitted infections as a consequence of sexual violence, and were appalled at the lack of safe spaces for women to recover and defend themselves.

The few women who tried to bring charges of sexual violence have found the legal and investigative systems totally unresponsive to their needs. In many cases, it is the police who were the instigators and perpetrators of sexual violence against Muslim women. The entire system conspires to detract from the gravity of sexual violence as a crime including as a crime against humanity. In addition, patriarchal attitudes that prevail throughout the system preclude an unbiased approach on the part of the police and lawyers. The known connections of officials within the legal system including many members of the police, Public Prosecutors and the judiciary, with organizations of the Sangh Parivar clearly impairs the course of justice. In cases of sexual violence combined with murder, there is a tragic tendency to prioritise murder over rape. This situation has made it clear that the criminal justice system as it exists in India at present is not capable of dealing with incidents of sexual and other violence, particularly of a communal nature. What the experiences of Gujarat show more clearly than ever is the need to eliminate unjust evidentiary requirements that prevent prosecution without medical reports and other corroborating evidence.

Many women victims of sexual violence have been silenced, not only by the blatant biases against them at the level of the police, the medical and legal systems but also by their families and communities who seek to hide their 'shame'. The forced marriage of young girls in an attempt to hide the fact that they had been raped, or as a preventative measure is but one terrible consequence of this situation. We met many mothers who admitted to us that they had been compelled to send their daughters 'away' or marry them off to men who they knew to be unsuitable. The failure of state agencies to prosecute perpetrators of violence means that rapists are free to continue to threaten and taunt women on a daily basis.

This situation is all the more unacceptable in the face of progress that has been made internationally in terms of prosecuting rape and sexual violence as torture, as a war crime and as a crime against humanity and genocide at the ad hoc Tribunals for the former Yugoslavia and Rwanda. These advances have now been expanded and codified in the Rome Statute of the International Criminal Court (ICC).

In addition, many testimonies point to the direct involvement of BJP, VHP and Bajrang Dal leaders as instigators and perpetrators of the violence in Gujarat. In a search for justice, holding public figures who bear a specific responsibility to safeguard democratic norms and human rights accountable is an essential step. This accountability has been demonstrated in the Tribunals for the former Yugoslavia and Rwanda, where public officials and public figures have been tried and convicted for the instigation and encouragement of crimes against humanity and genocide including sexual violence.

Despite the Indian government's claims that normalcy has been restored, during our visits we have seen patterns of continuing violence that totally marginalize the Muslim community and convey to them that they do not have any place within the Indian nation today.

- We met many Muslims who had been displaced due to the attacks on their villages are not allowed to return to their homes. They continue to live in a state of limbo, unable to work, unable to send their children to school and with a deep sense of physical and mental insecurity. Even those few who remained in their villages and homes, or who have returned, are facing constant threats and insults. They fear to let children out of the home to play; they live a second-class and constrained existence and are denied freedom of movement even within the areas in which they live and work.
- In many cases, Muslims face an economic boycott, despite claims to the contrary. They remain unable to farm their fields, operate commercial vehicles, or return to their businesses. They are no longer allowed to rent stalls in public markets or fairs, and are being fired from their jobs including in the public sector. Muslims are also now forbidden to engage in traditional occupations of the community, many of which have been taken over by others. This situation presents a grim parallel to the ghettoization and economic persecution faced by the Jewish community in Nazi Germany.
- The criminal justice system has failed to deliver justice to the victims of the violence. The Police have deliberately and consistently produced distorted, erroneous and incomplete complaints, or have refused to register complaints altogether. The investigations have almost always been biased, and in some cases false charge sheets have been filed against the victims themselves. While perpetrators continue to enjoy impunity, hundreds of Muslims remain in prison on false charges.
- Everywhere we went, in towns and villages, we met Muslims who spoke of being forced to 'compromise'. They are being subject to constant pressure to withdraw their complaints, in exchange for being allowed to return to their homes. They speak of an increasing surrender of their social and cultural way of life, including prohibitions on prayer. The Muslims have also experienced the destruction of mosques, graves and community buildings as an attack on the community as a whole.
- The state continues to abdicate its responsibilities to the Muslim citizens of Gujarat in terms of support for survival needs, rehabilitation and reconstruction in the aftermath of the violence. It has left this process almost entirely in the hands of NGOs and charitable organizations. The fact that at present it is primarily Muslim organizations that are providing resources for relief and reconstruction in Gujarat points to shrinking secular spaces and heightens feelings within the Muslim community that they have been abandoned by the state and by fellow citizens and that it is only within their own community that they will find support and security.
- Administrative procedures are insensitive to, and obstruct access to redress for victims, such as widows' pensions, school admission, documentation for 'missing persons';
- There is a lack of focus on specific issues faced by single women, widows, female heads of households especially in the context where their traditional systems of support have collapsed;

Analyzing and combating the continuing violence in Gujarat becomes all the more critical in the context of the recent elections. Given the failure of all other democratic institutions to protect them, the Muslims of Gujarat saw the elections as their last hope.

They came out in large numbers to exercise their franchise as citizens in spite of widespread intimidation including use of hate speech and direct threats during the polling. In all our interviews, we found that the election had become such a critical watershed in their own perception of the future, that plans to return to their homes and rebuild their lives were put on hold until the results of the election were known.

In the post-election scenario, where the BJP won in all areas where violence was most widespread, Muslims feel that for them, all democratic options for justice and representation have been closed off. On the one hand the election results give the perpetrators of violence in Gujarat a 'legitimate' platform from which to deny that violence of this scale ever happened. On the other hand at the local level the pre-election as well as post election victory slogans not only explicitly admit the violence but also hold out the threat of its continuation. The election result reaffirms the impunity of those who unleashed and enacted the violence, and their renewed strength has increased fear among the Muslim community. Muslim women told us that slogans at the 'vijay yatra's directly stated that sexual violence against women would be a part of a future political agenda: **'There is more violence to come'**. (*Age aur dhamaal hai!*)

Post-election victory speeches and statements have also threatened all those who have tried to draw attention to the situation of the Muslim community in Gujarat, labeling them as 'pseudo-secularists' who try to ruin the image of Gujarat. For example, we cite Pravin Togadia's statement, "All Hindutva opponents will get the death sentence and we will leave it to the people to carry this out". (The Hindu, 18 Dec, 2002). Such statements enhance fear and insecurity among NGOs, community leaders and progressive media persons that they would be targeted next. In many villages women activists are being told 'we know where you live, we know you go to the field alone, what happened to Muslim women can also happen to you'. The tolerance of such hate propaganda is morally reprehensible, and in flagrant violation of national and international standards that prohibit the inciting of hatred against a community, as set out in the Convention against Genocide and in the International Covenant on Civil and Political Rights, to which India is a signatory.

At the conclusion of our visit, the most immediate need remains to guarantee safety, and legal and social justice to the victims of violence in Gujarat at the individual and collective level. Not only must the system of justice and law be re-defined in the context of the specific nature and form of the violence, so that individuals who have suffered may receive justice, but all those who bear responsibility for propagating and encouraging the violence through their political and other activities must be held accountable for their failure to protect the rights of Indian citizens and for the flagrant violation of international and national human rights norms and standards.

Even as we indict the state and its mechanisms for its failures to protect citizens and to provide redress for injustices, we also call upon all Indian people and civil society institutions to actively counter the campaign of hatred and fear that is at the core of this genocidal project. Active mobilisation against discrimination and hate-mongering against minorities and against women on the part of all sectors of society within and outside

India is urgent. The international community, at the level of state, inter-governmental and non-state organizations, must condemn the advance of this genocidal project in India, and pressurise the government of India to protect human rights and democratic principles.