

Threatened Existence: A Feminist Analysis of the Genocide in Gujarat
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Chapter 7
Gujarat Pogrom As Genocide

Under international law, offences such as genocide and crimes against humanity are committed not only against the persons or communities targeted; they are also, *erga omnes* violations, that is, violations of obligations that are owed to every nation, and thereby, to humanity as a whole. Genocide and crimes against humanity are also non-derogable violations (*jus cogens*) that can never be justified. As such, these crimes are subject to universal jurisdiction, which triggers the authority, and, indeed, the obligation of the international community as a whole, and every nation individually, to extradite or prosecute the perpetrators. For the reasons set forth in the following two chapters, the pogrom against the Muslim community of Gujarat and the on-going persecution constitute both a genocidal attack and a crime against humanity.

Under international law, “crimes against humanity” and genocide are equally grave violations. There is no hierarchy of egregiousness between them. In assessing whether the attack on the Muslim population of Gujarat constitutes either crimes against humanity or genocide, we have closely examined the facts available to us in light of the international understanding of each of these crimes and their distinct elements. Having done this exercise we agree that, given the context in which these crimes occurred, the attack on the Muslim population in Gujarat as well as the continuing persecution *prima facie* meet the legal criteria of both genocide and crimes against humanity. Both crimes give rise to Universal jurisdiction to try the perpetrators and obligate the Indian State to repair the damage and prevent recurrence.

The contemporary understanding of both genocide and crimes against humanity has also been shaped and developed through the jurisprudence of the post-World War II Tribunals and, more recently, in the ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). In the following discussion, we draw upon the Genocide Convention and the Rome Statute as well as upon Tribunals’ jurisprudence and other sources of international law.

7.1 Are events in Gujarat in February-March 2002 Genocide?

Over the years, tremendous caution has been exercised in the use of the term “Genocide.” Since genocide’s are often State-sanctioned mass violence against a particular group or collectivity within its territorial borders, acknowledgement that a certain situation is genocide at once holds the State or authority under which it occurs, responsible. It places an obligation on the States that acknowledge the genocide, to take all measures to prevent and prosecute those responsible. The reluctance by States in the international arena to acknowledge genocides may thus be motivated by the desire to avoid “telling on other States,” to protect their economic or other interests with the genocidal State and escape any obligation to take action. It is, however, articulated in objective terms like, whether the death and physical harm has been significant, whether the two sides are equally responsible or not, whether the “genocide” is a manifestation of internal political equations or not and other similar arguments that are generally put forward by the genocidal State.

The IIJ panellists too proceeded cautiously in discussing some of the above issues and others such as the need to adequately describe the continuing violence, the hierarchy of harms compared to situations elsewhere in the world and the psychological significance of the use of the term “genocide”. After a long discussion and due consideration of all issues involved, the present panel has, for reasons explained in detail below, come to the conclusion that there is an on-going genocidal project in the State of Gujarat and that the events of February-March, 2002 in fact satisfy the legal definition of the crime of genocide.

7.2 Legal definition of Genocide

The Genocide Convention, completed in 1948, defines the crime of genocide in Article 2:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group.

If any one or more of the above acts are committed with the intent to destroy a group identifiable as a distinct national, ethnic, racial or religious group, it is Genocide. There are many testimonies presented to this panel and other tribunals from which it is clear that four¹ of the five acts mentioned above have been committed.

7.3 Group targeted on the basis of religion

Although geographic area is of little consequence,² all the excerpts of the testimonies produced in this report show that the scale of atrocities was committed across two-thirds of a vast geographical expanse of 196,000km. The crimes were simultaneously committed and were targeted systematically only at the Muslim community. Indeed, as referred to in section 4.4 of this report, perpetrators and the police specifically said that victims were being attacked because they had the misfortune of being born Muslims. The discussion on the question of “Intent” below also demonstrates that Muslims have been the target of the violence. The group therefore has been targeted on the basis of their religion.

7.4 Killing members of a group

(a) The excerpts from testimonies below not only show the prevalence and extent of mass killings but also the fact that they happened simultaneously and in similar ways in different geographical regions.

My son, his mother-in-law, brother-in-law, two sons of my sister-in-law and my brother-in-law’s two sons were killed. They were killed and burned in front of my eyes. Total 10 were attacked out of which seven died. Amongst the dead is a three year old child. (Sulema, woman survivor, AA1 area, Ahmedabad).

¹ The IIJ panel did not come across any testimonies or reports that suggest forcible transferring of children to another group.

² In *Prosecutor v Jelicic* judgment, the Trial Chamber noted that ‘it is accepted that genocide may be perpetrated in a limited geographic zone.’ IT-95-10 ICTY, para 83.

A 28 year old woman, Gazala from AA1 area in Ahmedabad said that she had a family of 11 members and 8 of them were burnt to death. She and her son were injured. All of them were burnt and beaten and attacked with swords. Her husband and daughter were taken to Vadilal hospital and they died there.

In the Best Bakery incident in Baroda at least 12 persons were burnt alive and two have been reported missing possibly dead. The incident as reported by the surviving eye witness Zahira Shaikh, “Around 8.30 at night, the mob came. They were shouting loudly - making sounds like *Adivasis*. They had swords, bottles, stones, tins of petrol and kerosene, and were beating metal plates. There were about 200-300 men and boys... We ran upstairs... At first they looted the bakery... They set fire to the room on the ground floor.. My Uncle who could not run and my sister got burnt in it.. Two other people who were in the house then also died ... The whole night we were on the terrace, and the mob kept pelting stones at us, abusing us and trying to make us come down. They kept trying to put a ladder from behind the house to reach us, but the walls were too hot. ... “In the morning, we kept pleading and asking for forgiveness (*hum ne maafi maanga*). We pleaded for our lives, but the mob, who had been joined by more people in the morning, just laughed.... After a while, they put a ladder at the back and helped us come down.... The mob kept yelling, '*Maaro saalon ko*' (Kill them). They beat the boys more, and when the Hindu workers were trying to escape, they killed them with swords right there. They kept saying, “rape these women,” and were trying to drag us (the women) into the jungle.”

They killed 9 men in my village before my eyes. My son was slashed on his cheek. They threw one daughter into water and hit my other daughter. I got hit while trying to protect her. The police was standing and watching. (Pyarijan, woman survivor, PV30 village Panchmahals).

(b) The exact numbers of how many people were killed in the days after February 27, 2002 is not certain and will perhaps be never known. The official number of deaths in fact conceal a story rather than reveal any real information. The Gujarat administration attempted to keep the official record of those dead low. This was accomplished in many ways. Many were burnt alive and the bodies of those who were killed were also subsequently set on fire. Often the survivors buried the bodies before any investigation could take place. The authorities have no report of the body count of the numbers burnt by authorities. Since many were burnt beyond recognition, relatives could not recognize whether those they reported as missing were in fact dead. Many who sustained injuries and refused to report them for fear of reprisals, subsequently died and their deaths went unreported. Hospitals where injured were admitted have not maintained an accurate record of deaths.

Medical examinations and records of injuries were not maintained and doctors did not help in ways that they could have to record the violence. (Hema and Chetan, activists, organization BO11).

The number of deaths should therefore have consisted not only of the officially reported ones but also of the number of people reported missing, the number who died days after sustaining injuries, those who were buried immediately and those whose death went unreported because of the deliberate attempt to keep down the numbers. Independent fact-

finding missions visiting Gujarat within a month of the pogrom report the number of people killed as around 2000, over a period of a week, and the number missing at 2500.³

(c) Testifiers saw numbers of dead bodies, again in geographically disparate areas of Ahmedabad and Panchmahals.

Abbas from AA4 area in Ahmedabad told the panel that he was involved in clearing 58 dead bodies and bodies of 26 persons who sustained injuries from an area that was set on fire. Of the 26 injured, 10 died in civil hospital and 16 survived.

Shoab who works in PO2 organization and was camp organizer in PV11 in Panchmahals, testified that in PV10 area, pigs were scavenging on dead bodies. The NGOs got the Collector to send vehicles to pick up the bodies and finally bury them in a *jamaatkhana*(mosque) not in a burial ground.

(d) Often the discussion of whether a genocide took place edges around the “numbers game” i.e. “only 2000 were killed” which implies that it could not have been genocide. Some believe that to make a genocide claim, one has to wait till the death toll rises to millions of people. There is clearly no indication of this either in the definition of genocide or in the negotiations leading up to the Convention. Reading numbers into a definition where none exist is being *ultra vires* to the objectives and purpose of the Convention. The crux of the crime of genocide therefore lies not in the numbers but in the intent to destroy, in whole or in part an entire group of people. The means of destruction, however, are broader than killing. Killing members of a group is only one means of committing the crime of genocide.

7.5 Causing serious bodily or mental harm

(a) Genocide is also perpetrated by causing serious bodily or mental harm to members of a group within the context of an intentional effort to destroy the group in whole or in part. In the *Eichmann* case, the District Court of Jerusalem noted that serious bodily and mental harm of members of a group could be caused by “.....deprivation of their [the group’s] rights as human beings, and to suppress them [the group members’ rights] and cause them [members of a group] inhumane suffering and torture.”⁴ This view was reaffirmed by the International Criminal Tribunal for Rwanda (ICTR) in the recent *Akayesu* case where the Trial Chamber noted, “causing serious bodily or mental harm to members of the group does not necessarily mean that the harm is permanent and irremediable” and includes “acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution.”⁵ Testimonies, like the following and others in the report, demonstrate that many suffered severe physical or mental harm.

Zainab, a woman from AA4 area in Ahmedabad was fully burned. All in her family have died except her grand mother. The mob took her to AA5 area and burned her and her brother. She is 18 years old.

(b) The following testimonies demonstrate the irreparable mental harm caused, to children and male members of families who were forced to watch their female relatives being sexually assaulted and raped.

³ *Communalism Combat*, 77-78 (2002) p. 17.

⁴ *A-G Israel v Eichmann* (1968) 36 ILR (District Court, Jerusalem) p. 340.

⁵ *Prosecutor v Akayesu* ICTR-96-4-T, Sept.1998, para 502 and 504.

The testimony of a 10 year old Sahir from AA2 area in Ahmedabad demonstrates the severe physical and mental harm that children have suffered. He was beaten with pipes and his parents were burnt alive. He is the only survivor. He also witnessed the killing of Farhat in AA1 area. Eight people died in his family. He was in the camp for 8 months. Even today he feels scared and cannot sleep. Most of the children in the camp were in the same mental situation.

Women from BV16 recounting some of the cruelty said, “Betrayal of trust was rampant.” People would tell them to run or hide then send the mob after them and proceed to loot their houses. These mobs would stop the women when they were running, give them water, and take their clothes off. They would douse them with petrol. They would be chased by 50-100 men at a time. “Our men and sons have lost their minds, they could not do anything. They do not like to show their faces but what could they do when they [the mob] were standing in front of them, threatening to kill. Husbands, brothers in law, fathers in law were all there while it [rape] was happening.”

Summarizing the humiliation and persecution felt by the community, Banu from PO7, in PV39, Panchmahals district said in her testimony, “The biggest damage the violence has caused is that the community has been stripped of dignity and self-esteem ... That hurts me a lot and I want to change things. The sense of isolation is also what bothers me.”

(c) While the causing of serious bodily harm is rather straightforward and uncontested, the inclusion of serious mental harm in the Genocide Convention generated some confusion initially. Mainly the questions that arose were how was causing mental harm with the intent to destroy a group in whole or in part, different from mental harm caused otherwise? Or does mental harm relate to injuries sustained to an individual’s mental faculties or is it the kind of harm caused by the use of drugs and narcotics. The *travaux*, or the negotiating history, of the Genocide Convention suggests that most of these views did not receive much support. Consequently, text of the Convention does not include any language that indicates a requirement that acts causing mental harm must be such as to result in the destruction of the group. The text does not limit mental harm to apparent injury to mental faculties nor does it specify the use of narcotics.⁶ Rather serious mental harm encompasses psychological harm including traumatization, terror, humiliation, assault on human dignity. This was inflicted on Muslim individuals and the Muslim community as a whole as part of the effort to destroy them by breaking their will and collective security.

7.6 Deliberate infliction of conditions of life to bring about destruction of a group

(a) The ICTR’s *Akayesu* judgment on this issue suggest that infliction of conditions of life should be “construed as methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction.” The enumeration of the different methods used to inflict conditions of life include “*inter alia* subjecting a group of people to a subsistence diet, systematic expulsion from homes and reduction of essential medical services below minimum requirement.”⁷ This

⁶ See discussions in William A. Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2000) 159-165. Indeed it was India that proposed the final wording of Art.II(b) insisting on ‘serious mental’ harm as opposed to the higher standard of ‘grievous’ and without any reference to use of drugs.

⁷ *Akayesu*, *Supra* n.52, paras 505 and 506.

list is not exhaustive and is very specific to the case before the Rwandan Tribunal and to the nature of evidence placed before that Trial Chamber. The draft of the Convention mentions another important provision describing that physical genocide could be perpetrated by depriving the group⁸ of means of livelihood like confiscating property, looting, curtailment of work, denial of housing and of supplies that are otherwise available to others. There is thus a serious emphasis on deliberate deprivation as well as failure to provide for conditions of life which is “apparent not by some abstract standard of a vital minimum but because it is discriminatory vis-à-vis other groups.”⁹ There are many testimonies referred to in subsection 5.3 that point to a virtual economic boycott of the Muslim community in Gujarat since March 2002, one of the means of inflicting conditions of life on a targeted community.

(b) The victims of violence in Gujarat were subjected to conditions of living that were grossly inadequate and much below subsistence levels. As documented earlier in chapter 4, many Muslims could not access emergency health care and, once in hospital, were untreated or mistreated, as recorded in Saleem’s testimony in sub-section 7.8 (b) below. Some testifiers indicated that continuing medical and health problems, which remained untreated were causing suffering resulting in the inability to carry on daily life. Testifiers reported that there were deliberate acts to prevent the wounded from reaching any medical facilities or obtaining assistance.

We were not allowed to reach hospital. Mob was interested in not allowing the doctors to reach hospital because they wanted people to die without any medicines. Every time we took critical patients to hospital... the police would stop our vehicle saying we are carrying weapons in the ambulance. (Tayabba and Gulabi who worked in AA3 camp in Ahmedabad).

(c) In the February-March 2002 violence, the Muslim community of Gujarat also suffered the carefully targeted destruction of their homes, businesses, and property—both personal and earning assets. Section 4.8 of this report lists measures taken by the government to provide immediate economic relief to victims and survivors and testimonies of how these provisions fell short of even basic needs and requirements. In addition, there are reports that in some places, graveyards that had no provision for basic sanitation and hygiene (e.g., one toilet for thousands of people) were used as refugee camps for displaced people. Finally the testimonies below and in chapter 5 show that there was an active and continuing effort to deny members of the Muslim community in Gujarat sources of livelihood. Needless to add, these measures consign members of the Muslim community to public charity or illicit means of maintaining of themselves and their families. To be deliberately deprived of livelihood destroys both body and spirit and the consequences lead potentially to the slow death and disintegration of the community in addition to the more immediate death inflicted by the mobs through killing, raping and torching.

Laila from PO12 organisation of PV12 village in Dahod district testified that leaflets proclaiming an economic boycott of the community have been distributed and pledges have been taken in villages to implement the boycott.

Taslima, an activist from AO3 working in different areas of Gujarat noted that there is an active boycott on Muslim shops. All the business of Muslims have been totally

⁸ Deprivation could also be caused by failure to provide services and conditions of life in addition to actively withholding or refusal.

⁹ Schabas, 165-171.

destroyed. Muslims are not allowed to conduct a business at a place where a Hindu might have his. This is true for all small towns in Gujarat.

7.7 Imposing measures to prevent births within the group

(a) Births in the Muslim community of Gujarat are clearly seen as a problem. When an overwhelming number of Muslims were in refugee camps after the attacks, the Chief Minister of Gujarat, Mr. Narendra Modi made the following comment in one of his speeches, “Relief camps are actually child-making factories. Those who keep on multiplying the population should be taught a lesson.”¹⁰

The only so-called relief camps that existed in the State of Gujarat at the time were ones that provided shelter to ‘house’ victims and survivors from the Muslim community. The population Modi refers to in his next sentence is the population of Muslims which needs to be aggressively restricted by “teaching them a lesson.”

(b) Admittedly, the act of imposing measures to prevent births does not refer to threats of acts that might be committed in the future. The negotiating history of the Convention identifies methods that potentially cause prevention of births as sterilization, forced or compulsory abortions, segregation of sexes and imposing obstacles to marriage.¹¹ Positive developments in international law since, through judgments of the *ad-hoc* Tribunals, have led to recognition that the use of sexualised violence in genocide is as a way to prevent births by causing serious bodily and mental harm to the women and by knowingly humiliating and stigmatising and thereby rendering women either unable or ineligible to participate voluntarily in the reproductive life of the community. The specific ways in which acts of sexual violence in Gujarat constitute genocide are discussed below.

7.8 Genocide through Sexual Violence

(a) Over the last five years, *ad-hoc* Tribunals evolved jurisprudence recognizing that rape and sexual violence may constitute genocide in the same way as any other act, provided they meet the intent requirement.¹² This has also been reaffirmed in the Elements Annex of the Rome Statute of the International Criminal Court, which clarifies that genocide by causing serious bodily or mental harm “may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.”¹³

(b) Very evidently, some of the testimonies presented below show that acts of sexual violence were committed. In many cases, rape or gang rape was the torturous prelude to killing, often by torching the raped woman alive or throwing her to a fire. Inserting iron rods and swords into the vagina of a woman, cutting her open to extract the foetus or for other mutilatory purposes, torching her after rape are all acts that undoubtedly cause serious bodily harm and can lead to death. Because of the stigma and shame attached to rape in society, sexual violence also causes grave mental harm. Even after having suffered violation of her bodily integrity, the woman often feels guilty and responsible for the crime and she may be shunned by her community. And when rapes are committed in front of male members of

¹⁰ *The Hindu*, September 10, 2002.

¹¹ Schabas, 172.

¹² *Akayesu*, *Supra* n.52, para 731.

¹³ PCNICC/2000/I/Add.2 Elements of Crimes Annex, Article 6(b) Fn 3, Rome Statute, International Criminal Court.

the family, or in front of children, or in public, the woman and the witnesses suffer additional trauma.

Tahira a woman from AA1 Area in Ahmedabad testified that many women were raped and molested. These women were her neighbours. Fifteen year old Barkat was raped and an iron rod was pushed inside her; even a sword was pushed inside. She witnessed the rape of 5-6 women. Barkat's mother also saw her being raped. Barkat was burned to death.

Saleem, from AA4 area in Ahmedabad testified that Hanifa, his 20 year old daughter died on 7th March in hospital. On 28th February, police took her to the hospital and on 4th March, he came to know about it. He met his daughter at the hospital who told him what happened. She told him that AHM15, a Hindu man had raped her. She also told him about two other girls who were raped by AHM14 and AHM15. The name of one of the two girls was changed to a Hindu one in the hospital record. They also showed her age as 35 years. She gave her statement to the police and doctors before dying. Her father said that he had seen people who had suffered burns and that, comparatively, his daughter was less burnt. He therefore suspects that she was not allowed to live.

The tempo overturned. As we got out they started attacking us. People started running in all directions. Some of us ran towards the river. I fell behind as I was carrying my son. The men caught me from behind and threw me on the ground. My son fell from my arms and started crying. My clothes were stripped off by the men and I was left stark naked. One by one the men raped me. All the while I could hear my son crying. I lost count after three. They then cut my foot with a sharp weapon and left me there in that state. (Nafisa's testimony that appeared in another report¹⁴).

(c) Another significant contribution of the ad-hoc Tribunals have been judgments that affirm the use of rape as a means to change the identity of a group, and impart to the child an identity that is different from the one acquired at birth. In *Akayasu*, the Trial Chamber considered that rape could be subsumed within paragraph (d) of the definition of genocide noting "... In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent birth within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group."¹⁵ Gujarat, like other States in India and outside, is a patriarchal society and the testimonies below show that the perpetrators violated women with the intention of impregnating them with Hindu children. The objective of such impregnation is to replace Muslim children by Hindu children and thereby contribute in bringing about the destruction of the Muslim community.

On 1st March '02, I left my home at 1.00 p.m. in the afternoon. I was separated from the rest of the family because of the confusion. I was running towards BV21. At that time, a mob of 20-25 men surrounded me. They said, "She's really pretty and good to look at, she cannot be left alone." I begged them to leave me. They grabbed my son from me and threw the child thrice in the *babul* bush. I begged them to leave my child but they began beating me. One man said, "We shouldn't beat up someone so

¹⁴ Women's Panel, April 2002.

¹⁵ *Akayasu*, *Supra n.52*, para 507.

beautiful, she should be laid on the ground and we should enjoy her body.” After this, some were biting me, someone was punching me on my chest, someone was tearing my clothes off and they were abusing me. They were scratching me with their nails or kissing me. They were biting my thighs. They were saying “We will make you birth a Hindu child.’ After that three people raped me. They were saying “Use her as much as you want now, we won’t get her tomorrow.” At that time we could hear screams from the road, so they left me and went towards the road. (Rubina, BV9 village, Anand).

On 1st March ’02, we left BV9 at around six pm and were going towards BV21. We were surrounded by a mob on the way. Amongst us were seven girls and including me we were eight women. There were eight men with us including my husband, father in law and my nephew. The mob hit the men with iron rods till they lost consciousness. My father in law was threatened with a sword (*dhariya*) “*hum tumko kaat dalenge*” (we will cut you). They took us to the fields and started shouting dirty abuses at us, “We will make you conceive and birth Hindu children.” (Rehana, BV9 village, Anand).

They (the mob) were shouting that no Allah would come to protect you. Now say “*Jai Siyaram.*” (Hail to Hindu God Ram). After we impregnate you, then only we will leave your family. (Tahira, AA1 area, Ahmedabad).

7.9 Intent to destroy, in whole or in part, a group

(a) Acts are crimes only when the requisite mental element or *mens rea* is met. In general most acts are crimes when they are committed voluntarily and with intent i.e. the perpetrator intended to commit the act and, either intended to cause the consequences of the act, or was aware that such consequences would likely result. The intent referred in the genocide definition however, also refers to a specific intent in addition to the general intent. It is not sufficient that the acts referred in Art. II (a) – (e) of the Genocide Convention be committed with the intent to kill or cause death or cause physical or mental harm or the knowledge that death or harm would foreseeably result. It is also necessary to show that the acts were committed with the specific intent, expressed directly or inferable from the circumstances, that the acts should cause destruction of a group, in whole or in part.

(b) In *Akayesu*, the Trial Chamber notes that “intent is a mental factor which is difficult, even impossible to determine. ... intent can be inferred from a certain number of presumptions of fact. ...such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.”¹⁶ Thus, specific intent can be demonstrated by the presence of a well-defined plan or policy to eliminate, in whole or in part, the targeted group. At the same time spontaneous acts that further the genocide also reflects intent. The fact that only members of a certain group were attacked and that similarly only their livelihoods were destroyed indicates genocidal intent. Genocidal intent can also be demonstrated through statements of leaders and perpetrators and is often preceded and incited by a campaign of hate propaganda that dehumanizes the targeted group, mobilizes people by direct provocation or by stoking fear and/or disgust.

¹⁶ *Akayesu*, *Supra* n.52, para 523.

In the context of the Gujarat pogrom, the exercise of signifying intent involves identifying the perpetrators; stating their ideologies in relation to the targeted group; and tracing the ways in which perpetrators are linked to each other and the State. In addition, it involves enunciating the directives of the leadership that guide ideological construction of the targeted group from an economic, gender, cultural, social, and political perspective: and finally demonstrating the ways in which these directives are implemented by the perpetrator group at the ground level.

7.10 Victims and survivors describe their perpetrators

Victims and survivors testifying before the panel named the perpetrators of the crimes they have individually suffered. Some of the above testimonies, and those in other sections of the report, generally indicate who are responsible. Most of them are leaders and members of extreme right Hindu groups such as VHP, RSS, BJP, *Bajrang Dal*, *Shiv Sena*, the head of the State of Gujarat and other senior functionaries and police officials. The following testimonies describe the mobs, which clearly reaffirm and indict the above groups and their leaders:

It was Sunday on 21st April. The men [from the mob] were from Shiv Sena with orange belt on their heads.” (Fahima, 27 year old woman survivor, AA2 area, Ahmedabad).

Famila, from AA7 area in Ahmedabad while speaking about her sister-in-law, Firdaus said: On that day she was inside the house with four other persons.The mob was shouting “jai shri ram,” they were wearing saffron colour.”

We were having breakfast in the morning. They started throwing stones. The slogans were, get inside and hand over your women. The mob was carrying swords, tridents.(Raffat and Sameera, women from AA7 area, Ahmedabad).

Shabana and Shabnam, two women from AA23 area, and Sabiha from AA22 area of Ahmedabad, all concurred that the people in the mob were carrying swords, pipes, *trishul* and saying “Jai Shriram”. All were from Vishwa Hindu Parishad and RSS.

Yusuf from BO8, giving a brief overview on how the violence occurred in Baroda said, The mob carried swords, *trishuls* and other symbols of the *Sangh Parivar*. Petrol bombs and gas cylinders were used to burn these places. ... The mobs were made up of dalits and poor Hindus but the leadership came from leaders of VHP and BJP as well as the *Bajrang Dal*. The *Bajrang Dal* has been giving arms training to the youth even before the riots.”

The men who participated in the mobs were those who participated in the religious programmes conducted by the VHP or who had gone for other VHP programmes. They were drunk, many of the leading ones were rich tribals and the others were dressed as *Adivasis*. Most of those who lead the mobs were from the other backward castes. But we should note that although they are members, tribals do not hold any position of power within these organizations. After the violence, the VHP and BJP have been having night meetings daily, to instruct the guilty about how to duck the complaints, to ensure that the accused are not caught and so on.” (Laila, PO12 organization, PV12 village Dahod; and Kamalbhai, PO3, Panchmahals).

7.11 Ideological grounding for the attack on Muslims

Of all the organizations named, the RSS is the oldest and the chief proponent of the fascist *Hindutva* ideology that has been referred to and explained in chapter 2 and in the Annexures. RSS ideologues proclaim, “Hindus alone are the legal citizens of Bharat...”¹⁷ and the non-Hindus “.... may stay in this country, wholly subordinated to the Hindu nation, claiming nothing, deserving no privileges, far less any preferential treatment—not even citizen’s rights.”¹⁸ The prescribed treatment of non-Hindu minorities, particularly the Muslim community was therefore found in the example of Nazi Germany. “To keep up the purity of the race and its culture, Germany shocked the world by her purging the country of the Semitic races—the Jews. Germany has also shown how well-nigh impossible it is for races and cultures, having differences going to the root, to be assimilated into one united whole, a good lesson for us in Hindustan to learn and profit by.”¹⁹

7.12 Linkages between Hindutva organizations and the State

While the international law of genocide, as set forth in Article IV of the Genocide Convention, does not require the involvement of the state, it is nonetheless clear that when the forces that preach and prepare for genocide acquire state power, as in Nazi Germany and as here, the potential for escalation of the genocidal project is dangerously magnified.

In 1997, the central publication house of RSS, the *Suruchi Prakashan* published “*Param Vaibhav ke Path Par*” (On the Road to Great Glory). This book gives details of more than 40 organizations purportedly created to accomplish different tasks within different constituencies but all working towards the implementation of the *Hindutva* ideology and the manifestation of a *Hindu Rashtra*. All these groups are collectively referred to as the *Sangh* Combine. BJP, the organization formed to take over political power, and named by the victims above appears third on the list.²⁰ VHP, *Bajrang Dal*, *Durga Vahini* and *Dharam Sansad* all appear together at number four in the list. Of these, testifiers above have also identified the VHP and the *Bajrang Dal*. VHP is the organization formed to Hinduise the cultural, religious and social ethos of the country and the *Bajrang Dal* is tasked with attracting the youth, particularly from the lower caste groups, to use muscle power to manufacture consent for the *Hindutva* agenda and purge undesirable elements in the scheme of things. The *Shiv Sena*, though not officially part of the *Sangh* Combine competes with them in the vehement propagation of *Hindutva* ideology.

The *Hindutva* ideology strives to establish a *Hindu Rashtra* mainly by stoking anti-Muslim feeling among the general populace articulated in language that seeks to justify the sentiment. A recent study done among VHP activists reveals that all “who were met (formally interviewed or not) nurtured without exception a bitter anti-Muslim sentiment, so much that they seem to take as the core of Hindu identity nothing but an anti-Muslim feeling.”²¹ The RSS, VHP and their leaders have, on a number of occasion, made statements that clearly voice their anti-Muslim sentiments.

¹⁷ Organiser, Vol. 10, Oct.20, 1952, as quoted in C. Baxter, *Jan Sangh: A Bibliography of an Indian Party* (New Delhi: Oxford University Press, 1971).

¹⁸ M.S. Golwalkar, *We or Our Nationhood Defined*, 4th ed. (Nagpur: Bharat Prakashan, 1984) 55-56.

¹⁹ Golwalkar, 1st ed., (Nagpur: Bharat Prakashan, 1939) 34-35.

²⁰ See Annexure III for a reproduction of the list

²¹ Katju, 87.

“Let Muslims look upon Ram (Hindu God) as their hero and the communal problems will all be over.” (Organizer, mouthpiece of the *Rashtriya Swayam Sevak* (RSS), June 20, 1971).

“Let Muslims understand that their real safety lies in the goodwill of the majority.”
)RSS resolution, Bangalore, March 18, 2002).

“Godhra happened on February 27 and the next day, 50 lakh Hindus were on the streets. We were successful in our experiment of raising Hindu consciousness, which will be repeated all over the country now.” (VHP International Working President, Ashok Singhal, *The Indian Express*, September 4, 2002).

Hindutva organizations’ access to State power and institutions are essentially secured and consolidated through BJP, their political formation. With BJP leading a coalition government at New Delhi, there has been a systematic infiltration of RSS functionaries in a number of political positions of authority and power. The Prime Minister, Mr. Atal Behari Vajpayee and the deputy prime minister, Mr. L.K. Advani are leading members of the RSS. For the first time, an RSS *pracharak*, Mr. Narendra Modi is heading a State in India. Further, Annexure V goes on to explain how a number of high officials in public service, judiciary, police and educational institutions are all old RSS hands. As noted in chapter 2 while there have been riots in the State of Gujarat because of conflicting group interests earlier, since the 1990s when BJP rose to power politically, all violence has acquired a communal and religious colour.

7.13 Inference of Intent

The ICTR, in its *Akayesu* judgment, refers to a decision of the ICTY on specific intent: “This intent derives from the combined effect of speeches or projects laying the groundwork for and justifying the acts, from the massive scale of their destructive effect and from their specific nature, which aims at undermining what is considered to be the foundation of the group.”²²

The level and extent of complicity of officials of the State administration is a direct result of the successful infiltration of RSS and their counterparts into bureaucracy, administration and governance. Chapter 4 of the report describes the involvement of government officials, police officers and leaders of extremist Hindu organization officials and institutions in the Gujarat pogrom. From the testimonies recounted there, it is evident that the police and officials of the State administration disregarded their duty and responsibility to protect citizens. They colluded in the violence by participating in it, inciting mobs, giving carte blanche to mobs and simply refusing to protect and bring victims to safety. The defiant and non-apologetic statements of the Chief Minister of Gujarat justifying the carnage, plead for recognition as evidence of intent.

“With the entire population of Gujarat very angry at what happened in Godhra much worse was expected.”²³

Blaming it the Muslim community for the violence, Modi quoted Newton’s third law, “Every action has an equal and opposite reaction.”²⁴

²² *Akayesu*, *Supra n.52*, para 524.

²³ Narendra Modi, Gujarat Chief Minister, Press Conference in Gujarat, 28 February 2002.

Statements like the above from a Chief Minister, who has the responsibility to uphold the Constitution and protect all citizens, certainly indicates his view that carnage is justified in the event of “perceived” aggravation and his support for the violence thus follows. With no evidence even to lend credence to Modi’s claim that Muslims conspired to torch the *Sabarmati* Express,²⁵ even one year later, his statement about “avenging” it a day after seems to have been a signal to the mobs to implement, to the extent possible, the genocidal intent of destroying the Muslim community, as propounded by extremist *Hindutva* ideology.

7.14 Plan and preparation to destroy

It seems clear that the construction of a justification was also a part of plan to destroy the Muslims in Gujarat by making the attack appear retaliatory and a “spontaneous” outburst of anger. However, the planning that went into implementing the pogrom gives away their claim that the attack was retaliatory. The testimonies below are accounts suggesting that the attack was planned days in advance and much earlier than the train accident.

In 1999, the Gujarat State government (BJP) conducted a special census of Muslim and Christian households. Justice Kalla (a High Court Judge) initiated a sue moto action and the government had to stop the survey but damage was already done. They had collected enough information.²⁶ (John, AO12 organization, Ahmedabad).

Professor Keshvram Kanshiram Shashtri, 96 year old chairman of the Gujarat unit of the VHP told a web based news portal www.rediff.com that the list of shops owned by Muslims in Ahmedabad was prepared on the morning of February 28 itself.²⁷

The sexual assaults were planned in the Bajrang Dal camps. They circulated many pamphlets, which said women should be assaulted, “Don’t feel guilty to rape women of the other community.” (Lata, woman activist, AO9 organization, Ahmedabad).

Petrol bombs and gas cylinders were used to burn places. The mob used to come prepared with gas cylinders. It is also said that these people were trained to use cylinders much before the incident to be able to burn houses. (Yusuf, BO8 organization, Baroda).

There are similarities in blowing up of the mosque and houses by using gas cylinders. In Sabarkantha and Dahod district villages also you can see the use of gas cylinders though regular gas supply does not exist there and it is clear that this was sent in advance and used against people. The argument of Modi is bogus when he puts up case of spontaneous reaction. Sword and *trishul* is used across the state and this was also sent in advance. Women said that people arrived in *Marutis* (car) to bring swords and tridents. (Taslima, activist working in different districts of Gujarat, AO3).

²⁴ (the action being torching of the train Sabarmati Express which killed 59 Hindu fanatics) [The Times of India](http://www.timesofindia.com), March 3, 2002.

²⁵ In fact, the police have changed their story a number of times to fit the statements of the leaders that the facts have been obscured beyond recognition and there is serious apprehension that the truth may never be known. See Annexure VIII for the testimony of Kartik, a political activist and lawyer appearing before the Shah and Nanavati Commission inquiring into the Godhra train accident and the carnage that followed.

²⁶ There are reports that information gathered from this census was used to identify and target Muslim households and individuals for attack and destruction in the Gujarat pogrom.

²⁷ <http://www.rediff.com/news/2002/mar/12train.htm>

The pre-planned nature of the attack was also confirmed in a confidential communication of the British High Commission, New Delhi. Commenting on the Gujarat pogrom after a visit to the State, the communication states, “Their systematic campaign of violence has all the hallmarks of ethnic cleansing. The attack on the train at Godhra on 27 February provided the pretext. If it had not occurred, another one would have been found.”²⁸

7.15 Intent to destroy

The following testimonies, in addition to demonstrating that the above four acts of genocide occurred, also show that the perpetrators intended **to destroy** the Muslim population. Destruction does not only imply acts to cause immediate or eventual death (testimonies clearly point out to the intention to wipe out the Muslim population) but also includes destruction of aspects of life that makes the targeted community a distinctly identifiable group.

Sharifa, testified that when they went to PV2 in Panchmahals district to cast their votes, a mob of men from the Hindu community were present. They were drunk and said, “Now we will not only burn your houses, we will put you into shredding machines. We do not want Muslims.”

They have written on the door of our house, “Don’t come back here, if you come back here, you will be killed.” (Zaitoon, volunteer for organization AO10, Ahmedabad).

Ajaybhai from organizations BO8 and BO9 working in Baroda city, said in his testimony that in the last 10- 12 months BO8 has had to come out with a different face on account of the riots. “BJP, which is a part of the *Sangh Parivar*, has been trying to snuff out the Muslims. It has got power at the Centre. This (Baroda) used to be a Congress dominated area but they have created an atmosphere of terror and have been able to oust the Muslims from their homes.”

One of the means of achieving RSS and VHP’s objective to *Hinduise* the country is to deny religious minorities the right to practice their specific social and cultural ways of living, or to obstruct it. Exhortations to destroy Muslim places of worship, or to claim them as places of Hindu worship, have been propagated consistently in order to reduce the visible presence of the Muslim community. Though acts of cultural desecration are not by themselves one of the constitutive elements of the crime of genocide,²⁹ they are certainly indicative of the intent to destroy a group by destroying symbols that the group perceives to be markers of their distinctness or ones that the perpetrators perceive to be the identity of the group. Victims before the panel testified about the cultural destruction wreaked by attacks on mosques or shrines; by vilification of the Holy Quran; and by razing to ground the shrine of a Muslim poet writing in Urdu, often associated as the language of Muslims.

Many attempts to target symbols of identity were made, so mosques, dargahs and Korans were destroyed. The *dargahs* (shrines) that were attacked, were also

²⁸ British High Commission, New Delhi, Restricted Fm New Delhi, To DESKBY 111430Z OF 111211Z April 02. The panel has a copy of the document which was leaked to the Hindustan Times on the 15th of April, 2003 <http://www.newsindia-times.com/2002/04/26/india-british.html>

²⁹ Such acts are particularly excluded from the definition of genocide. According to the *travaux* of the Convention, listing acts of cultural desecration as means of genocide did not gather much support among countries, who were perhaps aware that some of their own policies towards minorities may well be construed as genocide.

frequented by Hindus. So even symbols of Hindu-Muslim unity were attacked. (Yusuf, male activist, BO8 organisation, Baroda).

They broke our *Masjid*, put a flag of their temple, and installed an idol in the village. (Razia, PV1 village, Panchmahals).

On 28th February all the shops were burnt and the mosque was attacked. Three gas cylinders were exploded. They burnt the Quran and urinated on it. (Dilasa, woman survivor, AA32 area, Ahmedabad).

By 4 p.m. on March 8, 02, a tarred road replaced the shrine of the grandfather of Urdu poetry, Wali Gujarati, located not more than 10 metres from the Ahmedabad Commissioner of Police P.C. Pandey's headquarters. The shrine was torn down by marauding mobs allegedly under the directions of Gujarat Revenue Minister Haren Pandya on the night of March 1. That day, a saffron flag was embedded into the site where the shrine once stood.³⁰

VHP also actively seeks the religious re-conversion of Muslims and Christians. After one success in re-converting, a VHP activist, Mr. Arvind Brahmabhatt said, "Today the *Moray Salaam* Muslims have come back to the Hindu fold and tomorrow it would be the entire Muslim community which would take a similar step."³¹

The *Sangh* Combine effectively uses BJP's political power to "reform" education to make schools and colleges a breeding ground for the spread of fascist, Hindutva ideology and to ground students in hate politics. School textbooks already project religious minorities such as Muslims, Christians and Parsis as "foreigners" and as "problems" facing the country. Annexure VII on saffronisation of education has more details on ways in which education is used to further the Hindutva ideology.

Similarly, as described in chapter 3, inter-religious marriages are controlled and monitored through the actual establishment of a cell in the state of Gujarat. The objectives are to ensure that no Hindu woman becomes a vehicle to bear Muslim children and help expand their population. A situation vice-versa is not considered a problem, as a Muslim woman married to a Hindu man will mean one less woman to bear Muslim children.

Even the dire situation of the affected Muslims in post-pogrom in Gujarat is being exploited by extremist Hindus to protect themselves from any legal action and to further their ideology of destroying Muslims. Subsection 5.2.1 lays out the ways in which Muslims are forced to agree to "compromises" that involve making changes in centuries old cultural habits and lifestyles such as the practice of *azan* (call to prayer), and of eating beef.

There is thus clearly a multi-pronged approach to achieve the objective of destruction of the Muslim community. The pogrom was one way to achieve physical destruction but there are simultaneous efforts at erasing religious, cultural, and social aspects of Muslim lives that would certainly ensure that the Muslim community, as a distinctly identifiable religious community, ceases to exist in years to come.

³⁰ Communalism Combat, 77-78 (2002).

³¹ Katju, 130.

7.16 On-going genocidal project in Gujarat

(a) Genocides do not happen overnight. As explained above, often they are preceded by a history of hate-mongering against the group built up over the years, fuelled on misinformation and events that are often exaggerated and full of propaganda. Similarly a genocidal project is implemented by unleashing acts of genocide over a period of time. While there have been acts of violence over a period of years, February-March 2002 was the first act of genocide. But the violence constituting the genocidal project continues as explained in chapter 5. The following testimonies show specifically how the constitutive elements of the crime of genocide continue even today.

On November 11, 2002 my brother was killed. He was disabled and had an artificial leg. He was also identifiable as a Muslim because he had a beard. He was travelling by bus and used to sell bed sheets. He was on his way back to the village. The mob got onto the bus by stoning and stopping it, they tore out his leg and used an axe to kill him. (Shahana, from village BV19, Kheda).

They [Hindus] have been telling us to get out. This morning [14th December, 2002] some women were told that they should leave. In the village nobody talks to us, not even those who live with us in the same lane. There is rule that they should turn Muslims away from their home. (Women from BV16 village in Anand).

Our neighbours still do not talk to us properly. They have been telling us that if the BJP comes to power we are going to kill you and send your dead bodies in a parcel to Pakistan. (Ruksana, woman survivor, village PV10, Dahod).

Last night (15th December, 2002) during *namaz* time they [the Muslims] were asked not to use loud speakers, which has been the tradition for several years. (Sarah and Aamir, activists, AO7 organization, Ahmedabad).

Shagufta lived in a *Chali* (row tenements) in Ahmedabad, with 3000 people. She said, "Now there is so much hate against Muslims that I cannot rebuild anything there."

7.17 India's obligation under Genocide Convention

(a) In 1959, India ratified the Convention on Prevention and Punishment of the Crime of Genocide, 1948. Under Article V of the Convention, India is obligated to enact legislation nationally to give effect to the provision of the Convention and to penalize persons guilty of the crime of genocide. Forty-four years later, India has yet to enact the necessary legislation. Without the necessary legislation, India is potentially unable to meet its obligation under the Convention. However, despite the lack of specific legislation, as stated in section 6.6 above, Indian Courts could conceivably show judicial will and apply international law to outlaw prohibited practices such as genocide.

(b) Where the genocidal project has, such as in this case, developed with the active participation and acquiescence of the State, leaving prosecution of the crime of genocide—or even other crimes committed under the Indian Penal Code to further genocide—to national courts would essentially ensure impunity of perpetrators. In the case of Gujarat, it is impossible to leave investigation and prosecution of the genocide to the Gujarat police and the High Court of the State as this will most certainly result in sham trials that will do nothing more than protecting *genocidaires* from justice. The recent admonishment of the State government by the Supreme Court is a reason to believe that the apex Court of India will act independent of any political pressures. However, the hope that the Supreme Court will

intervene to provide justice is slowly turning into despair because even after a year, no interim order has been issued in a number of PILs filed before the Court, which request the transfer of investigation to Central Bureau of Investigation to ensure impartial investigation.

(c) In the absence of prosecution at the national level, it is the duty and obligation of the international community to take all measures to prevent and punish those responsible for the crime of genocide. This obligation is stated clearly under Article I of the Convention by which, “The contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.” If, under Article VI, there is no competent tribunal in the State, in the territory of which the crime occurred, and if no international penal tribunal with jurisdiction exists, then contracting parties cannot be prevented from performing their obligation under Article I. Subsequent developments in international law³² have affirmed the availability and obligation to exercise universal jurisdiction for the crime of genocide. There have been a number of cases where criminals of one country are being tried by another country with legislations of universal jurisdiction. At the same time, the notion that primary jurisdiction for prosecution must lie with the State in which the crime occurred also has wide recognition under the principle of complementarity. However, different states may have a different understanding of how long to wait for national courts to take action before intervening and it is within this context that the Supreme Court of India must intervene immediately and be seen by the national and international community to be doing justice.

³² Schabas, 353-368.