

Threatened Existence: A Feminist Analysis of the Genocide in Gujarat
Report by the International Initiative for Justice (IIJ)
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Chapter 11
Recommendations

To the International Community:

- The situation in Gujarat is such even today, that there is a need to declare a **genocidal alert**.
- The genocide that took place in Gujarat had as its backdrop, the international witch-hunt of the Muslim community after the September 2001 attacks and the global war unleashed by America and its allies. The international community needs to bear this in mind.
- Under international law, “crimes against humanity” and genocide are equally grave violations which are also non-derogable (*jus cogens*) and can never be justified. Further these crimes are subject to universal jurisdiction, which triggers the authority and the obligation of the international community as a whole, and every nation individually, to extradite or prosecute the perpetrators of these crimes in Gujarat.
- The use of sexual violence as a strategy needs to be specially addressed by the international community. This is because of the sensitivity of sexual violence, which by its very nature will go completely unnoticed and unpunished unless it has a special focus and it is specifically condemned as a strategy.
- It is urgent to challenge the charitable and tax exempt status of organizations that support, directly or indirectly, the *Hindutva* agenda and spew hatred and violence with public money.
- Investigate and prevent the funding of organizations participating in the instigation and implementation of genocide and crimes against humanity against the minority communities.
- International structures, like the United Nations function necessarily within the framework of various nation-states authorities. Today these bodies are totally inadequate in providing justice to communities and to sections of people who have been denied justice either within the nation-states or by other nation-states. The international community needs to build an international platform and solidarity networks to help struggles of such communities and sections.

To the Indian Government:

- Enact legislation to implement the *Convention on the Prevention and Punishment of the Crime of Genocide*, ratified by the Government of India. Under this legislation, prosecute all the constitutionally responsible government officials (elected representatives, as well as ministers), public officials or private individuals for the act of genocide in Gujarat.

- Accede to the Rome Statute of the International Criminal Court and implement its provisions in domestic law applicable to crisis and non-crisis situations.
- Invite and facilitate an international mission of enquiry, including visits by the relevant U.N. Special Rapporteurs to monitor the development of genocide and State responsibility, in order to punish the perpetrators and prevent such occurrences in the future.
- Investigate and prosecute organizations such as VHP, RSS, BJP, *Bajrang Dal*, *Shiv Sena* and their affiliate organizations, as well as officials and individuals responsible for the continuing harassment and propagation of hate through measures such as training militia and planning genocidal attacks in Gujarat.
- Enforce strict action against, and outlaw where necessary, those responsible for the economic boycott, ghettoisation and other economic sanctions against the Muslim community.
- Establish community reparation rights for people from the Muslim community of Gujarat.
- Recognize the right to rehabilitation as the fundamental right of the Muslim Community of Gujarat.
- Establish the right to compensation of the affected Muslim community of Gujarat for failure of due diligence by the State as distinct from assistance and relief provided.
- Ensure transparency in the distribution of the relief funds.
- Restore to the Muslims of Gujarat, their rights to life, security and survival, as guaranteed to all citizens in the Constitution of India.
- Safeguard and protect the social, economic, cultural and political rights of Muslims in Gujarat as per international human rights norms.
- Ensure food security and shelter, and guarantee adequate conditions of living and the possibility of returning safely to their communities to those displaced.
- Provide comprehensive health services, including trauma counselling, and support services to all who were subjected to the brutal violence.
- Ensure security to children, both girls and boys, in terms of exercising their right to education, without being harassed, targeted and discriminated against.
- Remove communal and discriminatory references and distortion of historical facts in the textbooks of schools, colleges and other educational institutions and develop a comprehensive plan of community education, critical memorialization of the pogrom of 2002, and the support of research into the origins and process of the genocidal project and the methods of combating it.
- Disband forthwith the Gujarat State Cell to monitor inter-religious and other forms of mixed marriages.

- Ensure freedom of social interaction between people of different communities and protect such interaction from being policed and provide protection to people who are threatened.
- Ensure safety and security of human rights & women's rights defenders, and of independent and secular NGOs working to promote human rights and non-discrimination.

For the Judicial System in India:

- The Supreme Court of India has taken the first step in the direction of securing justice to the victims of the Gujarat carnage, by issuing certain instructions to the State of Gujarat. Though this laudable step has taken more than a year, it is only the beginning. The situation in Gujarat is unprecedented and hence unprecedented measures would be required to ensure justice.
- Transfer all the major cases of carnage outside of Gujarat. Establish special independent court and appoint special prosecutors, as well as staff who are not connected to communal organizations, with the authority to try the crimes committed in Gujarat as crimes against humanity and genocide under customary international legal standards, including the international crimes of rape and sexual violence since India has signed the Genocide Convention.
- In the light that the events of Gujarat in February-March 2002 are international crimes of genocide and crimes against humanity, the Supreme Court or indeed the High Court of any other State in India must assume universal jurisdiction and apply international law to initiate a process to investigate and prosecute those responsible for these crimes with the help of the CBI.
- Establish witness protection programme for all the witnesses of the carnage in Gujarat.
- Ensure prosecution of all instances of sexual violence, including those where the victim has been killed.
- Broaden the understanding of rape to include insertions other than penile penetration and the broad circumstances of coercion recognised in international law.
- Eliminate the insistence on production of medical evidence and corroboration of victims' testimonies, and prohibit admission of evidence attacking the character or sexual chastity of victims.
- Direct the Government of India and the National Commission of Women to implement the scheme for rehabilitation of survivors of sexual assault in Gujarat in accordance with the judgement delivered by Chief Justice Venkatchallaiah.¹
- Institute a legitimate investigation and prosecution of the crimes committed against the Muslim community and against Muslim women by individuals in the police, paramilitary forces and other officials, including review and re-filing of FIRs and arrest of absconders.

¹ *Delhi Domestic Working Women's Forum v. Union Of India* (1995) 1 SCC 14.

- Hold the controlling authority responsible for the carnage. This should include Ministers, elected representatives, government and public officials and the police. They should be held responsible for abetting the violence (including sexual assault) and for dereliction of duties.

To the Civil Society in India:

- The privileged sections of society and right-wing religious forces have discriminated against various marginalized communities in India such as the Dalit and *Adivasis* for centuries. Today under the *Hindutva* project there is an attempt to bring these marginalized sections into the fold of a mythical homogenised Hindu *Rashtra*. This very attempt also aims to deny these groups their fundamental rights and to provoke them to attack and violate other marginalized communities, such as the Muslim community in Gujarat. It is the responsibility of all progressive movements in India, including those within oppressed sections, to continue to strengthen the struggles of all marginalized groups and build solidarity across discriminated sections of society, including religious minorities.
- Several organizations are based on important but particular interests of oppressed or marginalized sections of society. Still, there is a need for greater awareness of the divisions within those sections and sensitivity towards them. For example, trade unions are based on the identity of people as workers. However, it is necessary to be aware of the rights of the marginalized sections within the workers, such as minorities, socially disadvantaged communities as well as women. This applies to the women's movement and several other movements as well.
- Civil society must demand legislative changes required to secure justice, while opposing draconian laws like Prevention of Terrorism Act (POTA), which target minorities once again. Civil society has the major task of strengthening the secular, democratic structure of society that is under threat and duress today.
- Civil society, democratic and progressive organizations and institutions must come together to support the people of the Muslim community to rebuild their lives and continue in their struggle for justice. In the absence of state help, the major responsibility of relief and rehabilitation was borne by the community itself, while under attack. Civil society has to come forward and build the infrastructure to shoulder this major responsibility.
- Civil society must actively resist attempts to saffronise education by demanding a rational, unbiased, historical and scientific approach, which upholds a secular, democratic and just understanding of society.
- Civil Society also has the major task of strengthening progressive forces within the Muslim community, to ensure justice for all marginalized sections such as gender, caste and class, within the community.