

NYAYAGRAHA

Campaign for legal justice and reconciliation in Gujarat

Progress Report

THE FIGHT FOR JUSTICE

The Aftermath of the Gujarat Carnage of 2002

Some of the most brutal mass crimes in recent history are those of collective vengeance against an entire community for the real or imagined crimes of a few of its members. The blood flowed of thousands of innocent Sikhs in 1984 as a reprisal against the perfidy of two Sikhs guards who



assassinated Indira Gandhi. Terrorist attacks on the twin towers in New York have been used to condone indefensible military attacks on civilian populations in Afghanistan and Iraq.

It is the same dangerously warped and morally flawed logic that was used to condone the merciless

blood letting that mortally wounded Gujarat three years ago. It was alleged that a group of Muslims set on fire a train compartment at Godhra station, resulting in the tragic deaths of 58 passengers, many of them women and children. Chief Minister Modi described the gruesome incident as a pre-planned 'one sided collective terrorist attack by one community...'

The then Prime Minister Vajpayee complained that Muslims did not condemn the incident enough.

For the last three years, intolerably

heavy burdens of vicarious guilt have been thrust upon the shoulders of the entire Muslim community in India for the alleged outrage by a few of their co-religionists in the train compartment in Godhra. The slaughter, rape, loot and arson that followed, was widely perceived as a

righteous, or at least an understandable reaction to the alleged barbarous crime by Muslims of torching the train. The same 'logic' reverberates to this day in middle-class living rooms across country. Indeed, the same reasoning choked the flow of human sympathy for the brutalized, bereaved and homeless survivors of the Gujarat carnage, in disturbing moral contrast to those of the tsunami. There was then no jostling of celebrities, no star-studded concerts, no media houses raising money for the victims, only a deafening silence. The unstated subtext was that it was somehow fitting that a gravely tainted community was left to deal with the consequences of its collective transgressions.

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It is particularly striking that this doctrine of collective communal responsibility for crimes of individuals is applied only selectively. For the recent gruesome killing of dalits in Jhajjar, or indeed in instances of dalit and atrocities that shame every generation, the upper – caste Hindu majority are never held collectively responsible. Nor are they pronounced jointly guilty for the massacres of 1984 and 2002. Such collective responsibility seems apportioned only to minorities. The official version of the Government of Gujarat, evolved through 9 charge sheets, is that a conspiracy was hatched at a guesthouse in Godhra, the night before the fire, to kill kar sewaks returning from Ayodhya, by setting aflame coach S-6 of the Sabarmati Express. For this 140 liters of petrol were said to have been procured. The next morning, on 27 February 2002, the train was halted at Godhra Station by the conspirators, by repeatedly pulling the alarm chain. It is conceded in the police version that a kar sewak misbehaved with a Muslim girl, leading to tension and of throwing of stones. Taking advantage of the confusion it is alleged that the conspirator cut through the canvas of the vestibule, poured petrol on to the S-6 coach and set it aflame.

However, the evidence before the Nanawati and Banerjee Commissions, and reports of independent experts, completely debunk the police theory. There is no explanation as to how the

alleged conspirators came to know that kar sewaks were traveling by Sabarmati Express on that fateful day, when the police and intelligence departments constantly claim they had no such advance information. It is established that it was not the Muslims but the kar sewaks who pulled the chain to stop the train, because several passengers were left behind at the platform. The theory of petrol being poured in to the bogey collapses also because none of the 70 or more passengers who escaped from the bogey had any burn wounds below their waist.

Although the evidence now overwhelmingly supports the theory of a fire accident within the train and death mainly by asphyxiation, there are still many unanswered questions that the investigations and history will hopefully answer. However an impartial assessment of the large body of available evidence makes one thing incontrovertible, and this is that the official version of a conspiracy planned and executed by the Ghanchi Muslims of Godhra to set the bogey aflame, is unsupported by any credible corroboration.

The carefully reasoned Banerjee interim report has exposed the venality and cynicism of state authorities who

created and continue to expound stubbornly this communally incendiary Muslim conspiracy theory, which has profoundly impaired communal relations across the country, and further demonised the entire Muslim community, as violent, supportive of terrorism and of unreliable patriotism. More than a hundred Muslims youths remain confined even today behind bars, without either bail or hope, charged under the draconian provisions of POTA with the burning of the S-6 compartment at Godhra.



However it is perilous to suggest that the Banerjee report has also demolished the ethical justification for the 2002 massacre of minorities in Gujarat, because such justification never existed. No community can be held collectively culpable for the crimes of individuals. Even if a group of Muslims had indeed planned and executed the horrific murder of kar sewaks on that fateful winter morning at the at Godhra station three years ago,

Yet fear still remains the dominant motif of a battered community across Gujarat. It takes two days for my taxi driver Munnabhai to tell me in low conspiratorial tones, almost like a confession, 'Do you know, I am also a Muslim'. Days later, when I return to Delhi, a friend calls a local taxi stand for a taxi. The taxi owner informs him that the driver is Muslim. 'Chalega?' he asks.

I realize then that the distance from Gujarat to Delhi is not as far as one may have hoped.

it would not have justified the taking of a single life.

GUJARAT TODAY

Little has changed for the survivors of the Gujarat carnage of 2002, despite the passage of more than three years and a major change of regime in New Delhi. Their wounds refuse to heal, as an unrepentant state government continues to subvert and destroy justice and all norms of civilized and humane governance. As a climate of fear and hostility, as well as economic and social boycott, continues to prevail in many parts of Gujarat, many thousand survivors continue to languish without hope, security, homes and livelihoods. The government still refuses to reach out with resources and support to enable people to rebuild their lives. It also continues to subvert the legal justice system in unprecedented ways to deny justice to the survivors.

What has changed is that independent judicial authorities have rejected the claim that there was any

pre-planned conspiracy to burn down the Sabarmati Express at Godhra. The Justice Bannerjee Commission, in fact, concludes on the basis of wide forensic and circumstantial evidence that the fire was most probably the result of a fire. The UPA federal government repealed the draconian POTA, but without retrospective effect, therefore several hundred Muslim youth continue to be wrongfully detained in Gujarat under its provisions.

In September 2004, we were able to secure a historic judgment from the Supreme Court for re-examination by a high level committee of the state government, the decision to close without trial more than 2000 cases registered after the carnage, and also to look into appeal of more than 300 cases where the accused are acquitted. Efforts to get the Supreme Court to decide on the reinvestigation and transfer of investigation of specific riot cases are also being undertaken. The orders of the Supreme Court continue to be flouted



with impunity by the Modi government.

There are many villages in Gujarat today that have proudly been 'cleansed', fully and probably permanently, of their erstwhile Muslim residents, settlements that have accomplished the next decisive phase of the on-going genocide, which was initiated in the bloody spring of 2002. Gaily painted boards greet you at the entrance of these villages, in ominous greeting: 'Welcome to this Hindu village in the Hindu Rashtra of Gujarat'. These are villages where their Muslim residents are too terrified to return home even today. Many now despair that they will ever be able to go back to the soil of their ancestors.

The predominant situation, especially in villages that were torn apart by the mass violence of 2002, remains one of settled hate, settled fear and settled despair. In that sense, what has elapsed after 2002 is in many ways even more genocidal than the gruesome events of 2002. It is estimated that more than half of the affected people are still unable to

In one such village Moghri, in the outskirts of Kheda, around 90 Muslim families lived for generations before 2002. In the tempest of hate in 2002, they were driven out, destitute and in terror; never to return. Most families owned agricultural land; some were tailors, farm workers, shopkeepers, artisans or small businessmen and traders. The homes were torched of those families who owned these properties. For tenants of Hindu house-owners, the houses themselves were systematically spared, but their properties were looted and burned

In the months that followed, some attempted sporadically and fearfully to return to their ravaged homes and lands, but village elders and youth openly told them that they were unwelcome and that their security could not be assured. They warned them that the first condition for anyone who still wanted to return to the village of their birth, was that they would have to refuse to give evidence in any police investigation or court trial into the mass crimes of 2002.

Only one timid resident agreed to these humiliating terms. He filed no case, refused to name his tormentors to policemen and magistrates. 18 months after the massacre, the village elders of Moghri village agreed grudgingly to permit his homecoming. He hired a truck and returned with his family to what remained of his home. Two days later, he fled after a mob of village youth gathered outside his home, threatening to set it aflame once again. He pleaded that he had given no evidence against them, but they demanded that he should pressurise the entire village into withdrawing their cases. Eight days later, the truck returned forlornly to collect his belongings once again. He later sold his land and home in Moghri, and bought instead a home in a settlement with 98 per cent Muslims. He then joined his village brethren to file a complaint before a magistrate against those who threatened him.

The villagers have filed a total of 8 complaints in the magistrate's courts against the mass crimes of 2002, and 4 more for the threats that followed. But predictably the police have done little to investigate the crimes. In exile from their village, many live in small tenements in Muslim ghettos built by Islamic relief organizations. But they are too frightened to cultivate their fields, and the economic boycott robs them of opportunities for wage work. Many have been compelled to sell their lands at distress prices to Hindu land-owners. With this is buried their last hope of ever returning home

return to their homes, and indeed today despair of ever returning. If they return, they have to surrender their right to fight for justice, whatever they may have suffered, and to accept residential segregation and economic boycott. A number of humiliating conditions are laid down. The first of these is that they will not pursue legal justice, refusing to give evidence against their tormentors to the police or courts, even if their daughter may have been raped or their parents killed in their presence. Other conditions forced on the internal refugees who long to return home, are that they will live in separate settlements, no one will employ or trade with them, their religious and cultural expressions must be muted, and so on. The acceptance of these conditions amounts to abject social surrender by an entire community, a forced consent to live as

second-class citizens. It is the fact that thousands are accepting these terms even though there is now little overt violence, and there is little public resistance or outrage, that makes the aftermath of 2002 even more chilling and genocidal, with congealed covert violence embedded in transformed social relations.

Gujarat represents an extreme case in which none of the four necessary components of reconciliation hypothesised earlier were allowed to happen to any degree, actually it was the reverse. Instead of acknowledgement, there remains active denial and blame of the victim; instead of remorse, there is pride; instead of reparation, there is economic boycott; and instead of justice, there is active subversion of the process of law.

THE CHALLENGES OF SECURING JUSTICE AND HEALING IN GUJARAT

We believe the struggle for defending secular democracy in India is in the nature of a second freedom struggle. And healing and justice for the survivors of the brutal state-sponsored massacre of 2002 in Gujarat, has become both the symbol and necessary condition for the success of this vital democratic battle for equal rights of all citizens. We would go so far as to say that in the troubled times that we are passing through globally, this effort is part of a battle that indeed has historic implications for the destinies of future generations. The battle for justice and healing of the survivors in Gujarat has become symbolic of the battle for the survival of secular democracy in

India. It is a battle in which all people who believe in pluralism, equality, justice and humanism must join hands. It will be a long battle, but one that we will eventually win.

We believe that reconciliation and healing are impossible from a position of social surrender, humiliation and fear. In this sense, the battle for justice is a necessary precondition (but by no means

constructed on fear and injustice. The purpose for the fight of justice is not mere individual revenge and if it reduced to this it is unlikely to lead to any genuine reconciliation in the communities that were torn apart by the hate and bloodshed. The battle for justice must be resolute but must also create spaces for dialogue and healing. As Desmond Tutu of South Africa says,

echoed the collective anguish of large sections of the Indian people at the open partisanship and utter impunity of the state machinery with regards to the Gujarat carnage.

The damning observations of the highest court in the land were made in the context of the Best Bakery case, which has justly captured national attention. However, this is only one of

Two teenage girls from Godhra lost their father in jail, while he was detained under POTA. Their mother had died earlier, and they struggle to feed their younger brothers and sisters. 'We miss him unbearably', they said to us, 'But now we are not afraid. After that, what is there left for us to fear?'

a sufficient condition) for reconciliation. The struggle for justice for the survivors of the 2002 massacre in Gujarat has no doubt to be fought in the courts, judicial and human rights commissions, the parliament and legislature. But most importantly of all, it has to be fought by the people themselves, in the places they live and work, and in their hearts and minds. This is a fight against fear and hate. It is a struggle for equal rights before the law, regardless of one's faith, caste, class or gender. It is a battle against forgetting. If justice is not done this time, then fear and hate will win decisively, and the secular foundations of India will be threatened as never before.

The battle for justice is important to prevent the recurrence of such mass crimes in the future. It is also important for upholding the dignity, equal rights and freedom from fear and intimidation of the survivors. Justice is an essential feature of reconciliation because no genuine reconciliation can be

'there is no future without forgiveness.'

PLANNED SUBVERSION OF JUSTICE IN GUJARAT

There has been injustice and partisanship by state authorities in India in communal situations in the past. But never in independent India have state authorities treated a segment of its citizens with such open consistent and elaborate structured discrimination, as has been observed during the state sponsored pogrom of 2002 and its aftermath, in defiance of every civilised principle of justice and the rule of law.

The unprecedented outrage of both the Supreme Court of India and the statutory National Human Rights Commission, at the brazen subversion of all civilised principles of justice by the elected state government of Gujarat,

literally thousands of cases in which justice has been cynically and efficiently subverted by state authorities in Gujarat, in the aftermath of the carnage of 2002. Of the 4252 cases registered in connection with the mass violence, more than 2107 were closed without even the issue of a charge-sheet to the courts. 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. In around 300 cases, the accused have been acquitted after trial.

The closure or cases or acquittal of the 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 universally sluggish pace of criminal justice in our country. This was the outcome of systematic planned subversion of justice in a manner not unlike the planning of the massacre itself.

Many of the cases that have been closed were deliberately destroyed in this way at the stage of the filing of the FIR itself. The accused were not named, and instead the violence was attributed to anonymous mobs. In many cases, om- are asking for a re-investigation into the case. They allege that the police did not take down their testimonies properly, deliberately omitting details and the names of the accused. Once trial begins, prosecution is frequently deliberately the strenuous resistance by the police to their applications for bail. With such shoddy investigation and deliberately subversive prosecution, it is not surprising that cases fell like a house of cards.

In this sombre hopeless climate of settled hate and mortal fear that has gripped large tracts of the Gujarati countryside, supported unashamedly and with impunity by a recalcitrant rogue state government, the stunning victory of the residents of another village, Ghodasar, in the same district, is all the more inspiring. Unnoticed by the media, the humble villagers, mostly farm workers, secured from a police apparatus and lower judiciary that is notoriously corroded with partisan communal prejudice, the first conviction of life imprisonment against 12 of their attackers. This came within just 20 months of the crime.

On that fateful day in 2002, mobs in their village attacked first their mosque, then their shops and homes. They cowered in terror for two days and nights amidst the standing crops of the fields in the neighbouring village of Jalampur, whose residents gave them cover and protection. But on the third day, a mob of 1500 people traced them. 14 people were killed, all elderly, including two seventy year old women.

Investigations into their police complaint began desultorily a month and a half after the tragedy, when they were still in makeshift relief camps. A delegation of village elders visited them to say that if they wish to return to their village, they must refuse to give evidence to the police, and contradict their police complaint. A meeting of the village residents, however, resolved that they would not trade truth and justice for even the security of returning to their former homes.

Based on their police statements, arrests started of leading local Hindutva activists, who were named in their complaints and statements. As the matter reached the district court at Nadiad, alarm spread to the ranks of the attackers. A high level delegation, comprising senior Sangh and VHP leaders and lawyers visited them again to negotiate. This time, not only the threats were held out, but inducements of money were added. The dispossessed villagers, mostly landless, had received less than ten thousand rupees each from the government for their destroyed homes and shops and were without work or roof. But they resolutely refused to bow to both the threats and the bribes.

It is testimony to their steadfast courage and integrity even under such odds, that not one of 48 witnesses turned hostile or altered their statements in court. They were assisted by a low profile dedicated team of human rights activists of the Foundation for Civil Liberties. The witnesses confidently identified in the courts the killers, and testified to the judge how the accused had slaughtered their loved ones and neighbours, variously with swords or crowbars, or by roasting alive.

The sentence of life imprisonment against 12 accused electrified the entire region. The Muslim residents of Ghodasar village then returned to their village. No one had the courage to halt their path. Today they live in their homes rebuilt by a relief organization, none threaten them and many have found work once again as farm workers. The pain and memories linger, but there is now no fear in their hearts.

nibus FIRs were filed in advance by the police, 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.

Investigation in many cases was assigned to tainted police officers accused of abetting or even participating in the massacre. Witnesses and survivors

shoddy and partisan, and public prosecutors are often openly active members of the Sangh and affiliated organisations.

The accused are frequently not arrested, under the specious claim that they are 'absconding', whereas they openly threaten and intimidate the witnesses. The injustice is further compounded by the large-scale arrest of people of the minority community, and

The brazenly partisan exercise of state authority is most evident in the unapologetically discriminatory application of the draconian Prevention of Terrorism Act 2002 (POTA) exclusively against minorities. All 240 cases of POTA in Gujarat have been filed against minorities, and all but one of these has been filed against Muslims. 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, have been booked by the state government under POTA. The UPA government refused to repeal POTA retrospectively, so these cases persist.

For the first time in independent India, the state government refused to set up relief camps for the survivors of the brutal massacre. Relief camps set up by the battered community had sub-human conditions, but the state government forcefully disbanded even these. Many survivors of the carnage are still too terrified to return to their homes in the face of a social and economic blockage. Compensation was arbitrary, discriminatory and a pittance, and again for the first time so soft loans were extended by any bank to assist people to rebuild their devastated homes.

FIRST STEPS

In the first month, much effort was devoted to finding one's feet and understanding the situation. We arrived in Ahmedabad, hired a small flat, and *Janhit* generously offered us two additional rooms to work out of. We met



most organisations that are engaged in issues of rehabilitation and legal justice, to understand the nature of the challenges. We also travelled into many parts of rural Gujarat and spoke to a large cross-section of affected people. We also spoke to lawyers who were engaged in legal justice work.

We identified the legal challenges and began preparation of a manual for legal justice and peace workers or *nyaya pathiks*, who would be drawn from local communities. In this, Ms Indira Jaisingh, senior human rights lawyer provided leadership, and Nimisha Agrawal, a volunteer lawyer from the UK contributed significantly.

We finalised three districts for intensive work and study. The first of these was Ahmedabad, which is the capital city, a flourishing metropolis that saw almost half the violence in the entire state, Anand, which is agriculturally prosperous and politically influential, and Sabarkantha, which has a significant rural and tribal population. We also began the process of recruiting

community workers or *nyaya pathiks*.

THE FIGHT FOR JUSTICE

In the face of the colossal degree of state impunity, subversion and open hostility and extensive bias in the judiciary, the resistance by human rights groups and many who have never engaged in legal justice work in the past but feel impelled to now join the fight for these, has been utterly remarkable, and in the long history of communal violence in India unprecedented.

Most organization decided to focus all their attention and resources on a few selected 'major' test cases, where there was a great deal of loss of life, and to fight these with the best legal talent, and considerable resources and efforts for witness protection and support. The outcome of these efforts has been salutary. The legal battle of the Citizens for Justice lead to the historic decision

of the Supreme Court to move the hearings to a court located outside the state of Gujarat. Organisations like Behavioural Science Centre are pursuing the Naroda massacre.

Organisations like Jan Vikas have established police venality in the Bilkis rape and massacre case, and forced the

reopening of investigations in a matter in which justice was literally buried. 19 year old Bilkis of Randikpur village, who was 5 months pregnant at that time, was gang raped, and escaped murder by her assaulters only because she fell unconscious, and was assumed to be dead. She is the lone surviving witness to 14 murders and 8 gang rapes including herself. She told her story to the police, who merely took her thumb impression on a blank sheet of paper. They then wrote an FIR which did not mention rape and referred only to violence by unknown mob. The men she named walked away free, and the police characterised as mentally unstable. Through the intervention of human rights lawyers, a medical examination was ordered but only after the lapse of 15 days and no evidence or rape was detected. The case stood closed as far as the police was concerned. Today in the reopened case, Bilkis has bravely stood her ground and is close to bringing the guilty to justice.

Away from the media spotlight, the Foundation for Civil Liberties has secured two extraordinary convictions, in the mass murders of Ghodasar and Anjanwada. In this sombre hopeless climate of settled hate and mortal fear that has gripped large tracts of the Gujarati countryside, supported unashamedly and with impunity by a recalcitrant state government, the

stunning victory of the residents of another village, Ghodasar, in the same district, is all the more inspiring.

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An auto rickshaw driver Munnabhai recounts his encounter with a beautiful young woman, who asks him to drive her anywhere, do what he likes with her, but give her some money. On persistent probing, she confides that she was widowed by the massacre in and did not know how else to feed her three children. The driver, himself a 'victim of the carnage, gives her all the money he has, and weeps a little as he drives her home.

The recent dramatic victory in three quarters of the seats by the BJP in the recent municipal elections in Ahmedabad confirms the emergence of Modi as a modern folk hero for the adoring middle classes, testifying to a terrifying ever widening engineered communal chasm. But many bewildered Muslim residents say, 'we ourselves worked against the Congress. What could we do when it put up candidates who had led the murdering mobs in 2002.

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It is testimony to their steadfast courage and integrity even under such odds, that not one of 48 witnesses turned hostile or altered their statements in court. A low profile dedicated team of human rights activists of the Foundation for Civil Liberties assisted them. The witnesses confidently identified in the courts the killers, and testified to the judge how the accused had slaughtered their loved ones and neighbors, variously with swords or crowbars, or by roasting alive.

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region. The Muslim residents of Ghodasar village then returned to their village. No one had the courage to halt their path. Today they live in their homes rebuilt by a relief organization, none threaten them and many have found work once again as farm workers. The pain and memories linger, but there is now no fear in their hearts.

Jan Sangharsh Morcha is resolutely fighting for justice in another battlefield, the judicial commission set up by the state government headed by Justice

Nanavati. The organisation has been relentless in ensuring that truth is documented for posterity about state failures and crimes in 2002 and thereafter,

and has mustered a prodigious number of witnesses and documents that keep alive the hope for justice at least on some future date. Organisations are also pursuing the defence of those accused under various cases of POTA.

NYAYA-AGARHA is attempting to complement and support these major efforts for justice and eventual reconciliation. Despite the very important wider impact of the legal efforts focused on a few selected cases, in a practical sense an estimated 80 to 90 percent of the victims are still struggling on their own to fight their legal cases. This would be a formidable human rights challenge even in more normal circumstances, but it can be devastating both for justice and peoples



Student Volunteers & Nyay Pathiks

morale in the situation of massive unprecedented state subversion of justice outlined earlier. This is compounded further by the atmosphere and intimidation, in which large numbers of people are being coerced to concede to humiliating compromises of agreeing to withhold or even reverse their evidence that can bring the guilty to book.

We believe that this struggle for

NYAYAGARHA

In a tribal village Tejgarh in rural Vadodara in Gujarat, economic boycott continues vigorously against the petty local Muslim traders even today. While destroying their small shops in 2002, a spreading neem tree under which some of the shops had sheltered for generations was also burnt down. Arjun, a young adivasi teacher of literature writes poignant requiem to the fallen mighty neem, 'You were like the adivasi steadfast of character and generous of spirit. In an analogy to the violence by adivais in 2002, he goes on, 'It was not you who destroyed the shops of the Muslims. You were set aflame yourself, and fell unknowingly of the shops that stood in your shade. . 'He adds, 'I grieved as you burnt, but did nothing to douse your fires. Just like the intellectuals of my Gujarat.

justice and equal rights before the law that must be waged primarily by people themselves, and further that the greatest contribution can be made by resolute and courageous peace and justice workers who emerge from among the very communities that have survived the mass violence. These *nyaya pathiks* will try to help the survivors to rise above the hate and fear that has bitterly divided their communities and almost broken their spirits. They will work without compromise, hate or fear with steadfast

commitment to justice, and with compassionate and unfailing support for the survivors and witnesses.

The historic order from the Supreme Court to re-examine all cases that were summarily closed or acquitted opens up the opportunity to secure justice for thousands of survivors of the Gujarat carnage. One category of litigation in the Supreme Court relates to more than 2000 cases that were closed after investigation without even trial, and

nearly 300 cases which were heard in court with deliberately weakened and openly partisan investigation and prosecution resulting in the accused being acquitted. The September 2004 Supreme Court ordered re-examination by a high level committee of the state government, the decision to close without trial more than 2000 cases registered after the carnage. In brief, a high-level team has been set up to re-examine each of the cases, with periodic reports to the Supreme Court, directions allowing NGOs to submit evidence and the reasons for closure have to be placed on a web-site. However, these orders have mostly been ignored with characteristic impunity by the Gujarat government, leading to a second application scheduled for hearing in Feb 2006. The application also sought review of appeals filed by the state government in all the cases where the accused are acquitted.

A second category of litigation with which *Nyay-agraha* will engage relates to matters related to compensation, relief and rehabilitation. There is in this first the challenge that is being mounted against the paltry and discriminatory norms that are established for compensation, relief and rehabilitation of the survivors. Secondly, even these minimalist entitlements have been systematically withheld by a hostile and partisan state, for which the aggrieved



Learning Law

people will file a large number of appeals.

Beginning with three major districts, Ahmedabad, Anand and Sabarkantha that account for an estimated 60 percent of all cases and affected people, teams of paralegal *nyaya pathiks* or peace and justice community workers, and young lawyers will be established. The teams will identify all legal infirmities by examining the record, it will make contact with the complainant victims and witnesses, and attempt to build and sustain their confidence to pursue the cases. In all cases where there are clear legal infirmities and the consent of the victims, they will pursue the matter with High Level Review Committee, Special Investigation Teams, the concerned Courts and the local committees.

A *nyaya pathik* is a community legal worker, a volunteer peace and justice worker drawn from the community affected by the mass violence on both sides of the divide. They may be male or female; of diverse religions and caste; and will include dalits and adivasis. They may be of any age, although the majority will be drawn from youths; of any profession but most will be from working class or farming backgrounds. No formal educational qualifications are required. What they must possess are sterling qualities of character, including a passion for justice, fearlessness, integrity and compassion.

Some *nyaya pathiks* will work full

time and effort will be made to pay them a modest monthly fellowship. Other large numbers will work part time, on a purely voluntary basis. However, for both they should see their contribution not as a job, but as a movement for justice, peace and reconciliation.

The broad duties of a *nyaya pathik* are to assist survivors of mass communal violence to overcome hate and fear, and to fight for legal justice in accordance

Two teenaged girls from Godhra lost their father in jail, while he was detained under POTA. Their mother had died earlier, and they struggle to feed their younger brothers and sisters. "We miss him unberably, they said to us, but we are not afraid. After that, what is there left for us to fear?"

with the victim's aspirations. They will collect information about various aspects of the legal cases, understand what stage the case has reached, its problems and also the aspirations of the victim. They are also charged with assisting vulnerable survivors of mass communal violence, especially widows, children and unsupported old people, to rebuild their livelihood and shelters in accordance with their aspirations. Their ultimate duty is to promote processes of genuine reconciliation and healing in the communities that were torn apart by the

mass violence and hate mobilization, including where possible to facilitate the dignified return of people to their homes.

The *nyaya pathiks* are trained to carry out their duties with the following principles, that they must always treat the victims and witnesses with great empathy and respect; help them combat fear and hatred, hopelessness and the sense of being alone; clarify also the risks and difficulties of pursuing legal justice; to assure the victims of solidarity and support regardless of whether or not they choose to fight the legal cases; and in no circumstances to judge the victim or witness should they decide to compromise or not fight, remembering they are coping as best as they can with very difficult circumstances.

PROGRESS SO FAR

Teams of 6 to 8 *nyaya pathiks* have been established in all the 3 districts, Anand, Sabarkantha and Ahmedabad. Some young lawyers are on board, but more needed with the motivation, integrity, secular values and professionalism that is needed. *Nyaya pathiks* have been trained to understand the working of the legal system, the constitutional framework and criminal justice procedures, with special reference to the cases in hand. A manual has also

been readied and is being translated into Gujarati.

To complement the efforts of other organisations that are pursuing a select number of cases, we are going in for a strategy of mass of cases decreases the risk of those represented individuals

'It is usually after midnight that there is violent knocking on your door. Before you realize it, 20 to 30 policemen storm into your house, hurling abuses, kicking and beating even women and children, smashing furniture, ransacking papers. Amidst the terror, finally a man is picked up. You watch helplessly as he is taken away. For questioning, you are told by the policemen. You plead desperately, and ask for reasons. You are given only abuses and threats.'

There is a sickening monotony to the testimonies of families whose loved ones have been detained under the notorious Prevention of Terrorism Act (POTA), 2002 in Gujarat, used exclusively against Muslims. As human rights activist Zakia Jowher says, 'There is no reprieve against the might of a state determined to brand an entire community as terrorists. No one knows who will be the next to be targeted'.

facing harassment and police prosecution means that not all cases may achieve success, it puts enormous pressure on the system, forcing the police to start responding. This change is clearly visible. Our priority, therefore, is to

reopen and produce a charge sheet for every case in which the affected person wishes to pursue justice.

A large number of factors will determine the degree to which the survivors will ultimately secure justice. To the extent that they do, they will contribute both to healing the wounds of the survivors and preventing the recurrence of such mass crimes with state complicity in future. In the words of leading human rights activist Girish Patel, this battle is not primarily about winning or losing, although we do hope to win cases. 'It is far more importantly a crushed people's resolve to resist efforts by the state to exile them from the legal process itself, to deny them their rights as equal citizens of this country to access the legal system, with all its strengths and flaws. To the extent that even the efforts ultimately fail, they will constitute a significant people's resistance to injustice. Gandhi spoke of *satyagraha*, or a people's struggle for truth. Equally, in the context of second class citizenship being imposed on people in Gujarat only because they follow a different faith, this effort is called *nyaya-agraha*, or a people's struggle for justice, secularism and their equal rights guaranteed under the constitution.

It is hoped that the organisation of community peace and justice workers, both paid and voluntary, and the young lawyer who partner them, will continue

to work for justice and genuine reconciliation in the years ahead, as long as their efforts are needed. This should work as a genuinely democratic mass crimes with state complicity in people's organisations, resolutely devoted to the principles of *insaaf*, *insaniyat* and *anam* or justice, humanism and peace .

The campaign *nyaya-agraha* is at present being anchored mainly by this organisation of peace and justice workers called Arnan Biradari, and the Yusuf Meherally Centre, Mumbai that has long fought resolutely for communal harmony and justice. These groups will strive to build a large number of alliances, for their work of legal justice as well as enduring and authentic reconciliation. A large number of organisations have pledged and extended support to the work in a variety of ways, like Lawyers Collective, Jan Vikas, Janhit, Behavioral Science Centre and ANHAD. It is hoped that more and more organisations join hands to assist this work. The support of senior lawyers to fight the cases especially appeals is also being sought.

The action study on reconciliation is supported by WISCMOP, of the Foundation for Universal Responsibility of the Dalai Lama, and they are particularly keen to continue to engage with the long-term processes of reconciliation.

NYAYAGRAH GOALS, STRATEGIES AND PROGRESS.

Background.

The roots of Nyayagrah were sown in the injustice meted out by the criminal justice and state machinery to the Muslim community in the wake of the violence. Many of our Nyay pathiks and coordinators were previously involved as Aman Pathiks in an effort to build peace and trust between the two communities and in an effort to provide emergency support with housing, economic generation, health and education to the victims of the violence as they struggled to survive, having lost their homes and loved ones in the carnage of 2002.

A fundamental philosophy underpinning the project is that justice is a prerequisite to peace and work of building trust between the two communities has to be on terms which are fair and grounded on values of equality, respect and care for the other. We therefore are against compromises which have been reached under coercive and unjust circumstances. We have heard of Muslim citizens being denied the right to legal justice as a precondition to returning to their village homes or having to agree to not have the call to daily prayers being announced over the loudspeaker.

Legal Injustice.

There were about 4252 cases registered following the carnage of Gujarat 2002. 2122 of these cases were closed without proper investigation and following legal intervention most of these cases have been reopened. Our work in the initial few months was focused on getting details of these closed cases so that we could contact witnesses, victims and complainants and support them in securing justice where they had not been able to pursue it before. There were many, many people who were dissuaded, discouraged or threatened into not registering their FIRs accurately with full details of the accused. We initially faced many obstacles in securing the relevant information from the local police stations and the courts. Our Nyaypathiks and advocates had to make many trips to the police stations and courts, but slowly they feel that they have established some connections at some police stations and it is not as hard for them to get information as it was at the beginning.

The work done in the three districts is summarised in the attached table. Though we are doing our best to contact as many victims as possible, there are still many more for us to contact.

In Anand and we have contacted 36 people in cases which were closed and of these people, 14 have indicated that they wished to take further action. There

are currently 35 trials scheduled to take place-our advocates are attending court in 17 of these trials to monitor the conduct of public prosecutors and to provide support to the victims and their families. Our advocates inform us that their presence in court is reassuring to the victims and also their presence means that victims cannot privately be coerced, threatened or induced to accept compromises that are not in their interests. We have learnt that in certain cases, the public prosecutors have delayed court process by just refusing to be present in court on dates when the cases are due to take place. This has caused great inconvenience and injustice to the victims who have waited for months for a court date and have travelled great distances to attend court. Ofcourse, a factor completely overlooked by the Public Prosecutors is the level of psychological trauma suffered by the victims and the courage and effort required for them to prepare themselves to attend court again recall the events when they lost their loved ones or watched their entire belongings burnt to ashes in front of their own eyes. It is likely that some victims will not be able to put themselves through this process again and so if the court proceedings are adjourned on the date they made it to court, they may not make it back to court again and in that case the trial would be ineffective because of the absence of evidence from eye witnesses.

In Sabarkatha, we have contacted 70 people in closed cases of which 11 have indicated their agreement to proceeding further. On the reinvestigation front we have recently been successful in getting a case reopened where 14 people have been arrested. We have obtained court papers in 13 cases and our advocates are looking at possibilities of appealing acquittal decisions.

In Ahmedabad, the district with the largest number of FIRs, we have contacted 152 people at various stages of court proceedings. In some cases the victims are looking to reopen their cases, in others they are hoping to challenge the acquittal decisions in the lower courts. A number of the Nyaypathiks working in Ahmedabad and the other two districts are themselves victims of the mass genocidal violence perpetrated against Muslims in 2002, they also volunteered to help in the initial relief camps which were set up to support the thousands of homeless men and women. Many of these volunteers continued to engage with the multiple injustices faced by poor Muslims in the wake of the genocidal violence by joining movements such as Amansamuday which sought to create the foundation for peace and justice through the work of various grass root activists (who called themselves Aman Pathiks), engaging with issues that affected the people on the ground.

The structure of Nyayagrah.

The project is engineered, inspired and led by Harsh Mander, who has written extensively on the important issues arising out of the failure of the local state not only to prevent and control the violence against Muslim citizens but the abject failure in refusing to provide suitable rehabilitation to the affected people and its failure to build foundations for renewing the trust of the affected people.

The project is presently primarily concerned with the three districts of Ahmedabad, Sabarkatha and Anand. In each district there is a team, comprising of about 8 nyaypathiks, supported by about 4 advocates and administered, supported and managed by a district coordinator. The Nyaypathiks role is to work with victims, complainants and witnesses on the ground in their respective areas. Their work involves enlisting the help of a community of volunteers, called Nyaysathis in each area. The aim in creating a community of Nyaysathis in each area is to provide a supportive environment which enables those who want to pursue justice to be able to overcome any fear, intimidation and threats that they may be subjected to. Nyaysathis and Nyaypthiks are our ears and eyes on the ground. They are also responsible for working with the advocates to get relevant documents out of the police station and courts to ensure

that the steps towards achieving a just outcome can be promptly taken.

The advocates are primarily young local lawyers whose role is to provide legal support to all Nyaypathiks and take all legal steps to further the cause of justice where the victims/complainants and or witnesses wish to exercise their right to justice , a right that has so far been denied to them.

There have been 4 stages of cases that our Nyaypathiks and advocates have been dealing with. For the first few months they were focusing exclusively on the 2000 or so cases that were summarily closed before trial without going through the proper legal procedures. The Gujarat government by its action of reopening the vast majority of these cases has accepted that the closures were indeed unfair and illegal. The second stage of the cases are those which are ongoing in that they were not summarily closed and they are either going to proceed to trial or are actually going through trial. The third stage is where the trial has taken place but the victims/complainants/witnesses allege that the trial was unfair either because the prosecution and presentation of evidence was done in such an unbiased manner that an unjust outcome was inevitable. There have been a very small proportion of cases so far where the trials have resulted in the conviction of the accused .Also, in some cases where the

accused have been convicted of very serious offences; they have been sentenced extremely leniently. We have information about one such case in Ahmedabad, where we are hoping to pursue an appeal on behalf of the victim's family. With the reopening of the vast majority of cases, the most common category of cases that our teams have to deal with is assisting and advising victims through the reinvestigation and hopefully the retrial process. Our aim is to intervene through the various stages of reinvestigation and retrial to ensure justice is achieved the second time round.

Our Nyayagrah team is also engaged in helping victims to get compensation for the damage and loss incurred in 2002. We are also committed to long-term work with the affected communities to rebuild trust and peace. Our guiding principle is that peace has to be built on the secure foundations of justice and equality of citizenship. So, we are firmly against compromises reached by Muslim victims under unfair and coercive circumstances. We believe that Muslim citizens have the right to pursue justice against those who were responsible for the committing serious crimes against Muslim bodies and against Muslim property.

Nyayagrah team is also engaged in supporting research which seeks to better understand and illuminate the

conditions in which survivors of carnage continue to live their lives.

Apart from the district coordinators, we also have three people working across the districts to coordinate the work of the team across the districts. Their work is to support the district coordinators with identifying resources and support needed in each area for the team to pursue its goals of obtaining justice for the concerned victims in each area.

RECONCILIATION & JUSTICE ACTION RESEARCH PROJECT

This action research project is being undertaken in conjunction with a people's campaign for justice and reconciliation, among the survivors of the 2002 carnage in Gujarat, called Nyaya-agraha. The lines between the two efforts are thin, but Nyaya-agraha is more intensively into practice, with a strong initial focus on legal justice. The WISCOMP supported action research is an attempt to map out the contours of what is happening in the lives of ordinary people in the aftermath of the massacre and their large-scale displacement from their homes, a kind of contemporary subaltern history of what an enormous human made catastrophe like a communal slaughter wreaks on the lives of ordinary people, and how they cope and adapt. It also is

trying to find ways of working with community peace and justice workers to achieve genuine reconciliation in extremely difficult circumstances.

This is the first update after both the WISCOMP study and the Nyaya-agraha campaign formally began work, on 15 Sept 2005. It will attempt mainly to lay out the social and political realities and challenges against which both the campaign and the study will be undertaken.

Introduction: In search of a national process of reconciliation in communal relations

Given the enormity of the paramount ever-looming threats posed by a deliberately fostered communal divide and violence to the very survival of secular democracy in India, it is remarkable that there has been no systematic, sustained process of reconciliation and justice in communal relations in India.

Part of the problem is that the challenge itself, both of on-going communal mobilisation and violence and of pervasive subversion of justice, are not sufficiently acknowledged, by the state, political parties and formal civil society organizations. Secondly, much of the violence and injustice is not overt, it rages unseen most in the hearts and minds of people, and spills over only rarely on to the streets, where it is much

more clearly visible. Thirdly, governments, political parties and social organizations, are most frequently increasingly equivocal, unsteady and reluctant in dealing with the intensely sensitive and potentially divisive issues

what they enjoyed prior to the conflict. There can be no compensation for loss of loved ones, homes and valued ways of life, but reparation should also address this.

Justice involves firstly legal justice of

fair, timely and non-partisan processes of registering police complaints, investigation, arrest, bail, prosecution, trial and appeal. It includes

organizations is optional, but equipped with compatible values and skills; they can vastly facilitate the process.

We believe that if our country remains secular and humane, it is primarily because of its large mass of ordinary, working people, and in the choices that they make even as they struggle and cope with the extremely difficult conditions of their lives. They defend secularism, justice, humanism and democracy, and indeed the idea of India itself, in a myriad different ways, in their politics and social objectives, but also in the manner they choose to live their lives. The ways they earn their living and spend their money, in what they teach their children and speak of to their friends, in the dreams of young people and the wisdom of the old. In their worship and their irreverence. In the songs they sing, in the books they read, in the films they choose to watch. In their solidarities and friendships, in whom they choose to align with and whom they choose to fight, in their voices and their silences. We propose to work primarily with them, recognising them to be our greatest resource and strength.



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raised by communalism.

Any authentic process of reconciliation requires at least four mandatory stages: (i) acknowledgement; (ii) remorse; (iii) reparation; and (iv) justice. The first of these involves a public acceptance that grave violence and discrimination actually took place: and the second, a public and expression of collective regret for the violence and discrimination.

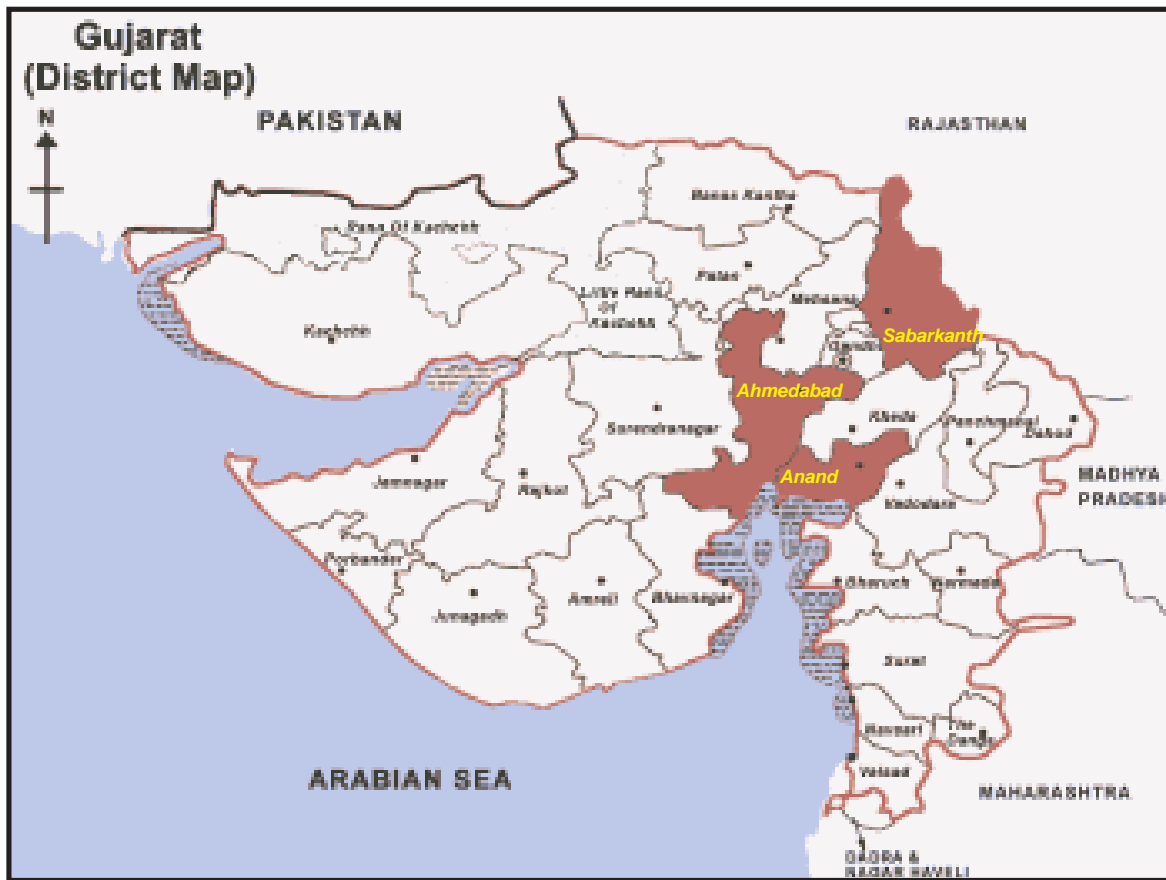
Reparation involves at the very minimum adequate and timely assistance to enable survivors to sustainably achieve shelters, livelihoods, common resources, habitats and cultural environments, which are better than

also accountability to people and the legal system of public officials charged with preventing and controlling communal violence, reparation and restoring peace. Finally it involves restoring peace: the establishment of a sustainable environment of peace founded on justice, free from fear and mistrust between communities, and strengthening of social, economic and cultural bonds between them.

The responsibilities for process of reconciliation and justice and their failures vest with the people on both sides of the conflict, on the one hand, and the governments on the other. The role of human rights and the social

Tabular representation of the legal cases being followed

Chart of District Team From December 05 to February 06															
Team	Closed Case			Re Investn			Ongoing Case			Acquittal		App filed	Compensator		
	Cont	Const	Appl	Cont	Const	Re lvn	Cont	Trial	C.St	Docs	Stat		Appl	Relief	To
Anand															
Total FIR Registered	66			0			104			29		0	0		
Last review Progress	36	14	0	36	15	8	25	7	2	1	0	0	82	0	
Progress in period of review	0	0	0	1	2	2	10	10	2	10	1	0	117	0	
Cumulative total	36	14	0	37	17	10	35	17	4	11	1	0	199	0	
Legal Aid application	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Legal Advice	0			0			18			0		0	0		
Action Plan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Sabarkantha															
Total FIR Registered	285			0			176			36		0	0		
Last review Progress	70	11	11	0	11	11	0	1	0	3	1	0	56	0	
Progress in period of review	0	0	0	37	10	0	0	3	0	10	4	0	117	0	
Cumulative total	70	11	11	37	21	11	0	4	0	13	5	0	173	0	
Legal Aid application	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Legal Advice	0	0	0	0	0	0	0	0	0	18	0	0	0	0	
Action Plan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Ahmedabad															
Total FIR Registered	414			0			516			0		0	0		
Last review Progress	57	18	1	0	0	2	0	3	0	3	1	0	0	0	
Progress in period of review	0	0	0	78	36	4	0	4	0	3	3	0	0	0	
Cumulative total	57	18	1	78	36	6	0	7	0	6	4	0	0	0	
Legal Aid application	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Legal Aid application	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Legal Advice	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Action Plan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	



*Marked are the three District in Gujarat where intensive work and study is going on.

INTRODUCTION



was organized 20 years ago by the Indian Muslim residents of the United States primarily as a forum for addressing issues of special

concern to Muslims of India. In these fifteen years, the Committee’s work has focused on four major areas: Humanitarian aid to victims of recurrent anti-Muslim pogroms in India, educational assistance to orphaned and destitute children, financial support for the poor, and development and dissemination of literature on abuses of human rights of Indian Muslims. As the Committee enters its sixteenth year, it realizes the need to look beyond a temporary fix for the suffering Indian Muslims, in keeping with the changing times.

The Indian Muslim Relief Committee is a nonprofit organization. It is funded by donations of concerned US citizens who want to reach out to victims of human rights abuses, social injustices, and racial bigotry. Add to this the selfless contribution by more than 100 volunteers of their valuable time without compensation, thus enabling the Committee to operate on an overhead that rarely exceeds 5 percent of its revenues. It is this generosity that has made it possible for the Committee to undertake the much needed relief and rehabilitation work in India. However, a lot more needs to be done especially when forces of fanaticism and hatred are on the rise in the world’s largest democracy.

YUSUF MEHERALLY CENTRE

The Yusuf Meherally Centre was started in 1961 in memory of Yusuf Meherally, and Dr. Zakir Hussain, the then Vice-President of India, inaugurated it formally in 1966.

The objectives initially were : promoting national integration and studying the problems of urbanisation. After 1967, the transformation of a rural area through mobilisation of urban resources in man, money and material and with the participation of local people got added as an objective.

Later, rural development became its main thrust and a large number of activities were taken up in diverse fields at Tara in and around Karnala Panchayat, Tal. Panvel, Dist. Raigad. On the basis of the experience gained over two decades, a new dimension was added to its activities. Since early nineties, it is actively engaged in presenting to the nation a replicate model of rural development. This model is based on its definition of organic farming, including vermi-culture and vermi-compost, plus non-conventional energy plus village industries and marketing their products in urban and semi-urban areas, in addition to the surrounding village.

YUSUF MEHERALLY CENTRE

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Tel.: 011-(022) 23870097 Telefax : 23889738**

AMAN BIRADARI

Aman Biradari is a people's campaign for promoting communal harmony: aspires to build local level institutions mainly of youth and women, of diverse faith, caste and gender, at village and district levels to strengthen mutual bonds of tolerance, fraternity, respect and peace between people of different religious groups, caste and language groups, to promote equal citizenship, justice communal harmony, peace and the celebration of our social and cultural diversity.

AMAN BIRADARI

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