

Case: Mass Community-Based Legal Aid in Gujarat, India

**An Interview with Harsh Mander
March 2008**

In the aftermath of the 2002 Gujarat riots, more than half of the complaints filed by victims were closed without trial. The Nyayagrah initiative brought together working-class Muslim and Hindu volunteers to provide moral support and legal assistance to the victims. Along with a petition to the Supreme Court, the project led to real access to justice for the survivors of the riots.

Who were the disadvantaged in this case?

In 2002, the state of Gujarat was convulsed by one of the worst episodes of ethnic blood-letting that independent India has seen. This resulted in the brutal murder, often by burning alive, of an estimated 2,000 men, women and children, almost entirely of the Muslim community, and mass rapes and slaughter, often of young girls. More than two hundred thousand people fled in terror as their homes and livelihoods were systematically plundered and burned. They took refuge in sparse makeshift relief camps that were hastily erected across the state of Gujarat by volunteers of the beleaguered victim community.

There is massive independent evidence confirming the enormity of the brutality, which was substantially targeted at women and children from the minority Muslim community. This evidence corroborates the systematic advance planning and execution of the violence by right-wing fundamentalist Hindu nationalist groups, and the role of the State authorities who enabled or actively abetted the planned massacre and destruction.

As fear and insecurity continued, authorities forcibly closed refugee camps. Refugees were told, by local residents, as well as by law enforcement officials, that they would only be allowed to return on the condition that they would not seek legal justice against individual perpetrators of violence. Otherwise they would face renewed violence as well social and economic boycott until they were forced to leave their homes again. In the aftermath of the riots, 4,500 complaints of violence were filed, largely by the police; victims were prevented from filing their complaints. Most case files failed to name an accused, referring instead to "anonymous mobs." These police complaints often included hundreds of crimes in single files. More than half the cases were closed without trial. To break this trend of legal protection for perpetrators of ethnic violence, the Nyayagrah Program for Mass Community-Based Legal Aid began a two-pronged strategy to improve access to justice for riot survivors.

What was the innovation, and how did it improve access?

Gandhi fashioned the instrument of "satyagrah," literally truth-force, as a mode of ethical, non-violent mass resistance against unjust laws and legal regimes. In his words, "Civil disobedience becomes a sacred duty when the State becomes lawless." However, in formal democratic regimes, the letter of the law often upholds justice while State authorities openly violate citizen rights in practice. Where the State willfully violates its own laws, we require the development of new instruments of civic resistance. We

propose the idea of “Nyayagrah”, (literally “justice-force” or people’s resistance for justice) as mass campaigns not to disobey unjust laws, but instead to hold the State accountable for enforcement of its own just laws. The State must be required to uphold rights guaranteed by its Constitution and laws, and to secure justice through its democratic instruments.

The Nyayagrah Program’s two-part innovation began, first, with a petition to the Supreme Court to reopen these 2000-plus closed cases. The petition was granted, but without the support of victims there were still impediments to access to justice. To encourage riot victims to speak up, Nyayagrah began a second initiative, a mass community-based and ethically bounded grassroots campaign, to educate, guide, counsel, support and aid victims of ethnic violence. It uses the police and courts, but we see it as primarily a battle against fear, hate, and injustice. Our ethical foundation rests on our resolution never to manipulate or make use of the victim, to take every step only with her informed consent, and to ensure that no bribe is given or taken and truth never compromised.

We chose a holistic approach to the problem: rather than selecting test cases for trial, we contacted every person affected by the riots. Once we identified the plaintiffs in these improperly closed cases, we provided moral support, in case they wished to name the accused and fight the cases, ensuring that the accused were arrested and brought to trial. To ensure the authenticity of Nyayagrah’s cases, each victim must pledge that he or she will not take give or take bribes or falsely accuse members of the community. To give local residents a sense of ownership over the grassroots initiative, the Nyayagrah Program employed both Community Justice Workers and lawyers to educate and support plaintiffs. Community Justice Workers proved essential to helping local communities heal in the aftermath of the Gujarat riots: they were both Hindu and Muslim, mostly working class, and generally contributed their time not for the minimal wages they received, but to overcome the ethnic tensions that led to the carnage in the first place.

What were the obstacles you encountered?

The State continues five years later to be openly hostile to the Muslim minorities, and many refugees are still unable to return home, cramped in ghettos. Others who have returned face widespread social and economic boycott.

Many observers were skeptical that mass prosecution by working class justice workers and young lawyers could challenge the impunity of the powerful State and the persisting social divide between communities. Yet others felt that the police and courts could never be used to enforce justice. In a sense, Nyayagrah had to wage a war against common sense, given the size of the state apparatus the program had to face.

Others believed that justice was not the priority of the victim, who was believed to be more interested in issues of livelihoods and the opportunity to return to their homes.

What were the results of the innovation?

In a persisting situation of fear, open State hostility and boycott, it is remarkable the survivors in around 250 cases have decided to confront both the State and their neighbors by both naming the accused and pursuing the cases with our support. We learned that justice is important for dispossessed survivors, as it restores to them a

sense of equal citizenship and humanity, forces acknowledgement of their suffering, and prevents recurrence. Local victims of violence were encouraged to seek legal recognition for their suffering, not for retribution, but because the community perceived justice to be the only way to rebuild a sustainable community after the disruptions of the sectarian carnage. When the fight for justice is community-based, egalitarian, and ethical, even states that violate their own secular, democratic Constitutions can be held accountable through the institutions of the police and the court system.

The Innovator



Harsh Mander is a social worker and writer. He worked for nearly two decades in the Indian Administrative Service, primarily as head of district governments in the predominantly tribal states of Madhya Pradesh and Chhatisgarh. Mr. Mander has worked tirelessly for social causes such as community harmony; tribal, dalit, and disability rights; the right to information; custodial justice; and livelihoods for homeless people and bonded labor. He writes and speaks regularly on issues of social justice. Mr. Mander's books on the subject include *Unheard Voices: Stories of Forgotten Lives* (published by Penguin India), *Cry, My Beloved Country: Reflections on the Gujarat Carnage 2002 and its Aftermath*, and *The Ripped Chest: Public Policy and Poor in India*. He has been awarded the M.A. Thomas National Human Rights Award (2002) and the Rajiv Gandhi National Sadbhavana Award for peace work.

At present, Mr. Mander is the Convenor of Aman Biradari, a people's campaign for secularism, peace and justice. In this capacity, he works for Nyayagrah, a movement for legal justice and reconciliation for the survivors of the 2002 Gujarat riots, and Dil Se, advocating for the rights of homeless children, youth, and women. In addition, Mr. Mander is a Special Commissioner appointed by the Supreme Court of India, Honorary Director of the Center for Equity Studies (working on public policy for the poor), and a columnist for the Hindu Times. **Email: Harsh Mander, harshmander@vsnl.net**